



16.1.2017

OPINION

of the Committee on Legal Affairs

for the Committee on Culture and Education

on the proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities

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

Rapporteur: Daniel Buda

SHORT JUSTIFICATION

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 audio-visual media services in view of changing market realities seeks to modernise the audio-visual media landscape and to bring it up to speed with the market, consumption and technological changes. The constantly increasing convergence between television and services distributed via the internet and new emerging business models such as video-on-demand and user-generated content call for the re-examination of the scope of application of the AVMSD, as well as of the nature of the rules that are applicable to all market players, including the rules on the protection of minors and on advertising.

As such, this proposal forms part of the Digital Single Market strategy adopted on 6 May 2016, and builds on the findings of the REFIT evaluation envisaged in the Commission's 2015 work programme. This updated legal framework shall ensure a balance between competitiveness and consumer protection, facilitate access to online content services and guarantee an adequate and uniform level of protection, especially of minors and citizens from harmful content and hate speech on the internet.

Specifically, the primary objectives of the proposal are centred on three main problematic issues: a) the protection of minors and consumers on video-sharing platforms; b) the promotion of a level playing field between traditional broadcasters and on-demand audiovisual media services and video-sharing platforms; and c) simplification of the overall legislative framework through clearer and more flexible rules on commercial communications.

AVMSD currently covers broadcasters and certain on-demand video services and requires Member States to impose minimum rules for the regulation of audio-visual media services in specific coordinated fields. In doing so, it establishes the country of origin principle for the regulation of media services within its scope of application, with certain exceptions to avoid abuses. The new proposal seeks to bring video-sharing platforms within its scope of application, also imposing new obligations on on-demand services.

The proposal provides for alignment of the standards of protection of minors from programmes that may impair their physical, mental or moral development for TV broadcasting and on-demand services. The proposal also introduces quantitative quotas to ensure that on-demand services promote EU content as well as the possibility for Member States to impose financial obligations on on-demand services in their jurisdictions and, under certain circumstances, on services established in a different Member States so long as they are targeting their national audiences, thus creating more level playing field. It also introduces more flexibility for all audio-visual media services, including for TV broadcasting, regarding product placement and sponsorship, thus achieving a balance between competitiveness and consumer protection. Finally, the proposal brings within its regulatory scope video-sharing platform services, which do not have editorial responsibility for the content they store, but which organise that content, imposing rules on protection of minors from harmful content and of all citizens from hate speech.

Your rapporteur is of the opinion that this proposal should also aim at ensuring effective

enforcement of intellectual property rights. In this context, producing and promoting European works represents an important goal and cultural diversity in Europe could be safeguarded by ensuring a high level of copyright protection, guaranteeing authors' and right holders' fair remuneration as well as by encouraging investments in cultural and creative sectors. In this sense, both the principle of territoriality and also the value created by exclusive rights are important elements for the success of the audio-visual sector, and for its financial sustainability, taking into account the small and medium-sized Member States' characteristics and specific interests and also their cultural background and diversity.

Your Rapporteur considers that the new rules introduced by the amending proposal should also ensure compliance with Union Law, ensuring, inter alia, respect for European citizens' fundamental rights, for the principle of proportionality and for transparency.

Moreover, as far as measures against harmful content and hate speech are concerned, it must be taken into account that freedom of speech and of expression is a fundamental right, which should not be used as an excuse to cover up these practices.

In the context of the extension of the regulatory scope of the Directive 2010/13/EU, your Rapporteur stresses the need and importance of aligning linear and nonlinear audio-visual media services. The rights and obligations of the traditional services should be aligned with those of the new media players; this aspect should be fully incorporated in the review process of the AVMSD.

In conclusion, your Rapporteur welcomes 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 audio-visual media services in view of changing market realities and proposes the following amendments in order to reinforce the audio-visual media sector's role in all areas: economic, social and cultural:

AMENDMENTS

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

Amendment 1

Proposal for a directive

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

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.

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.

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 *owing to the gradual convergence between television and internet services*. 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. *An updated legal framework is therefore required in order to reflect developments in the market and to achieve a balance between access to online content services and consumer protection and competitiveness.*

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).

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).

