



**2016/0151(COD)**

19.12.2016

## **OPINION**

of the Committee on the Internal Market and Consumer Protection

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: Emma McClarkin

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## **SHORT JUSTIFICATION**

Since 2010, the Audiovisual Media Services Directive (Directive 2010/13/EU) has provided a strong regulatory framework that has emboldened the cultural and creative industries and protected vulnerable consumers, such as minors, through a minimum harmonisation approach to standards for the European audiovisual media services industry.

In light of new technology, consumer demand and the resulting continual shift from linear to non-linear broadcasting methods, the review of the AVMSD seeks to create a more level playing field to enable broadcasters and content producers using both new and traditional technologies to compete, protect, distribute and invest in cultural content.

### **Scope**

The rapporteur believes that it is vital that any widening in scope, in particular regarding video sharing platforms, does not infringe upon Directive 2000/31/EC (the E-commerce Directive) and is specific only to the audiovisual sector. Current parameters of the AVMSD are helpful in already encompassing many new technologies with a definition centring on the type of output as opposed to the means of distribution.

Any enlargement of scope needs to ensure that the same standard of protection throughout. Geographically the scope of the current regulation remains appropriate and conducive to achieving a strong single market for broadcasting services.

### **Definitions**

On the whole, the current definitions laid out in 2010/13/EU regulation remain relevant. Notes that where media convergence has occurred there is value in differentiating content that is with or without editorial responsibility. This will prevent encroachment on the E-commerce Directive, crucially safeguarding the interpretation of the liability regime of intermediary service providers.

### **Country of Origin (COO)**

The principle of COO is the backbone of this regulation and any moves to erode this would be counterproductive to the audiovisual media services industry, the single market and the ability to distribute content cross-borders. The COO principle simplifies the regulatory burden on broadcasters and provides clear legal and editorial responsibility of ownership of content.

The Commission's proposal to allow national levies on cross border delivery runs counter to COO and is a first step towards a Country of Destination approach. For this reason, the rapporteur has removed it from this IMCO draft opinion. The IMCO Committee must commit to safeguarding the COO principle, as it is central to a number of regulations under IMCO competency, specifically Directive 2000/31/EC.

However, concerns regarding circumvention of national rules via the COO principle need to be addressed. Therefore greater cooperation, stronger and faster redress mechanisms for nations should be further explored.

### **Commercial Communication Rules**

Whilst greater flexibility surrounding commercial communication rules is welcome, amendments to these provisions should not weaken consumer protection. It is positive to see the removal of “due prominence” concerning product placement, previously the regulatory ambiguity of this term has limited the ability of broadcasters to use this commercial revenue stream.

However, greater flexibility surrounding minutage and the quantitative limits fails to take account of the various ways in which adverts are financed across the EU, both in terms of impact and minutes. This will not increase advertising expenditure for linear broadcasting. This flexibility will lead to congested peak hours, weakening the advertising impact, creating periods of saturation to the detriment of consumers. In the interest of consumers, this draft opinion removes measures designed to deregulate advertising minutage.

## **European Works**

The rapporteur believes that whilst the promotion of European Works should be encouraged, the approach adopted should be market-driven and not prescribe prominence or discoverability of content. The use of quotas should be limited and in no way exceed the Commission’s proposals. Larger quotas and more specific prescriptions are akin to protectionism of cultural markets and fail to appreciate the larger global market the EU digital single market is a part of. Investment in European content is maximised when generated through competition and market-demand, not artificial benchmarks and levies.

## **National Regulatory Authorities (NRAs)**

The Commission’s proposals to improve the effectiveness of NRAs are necessary to ensure universal and comprehensive implementation of the AVMSD. Although ERGA plays an important role in the coordination and exchange between regulatory bodies, the burden of AVMSD falls within Member States and NRAs. Member States should devote adequate resources to these bodies to develop their capabilities and provide clear redress and complaint processes.

## **Protection of Minors**

In the face of media convergence, the review of the AVMSD provides an opportunity to level up, where necessary, protection of minors in the non-linear sphere. It is important that any new definition or alteration in scope of AVMSD seeks to improve protection of minors while still providing the flexibility to Member States to address illegal activities.

## **Accessibility**

Whilst vital to continue efforts to mainstream accessibility, Article 7 of the current AVMSD should be retained and improved with references to AVMS deleted from the European Accessibility Act (EAA). The EAA, which mixes both hard and soft aspects of AVMS delivery<sup>1</sup> does not sufficiently recognise the realities and needs of the audiovisual media sector, which could stifle genuine innovation that will, in future, be best placed to meet

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<sup>1</sup> “audiovisual media services and related consumer equipment with advanced computing capability”, Proposal for a Directive of the European Parliament and of the Council, on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services, COM(2015) 615 final, 2015/0278(COD)

individual consumer needs.

## AMENDMENTS

The Committee on the Internal Market and Consumer Protection 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 Council<sup>27</sup>, later codified by Directive 2010/13/EU of the European Parliament and of the Council<sup>28</sup>, was made in 2007 with the adoption of Directive 2007/65/EC of the European Parliament and of the Council<sup>29</sup>. 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.

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<sup>27</sup> 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).

<sup>28</sup> 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).

<sup>29</sup> 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).

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### *Justification*

*The role of social medias in our society is more and more important, especially for the new generations and now constitute a privileged access point to audiovisual media content.*

## **Amendment 2**

### **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

##### *Amendment*

(3) Directive 2010/13/EU should remain applicable only to those services ***which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public and*** 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

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.

