



2016/0151(COD)

3.2.2017

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Culture and Education

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

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

Rapporteur: Angelika Mlinar

PA_Legam

SHORT JUSTIFICATION

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

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

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

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

Approach towards hate speech and incitement to violence or hatred

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

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

Protecting minors from harmful content

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

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

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

Due process in tackling illegal content

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

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

E-commerce Directive safeguards

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

Independence of regulators at both European and national level

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

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

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

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

AMENDMENTS

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

Amendment 1

Proposal for a directive Citation 1 a (new)

Text proposed by the Commission

Amendment

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 7, 10, 11, 21, 24, 26, 47 and 52 thereof,

Justification

LIBE AM 1 Mlinar with addition of Art. 47 (effective remedy)

Amendment 2

Proposal for a directive Recital 8

Text proposed by the Commission

Amendment

(8) In order to ensure coherence and give certainty to businesses and Member States' authorities, ***the notion of***

(8) In order to ensure coherence and give ***legal*** certainty to businesses and Member States' authorities, "incitement to

"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.

hatred" should be aligned *with* the definition in the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law which defines hate speech as "publicly inciting to violence or hatred", *as well as those grounds not covered by Framework Decision 2008/913/JHA such as social origin, genetic features, language, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. These grounds are intended to further specify the characteristics of "publicly inciting to violence or hatred" but should not alone be considered as a basis for restricting the making available of audio-visual content. All circumstances, including intention, should be taken into account, and freedom of expression, in particular artistic, literary and journalistic expression, should be respected. Provisions concerning hate speech should be applied in line with the jurisprudence of the European Court of Human Rights concerning the right to freedom of expression and information.*

Justification

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

Amendment 3

Proposal for a directive Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) *In order to achieve a true digital*

single market, further efforts are needed in the field of improving media literacy among citizens. The Commission and the Member States should, therefore, strengthen their efforts to promote a true digital single market among all Union citizens, in particular children and minors, through initiatives and coordinated actions, in order to increase the understanding of audiovisual media services.

Amendment 4

Proposal for a directive Recital 8 b (new)

Text proposed by the Commission

Amendment

(8b) Member States are encouraged to take all the necessary measures to promote media education, which provides knowledge and skills and empowers citizens to exercise their right to freedom of expression, to analyse media content and to react to disinformation. In this regard, it is important to strengthen knowledge on all levels of the educational system and to encourage people to active citizenship and to develop their awareness as media consumers.

Amendment 5

Proposal for a directive Recital 9

Text proposed by the Commission

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***

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

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.

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Justification

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

Amendment 6

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The demand for linear television channels in Europe remains prominent in comparison to other media services, as demonstrated by the study "Linear and on-demand audiovisual media services in Europe 2015", published by the European Audiovisual Observatory in June 2016, which shows an overall good condition of linear television in Europe, with the number of available linear television channels in 2015 increasing on average of 46 % compared to 2009.

Amendment 7

Proposal for a directive Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) The demand by young people for linear television channels has slightly decreased in Europe, as demonstrated by the study "Measurement of Fragmented Audiovisual Audiences", published by the European Audiovisual Observatory in November 2015, which shows in 2014 an average decrease in the Union of only 4 %

Amendment 8

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, **as well as channels and audiovisual programmes for children**. 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 **channels and audiovisual programmes for children**. 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 9

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

Amendment

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

enough prominence.

enough prominence, *without affecting media pluralism*.

Amendment 10

Proposal for a directive

Recital 26

Text proposed by the Commission

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

Amendment

(26) There are new challenges, in particular in connection with video-sharing platforms, on which users - particularly minors - increasingly consume audiovisual content. *Illegal, harmful, racist and xenophobic content and hate speech hosted on video-sharing platforms, have increasingly given rise to concern. In addition, the decision to remove such content, being often dependent on a subjective interpretation, can undermine the freedom of expression and information. In this context, it is necessary, in order to protect minors from harmful content and all citizens from content containing incitement to violence or hatred hosted on video-sharing platforms, but also to protect and guarantee the fundamental rights of users, to set out common and proportionate rules on those matters. Such rules should, in particular, further define at Union level the characteristics of "harmful content" and "incitement to violence and hatred", taking into account the intention and effect of such content. Self-regulatory and co-regulatory measures implemented or approved by Member States or by the Commission should fully respect the obligations of the Charter of Fundamental Rights of the European Union, in particular Article 52 thereof. National regulatory bodies or authorities should retain effective enforcement powers.*

Amendment 11

Proposal for a directive Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) In accordance with Directive (EU) 2016/XXX [replace with reference to the Directive on combatting terrorism once that is published and update Article number], public provocation to commit a terrorist offence is defined as an offence related to terrorist activities and is punishable as a criminal offence when committed intentionally. Audiovisual media content distributed, or otherwise made available by any means, whether online or offline, to the public with the intent to incite the commission of a terrorist offence should therefore be treated as illegal content. Further to the obligations imposed on Member States to apply Directive (EU) 2016/xxx, cooperation between internet providers, Union agencies and national authorities is vital to combat these trends and elaborate positive counter-narratives.