Amendment 2

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 Commission should be able to ask*** the European Regulators Group for Audiovisual Media Services (ERGA), ***which is to be composed of national independent regulatory authorities in the field of audiovisual media services,*** to provide ***non-binding*** opinions on jurisdiction ***in order to facilitate coordination with the law of the Member States.***

Amendment 3

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 codes. 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.

(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, **constituting a useful alternative or complementary means to legislative action**, 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 self- or co-regulatory codes. **Member States should ensure the enforcement of self-regulatory or co-regulatory codes**. It is equally important that the codes establish specific targets and objectives allowing for the regular, **efficient**, 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>.

³¹ COM(2015) 215 final.

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

Amendment 4

Proposal for a directive Recital 8

Text proposed by the Commission

(8) In order to ensure coherence and give certainty to businesses and Member States' authorities, the notion of "incitement to hatred" should, **to the appropriate extent**, be aligned **to** the definition in the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law which defines hate speech as "publicly inciting to violence or hatred". This should include aligning the grounds on which incitement to violence or hatred is based.

Amendment 5

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 6

Proposal for a directive Recital 9 a (new)

PE589.491v02-00

Amendment

(8) In order to ensure coherence and give certainty to **Union citizens**, businesses and Member States' authorities, the notion of "incitement to hatred" should be aligned **with** the definition in the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law which defines hate speech as "publicly inciting to violence or hatred". This should include aligning the grounds on which incitement to violence or hatred is based.

Amendment

(9) In order to empower viewers, **in particular** parents and minors, in making informed decisions about the content to be watched, it is necessary that audiovisual media service providers provide **all necessary** 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 **and, where possible, comply with available local systems of rating of descriptors.**

8/38

AD\1108551EN.docx

(9a) The right of persons with an impairment and of the elderly to participate and be integrated in the social and cultural life of the Union is linked to the provision of accessible audiovisual media services. Therefore, Member States should take appropriate and proportionate measures to ensure that media service providers under their jurisdiction actively seek to make content accessible to persons with a visual or hearing disability by 2027. The accessibility requirements should be met through a progressive and continuous process, while taking into account the practical and unavoidable constraints that could prevent complete accessibility, such as programmes or events broadcast in real time.

Amendment 7

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Similarly, Member States should be encouraged to ensure that **self-and co-regulatory codes of conduct** are used to effectively **limit** the exposure of children and minors to audiovisual commercial communications for alcoholic **beverages**. Certain co-regulatory or self-regulatory systems exist at Union and national level in order to market responsibly alcoholic beverages, including in audiovisual commercial communications. Those systems should be further encouraged, in particular those aiming at ensuring that responsible drinking messages accompany audiovisual commercial communications for alcoholic **beverages**.

Amendment

(11) Similarly, Member States should be encouraged to ensure that **self-regulation and co-regulation** are used to effectively **end** the exposure of children and minors to audiovisual commercial communications for alcoholic **products**. Certain co-regulatory or self-regulatory systems exist at Union and national level in order to market responsibly alcoholic beverages, including in audiovisual commercial communications. Those systems should be further encouraged **and Member States should be allowed to take further steps in drafting national guidelines**, in particular those aiming at ensuring that responsible drinking messages accompany audiovisual commercial communications for alcoholic **products**.

Amendment 8

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 media services** has evolved and there is a need for more flexibility **and greater clarity** with regard to, **in particular, existing rules on increasing competitiveness, on providing a real level playing field for audiovisual commercial communications and on** 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 9

Proposal for a directive

Recital 14

Text proposed by the Commission

(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

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 **being allowed to** directly **encourage** 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

provider's editorial independence.

audiovisual media service provider's editorial independence.

Amendment 10

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) The liberalisation of product placement has not brought about the expected take-up of this form of audiovisual commercial communication. In particular, the general prohibition of product placement with some exceptions has not created legal certainty for audiovisual media service providers. Product placement should thus be allowed in all audiovisual media services, subject to exceptions.

Amendment

(15) The liberalisation of product placement has not brought about the expected take-up of this form of audiovisual commercial communication. In particular, the general prohibition of product placement with some exceptions has not created legal certainty for audiovisual media service providers. Product placement should thus be allowed in all audiovisual media services, subject to exceptions, ***as it can create additional income for audiovisual media service providers.***

Amendment 11

Proposal for a directive

Recital 18

Text proposed by the Commission

(18) *As* the increase in the number of new services has led to a greater choice for viewers, ***broadcasters are given greater flexibility with regard to the insertion of advertising and teleshopping spots where this does not unduly impair the integrity of programme.*** *Yet*, in order to safeguard the specific character of the European television landscape, interruptions for cinematographic works and films made for television as well as for some categories of programmes that still need specific protection should remain limited.