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 ***represent an important access point to information for consumers and rely increasingly on audiovisual content generated or made available by their users. Social media services are generally not included within the scope of this Directive but it is necessary to include them when their services meet all the criteria defining*** a video-sharing platform. ***Similarly, audiovisual media services that provide and distribute audiovisual media content and do not compete with television broadcasting, for example, by providing and distributing the audiovisual content of private users for sharing in communities of interest, should not be included.*** 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.

### **Amendment 3**

#### **Proposal for a directive Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**(3a)** *Editorial decisions are decisions taken on a day-to-day basis, in particular by programme directors and editors-in-chief, in the context of an approved programme schedule. The place in which editorial decisions are taken is the normal place of work of the persons who take them.*

#### **Amendment 4**

##### **Proposal for a directive Recital 3 b (new)**

*Text proposed by the Commission*

*Amendment*

**(3b)** *On-demand audiovisual media services compete for the same audience as television broadcasts, and the nature and means of access to those on-demand audiovisual media services would lead the user reasonably to expect regulatory protection within the scope of this Directive. In the light of this fact, and in order to prevent disparities as regards free movement and competition, the concept of "programme" should be interpreted in a dynamic way, which takes into account developments in the provision of the content of audiovisual media services that are directed at a significant audience and considered mass media.*

#### **Amendment 5**

##### **Proposal for a directive Recital 5**

*Text proposed by the Commission*

*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

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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.

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, ***in conjunction with national regulatory authorities***, on jurisdiction upon the Commission's request.

## Amendment 6

### 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*

(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 ***and where applicable to Member States***, 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 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

#### *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 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.

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. ***The different means of content descriptors should be clear enough to stipulate whether the specific content may be of harm to minors.***

## Amendment 8

### Proposal for a directive Recital 10

*Text proposed by the Commission*

(10) ***Certain widely recognised nutritional guidelines exist at national and international level, such as the WHO Regional Office for Europe's nutrient profile model, in order to differentiate foods on the basis of their nutritional composition in the context of foods television advertising to children.*** Member States should be encouraged to ensure that ***self-and co-regulatory*** codes of conduct are used to effectively ***reduce*** the exposure of children and minors to audiovisual commercial communications regarding foods and beverages that are high in salt, sugars or fat or that otherwise do not fit ***these*** national or international nutritional guidelines.

*Amendment*

(10) Member States should be encouraged to ensure that ***self-regulation and co-regulation, including*** codes of conduct are used to effectively ***minimise*** the exposure of children and minors to audiovisual commercial communications regarding foods and beverages that are high in salt, sugars or fat or that otherwise do not fit national or international nutritional guidelines, ***such as the ones developed in the framework of the Commission's Platform for Action on Diet, Physical Activity and Health and the WHO Regional Office for Europe's nutrient profile model.*** ***Self-regulation and co-regulation should contribute to this objective.***

## Amendment 9

### 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 ***need*** 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 10**

**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 ***ensure a high level of consumer protection and public health while removing*** 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. ***They should be of assistance to the national regulatory authorities in the drafting of their national codes of conduct and help improve coherence in the implementation of Directive 2010/13/EU.***

## Amendment 11

### Proposal for a directive Recital 13

*Text proposed by the Commission*

*Amendment*

***(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.***

***deleted***

#### *Justification*

*The existing quantitative rule for advertisement proved itself to be effective in striking a balance between consumer protection and the financing of audiovisual media. The increase in the audiovisual offer should not justify a general decrease in the level of protection offered to consumers from advertising content. An abolition of the quantitative rule would also affect vital non audiovisual sectors, such as the press, which rely heavily on advertising and already face financing difficulties.*

## Amendment 12

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

*Text proposed by the Commission*

*Amendment*

***(13a) In order to ensure the effectiveness of Directive 2010/13/EU, in particular with regard to the editorial responsibility of media service providers, the integrity of programmes and services should be safeguarded. Third parties other than the recipient of the service should not modify programmes and services without the consent of the media service provider concerned. Changes in the display of programmes and services that have been authorised or initiated by the recipient should be permitted.***

## Amendment 13

### 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 provider's editorial independence.

*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 audiovisual media service provider's editorial independence.

## Amendment 14

### Proposal for a directive

#### Recital 15 a (new)

*Text proposed by the Commission*

*Amendment*

***(15a) In order to protect the editorial responsibility of the media service provider and the audiovisual value chain, it is essential that the integrity of the programmes and services supplied by media service providers be guaranteed. Programmes and services must be transmitted without being shortened, altered or interrupted. Programmes and services should not be modified without***

*the consent of the media service provider.*

*Justification*

*Third parties should not be allowed to modify programmes and services without the consent of the media service provider.*

**Amendment 15**

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

*Amendment*

(16) Product placement should not be admissible in news and current affairs programmes, consumer affairs programmes, religious programmes and children's ***programmes***. 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 children's ***programmes***. 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 distinction between advertising and editorial content for viewers who may expect a genuine and honest review of products or services in such programmes.

**Amendment 16**

**Proposal for a directive**

**Recital 17**

*Text proposed by the Commission*

*Amendment*

(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.

(17) 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 17**

### **Proposal for a directive Recital 18**

*Text proposed by the Commission*

*Amendment*

(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.