Amendment 12

Proposal for a directive Recital 26 b (new)

Text proposed by the Commission

Amendment

(26b) Cyberbullying is becoming increasingly common, especially among teenagers, and it can also take place on video-sharing platforms. Programmes should be put in place for the prevention of cyberbullying through anti-bullying campaigns and the promotion of online safety instruction on how to use the internet properly.

Amendment 13

Proposal for a directive Recital 28

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 14

Proposal for a directive Recital 29

Text proposed by the Commission

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

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.07.2000, p. 1).

Amendment 15

Proposal for a directive Recital 30

Amendment

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

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.07.2000, p. 1).

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

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

³⁵ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

(30) It is appropriate to involve ***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.

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

³⁵ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

Amendment 16

Proposal for a directive

Recital 30 a (new)

Text proposed by the Commission

Amendment

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

Amendment 17

Proposal for a directive

Recital 31

Text proposed by the Commission

Amendment

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

(31) When taking the ***necessary*** measures to protect minors from ***illegal, harmful, racist and xenophobic*** content and to protect all citizens from content containing incitement to violence or hatred in accordance with this Directive, the applicable fundamental rights, as laid down in the Charter on Fundamental Rights of the European Union, should be carefully balanced. That concerns in particular, as the case may be, the right to respect for private and family life and the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the prohibition of discrimination and the ***rights*** of the child. ***Member States have a positive obligation to ensure that the balance of incentives for media service providers and video-sharing platform providers covered by this Directive is such that legal content, including content that can offend, shock or disturb, can be communicated. Similarly, age verification should only be***

required by law if necessary and proportionate and should be implemented in a way which offers the maximum protection of privacy.

Amendment 18

Proposal for a directive Recital 31 a (new)

Text proposed by the Commission

Amendment

(31a) The 2011 EU Agenda for the Rights of the Child defines "the Treaties, the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child (UNCRC) as a common basis for all EU action which is relevant to children". Articles 5 and 19 of the UNCRC are of particular relevance for the protection of children in audiovisual media services.

Justification

The importance of the UN Convention on the Rights of the Child for protection of minors in this sector should be underlined.

Amendment 19

Proposal for a directive Recital 32

Text proposed by the Commission

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

(32) The video-sharing platform providers covered by this Directive provide information society services within the meaning of point (a) of Article 2 of Directive 2000/31/EC ***and generally provide hosting services in line with Article 14 of that Directive.*** Those providers are consequently subject to the rules on the internal market set out in Article 3 of that Directive, if they are established in a Member State. It is appropriate to ensure that the same rules

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.

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.

Amendment 20

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

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

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

^{1b} Judgment of the Court of Justice of 24 November 2011, Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM), C-70/10, ECLI:EU:C:2011:771.

Justification

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

Amendment 21

Proposal for a directive Recital 32 b (new)

Text proposed by the Commission

Amendment

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

Amendment 22

Proposal for a directive Recital 33

Text proposed by the Commission

Amendment

(33) Regulatory authorities of the Member States *can* achieve the requisite

(33) Regulatory authorities of the Member States *should* achieve the

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

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

Amendment 23

Proposal for a directive Recital 35

Text proposed by the Commission

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

Amendment

(35) With a view to ensuring the consistent application of the Union audiovisual regulatory framework across all Member States, the Commission established ERGA by Commission Decision of 3 February 2014³⁶. ERGA's role is to *act as an independent expert advisory group* and assist the Commission in its work to ensure a consistent implementation of Directive 2010/13/EU in all Member States, and to facilitate cooperation among the national regulatory *bodies and* authorities, and between the national regulatory *bodies and* authorities

and the Commission.

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

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

Amendment 24

Proposal for a directive Recital 35 a (new)

Text proposed by the Commission

Amendment

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

Amendment 25

Proposal for a directive Recital 36

Text proposed by the Commission

Amendment

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

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

Amendment 26

Proposal for a directive

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Recital 37

Text proposed by the Commission

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

Amendment

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

Amendment 27

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**

Amendment

(38) 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 obligations should **be proportionate and** meet general interest objectives, **such as media pluralism, freedom of speech, cultural and regional diversity, as well as language preservation, clearly defined by Member States in conformity with Union law.**

impose proportionate obligations on undertakings, in the interest of legitimate public policy considerations.