Amendment

(18) ***Even though*** the increase in the number of new services has led to a greater choice for viewers, ***it remains necessary to continue to protect the integrity of programmes and consumers from disproportionately frequent advertising and teleshopping spots.*** ***Therefore***, in order to safeguard the specific character of the European television landscape, interruptions for cinematographic works and films made for television as well as for some categories of programmes that still need specific protection should remain limited ***and not be subject to further flexibility.***

Justification

It is important to underline the importance of maintaining the 30 min rule between advertising interruptions for cinematic works, as it would disproportionately affect the programmes' integrity and does not correspond to the consumer habits, nor to an imperative need for the audiovisual media services.

Amendment 12

Proposal for a directive Recital 19

Text proposed by the Commission

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.

deleted

Justification

This amendment seeks to delete the Commission proposal to remove the current 20% per clock hour approach to commercial communication. The current system offered by Directive 2010/13/EU is effective and allows revenue to be generated and reinvested in quality content, whilst avoiding the saturation of peak hours with adverts, which could be detrimental to consumers. See also justification for amendment to Recital 13.

Amendment 13

Proposal for a directive Recital 21

Text proposed by the Commission

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

(21) Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring, **by appropriate means**, that their catalogues contain a minimum **amount of a variety** of

enough prominence.

European works and that those are given enough prominence. ***In preserving and promoting European production and cultural diversity, the principles of territoriality and of the country of origin should be respected.***

Amendment 14

Proposal for a directive Recital 26

Text proposed by the Commission

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

Amendment

(26) There are new challenges, in particular in connection with video-sharing platforms, on which users - particularly minors - increasingly consume audiovisual content. In this context, harmful content and hate speech stored on video-sharing platforms have increasingly given rise to concern. It is necessary, in order to protect ***citizens and, in particular***, minors from harmful content and from content containing incitement to violence or hatred, to set out ***common and*** proportionate rules on those matters, ***without undermining in any way the fundamental right to freedom of expression and without prejudice to Directive 2000/31/EC of the European Parliament and of the Council^{1a}.***

^{1a} ***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).***

Amendment 15

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 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.

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 **and should be applied to all audiovisual media**. The measures set out in this Directive therefore complement those set out in Directives 2005/29/EC, 2003/33/EC and 2014/40/EU.

Amendment 16

Proposal for a directive

Recital 30

Text proposed by the Commission

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

With a view to ensuring a clear and consistent approach in this regard across the Union, Member States should not be entitled to require video-sharing platform providers to take stricter measures to

Amendment

(30) It is appropriate to involve the video-sharing platform providers **actively** 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).

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).

Amendment 17

Proposal for a directive

Recital 32

Text proposed by the Commission

(32) **The** video-sharing platform providers covered by this Directive provide information society services within the meaning of point (a) of Article 2 of Directive 2000/31/EC. Those providers are consequently subject to the rules on the internal market set out in Article 3 of that Directive, if they are established in a Member State. It is appropriate to ensure that the same rules apply to video-sharing platform providers which are not established in a Member State with a view to safeguarding the effectiveness of the measures to protect minors and citizens set

Amendment

(32) Video-sharing platform providers covered by this Directive provide information society services within the meaning of point (a) of Article 2 of Directive 2000/31/EC **and generally provide hosting services in accordance with Article 14 of that Directive**. Those providers are consequently subject to the rules on the internal market set out in Article 3 of that Directive, if they are established in a Member State. It is appropriate to ensure that the same rules apply to video-sharing platform providers which are not established in a Member

out in this Directive and ensuring a level playing field in as much as possible, in as far as those providers have either a parent company or a subsidiary which is established in a Member State or where those providers are part of a group and another entity of that group is established in a Member State. To that effect, arrangements should be made to determine in which Member State those providers should be deemed to have been established. The Commission should be informed of the providers under each Member State's jurisdiction in application of the rules on establishment set out in this Directive and in Directive 2000/31/EC.