(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*

*Underlines the importance of maintaining the 30 min rules 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 18

### 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*

## Amendment 19

### Proposal for a directive Recital 20

*Text proposed by the Commission*

*Amendment*

***(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.***

*deleted*

## *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 20**

#### **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, ***where practical and by appropriate means,*** their catalogues contain a minimum share of European works ***without affecting the principle of media pluralism and where such measures do not affect the services provided to the consumer.***

### **Amendment 21**

#### **Proposal for a directive Recital 21 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(21a) Providers of on-demand audiovisual media services should be encouraged to promote the production and distribution of European works by ensuring that their catalogues contain a share of European works and that the viewing experience of the consumer is not affected by this.***

## Amendment 22

### Proposal for a directive

#### Recital 22

*Text proposed by the Commission*

(22) In order to ensure adequate levels of investment on European works, Member States ***should be able*** to impose financial obligations to on-demand service providers established on their territory. Those obligations can take the form of direct contributions to the production of and acquisition of rights in European works. ***The Member States could also impose levies payable to a fund, on the basis of the revenues made with on-demand services that are provided in and targeted towards their territory. This Directive clarifies that, given the direct link between financial obligations and Member States' different cultural policies, Member States are also allowed to impose such financial obligations on providers of on-demand services established in another Member State which are targeted towards its territory. In this case financial obligations should only be charged on the revenues generated through the audience in that Member State.***

*Amendment*

(22) In order to ensure adequate levels of investment on European works, ***it should be possible for*** Member States to impose financial obligations to on-demand service providers established on their territory. Those obligations can take the form of direct contributions to the production of and acquisition of rights in European works. ***Financial obligations can only be levied domestically by the Member States upon on-demand services within their domestic jurisdiction, in accordance with the country of origin principle.***

## Amendment 23

### Proposal for a directive

#### Recital 23

*Text proposed by the Commission*

(23) ***When assessing on a case-by-case basis whether an on-demand audiovisual media service established in another Member State is targeting audiences in its territory, a Member State shall refer to indicators such as advertisement or other***

*Amendment*

***deleted***

*promotions specifically aiming at customers in its territory, the main language of the service or the existence of content or commercial communications aiming specifically at the audience in the Member State of reception.*

#### Amendment 24

##### Proposal for a directive Recital 24

*Text proposed by the Commission*

*(24) When Member States impose financial contributions to providers of on-demand services such contributions shall seek an adequate promotion of European works, while avoiding risks of double imposition for service providers. With this view, if the Member State where the provider is established imposes a financial contribution, it shall take into account any financial contributions imposed by targeted Member States.*

Amendment 25

##### Proposal for a directive Recital 25

*Text proposed by the Commission*

(25) In order to ensure that obligations on promotion of European works do not undermine market development and to allow for the entry of new players in the market, companies with no significant presence on the market should not be subject to such requirements. This is in particular the case for companies with a low turnover and low audiences and small and micro enterprises as defined in Commission Recommendation 2003/361/EC<sup>33</sup>. It *could* also *be* inappropriate to impose such requirements in cases where – given the nature or theme of the on-demand audiovisual media services– they would be impracticable or

*Amendment*

*deleted*

*Amendment*

(25) In order to ensure that obligations on promotion of European works do not undermine market development and to allow for the entry of new players in the market, companies with no significant presence on the market should not be subject to such requirements. This is in particular the case for companies with a low turnover and low audiences and small and micro enterprises as defined in Commission Recommendation 2003/361/EC<sup>33</sup>. It *is* also inappropriate to impose such requirements in cases where – given the nature or theme of the on-demand audiovisual media services *or the competition with equivalent European*

unjustified.

*works* – they would be impracticable or unjustified. ***At the same time, it might be worthwhile having a system that encourages financial assistance for the production of quality European works, such as through tax incentives.***

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<sup>33</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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<sup>33</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

## Amendment 26

### Proposal for a directive Recital 25 a (new)

*Text proposed by the Commission*

*Amendment*

***(25a) The Commission should ensure adequate and geographically-diversified funding under the Creative Europe Media programme to support the circulation of creative content across borders, including the improvement of digital distribution of European audiovisual works and the development of innovative financing models for creative content.***

## Amendment 27

### Proposal for a directive Recital 26

*Text proposed by the Commission*

*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 minors from harmful content and all

(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. ***Whilst the arbitrary removal of such content, being often dependent on***

citizens from content containing incitement to violence *or hatred, to set out proportionate rules* on those matters.

*subjective interpretations, can undermine the freedom of expression and information, it is necessary to protect minors from harmful content and all citizens from content containing incitement to, inter alia, violence, hatred or terrorism. It is also necessary to encourage video-sharing platforms to put in place voluntary measures on those matters, in line with national and Union law and in accordance with regular guidelines issued by authorities, and without prejudice to Articles 14 and 15 of Directive 2000/31/EC of the European Parliament and of the Council<sup>1a</sup>. The most harmful content, such as gratuitous violence and pornography, should be subject to the strictest measures.*

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<sup>1a</sup> *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 28

### 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

#### *Amendment*

(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, *some* providers *demonstrate an ability to* determine the organisation of the content, namely programmes or user-generated videos, including by automatic means or algorithms, *in particular by tagging and sequencing*. Therefore, those providers should be required to take appropriate measures to protect minors from content that may impair their physical *and* mental development, *to the extent that they have*

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.

***obtained actual knowledge of said content***, 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. ***Where practical and available, the removal of that content through the use of reliable automatic recognition systems could be considered.***

## Amendment 29

### Proposal for a directive

#### Recital 30

##### *Text proposed by the Commission*

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

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

##### *Amendment*

(30) It is appropriate to involve ***relevant stakeholders, including civil society organisations***, and the video-sharing platform providers as much as possible when implementing the appropriate measures to be taken pursuant to this Directive. ***Transparent and accountable*** co-regulation should therefore be encouraged ***and monitored by the competent national regulatory authorities.***

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

Council<sup>35</sup>. It should also remain possible for video-sharing platform providers to take stricter measures on a voluntary basis.

