

6.9.2016

Proposed amendments to the AVMS Directive

This document sets out the EBU's amendments to the Commission's proposal on a revised AVMSD. The EBU suggests amending the following issues:

Appropriate prominence

- Strengthen and improve recital 38 of the Commission's proposal
- Include new provision in the operative part of the Directive (in addition to the revised recital 38)

Self-and co-regulation

Content/signal integrity

Commercial communications

- Quantitative advertising rules
- Requirements for commercial communications
- Product placement

Legal framework for video-sharing platforms

- Replacing full harmonization by minimum harmonization
- Changing the definition of 'video-sharing platform service' to avoid loopholes
- Application of the rules on audiovisual commercial communications to video-sharing platform services
- Making the rules on the protection of minors and the fight against hate speech more effective

Accessibility

Independence of national regulatory authorities

European Regulators Group for Audiovisual Media Services (ERGA)

Appropriate prominence

[Option 1: Strengthen and improve recital 38 of the Commission’s proposal]

Recital 38

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

Justification

The terms discoverability and accessibility are imprecise and should be replaced by access and appropriate prominence.

In particular, the notion of prominence is not limited to the unique activity of discovering general interest content (once discovered, content may “disappear” or be difficult to find at recurrent use).

The limits to Member States' freedom are clarified by express reference to proportionality and compatibility with Union law.

[Option 2: Include new provision in the operative part of the Directive (in addition to the revised recital 38)]

Article 4 – paragraph 10 or XX

Text proposed by the Commission	Amendment
	<i>(10) This Directive is without prejudice to the ability of Member States to impose obligations to ensure access to and appropriate prominence of content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity.</i>

Justification

In light of converging media markets and increasing vertical integration and consolidation, it is important for Member States to be able to ensure that general interest content, due to its democratic, social or cultural relevance, is available and remains prominent so that it is easy for users to find.

A provision regarding access and prominence in the operative part of the Directive enhances legal certainty as to the scope of the Directive. Legal certainty and stability are indispensable for all participants operating in a rapidly changing market.

The provision would be based on recital 38 of the Commission's proposal. However, the terms discoverability and accessibility are imprecise and should be replaced by access and appropriate prominence.

In particular, the notion of prominence is not limited to the unique activity of discovering general interest content (once discovered, content may "disappear" or be difficult to find at recurrent use).

Self-and co-regulation

Article 4 – paragraph 7

Text proposed by the Commission	Amendment
7. Member States shall encourage co-regulation and/or self- regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement.	7. Member States shall encourage co-regulation and/or self- regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement. At any rate, national regulatory authorities must retain effective powers in the event and to the extent that self- or co-regulation is not effective.

Justification

Self- and co-regulation can be very valuable instruments. However, it has to be ensured that national regulatory authorities have effective powers to intervene where self-or co-regulation fail to achieve the desired level of protection.

Content/signal integrity

Article 11a (new)

Text proposed by the Commission	Amendment
	<i>Member States shall ensure that programmes and services of media service providers are not modified without their consent, for instance through commercial overlays or similar practices.</i>

Justification

It is necessary to include a new provision on the protection of signal and content integrity so as to ensure that viewers receive the audiovisual media programmes and services as conceived by the media service providers which have the editorial responsibility. This strengthens viewers' trust in audiovisual media and the capability of media service providers to invest, while ensuring the effectiveness of the Directive's rules and preventing their circumvention by third parties, in particular as regards rules on commercial communications. This provision would protect the editorial responsibility of media service providers. It is not admissible that the programmes and services offered by media service providers are manipulated on their way to the consumer. Any action against the integrity of programmes and services should be prohibited, such as commercial overlays or similar practices which exploit the content of media service providers and draw commercial gains from their alteration. This would also help to maintain consumers' trust in audiovisual media. In addition, ensuring content/signal integrity would contribute to sustaining the audiovisual value chain and protecting the sources of financing of audiovisual productions. A provision on content/signal integrity would also prevent circumvention of the Directive's rules by third parties. The protection of consumers, in particular of minors, should not be undermined through the overlay of commercial communications or editorial content on audiovisual media services.

