



DIGITAL SINGLE MARKET – COMMISSION UPDATES EU AUDIOVISUAL RULES AND PRESENTS TARGETED APPROACH TO ONLINE PLATFORMS

Brussels, 25 May 2016

QUESTIONS AND ANSWERS

See also [IP/16/1873](#)

I. Modernisation of the [Audiovisual Media Services Directive](#)

Why is the Audiovisual Media Services Directive being revised?

The media landscape has shifted dramatically in less than a decade. Instead of sitting in front of the family TV, millions of Europeans, especially young people, watch content online, on demand and on different mobile devices.

- Children are watching less traditional TV: the average daily viewing time for young Europeans was 2 hours in 2014 i.e. about half as much as the average viewer ([source](#)).
- Global internet video share in consumer internet traffic is expected to increase from 64% in 2014 to 80% by 2019 ([source](#)).

Audiovisual media also increasingly target markets across national borders. At the end of 2013, more than 5,000 TV channels (not counting local channels and windows) were established in the EU. Of these, almost 2,000 targeted foreign markets (either EU or extra-EU). This share had increased from 28% in 2009 to 38% in 2013 ([source](#)). As far as video-on-demand services are concerned, 31% of the video-on-demand services available in a Member State are established in another EU country ([source](#)). This underpins the continued added value of the EU action in this area.

Taking these new developments into account, as well as a thorough evaluation ([REFIT](#)) of the current Audiovisual Media Services Directive (AVMSD), the Commission today presented updated rules to find a better balance of the rules which apply to traditional broadcasters, video-on-demand providers and video-sharing platforms, especially when it comes to protecting children. It proposes to have more common rules at EU level to provide clarity and legal certainty to consumers and businesses across borders.

Which type of audiovisual media services are covered by the new Directive?

The existing rules already cover traditional TV and video on-demand services. The new proposal foresees a limited extension of its scope to video-sharing platforms which tag and organise the content, for example YouTube.

Member States should ensure that video-sharing platforms put in place measures to:

- protect minors from harmful content (which may impair the physical, mental or moral development); access to which would have to be restricted; and
- protect all citizens from incitement to hatred.

Implementation of the new regime would be encouraged via co-regulation: the proposed rules provide basic requirements and partners who share responsibility contribute to fulfilling objectives.

What does the Directive consider to be a video-sharing platform?

In the proposal, a video-sharing platform is defined as a commercial service addressed to the public which:

- stores a large amount of programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;
- where the content is organised in a way determined by the provider of the service, in particular by hosting, displaying, tagging and sequencing;
- where 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;

- is made available by electronic communications networks.

As a general rule, social media, such as Facebook or other services, do not have as a principal purpose the provision of programmes or user-generated videos to the public. Of course, this may evolve with time and if a particular social media provider meets all the characteristics of a video-sharing platform, they will be covered as such.

While newspaper websites remain outside the Directive, standalone parts of newspaper websites which feature audiovisual programme or user-generated videos will be considered as video-sharing platforms for the purpose of the AVMSD. However, any occasional use of videos in websites, blogs, newspapers will be outside the scope of the Directive.

As with any Directive, the AVMSD will be implemented in national law. On the basis of the criteria set by the Directive, national audiovisual regulators will determine the players which are covered. The Commission's monitoring of the implementation of the Directive will ensure a consistent approach.

What is the country of origin principle? How will it be improved?

The aim of the country of origin principle is to protect media service providers established in one Member State from any restriction imposed by other EU Member States receiving their services. Audiovisual providers do not need to comply with 28 different rules, only with those of the country where they are established.

The Commission proposes to confirm and facilitate the country of origin principle in three ways:

- it will be easier to establish the country whose rules apply to each provider, thanks to a database which will contain an up-to-date list of providers under Member States' jurisdiction;
- this information will be accessible to all Member States and regulators; and
- the mechanisms foreseen in cases of exceptions to the country of origin will be improved.

What is proposed for advertising?