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<sup>35</sup> 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 30**

#### **Proposal for a directive Recital 31 a (new)**

*Text proposed by the Commission*

### **Amendment 31**

#### **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

Council<sup>35</sup>. It should also remain possible for video-sharing platform providers to take stricter measures on a voluntary basis.

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<sup>35</sup> 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*

***(31a) To ensure that the fundamental rights of users are protected, regulatory authorities of Member States, in cooperation with the ERGA and the Commission, should regularly issue guidelines on the terms and conditions applicable to the removal of harmful content, in accordance with national and Union law and the Charter of Fundamental rights of the European Union.***

*Amendment*

(32) The video-sharing platform providers covered by this Directive provide information society services within the meaning of point (a) of Article 2 of Directive 2000/31/EC. Those providers are consequently subject to the rules on the internal market set out in Article 3 of that Directive, if they are established in a

Member State. It is appropriate to ensure that the same rules apply to video-sharing platform providers which are not established in a Member State with a view to safeguarding the effectiveness of the measures to protect minors and citizens set out in this Directive and ensuring a level playing field in as much as possible, in as far as those providers have either a parent company or a subsidiary which is established in a Member State or where those providers are part of a group and another entity of that group is established in a Member State. To that effect, 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.

Member State. It is appropriate to ensure that the same rules apply to video-sharing platform providers which are not established in a Member State with a view to safeguarding the effectiveness of the measures to protect minors and citizens set out in this Directive and ensuring a level playing field in as much as possible, in as far as those providers have either a parent company or a subsidiary which is established in a Member State or where those providers are part of a group and another entity of that group is established in a Member State. To that effect, 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. ***In this regard, the concept of 'video-sharing platform provider' should be understood in the broadest sense of the term, so as to include linear service providers and platforms for the retransmission of audiovisual media services, regardless of the technical means used for retransmission, such as cable, satellite or internet.***

## Amendment 32

### 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

#### *Amendment*

(33) Regulatory authorities of the Member States can achieve the requisite degree of structural independence only if established as separate legal entities ***and functionally independent organs of such entities***. Member States should therefore guarantee the independence of the national regulatory authorities from both the government, public bodies and the industry

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.

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. ***There is a need to introduce certain obligations for Member States to have independent and effective regulatory authorities. To that end, the Member States should establish a set of administrative and financial requirements in order to facilitate these independent and effective regulatory authorities.***

### Amendment 33

#### 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**

##### *Amendment*

(37) The Commission should be free to consult ERGA on any matter relating to audiovisual media services and video-sharing platforms. ERGA should assist the Commission by providing its expertise and advice and by facilitating exchange of best practices. In particular, the Commission should consult ERGA in the application of Directive 2010/13/EU with a view to facilitating its **consistent** 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

*well as audiovisual commercial communications for foods high in fat, salt/sodium and sugars.*

protection of minors and hate speech.

#### **Amendment 34**

##### **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 is without prejudice to the ability of Member States to ***take measures*** to ensure ***non-discriminatory*** discoverability and ***access to*** content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity. Such obligations should only be ***introduced*** where they are necessary ***and proportionate*** 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 ***introduce*** discoverability rules, they should only ***take*** proportionate ***measures with regard to*** undertakings, in the interest of legitimate public policy considerations.

#### **Amendment 35**

##### **Proposal for a directive**

##### **Recital 38 a (new)**

*Text proposed by the Commission*

*Amendment*

***(38a) The rights of persons with disabilities and of the elderly to participate in and be integrated into the social and cultural life of the Union is inextricably linked to the provision of accessible audiovisual media services. It is therefore important to ensure that***

*accessibility is properly addressed and promoted in Directive 2010/13/EU, in line with the United Nations Convention on the Rights of Persons with Disabilities.*

## **Amendment 36**

### **Proposal for a directive Recital 38 b (new)**

*Text proposed by the Commission*

*Amendment*

*(38b) The means to achieve accessibility should include, but not be limited to, access services such as sign language interpretation, subtitling for the deaf and hard of hearing, spoken subtitles, audio-description, and easily understandable menu navigation. Audiovisual media service providers should be transparent and proactive in improving such access services for persons with disabilities and for the elderly, indicating clearly in the programme information as well as in the Electronic Programming Guide their availability, listing and explaining how to use the accessibility features of the services, and ensuring that they are accessible for persons with disabilities.*

## **Amendment 37**

### **Proposal for a directive Recital 39 a (new)**

*Text proposed by the Commission*

*Amendment*

*(39a) Any self-regulatory and co-regulatory measure implemented at Member State level should fully respect the obligations under the Charter of Fundamental Rights, in particular Article 52.*

## Amendment 38

### Proposal for a directive

#### Article 1 – Paragraph 1 – point 1 – point b

Directive 2010/13/EU

Article 1 – paragraph 1 – point aa – 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 **or provision** of a large amount of programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;

## Amendment 39

### Proposal for a directive

#### Article 1 – Paragraph 1 – point 1 – point b

Directive 2010/13/EU

Article 1 – paragraph 1 – point aa – point ii

*Text proposed by the Commission*

(ii) the organisation of the stored content is determined by the provider of the service **including by automatic means or algorithms, in particular by hosting, displaying, tagging and sequencing**;

*Amendment*

(ii) the organisation of the stored content is determined by the provider of the service ;