Recital YY (new)

Text proposed by the Commission	Amendment
	<i>(YY) In order to ensure the effectiveness of the Directive's provisions and to protect the editorial responsibility of</i>

	<p><i>media service providers and sustain the audiovisual value chain, it is crucial that the integrity of programmes and services of media service providers is safeguarded. Programmes and services of media service providers should be distributed unabridged, unaltered and uninterrupted and may not be modified without the consent of the media service provider concerned.</i></p>
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Justification

The AVMSD should recognise the protection of content/signal integrity in order to protect the effectiveness of the Directive's rules, in particular the requirements for commercial communications.

In addition, content/signal integrity should be protected as a quid pro quo for the editorial responsibility of media service providers. This protection is important for the entire audiovisual eco-system, and above all, for media service providers' revenues and ability to invest in quality content. Such protection should entail the unabridged, unaltered and uninterrupted distribution of media service providers and prevent any modification of the content without the consent of media service providers. Functionalities built into devices, which the user can control, should not be affected.

Commercial communications

- Quantitative advertising rules

Article 23 – paragraph 1

Text proposed by the Commission	Amendment
1. The daily proportion of television advertising spots and teleshopping spots within the period between 7:00 and 23:00 shall not exceed 20 %.	1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20 %.

Justification

The retention of the hourly limit is necessary to safeguard the European audiovisual model which takes due account of viewers' interests, protecting them from excessive advertising during peak hours. A shift towards a daily limit would call this model into question and could have unexpected consequences on the value of television advertising. This, in turn, could negatively impact investment in original content by broadcasters, and in particular those funded largely through advertising, taking into consideration the different funding models and market conditions.

Article 23 – paragraph 2

Text proposed by the Commission	Amendment
2. Paragraph 1 shall not apply to: (a) announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes from other entities belonging to the same media group; (b) sponsorship announcements; (c) product placements.	2. Paragraph 1 shall not apply to: (a) self- and cross-promotional announcements made by the broadcaster in connection with its own programmes, or ancillary products directly derived from those programmes or other content-related services, including those from other entities belonging to the same media group or those in which the broadcaster holds a material interest ; (b) sponsorship announcements, including additional announcements not referred to in Article 10(1)(c) ; (c) product placements; (d) neutral frames used to separate advertising spots.

Justification

The exceptions to the hourly advertising limit should be broadened, in particular regarding neutral frames (black seconds). More flexibility should also be given to broadcasters to advertise and promote their own media related products and services. The amendment would ensure a more levelled competition with other providers that are not subject to quantitative limits.

Recital 20

Text proposed by the Commission	Amendment
<p>(20) Many broadcasters are part of larger media groups and make announcements not only in connection with their own programmes and ancillary products directly derived from those programmes but also in relation with programmes from other entities belonging to the same media group.</p> <p>Transmission time allotted to announcements made by the broadcaster in connection with programmes from other entities belonging to the same media group should not be included in the maximum amount of daily transmission time that may be allotted to advertising and teleshopping.</p>	<p>(20) Many broadcasters are part of larger media groups and make announcements not only in connection with their own programmes, services and ancillary products [directly derived from those programmes] but also in relation with programmes, content-related services and products from other entities belonging to the same media group or from entities in which the broadcaster holds a material interest. Examples of such services and products include television channels, platforms, and cinema films on their theatrical release.</p> <p>Transmission time allotted to such announcements should not be included in the maximum amount of transmission time that may be allotted to advertising and teleshopping.</p>

Justification

More flexibility should be given to broadcasters to advertise and promote related products and services. In particular, it would allow the cross-promotion of European films (co-) produced and funded by broadcasters at the time of theatrical release. The amendment would also ensure a more levelled competition with other providers that are not subject to quantitative limits.