Today's proposal aims to strike the right balance between strong consumer protection, more specifically the protection of minors, and a more flexible system for TV broadcasters, taking into account new market realities.

The proposed rules strengthen provisions to protect minors from inappropriate audiovisual commercial communications of foods high in fat, salt/sodium, sugars by, where necessary, encouraging codes of conduct at EU level.

Tobacco advertising remains forbidden in all types of media. For alcohol advertising, the Commission wants also to encourage further development of self- or co-regulation, also at EU level if necessary, to effectively limit the exposure of minors to such ads. Member States can apply stricter rules and can, for example, ban alcohol advertisements or adopt other measures.

The overall limit of 20% of broadcasting time is maintained between 7 am and 11 pm, but instead of the current 12 minutes per hour, broadcasters can choose more freely when to show ads throughout the day.

The transmission of TV films, cinematographic works and news programmes can be interrupted only once every 20 minutes

Broadcasters and on-demand providers will also have greater flexibility to use product placement and sponsorship, while keeping viewers informed at the beginning and/or end of a programme. Product placement will however remain forbidden in programmes with a significant children's audience.

These different measures are expected to have a positive economic impact for media services providers – mainly TV broadcasters – and increase their capacity to invest in audiovisual content. This is important for the competitiveness of the EU audiovisual industry.

How will the protection of children from harmful and illegal content be strengthened?

Children watch less and less TV and more and more on-demand and online videos. However, the current AVMSD protects them more on TV and less in the online world. This inconsistency will now be fixed. Proposed rules:

- -require that programmes that may impair the physical, mental or moral development of minors (harmful content) are only made available in such a way as to ensure that minors will not normally hear or see them. This is regardless of whether such programmes are broadcast by TV broadcasters or provided by on-demand providers. Different rules apply for video-sharing platforms, where the Commission wants to support a co-regulatory approach: the Commission will invite all video-sharing platforms to work within the [Alliance to better protect minors online](#), with an aim to come up with a code of conduct for the industry, while national audiovisual regulators will have the power to enforce the rules.

- -require that the most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures providing a high degree of control (such as age verification or pin codes).
- -encourage EU co-regulation on content descriptors (words or symbols warning of bad language, sex, violence, drugs, discrimination) which provide sufficient information to viewers about the possible harmful nature of the content. The Commission wants the industry to develop common content descriptors because age ratings without additional explanations on this rating do not always give sufficient information to parents. This will empower parents to make decisions for their children or for children to make decisions for themselves.

How is European culture strengthened by the new Directive?

While European TV broadcasters invest around 20% of their revenues in original content, this figure represents less than 1% for on-demand providers ([source](#)). The proposal therefore will aim at encouraging new investment in European works.

Under proposed rules, TV broadcasters will continue to be obliged to broadcast at least 50% share of European works (including national content) in viewing time. Video-on-demand services – which already have to promote European works under current rules – are subject to more specific obligations: they need to ensure at least 20% share of European content in their catalogues and should give a good visibility (prominence) to European content in their offers.

Current rules already foresee that promotion of European works can also be carried out, amongst others, through financial contributions to the production and rights acquisition of European works. Member States have the option to require on-demand audiovisual media services under their jurisdiction to contribute in this way. The new rules give the possibility for Member States to impose financial contributions (direct investments or levies payable to a fund) upon on-demand services, including to those established in a different Member State but targeted at their national audiences. This would be a voluntary measure for Member States, not an obligation at EU level.

The reason for this clarification is that current rules can lead to "forum shopping" practices (i.e. on-demand services establishing themselves in Member States with light or no financial obligations). This in turn can create competition distortions. Financial contributions will only be able to be imposed on the revenues generated in the imposing country. Clarifying that Member States can impose financial contributions is considered as a justified and balanced way to limit "forum shopping" practices without undermining the country of origin principle.

The proposed rules also include a mandatory exemption for companies with a low turnover and low audiences as well as small and micro enterprises. 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 unjustified.

Overall, strengthening the promotion of European works for on-demand services will lead to a broader and more diverse offer for Europeans. This will have a positive impact on cultural diversity and bring more opportunities for European creators.