State with a view to safeguarding the effectiveness of the measures to protect minors and citizens set out in this Directive and ensuring a level playing field in as much as possible, in as far as those providers have either a parent company or a subsidiary which is established in a Member State or where those providers are part of a group and another entity of that group is established in a Member State. To that effect, arrangements should be made to determine in which Member State those providers should be deemed to have been established. The Commission should be informed of the providers under each Member State's jurisdiction in application of the rules on establishment set out in this Directive and in Directive 2000/31/EC.

Amendment 18

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

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

Amendment 19

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) Regulatory authorities of the Member States can achieve the requisite degree of structural independence only if established as legal entities ***separate from the government***. 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 ***their independence and thus*** 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 20

**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) ***The*** ERGA has made a positive contribution towards consistent regulatory practice and has provided high level ***and independent*** advice to the Commission on implementation matters. This calls for the formal recognition, reinforcement ***and further clarification*** of its ***coordinating*** role in this Directive. ***This Directive should therefore formalise the role of the ERGA as an independent expert advisor***

to the Commission and as a forum for the exchange of experiences and best practices between national regulators. The ERGA should be entrusted, in particular, with a specific advisory role with regard to issues of jurisdiction and the issuing of opinions on Union codes of conduct based on co-regulation.

Amendment 21

Proposal for a directive

Recital 37

Text proposed by the Commission

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

Amendment

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

Amendment 22

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

Amendment

(38) This Directive is without prejudice to the ability of Member States to impose obligations to ensure **adequate and non-**

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.***

discriminatory discoverability and accessibility of content of general interest under defined general interest objectives such as ***as guaranteeing media independence and*** pluralism, freedom of speech and ***expression, intellectual property rights, 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, ***taking into account the application of the principle of proportionality.***

Amendment 23

Proposal for a directive

Article 1 – point 1 – point d

Directive 2010/13/EU

Article 1 – paragraph 1 – point b a

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 containing*** 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 24

Proposal for a directive

Article 1 – point 3 – point b

Directive 2010/13/EU

Article 2 – paragraph 5 a

Text proposed by the Commission

5a. Member States shall communicate to the Commission a list of the audiovisual media service providers under their jurisdiction and the criteria set out in

Amendment

5a. Member States shall communicate to the Commission a list of the audiovisual media service providers under their jurisdiction and the criteria set out in

paragraphs 2 to 5 on which their jurisdiction is based. They shall subsequently inform the Commission without undue delay of any changes to that list. The Commission shall ensure that the competent independent regulatory authorities have access to this information.

paragraphs 2 to 5 on which their jurisdiction is based. They shall subsequently inform the Commission without undue delay of any changes to that list. The Commission shall ensure that the competent independent regulatory authorities have access to this information.

In accordance with the principle of transparency, the Commission shall make the list referred to in this paragraph publicly accessible.

Amendment 25

Proposal for a directive

Article 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 4 – 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, ***without undue delay***, request all necessary additional information. The Commission shall inform the Member State of the receipt of the response to that request.

Amendment 26

Proposal for a directive

Article 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Where the Member State concerned does not provide the information requested within the period fixed by the Commission or where it provides incomplete information, the Commission shall take a decision ***that*** the measures taken by the Member State in accordance with

Amendment

Where the Member State concerned does not provide the information requested within the period fixed by the Commission or where it provides incomplete information, the Commission shall take a decision ***as to whether or not*** the measures taken by the Member State in accordance

paragraph 2 are *incompatible* with Union law. If the Commission decides that the measures are incompatible with Union law, the Member State shall put an end to the measures in question as a matter of urgency.

with paragraph 2 are *compatible* with Union law. If the Commission decides that the measures are incompatible with Union law, the Member State shall put an end to the measures in question as a matter of urgency.

Amendment 27

Proposal for a directive

Article 1 – point 5 – point a

Directive 2010/13/EU

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall inform the Commission, the regulatory authorities of other Member States and the ERGA about more detailed or stricter rules adopted in accordance with paragraph 1.

Amendment 28

Proposal for a directive

Article 1 – point 5 – point c

Directive 2010/13/EU

Article 4 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(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.

(c) the Commission has decided, after having consulted ***the contact committee established pursuant to Article 29***, 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.