Justification

The concept of "discoverability" is very unclear.

Amendment 28

Proposal for a directive

Recital 39

Text proposed by the Commission

(39) This Directive *respects the* fundamental rights and *observes* the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive *seeks to ensure full respect for* the right to freedom of expression, the freedom to conduct a business, the right to judicial review and to promote the application of the rights of the child enshrined in the Charter of Fundamental Rights of the European Union.

Amendment

(39) *Member States, when implementing* this Directive, *are under the obligation to respect* fundamental rights and *observe* the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, *Member States should ensure that no measure adopted for the transposition of* this Directive *directly or indirectly undermines* the right to freedom of expression, the freedom to conduct a business, the right to judicial review and to promote the application of the rights of the child enshrined in the Charter of Fundamental Rights of the European Union.

Amendment 29

Proposal for a directive

Recital 39 a (new)

Text proposed by the Commission

Amendment

(39 a) *Where it is apparent that national law is such as to obstruct the exercise of one or more fundamental freedoms guaranteed by the Treaty, it may benefit from the exceptions provided for by Union law only in so far as that complies with the fundamental rights enforced by the Court. That obligation to comply with*

fundamental rights manifestly comes within the scope of Union law and, consequently, within that of the Charter. The use by a Member State of exceptions provided for by Union law in order to justify an obstruction of a fundamental freedom guaranteed by the Treaty should, therefore, be regarded as 'implementing Union law' within the meaning of Article 51(1) of the Charter.

Justification

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

Amendment 30

Proposal for a directive

Recital 40

Text proposed by the Commission

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

Amendment

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

Amendment 31

Proposal for a directive

Recital 42 a (new)

Text proposed by the Commission

Amendment

(42a) Member States should take all the necessary measures to ensure the correct, timely and effective transposition and application of this Directive.

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive 2010/13/EU

Article 1 – paragraph 1 – point aa

Text proposed by the Commission

(aa) 'video-sharing platform service' means a service, as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, which meets the following requirements:

Amendment

(aa) 'video-sharing platform service' means a service, as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, which meets **all** the following requirements:

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive 2010/13/EU

Article 1 – paragraph 1 – point a a – 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 dissociable section thereof is devoted to, **or the service plays a significant role in**, providing programmes and user-generated videos to the general public, in order to inform, entertain or educate;

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point d

Directive 2010/13/EU

Article 1 – paragraph 1 – point b a

Text proposed by the Commission

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

Amendment

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

of and separate from the video-sharing platform;

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point d

Directive 2010/13/EU

Article 4 – paragraph 7

Text proposed by the Commission

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

Amendment

7. ***The Commission*** shall encourage ***and facilitate*** co-regulation and self-regulation through codes of conduct in the fields coordinated by this Directive to the extent permitted by ***national*** legal systems. Those codes shall be such that they are broadly accepted by the main stakeholders concerned ***and approved by the national regulatory body or authority***. The codes of conduct shall clearly and unambiguously set out their objectives ***and measures***. They shall provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at. They shall provide for effective ***and transparent*** enforcement, including when appropriate, effective and proportionate sanctions ***are applied***. ***Member States shall ensure that in the event co-regulation fails to achieve the desired level of protection, national regulatory bodies or authorities have effective enforcement powers, including through issuing binding codes of conduct and applying administrative sanctions.***

Amendment 36

Proposal for a directive

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

Directive 2010/13/EU

Article 4 – paragraph 7a (new)

Text proposed by the Commission

Amendment

(da) The following paragraph is inserted:

7a. This Directive and any implementing act thereof shall be without prejudice to Directive 2000/31/EC, in particular Articles 14 and 15.

Amendment 37

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 means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to violence or hatred (***hate speech***) directed against a ***person or a*** group of persons defined by reference to ***race, colour, ethnic or social*** origin, ***genetic features, language*** religion or belief, ***political or any other opinion, membership of national minority, property, birth,*** disability, age, ***gender, gender expression, gender identity,*** or sexual orientation, ***residence status or health;***

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive 2010/13/EU

Article 6 a – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that audiovisual media service providers provide sufficient information to viewers about content which may impair the

Amendment

1. Member States shall ensure that audiovisual media service providers provide sufficient information to viewers about content which may impair the

physical, *mental or moral* development of minors. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service.

physical *or mental* development of minors. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service, *which properly warns parents to restrict their children from watching certain programmes.*

Amendment 39

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*:

Member States shall ensure that services provided by the audiovisual media service providers under their jurisdiction are made accessible to people with visual and/or hearing disabilities, including by using subtitles for the deaf and hard of hearing, sign language interpretation and audio message and audio description for any visual information. Member States should require that media service providers report on an annual basis on the accessibility of their services.