## Amendment 40

### Proposal for a directive

#### Article 1 – Paragraph 1 – point 1 – point b

Directive 2010/13/EU

Article 1 – paragraph 1 – point aa – point iii

*Text proposed by the Commission*

(iii) the principal purpose of the service or a **dissociable** section thereof is devoted to providing programmes and user generated videos to the general public, in order to inform, entertain or educate;

*Amendment*

(iii) the principal purpose of the service or a section thereof is devoted to providing programmes and user generated videos to the general public, in order to inform, entertain or educate;

## Amendment 41

### Proposal for a directive

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

Directive 2010/13/EU

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

*Text proposed by the Commission*

*Amendment*

- (da) the following points are inserted:***
- (bb) ‘access service’ means an add-on feature of the audiovisual media service that improves the accessibility of the programmes for people with functional limitations, including persons with disabilities. Access services include subtitles for the deaf and hard of hearing, audio description, spoken subtitles or audio subtitles and sign language interpretation;***
- (bc) ‘subtitles for the deaf and hard of hearing’ means a synchronised visual text alternative for both speech and non-speech audio information needed to understand media content;***
- (bd) ‘audio description’ means additional audible narrative, interleaved with the dialogue, which describes the significant aspects of the visual content of the programme that cannot be understood from the main soundtrack alone;***
- (be) ‘spoken subtitles’ or ‘audio subtitles’ means subtitles read aloud in the national language when the audio speech is in a different language;***
- (bf) ‘sign language interpretation’ means simultaneous translation of both speech and non-speech audio information needed to understand the programme, provided in the national sign language.***

*Justification*

*Amendment linked to the re-introduction of accessibility requirements*

## Amendment 42

### Proposal for a directive

#### Article 1 – paragraph 1 – point 3 – point a

Directive 2010/13/EU

Article 2 – paragraph 3 – point b

*Text proposed by the Commission*

(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;

*Amendment*

(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 **a significant part** of the workforce involved in the pursuit of the audiovisual media service activity operates. ***If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in both Member States, the media service provider shall be deemed to be established in the Member State where the majority of editorial decisions are taken in the pursuit of the audiovisual media service activity;***

## 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*

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

*Amendment*

(a) manifestly, seriously and gravely infringes Articles 6, **7 or 12**;

## Amendment 44

### 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**

#### **Amendment 45**

##### **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**

#### **Amendment 46**

##### **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 contraventions and the measures that that Member State intends to take **within 15 days of the notification provided for in point (b)**. It shall duly take into account those views as well as the views of the Member State of

jurisdiction.

## Amendment 47

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 4

#### *Text proposed by the Commission*

4. 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.

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.

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 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.

#### *Amendment*

4. 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 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 **two** months from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.

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

Where the Member State concerned does not provide the information requested within the period **set** 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 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 **within two weeks of the decision of the Commission**.

## Amendment 48

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 6

*Text proposed by the Commission*

6. Member States may, in urgent cases, derogate from the conditions laid down in points (b) and (c) of paragraph 3. Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State which has jurisdiction over the media service provider, setting out the reasons for which the Member State considers that there is such urgency that derogating from those conditions is necessary.

*Amendment*

6. Member States may, ***if the service provided by a media service provider gravely infringes upon the conditions laid down by points (a), (b) and (c) of paragraph 2 and*** in urgent cases, derogate from the conditions laid down in points (b) and (c) of paragraph 3. Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State which has jurisdiction over the media service provider, setting out the reasons for which the Member State considers that there is such urgency that derogating from those conditions is necessary.

## Amendment 49

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 7

*Text proposed by the Commission*

7. Without prejudice to the Member State's possibility of proceeding with the measures referred to in paragraph 6, the Commission shall examine the compatibility of the notified measures with Union law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Union law, the Commission shall require the Member State concerned to refrain from taking any intended measures or urgently to put an end to those measures.

*Amendment*

7. Without prejudice to the Member State's possibility of proceeding with the measures referred to in paragraph 6, the Commission shall examine the compatibility of the notified measures with Union law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Union law, the Commission shall require the Member State concerned to refrain from taking any intended measures or urgently to put an end to those measures ***within the shortest possible time.***

## Amendment 50

### 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*

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*

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, 7, 9, 10, 11, 12, 13, 16, 17, 19 to 26, 30 and 30a, provided that such rules are in compliance with Union law **and do not contain discriminatory provisions relating to the nationality or place of residence of the service provider.**

## Amendment 51

### 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 **within 2 months**, 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 52

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5 – point c

Directive 2010/13/EU

Article 4 – paragraph 5

#### *Text proposed by the Commission*

5. The Commission shall decide

#### *Amendment*

5. 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.

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.

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 proposed intended measures;

within **2** months following the **electronic and formal** 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 **6 weeks** from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.

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

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

## Amendment 53

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5 – point d

Directive 2010/13/EU

Article 4 – paragraph 7

#### *Text proposed by the Commission*

7. Member States shall encourage co-regulation and **self-regulation** through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. Those codes shall be such that they are broadly accepted by the main

#### *Amendment*

7. Member States shall encourage co-regulation and/or **self-regulatory regimes, for example** 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

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 54

### Proposal for a directive

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

Directive 2010/13/EU

Article 4 – paragraph 8 a (new)

*Text proposed by the Commission*

accepted by the main stakeholders *under the jurisdiction of* 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 *within the Member State’s jurisdiction*.

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 *for information*.

The Commission may ask ERGA to give an opinion on the drafts, amendments or extensions of those codes. The Commission *shall* publish, *and may raise awareness on*, those codes as appropriate.