Why is a quota needed at EU level? Won't it be an extra-burden for businesses?

Quotas already exist in more than half of EU Member States (see impact assessment, Annex XIII). This is required either as a standalone obligation (e.g. Cyprus, Hungary, Lithuania, Malta, Slovakia) or in combination with other joint or alternative obligations (e.g. France, Croatia, Czech Republic, Italy, Poland, Romania, Slovenia, Spain). The required shares in the catalogues vary considerably between Member States (10-60%). This is why minimum harmonisation at EU level is needed, so that all Europeans can have access to at least some European audiovisual content.

It should not be an extra-burden for businesses: on average, in the EU, European films already account for 27% of all films available in video-on-demand catalogues (according to a [2015 study by the European Audiovisual Observatory](#)).

More specifically:

- Share of EU films in 75 video-on-demand (VoD) catalogues: 27%
- Share of EU films in 16 subscription VoD catalogues: 30%
- Share of EU films in Netflix: 21%
- Share of EU films in iTunes: 21%

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How can video-on-demand services give adequate prominence to European works?

There is a wide range of tools to ensure visibility of European works, e.g. indicating the country where a film or series comes from; providing possibilities for searching for European works; placing information and materials promoting European works, including in the home/front page; using trailers or visuals.

How will the Directive increase the independence of regulatory authorities for audiovisual media services?

The proposal includes a requirement for Member States to have independent regulatory authorities for audiovisual media services. They will have to fulfil the criteria of independence listed in the Directive. The regulator :

- should be legally distinct and functionally independent of any other public or private body.
- should not seek or take instructions from any other body in relation to the exercise of the tasks.
- should exercise its powers impartially and transparently and in accordance with the objectives of the AVMSD in particular media pluralism, cultural diversity, consumer protection, internal market and the promotion of fair competition.
- should have its competences and powers clearly defined in law.
- should have adequate enforcement powers to carry out their functions effectively.

Also, the head of a national regulatory authority or the members of the collegiate body may be dismissed only if they no longer fulfil the conditions required for the performance of their duties.

The Commission will monitor the application of these principles in the Member States, and could take action if they are not respected.

What is the role of the European Regulators Group for Audiovisual Media Services (ERGA)?

The proposal reinforces the role of the [European Regulators Group for Audiovisual Media Services \(ERGA\)](#) by giving it more tasks when advising and assisting the Commission in the consistent implementation of the Directive in all Member States.

ERGA will be given specific tasks intended to approach Member States' positions. For instance, upon the Commission's request, ERGA will issue opinions in the context of the country of origin derogation mechanisms. Moreover, ERGA is tasked with supporting the adoption of codes of conduct at EU level.

What are the next steps?

The current AVMSD will continue to apply until the revised Directive enters into force. The Commission is calling the European Parliament and the Council of the EU (representing Member States) to adopt the text as soon as possible. The Commission proposes that Member States have one year to transpose the Directive into their national legislation.

II. Platforms

What are online platforms and why are they important?

Online platforms cover a wide range of activities including online advertising platforms, marketplaces, search engines, social media and creative content outlets, application distribution platforms, communications services, payment systems, and collaborative economy platforms.

They share key characteristics including the use of information and communication technologies to facilitate interactions (including commercial transactions) between users, collection and use of data about these interactions, and network effects which make the use of the platforms with most users most valuable to other users.

Some examples of online platforms are: eBay, Amazon Marketplace, Google and Bing Search, Facebook and YouTube, Google Play and App Store, Facebook Messenger, Google's AdSense, Zalando marketplace, BlaBla Car and Uber.

Online platforms are strong drivers of innovation and play an important role in Europe's digital society and economy. They increase consumer choice, improve efficiency and competitiveness of industry and can enhance civil participation in society.

Why is an EU policy approach to platforms necessary?