- Requirements for commercial communications

Article 9 – paragraph 1(a)

Text proposed by the Commission	Amendment
<p>1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:</p> <p>(a) audiovisual commercial communications shall be readily recognisable as such.</p>	<p>1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:</p> <p>(a) audiovisual commercial communications shall be readily recognisable as such and distinguishable from editorial content, without prejudice to Articles 10 and 11.</p>

Justification

Consumer protection is one of the primary objectives of the AVMS Directive and this objective should be strengthened in view of converging media markets and the emergence of new services. Thus, commercial communications should not only be recognisable to consumers, they should also be separated from editorial content to allow consumers to distinguish between editorial and commercial content. Sponsorship and product placement should be exempted from this general requirement as these forms of commercial communication are subject to special rules.

The extension of the principle of separation to commercial communications would also create a more level playing field between broadcasting and on-demand services and would ensure that consumers are protected to the same extent.

Article 9 – paragraph 2

Text proposed by the Commission	Amendment
<p>2. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in programmes with a significant children’s audience, of foods and beverages containing nutrients and substances with a nutritional or physiological</p>	<p>2. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children’s programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, excessive intakes of which in the</p>

<p>effect, excessive intakes of which in the overall diet are not recommended, in particular fat, trans-fatty acids, salt or sodium and sugars.</p> <p>Those codes should be used to effectively reduce the exposure of minors to audiovisual commercial communications of foods and beverages that are high in salt, sugars or fat or that otherwise do not fit national or international nutritional guidelines. Those codes should provide that the audiovisual commercial communications are not to emphasise the positive quality of the nutritional aspects of such foods and beverages.</p>	<p>overall diet are not recommended, in particular fat, trans-fatty acids, salt or sodium and sugars.</p> <p>Those codes should be used to effectively reduce the exposure of minors to audiovisual commercial communications of foods and beverages that are high in salt, sugars or fat or that otherwise do not fit national or international nutritional guidelines. Those codes should provide that the audiovisual commercial communications are not to emphasise the positive quality of the nutritional aspects of such foods and beverages.</p>
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Justification

The notion of programmes with a significant children’s audience is imprecise and should be replaced by children’s programmes. From the outset, this notion has been included in the Directive. For reasons of consistency, the current formulation should be retained.

- Product placement

Article 11 - paragraph 2

Text proposed by the Commission	Amendment
<p>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.</p>	<p>2. Product placement shall be admissible in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and children’s programmes.</p>

Justification

The notion of programmes with a significant children’s audience is imprecise and should be replaced by children’s programmes, a notion which has been used in the Directive from the outset.

Recital 16

Text proposed by the Commission	Amendment
<p>(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.</p> <p>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.</p>	<p>(16) Product placement should not be admissible in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes. In particular, evidence shows that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in children's programmes. In this context, children's programmes should be understood as programmes produced as mainly aimed at children.</p> <p>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.</p>

Justification

The notion of programmes with a significant children's audience is imprecise and should be replaced by children's programmes, a notion which has been used in the Directive from the outset. It should be made clear that – in the context of the Directive's rules on product placement – the children's programme qualification has to be done at the production stage, i.e. that the notion refers to programmes which were produced to be mainly directed at children.

Legal framework for video-sharing platforms

Note:

This document sets out amendments to the legal framework applicable to video-sharing platforms (VSPs) as proposed by the Commission.

The central weakness of the Commission's proposal is to put forward full harmonization in this field. This approach would prevent Member States from adopting stricter or more detailed rules in relation to VSPs in areas which are of fundamental concern to their societies, namely the protection of their citizens and in particular minors. It would also make it difficult for them to effectively control VSPs established on their territories. It is therefore of utmost importance to replace the approach of full harmonization by one of minimum harmonization, consistent with all other services regulated under the Directive.

It is important to consider the amendments jointly. Should the definition of VSPs be broadened but the full harmonization approach be retained, Member States' abilities to regulate VSPs or apply stricter standards would be limited even further.