*Amendment*

*(da) A new paragraph is added as follows:*

*‘8a. This Directive is without prejudice to the ability of Member States to impose obligations to ensure access to and appropriate prominence of content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity.’;*

## Amendment 55

### Proposal for a directive

#### Article 1 – paragraph 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 **and applicable** 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 56

### Proposal for a directive

#### Article 1 – paragraph 1 – point 9

Directive 2010/13/EU

Article 6a – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. The Commission shall encourage Member States to develop media literacy as a future-proof tool to develop the capability of children to understand the difference between content and commercial communications.**

*Justification*

*Children watch a lot of content that might not be originally directed to them. To enhance media literacy is a good and future-proof tool to develop children's capabilities to understand the difference between content and commercial communications.*

## Amendment 57

### Proposal for a directive

#### Article 1 – paragraph 1 – point 9

*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*

3. The Commission and ERGA shall encourage media service providers to exchange best practices on co-regulatory systems across the Union. ***The Commission, together with the ERGA, is encouraged to develop*** Union codes of conduct.

**Amendment 58**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 10**  
Directive 2010/13/EU  
Article 7

*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 develop measures to ensure that services provided by media service providers under their jurisdiction are made progressively more accessible to people with disabilities. These measures shall be developed in consultation with relevant stakeholders, including media service providers and organisations of persons with disabilities.***
- 2. The Commission and the ERGA shall facilitate the exchange of best practices between audiovisual media service providers.***
- 3. The measures 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 disabilities. Member States shall ensure***

*that this information is made publically available.*

*4. The measures referred to in paragraph 1 shall encourage audiovisual media service providers to develop, and make publicly available, accessibility action plans in respect of progressively making their services more accessible to persons with disabilities. Such action plans shall be communicated to national regulatory authorities.*

*5. Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, made available to the public through audiovisual media services, be provided, where practicable, in an accessible manner for persons with disabilities, including with subtitles for the deaf and hard of hearing, sign language interpretation and audio message and audio description for any visual information.*

*6. Member States shall ensure that audiovisual media service providers aim, through their content acquisition, programming and editorial policies, to deliver access services as part of content producers packages.*

*7. Member States shall ensure that audiovisual media service providers make their websites, online applications and mobile-based services, including mobile apps, used for the provision of the service, more accessible in a consistent and adequate way for users' perception, operation and understanding, and in a robust way which facilitates interoperability with a variety of user agents and assistive technologies available at Union and international level.*

## **Amendment 59**

### **Proposal for a directive Article 1 – paragraph 1 – point 11 – point -a (new)**

Directive 2010/13/EU  
Article 9 – paragraph 1 – point c – point ii

*Present text*

*Amendment*

‘(ii) include or promote any discrimination based on sex, **racial or** ethnic origin, **nationality**, religion or belief, disability, age or sexual orientation;’

**(-a) paragraph 1, point c, point ii is amended as follows:**

‘(ii) include or promote any discrimination based on sex, **race, colour, ethnic or social** origin, **genetic features, language**, religion or belief, **political or any other opinion, membership of a national minority, property, birth**, disability, age or sexual orientation;’

*(<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010L0013>)*

*Justification*

*In line with Article 21 of the Charter of Fundamental Rights of the EU.*

## **Amendment 60**

### **Proposal for a directive**

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

Directive 2010/13/EU

Article 9 – paragraph 1 – point c – point iv a (new)

*Text proposed by the Commission*

*Amendment*

**(-aa) The following point is added :**

**‘(iva) be targeted at minors;’**

## **Amendment 61**

### **Proposal for a directive**

**Article 1 – paragraph 1 – point 11 – point -a b (new)**

Directive 2010/13/EU

Article 9 – paragraph 1 – point e

*Present text*

*Amendment*

(e) audiovisual commercial

**(-ab) Paragraph 1, point (e) is amended as following:**

(e) audiovisual commercial

communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;

communications for alcoholic **or high caffeine content** beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;

*(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013&qid=1476777414550&from=FR>)*

*Justification*

*Limit on the advertising of energy drinks*

**Amendment 62**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 11 – point -a c (new)**

Directive 2010/13/EU

Article 9 – paragraph 1 – point g a (new)

*Text proposed by the Commission*

*Amendment*

**(-ac) The following point is added:**

**‘(ga) any audiovisual commercial communications, accompanying or included in programmes with a significant children’s audience, shall be prohibited.’**

**Amendment 63**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 11 – point a**

Directive 2010/13/EU

Article 9 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**(a) paragraph 2 is replaced by the following:**

**deleted**

**‘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; ’*

#### **Amendment 64**

##### **Proposal for a directive**

##### **Article 1 – paragraph 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- and co-regulation including codes of conduct regarding inappropriate audiovisual commercial communications for alcoholic beverages. Those codes, ***based on best practices in Member States***, should be used to effectively limit the exposure of minors to audiovisual commercial communications for alcoholic beverages.