The platform economy presents major innovation opportunities for European industry, SMEs and startups to develop new business models, products and services. Creating the right environment is essential to retain, grow and foster the emergence of new online platforms in Europe. A coherent EU approach is needed to avoid fragmentation and obstacles in the Digital Single Market. Different national rules can otherwise create uncertainty for economic operators, make scaling-up more difficult

for startups and limit the availability of digital services. In this respect, the Commission will in early June adopt a European agenda for the collaborative economy, including guidance on how EU law applies specifically to collaborative economy platforms and recommendations to Member States on how to ensure a balanced development of this market.

The Commission aims to ensure a balanced regulatory framework which allows consumers and businesses in the EU to benefit from the development and scaling-up of online platforms and which also protects the legitimate interests of users and fundamental values.

In order to assess the scope for further action the Commission has undertaken a comprehensive assessment which included a [public consultation](#), [engagement with stakeholders in workshops](#) and [studies](#). The stakeholder consultation process flagged a number of concerns related to online platforms. For example, respondents expressed concern about:

- the lack of level-playing field in certain sectors;
- the lack of transparency;
- certain business-to-business practices; and
- the tackling of illegal content online.

The Commission will only consider targeted policy measures (regulatory, self- or co-regulatory) on the basis of:

- (i) clearly identified problems relating to a specific type or activity of online platforms, and
- (ii) upon in-depth evaluation of the sufficiency and adequacy of the existing regulatory framework.

How do the Commission's existing policies support platforms?

The [Digital Single Market strategy](#), the [Single Market strategy](#) and the [Capital Markets Union](#), as well as investment through the research and innovation programme [Horizon 2020](#) and through the [Investment Plan for Europe](#) will help EU-born platforms to emerge and thrive. Initiatives such as [StartUpEurope](#) can also help create the right environment for new tech players.

Further action is needed to sustain this growth, to address barriers caused by different national approaches, and to ensure that the rules which already apply to platforms are correctly applied.

Does the Commission want to regulate platforms?

Today's Communication on platforms does not propose a new general law on online platforms, nor does it suggest to change the liability regime set by the [e-Commerce Directive](#).

The aim is to make sure that platforms can be created, scale up and grow in the European Union. To reach this goal we need a functioning Digital Single Market where online platforms (both startups and established market operators) are not hampered by heavy regulation.

Online platforms are already subject to EU legislation such as consumer and data protection rules, and competition law. New initiatives will only be taken to tackle any specific problems identified and only if it is established that better enforcement of existing rules is not sufficient to address these.

In our approach to online platforms, we will be guided by the following principles:

- a level-playing field for comparable digital services
- responsible behaviour of online platforms to protect core values,
- transparency and fairness for maintaining user trust and safeguarding innovation,
- open and non-discriminatory markets in a data-driven economy.

What does the Commission propose to do?

In line with the principles set forth in the Communication on Online Platforms, the next steps related are:

1. A level-playing field for comparable digital services

- A review of of [EU telecoms legislation](#), and of the [e-Privacy Directive](#) are expected by the end of the 2016. As part of its review of EU telecoms rules the Commission is looking at partial deregulation of traditional communication services, where they face competition from platforms and other digital players, and at the merits of applying certain communications-specific rules to all comparable services to better protect users. In the new e-Privacy Directive the Commission will consider, for example, extending data protection obligations currently applicable only to telecoms companies to platforms.

2. Ensuring that online platforms behave responsibly

- In the third quarter of 2016, the Commission will propose a [copyright reform package](#) aiming to achieve a fairer allocation of value generated by the online distribution of copyright-protected content by online platforms providing access to such content.
- In relation to the liability regime of online intermediaries established by [the e-Commerce Directive](#), the Commission will assess:
 - o the need for guidance on the liability of online platforms when putting in place voluntary measures to fight illegal content online [starting in the second half of 2016], and
 - o the need for a formal notice-and-action procedures [after taking due account of the updated audiovisual media and copyright frameworks].
- In addition to revised audiovisual media rules, the Commission will further encourage coordinated EU-wide self-regulatory efforts by online platforms in tackling illegal content online. The Commission is currently discussing with IT companies on a code of conduct on combatting hate speech online.