Amendment 40

Proposal for a directive

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

Directive 2010/13/EU

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

Text proposed by the Commission

Amendment

(-a) *In paragraph (1), following point (ga) is inserted:*

(ga) *audiovisual commercial communications for gambling services shall not be aimed specifically at minors*

and shall carry a clear 'no underage gambling' message indicating the minimum age below which gambling is not permissible.

Amendment 41

Proposal for a directive

Article 1 – paragraph 1 – point 11 – point a

Directive 2010/13/EU

Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in *channels and audiovisual programmes for children*, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, excessive intakes of which in the overall diet are not recommended, in particular fat, trans-fatty acids, salt or sodium and sugars.

Amendment 42

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, *as well as channels and audiovisual programmes for children*.

Amendment 43

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2010/13/EU

Article 12

Text proposed by the Commission

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

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

Member States shall take appropriate measures to ensure that programmes provided by audiovisual media service providers under their jurisdiction, which may impair the physical *or mental* development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme *and shall not lead to any additional processing of personal data and be without prejudice to Article 8 of Regulation (EU) 2016/679.*

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

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

Amendment 44

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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

Amendment 45

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 46

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) protect all citizens from content containing incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, **ethnic or social origin, genetic features, language**, religion **or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. These grounds are intended to further clarify the characteristics of "publicly inciting to violence or hatred" but shall**

not alone be considered as a basis for restricting the making available of audiovisual content. Member States shall ensure that all circumstances, such as intention, are taken into account, and freedom of expression, in particular artistic, literary and journalistic expression, is respected.

Amendment 47

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

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

Text proposed by the Commission

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

Amendment

(a) *specifying the characteristics of* and applying in the terms and conditions of the video-sharing platform providers the concepts of incitement to violence or hatred as referred to in point (b) of paragraph 1 and of content which may impair the physical *or mental* development of minors, in accordance with Articles 6 and 12 respectively; *Member States shall ensure that measures based on terms and conditions are only permitted where national procedural rules provide a possibility for users to assert their rights before a court after learning of such measures;*

Amendment 48

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

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

Text proposed by the Commission

(b) establishing and operating mechanisms for users of video-sharing

Amendment

(b) establishing and operating *transparent and user-friendly* mechanisms

platforms to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 stored on its platform;

for users of video-sharing platforms to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 *hosted* on its platform;

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

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

Text proposed by the Commission

(c) establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, *mental or moral* development of minors;

Amendment

(c) establishing and operating *efficient* age verification systems for users of video-sharing platforms with respect to content which may impair the physical *or mental* development of minors. *Such systems shall not lead to any additional processing of personal data and shall be without prejudice to Article 8 of Regulation (EU) 2016/679;*

Amendment 50

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

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

Text proposed by the Commission

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

Amendment

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

Amendment 51

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

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

Text proposed by the Commission

Amendment

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

(e) providing for parental control systems **that are under the control of the end-user**, with respect to content which may impair the physical **or mental** development of minors;

Amendment 52

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

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

Text proposed by the Commission

Amendment

(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).

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

Amendment 53

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 3

Text proposed by the Commission

Amendment

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).

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

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28a – paragraph 4

Text proposed by the Commission

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

Amendment

4. Member States shall establish the necessary mechanisms to assess the **legality, transparency, necessity, effectiveness and proportionality** of the measures referred to in paragraphs 2 and 3 taken by video-sharing platform providers. Member States shall entrust this task to the authorities designated in accordance with Article 30. **The independent national regulatory bodies or authorities shall provide the necessary guidelines to ensure that the measures taken respect the freedom of expression, are based on prior judicial authorisation, and include the necessity to inform users.**

Amendment 55

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 5

Text proposed by the Commission

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

Amendment

5. Member States shall not impose on video-sharing platform providers measures that are stricter than the measures referred to in paragraph 1 and 2. Member States shall not be precluded from imposing stricter measures with respect to illegal content, **in addition to appropriate measures already taken by video-sharing platform providers, provided that any measure taken, for the purposes of this Directive, to restrict the online distribution, or otherwise making available, of illegal content to the public is in line with the Charter of Fundamental**

Rights, is limited to what is necessary and proportionate and is taken on the basis of a prior judicial authorisation. When adopting such measures, they shall respect the conditions set by applicable Union law, such as, where appropriate, those set in Articles 14 and 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU. ***Member States shall not require video-sharing platform providers to conduct any stricter ex-ante control measure.***

Amendment 56

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28a – paragraph 6

Text proposed by the Commission

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.