## Amendment 65

### Proposal for a directive

#### Article 1 – paragraph 1 – point 11 – point b

Directive 2010/13/EU

Article 9 – paragraph 4

*Text proposed by the Commission*

4. 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*

4. The Commission and ERGA shall encourage the exchange of best practices on self- and co-regulatory systems across the Union. Where appropriate ***and in accordance with the principles of subsidiarity and proportionality***, the Commission shall ***consider*** the development of Union codes of conduct ***based on best practices in Member States***;

## Amendment 66

### 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 and non-discriminatory 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.***

***Such measures shall only be imposed where they are necessary in order to meet general interest objectives clearly defined by Member States in conformity with Union law. In this respect, Member States shall, 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 shall only impose proportionate obligations on undertakings, in the interest of legitimate public policy considerations.'*

## **Amendment 67**

### **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 media service providers' programmes and services may not be modified, for example through commercial overlays, without their consent.'***

*Justification*

*Third parties should not be allowed to modify programmes and services without the consent of the media service provider.*

## **Amendment 68**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 12**

Directive 2010/13/EU

Article 10 – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 69

### Proposal for a directive

#### Article 1 – paragraph 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 **children's** programmes.

## Amendment 70

### Proposal for a directive

#### Article 1 – paragraph 1 – point 13

Directive 2010/13/EU

Article 11 – paragraph 3 – point b

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 71

### Proposal for a directive

#### Article 1 – paragraph 1 – point 14

Directive 2010/13/EU

Article 12 – paragraph 1

*Text proposed by the Commission*

Member States shall take appropriate measures to ensure that programmes provided by audiovisual media service providers under their jurisdiction, which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the

*Amendment*

Member States shall take appropriate measures to ensure that programmes provided by audiovisual media service providers under their jurisdiction, which may impair the physical, mental or moral development of minors, **such as advertising for alcoholic beverages or gambling**, are only made available in such a way as to ensure that minors will not

time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme.

normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme.

## Amendment 72

### Proposal for a directive

#### Article 1 – paragraph 1 – point 14

Directive 2010/13/EU

Article 12 – paragraph 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 gratuitous violence and pornography, shall be subject to the strictest measures, such as encryption and effective parental controls, ***together with the measures referred to in paragraph 1;***

## Amendment 73

### 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, ***where practical and by appropriate means,*** providers of on-demand audiovisual media services under their jurisdiction ***provide*** at least a 20% share of European works in their catalogue. ***Any financial contribution shall comply with Union law, in particular with State aid rules, and shall not negatively affect consumers.***

## Amendment 74

### Proposal for a directive

#### Article 1 – paragraph 1 – point 15

Directive 2010/13/EU

Article 13 – paragraph 2

*Text proposed by the Commission*

2. Member States may require providers of on-demand audiovisual media services under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contributions to national funds. ***Member States may require providers of on-demand audiovisual media services, targeting audiences in their territories, but established in other Member States to make such financial contributions. In this case, the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid rules.***

*Amendment*

2. Member States may require providers of on-demand audiovisual media services ***established*** under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contributions to national funds.

## Amendment 75

### Proposal for a directive

#### Article 1 – paragraph 1 – point 15

Directive 2010/13/EU

Article 13 – paragraph 4a (new)

*Text proposed by the Commission*

*Amendment*

***4a. The Commission shall ensure adequate and geographically-diversified funding under the Creative Europe Media programme to support the circulation of creative content across borders, including improvement of the digital distribution of European audiovisual works and the***

**Amendment 76**

**Proposal for a directive**

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

Directive 2010/13/EU

Article 14 – paragraph 1

*Present text*

‘1. Each Member State may take measures in accordance with Union law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.’

*Amendment*

**(15a) Article 14, paragraph 1 is amended as follows:**

‘1. Each Member State may take measures in accordance with Union law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. ***Member States shall also require broadcasters under their jurisdiction to broadcast these events of major importance for society in an accessible way for those with functional limitations, including persons with disabilities.*** If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.’

(<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013&qid=1476777414550&from=FR>)

*Justification*

*Amendment linked to the re-introduction of accessibility requirements in Article 7*

**Amendment 77**

**Proposal for a directive**

**Article 1 – paragraph 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. ***No television advertising or teleshopping shall be inserted during religious services or during children's programmes.***

**Amendment 78**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 16 a (new)**

Directive 2010/13/EU

Article 22

*Present text*

‘Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:

- (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;
- (c) it shall not create the impression

*Amendment*

***(16a) Article 22 is amended as follows:***

‘Television advertising and teleshopping for alcoholic ***and high caffeine content*** beverages shall comply with the following criteria:

- (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) it shall not link the consumption of alcohol ***or high caffeine content*** to enhanced physical performance or to driving;
- (c) it shall not create the impression

that the consumption of alcohol contributes towards social or sexual success;

(d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;

(e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;

(f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

that the consumption of alcohol *or high caffeine content* contributes towards social or sexual success;

(d) it shall not claim that alcohol *or high caffeine content* has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;

(e) it shall not encourage immoderate consumption of alcohol *or high caffeine content* or present abstinence or moderation in a negative light;

(f) it shall not place emphasis on high alcoholic content *or high caffeine content* as being a positive quality of the beverages.

### *Justification*

*Limit on the advertising of energy drinks*

## **Amendment 79**

### **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 *a given clock hour* shall not exceed 20 %.

## **Amendment 80**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 17**

Directive 2010/13/EU

Article 23 – paragraph 2

*Text proposed by the Commission*

2. *Paragraph 1 shall not apply to:*  
(a) *announcements made by the*

*Amendment*

*deleted*

***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;***

- (b) sponsorship announcements;***
- (c) product placements.***

## **Amendment 81**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 18**

*Text proposed by the Commission*

*Amendment*

***(18) Chapter VIII is deleted;***

***deleted***

*Justification*

*This amendment aims at restoring Art 27 of directive 2010/13/EU, which contains important measures with regard to protection of minors in television broadcasting.*

## **Amendment 82**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 19**

Directive 2010/13/EU

Article 28a

*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:

- (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.