1) Replacing full harmonization by minimum harmonization

Article 28 - paragraph 5

Text proposed by the Commission	Amendment
<p>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.</p> <p>Member States shall not be precluded from imposing stricter measures with respect to illegal content.</p> <p>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.”</p>	<p>5. Member States shall not be precluded from imposing more detailed or stricter measures, in particular with respect to illegal content.</p> <p>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.”</p>

Justification:

The approach of full harmonization is inconsistent with the AVMSD's overall approach and moreover unsuitable for the regulation of certain aspects of video-sharing platforms.

Given the dual nature of audiovisual media services, as economic as well as cultural goods, the AVMSD has to date relied on minimum harmonization, allowing Member States to adopt

more detailed or stricter rules with a view to national specificities and sensitivities. This rationale also applies to video-sharing platforms, in particular regarding areas such as the protection of minors and the fight against hate speech. Deviating from this approach would undermine the delicate balance struck so far and disregard the nature of audiovisual programmes and other audiovisual content.

In order to properly reflect the special character of audiovisual content production and distribution, the full harmonization approach should be abandoned. This would also respect the principles of conferral, subsidiarity and proportionality.

2. Changing the definition of ‘video-sharing platform service’ to avoid loopholes

Article 1 - paragraph 1, point (aa)

Text proposed by the Commission	Amendment
<p>"(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:</p> <p>(i) the service consists of the storage of a large amount of programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;</p> <p>(ii) the organisation of the stored content is determined by the provider of the service including by automatic means or algorithms, in particular by hosting, displaying, tagging and sequencing;</p> <p>(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;</p> <p>(iv) the service is made available by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC."</p>	<p>"(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:</p> <p>(i) the service consists of the storage or the making available of a large amount of programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;</p> <p>(ii) the organisation of the content is determined by the provider of the service including by automatic means or algorithms, in particular by hosting, displaying, tagging and sequencing;</p> <p>(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;</p> <p>(iv) the service is made available by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC."</p>

Justification:

The sole reference to “storage” is not appropriate as it is a purely technical criterion that does not necessarily capture the activities of video-sharing platforms and their essential role in making available audiovisual content.

The criterion of “principal purpose” proposed by the Commission is not entirely suited for video-sharing platforms. It has been developed to distinguish audiovisual media services from other media services, in particular electronic press and multimedia, and cannot be simply transposed to audiovisual platforms. Internet platforms often pursue various purposes, and operate in two-sided markets, and this is particularly true for platforms with very strong market power. It would be a paradox to exclude from the scope of the Directive the most important platforms, which play a significant role in the distribution of audiovisual content, simply because of their multi-purpose nature.

In interpreting the notion of significance, the following factors should be taken into account: the position of video-sharing platforms in the relevant (national) markets, consumption patterns by specific user groups (such as young people), the extent to which users rely on a particular platform for accessing audiovisual content, and the impact of a video-sharing platform on society, in particular its potential impact on public opinion forming.

3. Application of the rules on audiovisual commercial communications to video-sharing platform services

Article 28a – paragraph (9) (new)

Text proposed by the Commission	Amendment
	<p>9. To the extent that video-sharing platform providers are involved in the sale or placement of audiovisual commercial communications, or otherwise participate in the revenue derived therefrom, Member States shall ensure that they assume the same obligations as media service providers with regard to the requirements of Articles 9 to 11 for audiovisual commercial communications made available on their platform.</p>

Justification:

Many providers of video-sharing platforms pursue business models similar to those of providers of audiovisual media services, in particular when they provide services which are free of charge to users which are funded by (direct or indirect) revenue from audiovisual commercial communications. Both types of services compete for the same audiences.

Therefore it is absolutely crucial to apply the same rules to all audiovisual commercial communications, irrespective of whether they are included in or distributed via audiovisual media services or video-sharing platforms. Otherwise the new provisions for video-sharing platforms proposed by the Commission would not only perpetuate imbalance between the two categories of players but would aggravate the situation. They would create an additional incentive for the transfer of advertising revenue from media service providers to platform operators.