Amendment

6. Member States shall ensure that ***effective*** complaint and redress mechanisms, ***including counter-notice procedures***, 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.

Amendment 57

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive 2010/13/EU

Chapter XI – title

Text proposed by the Commission

REGULATORY AUTHORITIES OF THE MEMBER STATES;

Amendment

REGULATORY ***BODIES OR*** AUTHORITIES OF THE MEMBER STATES;

Amendment 58

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 59

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 60

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 61

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 **bodies or** authorities have adequate enforcement powers **and resources** to carry out their functions effectively.

Amendment 62

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 5

Text proposed by the Commission

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

Amendment

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

shall be made available.

and a statement of reasons shall be made available.

Amendment 63

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 64

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 2

Text proposed by the Commission

2. It shall be composed of national independent regulatory authorities in the field of audiovisual media services. They shall be represented by the heads or by nominated high level representatives of the national regulatory authority with primary responsibility for overseeing audiovisual media services, or in cases where there is no national regulatory authority, by other representatives as chosen through their procedures. A Commission representative shall participate in the group meetings.

Amendment

2. It shall be composed of national independent regulatory ***bodies or*** authorities in the field of audiovisual media services, ***which may include those regional independent regulatory bodies and authorities with full competence in the field of audiovisual media services.*** They shall be represented by the heads or by nominated high level representatives of the national regulatory ***body or*** authority with primary responsibility for overseeing audiovisual media services, or in cases where there is no national regulatory ***body or*** authority, by other representatives as chosen through their procedures. A Commission representative shall

participate in the group meetings.

Amendment 65

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 3 – point a

Text proposed by the Commission

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

Amendment

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

Amendment 66

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 67

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30a – paragraph 3 – point c

Text proposed by the Commission

(c) to provide for an exchange of

Amendment

(c) to provide for **guidelines and** an

experience and good practice as to the application of the regulatory framework for audiovisual media services;

exchange of experience and good practice as to the application of the regulatory framework for audiovisual media services;

Amendment 68

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 3 – point d

Text proposed by the Commission

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

Amendment

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

Amendment 69

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 3 – point e

Text proposed by the Commission

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

Amendment

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

Amendment 70

Proposal for a directive

Article 1 – paragraph 1 – point 23

Directive 2010/13/EU

Article 33 – subparagraph 2

Text proposed by the Commission

By [date – no later than four years after

PE593.952v03-00

Amendment

By [date – no later than four years after

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adoption] at the latest, and every three years thereafter, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Directive.

adoption] at the latest, and every three years thereafter, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Directive, ***including on the impact of the implementing measures on the fundamental rights enshrined in the Charter of fundamental Rights and in particular the freedom of expression and information as provided for in Article 11.***

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities
References	COM(2016)0287 – C8-0193/2016 – 2016/0151(COD)
Committee responsible Date announced in plenary	CULT 9.6.2016
Opinion by Date announced in plenary	LIBE 9.6.2016
Rapporteur Date appointed	Angelika Mlinar 5.9.2016
Discussed in committee	24.11.2016 31.1.2017
Date adopted	31.1.2017
Result of final vote	+: 44 -: 5 0: 1
Members present for the final vote	Heinz K. Becker, Malin Björk, Caterina Chinnici, Daniel Dalton, Agustín Díaz de Mera García Consuegra, Frank Engel, Cornelia Ernst, Raymond Finch, Monika Flašíková Beňová, Mariya Gabriel, Kinga Gál, Ana Gomes, Sylvie Guillaume, Jussi Halla-aho, Filiz Hyusmenova, Sophia in 't Veld, Eva Joly, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Marju Lauristin, Juan Fernando López Aguilar, Monica Macovei, Roberta Metsola, Claude Moraes, Alessandra Mussolini, Péter Niedermüller, Soraya Post, Birgit Sippel, Csaba Sógor, Helga Stevens, Traian Ungureanu, Bodil Valero, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Cecilia Wikström, Kristina Winberg, Tomáš Zdechovský
Substitutes present for the final vote	Kostas Chrysogonos, Carlos Coelho, Anna Maria Corazza Bildt, Sylvia-Yvonne Kaufmann, Jean Lambert, Jeroen Lenaers, Artis Pabriks, Morten Helveg Petersen, Salvatore Domenico Pogliese, Josep-Maria Terricabras, Róza Gräfin von Thun und Hohenstein