3. **Fostering trust, transparency and ensuring fairness**

- In view of informing and empowering citizens and consumers:
 - o The Commission will further promote interoperability actions, including through issuing principles and guidance on [secure electronic identifications \(eID\)](#) interoperability at the latest by 2017.
 - o The Commission will encourage industry to step up voluntary efforts, which it will help in framing, to prevent trust-diminishing practices (in particular, but not limited to, tackling fake or misleading online reviews) and monitor the implementation of the self-regulatory principles agreed on comparison websites and apps.
 - o The Commission will continue the ongoing evaluation ([REFIT](#)) of key pieces of EU market and consumer law and their application to online platforms and collaborative economy.
- In view of safeguarding a fair and innovation-friendly business environment, the Commission will launch a targeted fact-finding exercise of business-to-business practices in the online platforms environment. By spring 2017 the Commission will determine if additional EU action is necessary.

4. **Keeping markets open and non-discriminatory to foster a data-driven economy**

The [free-flow-of-data initiative](#) (due for the end of 2016) will consider options for effective approaches, including technical standards, to facilitate switching and portability of data among different online platform and cloud computing services, both for business and private users. In this context, the Commission will also examine the potential barriers to a single EU data market that may arise from legal uncertainties regarding the ownership and usability of — or access to — data, including issues related to application programming interfaces.

What about the liability regime in the e-Commerce Directive?

The [e-Commerce Directive](#) foresees that internet intermediary service providers should not be liable for the content that they hold and transmit passively. At the same time when illegal content is identified, intermediaries should take effective action to remove it, whether it be information that is illegal (e.g. terrorism/child abuse) or information that infringes the property rights of others (e.g. copyright).

Today's Communication on platforms does not propose any changes to the liability regime in the e-Commerce Directive. The Commission will not oblige online platforms to generally monitor content. As a complement, the Commission will, however, look into the possibility to tackle illegal content also by voluntary and self-regulatory action.

However, the Commission's stakeholder consultation indicated the need to explore potential problems for platforms when putting in place voluntary measures to fight illegal content online and further review the need for a clarification of the notice-and-action procedures. The Commission will therefore undertake further analysis in the coming year to explore whether EU action is warranted in these areas.

How will you address people's concerns about how platforms use their data?

Access to data spurs efficiency and innovation. However, many people are concerned about data collection and want to know what data is collected and how it is shared and used. The Commission believes platforms need to respond to these concerns and comply with existing data protection rules. The Commission also believes that improved enforcement of current rules as well as better compliance will increase trust.

The Commission will also promote interoperability actions and encourage platforms to recognise

electronic identifications (eID), in particular those identified under the Regulation on electronic identification and trust services for electronic transactions in the internal market ([eIDAS](#)), to improve consumer and data protection.

How will you address issues relating to potential unfair practices in business-to-business relations?

The results of the public consultation on platforms highlighted a number of concerns from suppliers about allegedly "unfair" practices e.g. platforms imposing unfair terms and conditions, in particular for access to important data bases; platforms refusing access to markets or essential business data necessary for suppliers; platforms promoting their own service to the disadvantage of third-party supplier.

Beyond the application of competition policy which addresses competition between market players, it is vital that more evidence is obtained on the prevalence of such "unfair" trading practices. This is all the more important in light of the fact that some Member States are already in the process of introducing or considering the introduction of platform-specific measures to address some of these unfair trading practices, risking fragmentation of the Digital Single Market. In order to assess the extent of any potential problems we will, therefore, further engage with public authorities and stakeholders to find out more about such practices in the online platform world and will decide if further action to address fairness in business-to-business relations is necessary in 2017.

More information

[Press release: Commission updates EU audiovisual rules and adopts targeted approach to online platforms](#)

Documents adopted today:

[Proposal for a revised Directive on audiovisual media services](#)

[Communication on online platforms and the Digital Single Market](#)

[Staff working document on online platforms and the Digital Single Market](#)

On social media

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