The extension of the rules concerning audiovisual commercial communications to video-sharing platforms would help to attain fair competition as the current rules set out by the E-Commerce Directive and the Unfair Commercial Practices Directive are insufficient.

4. Making the rules on the protection of minors and the fight against hate speech more effective

- Article 28a – paragraph (1)

Text proposed by the Commission	Amendment
<p>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:</p> <p>(a) protect minors from content which may impair their physical, mental or moral development;</p> <p>(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.</p>	<p>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 effectively:</p> <p>(a) protect minors from content which may impair their physical, mental or moral development;</p> <p>(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.</p>

Justification:

The rules imposed on video-sharing platforms are limited and lack any real force. Video-sharing and other similar kinds of platforms do, however, play an increasing role in the distribution of content to EU audiences. In order to level the playing field and regulate comparable services in a similar manner, platform providers should be required to effectively protect minors and prohibit hate speech.

- **Article 28a - paragraph 4**

Text proposed by the Commission	Amendment
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.	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 and shall give them effective powers in the event and to the extent that self- or co-regulation is not effective.

Justification:

In order to ensure the effectiveness of the obligations imposed on video-sharing platform providers, it is necessary that national regulatory authorities monitor their enforcement and evaluate the appropriateness of the measures adopted by providers. This can only be guaranteed if national regulatory authorities have effective powers to enforce them, especially in cases where self-or co-regulation fail to achieve the desired level of protection. A clear statement which would require Member States to equip national regulatory authorities accordingly would ensure that video-sharing platform providers take these obligations seriously and would prevent these obligations from being meaningless in practice.

Accessibility

Article 7 (new)

Text proposed by the Commission	Amendment
	<p><i>Member States shall take appropriate and proportionate measures to ensure that media service providers under their jurisdiction make their services gradually accessible to people with a visual or hearing impairment.</i></p>

Justification

Accessibility requirements in relation to audiovisual media services should be contained in the sector-specific AVMSD. In contrast to a horizontal legal instrument, the AVMSD takes into account the social and cultural role of audiovisual media services. Member States should have a margin of discretion regarding the obligations imposed on media service providers taking into account the specificities of national media markets.

Recital ZZ (new)

Text proposed by the Commission	Amendment
	<p><i>(ZZ) The right of persons with an impairment and of the elderly to participate and be integrated in the social and cultural life of the Union is inextricably linked to the provision of accessible audiovisual media services. Therefore Member States shall take appropriate and proportionate measures to ensure that media service providers under their jurisdiction actively seek to make content accessible to those with sensory impairments over a defined period of time. These measures could be developed through self- and co-regulation.</i></p> <p><i>This Directive should be without prejudice to the accessibility requirements concerning consumer</i></p>

	<i>equipment and their interoperability which are regulated by the European Accessibility Act.</i>
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Justification

Accessibility of audiovisual media services for persons with impairments should continue to be regulated in the sector-specific AVMSD. Based on the current recital 43, it should be clarified that the accessibility requirements concerning terminal equipment and interoperability are covered by the European Accessibility Act. Taking account of the development of new accessibility services, and strong potential for innovation in this area, the list of current technologies is too static and should be deleted. A precise list of technologies which are used at the time of adoption of the Directive may hamper innovation and soon become outdated.

In order to improve accessibility of audiovisual media services, Member States could set up self- or co-regulatory schemes to formulate adequate objectives which should be achieved progressively. Such schemes are subject to monitoring by the Commission in accordance with Article 33. In developing concrete objectives, it is vital that a dialogue is maintained with all stakeholders, in particular with associations representing the interests of persons with impairments.