Amendment 29

Proposal for a directive

Article 1 – point 5 – point c

Directive 2010/13/EU

Article 4 – paragraph 5 – subparagraph 3

Text proposed by the Commission

Where the Member State concerned does not provide the information requested within the period fixed by the Commission or provides incomplete information, the Commission shall take a decision **that** the measures taken by the Member State in accordance with paragraph 3 are **incompatible** with Union law. If the Commission decides that the measures are incompatible with Union law, the Member State in question shall refrain from taking the intended measures;

Amendment

Where the Member State concerned does not provide the information requested within the period fixed by the Commission or provides incomplete information, the Commission shall take a decision **as to whether or not** the measures taken by the Member State in accordance with paragraph 3 are **compatible** with Union law. If the Commission decides that the measures are incompatible with Union law, the Member State in question shall refrain from taking the intended measures;

Amendment 30

Proposal for a directive

Article 1 – point 8

Directive 2010/13/EU

Article 6

Text proposed by the Commission

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;

Amendment

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, terrorist acts or hatred directed against a group of persons or a member of such a group defined by reference to sex, **race, colour**, ethnic or **social** origin, **language**, religion, belief, **opinion**, disability, age or sexual orientation;

Amendment 31

Proposal for a directive

Article 1 – point 9

Directive 2010/13/EU

Article 6a – paragraph 3

Text proposed by the Commission

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.

Amendment 32

Proposal for a directive

Article 1 – point 10

Directive 2010/13/EU

Article 7

Text proposed by the Commission

(10) Article 7 is **deleted**;

Amendment

3. The Commission and ERGA shall **support** media service providers **in exchanging** best practices on co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.

Amendment

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

1. **"Member States shall encourage self-regulatory and co-regulatory codes of conduct to ensure that media service providers under their jurisdiction make their services progressively more accessible to people with a visual or hearing disability and shall aim for complete accessibility by the end of 2022. The Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a periodic report on the application of this provision, every three years after the entry into force of this Directive.**

2. **The Commission and the ERGA shall facilitate the exchange of best practices between audiovisual media service providers.**

3. **Such codes of conduct, as referred to in paragraph 1, shall include a requirement that media service providers report on an annual basis to Member States about the steps taken and progress made in respect of progressively making**

their services more accessible to persons with visual and/or hearing disabilities. Member States shall ensure that this information is made publically available.

4. Such codes of conduct shall encourage audiovisual media service providers to develop, and make publicly available, accessibility action plans made in respect of progressively making their services more accessible to persons with visual and/or hearing disabilities. Such action plans shall be communicated to national regulatory authorities."

Amendment 33

Proposal for a directive

Article 1 – point 11 – point a

Directive 2010/13/EU

Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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.

Amendment

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 **reasonable expectation of 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.

Amendment 34

Proposal for a directive

Article 1 – point 11 – point a

Directive 2010/13/EU

Article 9 – paragraph 2 – subparagraph 3

Text proposed by the Commission

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.

Amendment

The Commission and ERGA shall **support** 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.

Amendment 35

Proposal for a directive

Article 1 – point 11 – point b

Directive 2010/13/EU

Article 9 – paragraph 3

Text proposed by the Commission

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**.

Amendment

3. Member States and the Commission shall encourage the development of self-**regulation** and **co-regulation** regarding inappropriate audiovisual commercial communications for alcoholic **products**. **Such self-regulation and co-regulation** should be used to effectively limit the exposure of minors to audiovisual commercial communications for alcoholic **products, for example by prohibiting commercial communications for alcoholic products during times when children are most likely to be exposed to audiovisual media services**.

Amendment 36

Proposal for a directive

Article 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 may take appropriate measures to ensure adequate discoverability and accessibility of audiovisual media services of general interest. These measures shall be proportionate and meet general objectives such as media independence and pluralism, freedom of speech and information and cultural diversity and shall be 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 comply with those measures."

Amendment 37

Proposal for a directive

Article 1 – point 13

Directive 2010/13/EU

Article 11 – paragraph 2

Text proposed by the Commission

2. Product placement shall be admissible in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and programmes with a significant children's audience.

Amendment

2. Product placement shall be admissible in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and programmes with a ***reasonable expectation of a*** significant children's audience.