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

- (a) protect all minors from content which may impair their physical and mental 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 ***or belief, disability***, descent or national or

ethnic *or social* origin, *genetic features, language, political or any other opinion, membership of a national minority, property, birth, age or sexual orientation;*

*(ba) limit the exposure of children to advertising of unhealthy foods and beverages in video sharing platforms.*

**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

**2. Measures may** consist of, as appropriate:

(a) ***setting out the rights and duties of users and defining***, 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 development of minors, in accordance with Articles 6 and 12 respectively ***and the guidelines issued by the Member States as referred to in paragraph 4;***

(b) establishing and operating ***user-friendly*** 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, ***or other technical measures***, for users of video-sharing platforms with respect to ***known*** content which may impair the physical and mental 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.

1;

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

(f) establishing and operating *transparent, easy to use and effective* systems *and procedures* through which providers of video-sharing platforms *handle and resolve issues raised by* users of video-sharing platforms *and communicate, as appropriate*, what effect has been given to the *implementation of the measures* referred to in *points (a) to (f)*.

*Member States shall encourage video-sharing platforms, acting upon obtained knowledge or awareness of illegal content, to act expeditiously to remove or disable access to that content in line with Directive 2000/31/EC;*

*2a. 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, the protection of freedom of expression and information.*

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 *and report on the transparency, necessity, effectiveness and* 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

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.

authorities designated in accordance with Article 30. **Member States shall issue the necessary guidelines to ensure that measures taken respect freedom of expression and the need to inform users. Such guidelines could be drafted in cooperation with the Commission and ERGA;**

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.

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, **in accordance with the guidelines referred to in paragraph 4.** The Commission may request ERGA to give an opinion on the drafts, amendments or extensions of those codes of conduct. The Commission **shall** give appropriate publicity to those codes of conduct **in promoting best practice.**

## Amendment 83

### Proposal for a directive

#### Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 b – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

Member States shall ensure that video-sharing platform providers which are not established on their territory, but which have either a parent company or a subsidiary that is established on their territory or which are part of a group and another entity of that group is established on their territory, are deemed to **have been** established on their territory for the purposes of Article 3(1) of Directive 2000/31/EEC.

#### *Amendment*

Member States shall ensure that video-sharing platform providers

*(a)* which are not established on their territory, but which have either a parent company or a subsidiary that is established on their territory or which are part of a group and another entity of that group is established on their territory,

*(b) which are established in another Member State but target audiences on their territory,* are deemed to **be** established on their territory for the purposes of Article 3(1) of Directive 2000/31/EEC.

## Amendment 84

### Proposal for a directive

#### Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28b – paragraph 1 – subparagraph 2

#### *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, ***they 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 85**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 19**

Directive 2010/13/EU

Article 28 b – paragraph 2

#### *Text proposed by the Commission*

2. Member States shall communicate to the Commission a list of the video-sharing platform providers established on their territory and the criteria, set out in Article 3(1) ***of Directive 2000/31/EC*** and in paragraph 1, on which their jurisdiction is based. They shall update the list regularly. The Commission shall ensure that the competent independent regulatory authorities have access to this information.

#### *Amendment*

2. Member States shall communicate to the Commission a list of the video-sharing platform providers established ***or deemed to have been established*** on their territory and the criteria, set out in Article 3(1) and in paragraph 1, on which their jurisdiction is based. They shall update the list regularly. The Commission shall ensure that the competent independent regulatory authorities have access to this information.

### **Amendment 86**

#### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 19**

Directive 2010/13/EU

Article 28b – 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 of receipt of the 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 87**

##### **Proposal for a directive**

##### **Article 1 – paragraph 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 enforcement powers **and resources** to carry out their functions effectively.

#### **Amendment 88**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 21**

Directive 2010/13/EU

Article 30 – paragraph 4 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**4a. Member States shall ensure that national regulatory authorities designate a single and publicly available point of contact for information and complaints about the accessibility issues referred to in Article 7**

## Amendment 89

### Proposal for a directive

#### Article 1 – paragraph 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 *sufficient* 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 90

### Proposal for a directive

#### Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30a – paragraph 3 – point d

#### *Text proposed by the Commission*

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

#### *Amendment*

(d) cooperate and provide its members with the information necessary for the application of this Directive, in particular as regards Articles 3, *4 and* 7 thereof;

## Amendment 91

### Proposal for a directive

#### Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30a – 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

#### *Amendment*

(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.";

matter relating to audiovisual media services, in particular on the protection of minors, incitement to hatred, *media pluralism, protection of the freedom of expression and information.*";

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	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		
<b>References</b>	COM(2016)0287 – C8-0193/2016 – 2016/0151(COD)		
<b>Committee responsible</b> Date announced in plenary	CULT 9.6.2016		
<b>Opinion by</b> Date announced in plenary	IMCO 9.6.2016		
<b>Rapporteur</b> Date appointed	Emma McClarkin 17.6.2016		
<b>Discussed in committee</b>	10.10.2016	9.11.2016	28.11.2016
<b>Date adopted</b>	5.12.2016		
<b>Result of final vote</b>	+: –: 0:	24 3 2	
<b>Members present for the final vote</b>	Dita Charanzová, Carlos Coelho, Sergio Gaetano Cofferati, Anna Maria Corazza Bildt, Daniel Dalton, Dennis de Jong, Pascal Durand, Vicky Ford, Evelyne Gebhardt, Maria Grapini, Liisa Jaakonsaari, Philippe Juvin, Antonio López-Istúriz White, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Marco Zullo		
<b>Substitutes present for the final vote</b>	Jussi Halla-aho, Anna Hedh, Kaja Kallas, Emma McClarkin, Roberta Metsola, Julia Reda		
<b>Substitutes under Rule 200(2) present for the final vote</b>	Andrejs Mamikins, Andrey Novakov, Tonino Picula, Traian Ungureanu		