Independence of national regulatory authorities

Article 30

Text proposed by the Commission	Amendment
<p>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.</p> <p>[...]</p> <p>6. Member States shall ensure that independent national regulatory authorities have separate annual budgets. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to carry out the task assigned to them and to actively participate in and contribute to ERGA.</p>	<p>1. Each Member State shall designate one or more independent national regulatory authorities. Member States shall ensure that they are 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.</p> <p>[...]</p> <p>6. Member States shall ensure that independent national regulatory authorities have separate annual budget allocations. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to carry out the task assigned to them and to actively participate in and contribute to ERGA.</p>

Justification

The amendment brings the provision in line with Council of Europe standards (Recommendation (2000) 23 on the independence and functions of regulatory authorities for the broadcasting sector) and avoids a narrowing down of the concept of independence to the sole criteria of legal distinctiveness and functional independence. The guidelines appended to the above-mentioned Recommendation include important requirements also for example with regard to the composition and the appointment of the members of the authorities' decision-making bodies.

The formulation "legally distinct and functionally independent" as proposed by the Commission has obviously been taken from Art. 3(2) of the Telecom Framework Directive 2009/140/EC; however, it does not take into account the specificity of the audiovisual sector, and in particular the variety of regulatory authorities and supervisory bodies in dual broadcasting systems across Member States.

Adequate and reliable funding is an important prerequisite to ensure the independent work of a regulator. It should be avoided that political pressure can be exercised via (short term) changes in funding. Whether the funding is secured by a separate budget or a separate

budget allocation is of minor importance. The change would, however, take into account different systems in different Member States.

Recital 33

Text proposed by the Commission	Amendment
<p>(33) Regulatory authorities of the Member States can achieve the requisite degree of structural independence only if established as separate legal entities. Member States should therefore guarantee the independence of the national regulatory authorities from both the government, public bodies and the industry with a view to ensuring the impartiality of their decisions.</p> <p>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</p>	<p>(33)</p> <p>Member States shall guarantee the independence of the national regulatory authorities from the government, public bodies and the industry with a view to ensuring the impartiality of their decisions. Regulatory authorities of the Member States can achieve the requisite degree of independence if they are established as separate legal entities or as functionally independent organs of such entities and if the rules governing them protect them against any undue interference, in particular by political forces or economic interests, in line with Council of Europe standards.¹</p> <p>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</p>

¹ Recommendation (2000) 23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector (Adopted by the Committee of Ministers on 20 December 2000)

diversity, consumer protection, the internal market and the promotion of fair competition.
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diversity, consumer protection, the internal market and the promotion of fair competition.
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Justification

It is important to start from the fundamental principle that Member States must guarantee the independence of regulatory authorities from government, public bodies and the industry.

A number of different means are available for Member States to achieve this, in line with the Council of Europe Recommendation on the independence and functions of regulatory authorities for the broadcasting sector, which provides important guidelines with regard to the status, appointment, composition, functioning and financing of regulatory authorities.

To take account of different legal systems and constitutional obligations and to avoid unwanted collateral consequences in certain Member States such as Germany, it is also necessary to specify the criterion of “legally distinct” by referring to separate legal entities “or functionally independent organs of such entities”.

European Regulators Group for Audiovisual Media Services (ERGA)

Article 30a – paragraph 3

Text proposed by the Commission	Amendment
<p>3. ERGA shall have the following tasks:</p> <p>(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;</p> <p>(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;</p> <p>(c) to provide for an exchange of experience and good practice as to the application of the regulatory framework for audiovisual media services;</p> <p>(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;</p> <p>(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.</p>	<p>3. ERGA shall have the following tasks:</p> <p>(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;</p> <p>(b) to advise and assist the Commission as to any matter related to audiovisual media services within the Commission's competence and within the competence of the national regulatory authorities that are members of ERGA. 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;</p> <p>(c) to provide for an exchange of experience and good practice as to the application of the regulatory framework for audiovisual media services;</p> <p>(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;</p> <p>(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.</p>

Justification

ERGA is an important advisory body which facilitates the implementation of the AVMS Directive. It should, however, be clarified that outside the coordinated fields of the Directive, ERGA can only advise the Commission on matters falling within the competence conferred upon the national regulatory authorities by the respective Member States.