Amendment 38

Proposal for a directive

Article 1 – point 13

Directive 2010/13/EU

Article 11 – paragraph 3 – subparagraph 2

Text proposed by the Commission

By way of exception, Member States may choose to waive the requirements set out in point (c) provided that the programme

Amendment

deleted

concerned has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

Amendment 39

Proposal for a directive

Article 1 – point 14

Directive 2010/13/UE

Article 12 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 40

Proposal for a directive

Article 1 – point 15

Directive 2010/13/EU

Article 13 – paragraph 5

Text proposed by the Commission

5. Member States ***shall*** waive the requirements laid down in paragraphs 1 and 2 for providers with a low turnover or ***low audience*** or if they are small and micro enterprises. Member States may also waive such requirements in cases where they would be impracticable or unjustified by reason of the nature or theme of the on-demand audiovisual media services;

Amendment

5. Member States ***may*** waive the requirements laid down in paragraphs 1 and 2 for providers with a ***particularly*** low turnover or ***audience, in particular in comparison with competitors within the targeted market***, or if they are small and micro enterprises. Member States may also waive such requirements in cases where they would be impracticable or unjustified by reason of the nature or theme of the on-demand audiovisual media services, ***insofar as such a waiver would not disproportionately distort competition in the targeted market***;

Amendment 41

Proposal for a directive

Article 1 – point 16

Directive 2010/13/EU

Article 20 – paragraph 2

Text proposed by the Commission

The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least **20** minutes;

Amendment

The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least **30** minutes;

Amendment 42

Proposal for a directive

Article 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 proportion of television advertising spots and teleshopping spots within **a given clock hour** between 7:00 and 23:00 shall not exceed 20 %.

Amendment 43

Proposal for a directive

Article 1 – point 17

Directive 2010/13/EU

Article 23 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

An exception to the daily proportion of television advertising spots and teleshopping spots referred to in paragraph 1 may be made where a Member State and media service providers under its jurisdiction establish a framework whereby a certain number of

hours are defined as "prime time" hours. During these prime time hours the proportion of commercial communication shall not exceed 20% and shall not be restricted to each specific clock hour.

Amendment 44

Proposal for a directive

Article 1 – point 17

Directive 2010/13/EU

Article 23 – paragraph 1 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

During prime time hours, Member States shall be able to take concrete measures against audiovisual commercial communications for alcoholic products in order to protect, in particular, vulnerable viewers and minors. Such measures may consist of prohibiting audiovisual commercial communications during prime time hours.

Amendment 45

Proposal for a directive

Article 1 – point 17

Directive 2010/13/EU

Article 23 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(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;***

(a) announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;

Justification

Allowing media groups to freely make announcement within all the broadcasters they own in connection to the programmes of the owned broadcasters would be detrimental to a fair competition in the sector as it would give an undue advantage to the dominant actors. It would also lead to an unnecessary increased in the amount of advertising as these

announcement would be excluded from the quantitative rules.

Amendment 46

Proposal for a directive

Article 1 – point 17

Directive 2010/13/EU

Article 23 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) product placements

(c) product placements ***which do not conflict with Article 11(4).***

Amendment 47

Proposal for a directive

Article 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 48

Proposal for a directive

Article 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

(b) protect all citizens from content containing incitement to violence, terrorist acts or hatred directed against a group of persons or a member of such a group defined by reference to sex, race, colour, ethnic ***or social*** origin, ***language***, religion, ***belief, opinion, disability, age or sexual orientation***;

Amendment 49

Proposal for a directive

Article 1 – point 19

Directive 2010/13/EU

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

Text proposed by the Commission

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

Amendment

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

Amendment 50

Proposal for a directive

Article 1 – point 19

Directive 2010/13/EU

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

Text proposed by the Commission

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

Amendment

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

Amendment 51

Proposal for a directive

Article 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 52

Proposal for a directive

Article 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 53

Proposal for a directive

PE589.491v02-00

32/38

AD\1108551EN.docx

Article 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 7

Text proposed by the Commission

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.

Amendment

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

Amendment 54

Proposal for a directive

Article 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 8

Text proposed by the Commission

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.

Amendment

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. **With due regard for the principle of transparency,** the Commission **shall** give appropriate publicity to those codes of conduct.

Amendment 55

Proposal for a directive

Article 1 – point 19

Directive 2010/13/EU

Article 28 b – paragraph 1

Text proposed by the Commission

For the purposes of applying the second subparagraph, where there are several subsidiaries each of which are established

Amendment

For the purposes of applying the second subparagraph, where there are several subsidiaries each of which are established

in different Member States, or where there are several other entities of the group each of which are established in different Member States, ***the Member States concerned shall ensure that the provider designates in which of these Member States it shall be deemed to have been established.***

in different Member States, or where there are several other entities of the group each of which are established in different Member States, ***the provider shall be deemed to have been established in the Member State where the majority of the workforce operates.***

Justification

Giving video-sharing platforms the ability to choose the Member State in which they are deemed to be established under this directive would be disproportionate as it would allow forum-shopping practices. The localisation of the majority workforce is a clear and reliable criteria to determine where the platform is established in the Union.

Amendment 56

Proposal for a directive

Article 1 – point 19

Directive 2010/13/EU

Article 28 b – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where, in applying paragraph 1, 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 ERGA to provide an opinion on the matter within 15 working days from the submission of the Commission's request.

Justification

As video-sharing platforms usually target audiences in the entire Union, there could be disagreements between the Member States in the determination of the competent Member States for the purpose of this Directive. Therefore, the Commission should be able to act to determine the Member State having jurisdiction, as it does for the other audiovisual media services under Article 3.

Amendment 57

Proposal for a directive

Article 1 – point 21
Directive 2010/13/EU
Article 30 – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate one or more independent national regulatory authorities. Member States shall ensure that they are legally distinct and functionally independent *of* any other public or private body. This shall be without prejudice to the possibility for Member States to set up regulators having oversight over different sectors.

Amendment

1. Each Member State shall designate one or more independent national regulatory authorities. Member States shall ensure that these authorities are ***transparent***, legally distinct ***and*** functionally independent ***from the government or*** any other public or private body. This shall be without prejudice to the possibility for Member States to set up regulators having oversight over different sectors.

Amendment 58

Proposal for a directive
Article 1 – point 21
Directive 2010/13/EU
Article 30 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 59

Proposal for a directive
Article 1 – point 21
Directive 2010/13/EU
Article 30 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that national regulatory authorities exercise their powers

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.

independently, impartially and transparently and in accordance with the objectives of this Directive, *regarding* media *independence and* pluralism, *non-discrimination*, cultural diversity, consumer protection, and the promotion of fair competition *in the internal market*.

Amendment 60

Proposal for a directive

Article 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 2 – subparagraph 2

Text proposed by the Commission

National regulatory authorities shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law.

Amendment

National regulatory authorities shall not seek or take instructions from any other body, *public or private*, in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law.

Amendment 61

Proposal for a directive

Article 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that national regulatory authorities have adequate enforcement powers to carry out their functions effectively.

Amendment

4. Member States shall ensure that national regulatory authorities have adequate *experience and* enforcement powers to carry out their functions effectively, *in accordance with this Directive and Union law*.

Amendment 62

Proposal for a directive

Article 1 – point 21

PE589.491v02-00

36/38

AD\1108551EN.docx

Text proposed by the Commission

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

Amendment

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

Amendment 63

Proposal for a directive

Article 1 – point 21

Directive 2010/13/EU
Article 30 – paragraph 6

Text proposed by the Commission

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***.

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 ***effectively to the tasks carried out by the ERGA under this Directive***.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	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	
References	COM(2016)0287 – C8-0193/2016 – 2016/0151(COD)	
Committee responsible Date announced in plenary	CULT 9.6.2016	
Opinion by Date announced in plenary	JURI 15.9.2016	
Rapporteur Date appointed	Daniel Buda 13.9.2016	
Discussed in committee	7.11.2016	28.11.2016
Date adopted	12.1.2017	
Result of final vote	+: 15 –: 2 0: 3	
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Therese Comodini Cachia, Mady Delvaux, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Gilles Lebreton, António Marinho e Pinto, Julia Reda, Evelyn Regner, József Szájer, Tadeusz Zwiefka	
Substitutes present for the final vote	Daniel Buda, Sergio Gaetano Cofferati, Angel Dzhambazki, Heidi Hautala, Constance Le Grip, Victor Negrescu	
Substitutes under Rule 200(2) present for the final vote	Andrey Novakov	