

Wednesday 22 May 2013

P7_TA(2013)0215

Implementation of the audiovisual media services directive**European Parliament resolution of 22 May 2013 on the Implementation of the Audiovisual Media Services Directive (2012/2132(INI))**

(2016/C 055/09)

The European Parliament,

- having regard to Article 167 of the Treaty on the Functioning of the European Union,
- having regard to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 20 October 2005,
- having regard to the Protocol on the system of public broadcasting in the Member States annexed to the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts,
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) ⁽¹⁾,
- having regard to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising ⁽²⁾,
- having regard to 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 ('Directive on electronic commerce') ⁽³⁾,
- having regard to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) ⁽⁴⁾ amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 ⁽⁵⁾,
- having regard to 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 ⁽⁶⁾,
- having regard to Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of the Programme of support for the European Audiovisual sector (MEDIA 2007) ⁽⁷⁾,
- having regard to the Commission interpretative communication on certain aspects of the provisions on televised advertising in the 'Television without frontiers' Directive ⁽⁸⁾,
- having regard to Recommendation 2006/952/EC of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry ⁽⁹⁾,

⁽¹⁾ OJ L 95, 15.4.2010, p. 1.

⁽²⁾ OJ L 376, 27.12.2006, p. 21.

⁽³⁾ OJ L 178, 17.7.2000, p. 1.

⁽⁴⁾ OJ L 108, 24.4.2002, p. 51.

⁽⁵⁾ OJ L 337, 18.12.2009, p. 11.

⁽⁶⁾ OJ L 335, 17.12.2011, p. 1.

⁽⁷⁾ OJ L 327, 24.11.2006, p. 12.

⁽⁸⁾ OJ C 102, 28.4.2004, p. 2.

⁽⁹⁾ OJ L 378, 27.12.2006, p. 72.

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- having regard to the conclusions of the Council on the protection of minors in the digital world ⁽¹⁾,
- having regard to the Commission Proposal for a Regulation of the European Parliament and of the Council on establishing the Creative Europe Programme (COM(2011)0785),
- having regard to the Commission Communication of 1 December 2008 ‘Towards an accessible information society’ (COM(2008)0804),
- having regard to the Commission Communication of 3 March 2010 ‘Europe 2020: A strategy for smart, sustainable and inclusive growth’ (COM(2010)2020),
- having regard to the Commission Communication of 26 August 2010 ‘A Digital Agenda for Europe’ (COM(2010)0245/2),
- having regard to its resolution of 16 December 2008 on media literacy in a digital world ⁽²⁾,
- having regard to its resolution of 25 November 2010 on public service broadcasting in the digital era: the future of the dual system ⁽³⁾,
- having regard its resolution of 16 November 2011 on European cinema in the digital era ⁽⁴⁾,
- having regard to its resolution of 22 May 2012 on a strategy for strengthening the rights of vulnerable consumers ⁽⁵⁾,
- having regard to its resolution of 11 September 2012 on the online distribution of audiovisual works in the European Union ⁽⁶⁾,
- having regard to its resolution of 20 November 2012 on protecting children in the digital world ⁽⁷⁾,
- having regard to the Commission Recommendation 2009/625/EC of 20 August 2009 on media literacy in the digital environment for a more competitive audiovisual and content industry and an inclusive knowledge society ⁽⁸⁾,
- having regard to the First Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 24 September 2012 on the Application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2009-2010, Promotion of European works in EU scheduled and on-demand audiovisual media services (COM(2012)0522),
- having regard to the Commission Communication of 26 September 2012 ‘Promoting cultural and creative sectors for growth and jobs in the EU’ (COM(2012)0537),
- having regard to the First Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 4 May 2012 on the application of Directive 2010/13/EU ‘Audiovisual Media Service Directive’, Audiovisual Media Services and Connected Devices: Past and Future Perspectives (COM(2012)0203),
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Culture and Education and the opinions of the Committee on Internal Market and Consumer Protection, the Committee on Legal Affairs, and the Committee on Civil Liberties, Justice and Home Affairs (A7-0055/2013),

A. whereas the Audiovisual Media Services Directive (AVMSD) is the backbone of EU media regulation;

⁽¹⁾ OJ C 372, 20.12.2011, p. 15.

⁽²⁾ OJ C 45 E, 23.2.2010, p. 9.

⁽³⁾ OJ C 99 E, 3.4.2012, p. 50.

⁽⁴⁾ Texts adopted, P7_TA(2011)0506.

⁽⁵⁾ Texts adopted, P7_TA(2012)0209.

⁽⁶⁾ Texts adopted, P7_TA(2012)0324.

⁽⁷⁾ Texts adopted, P7_TA(2012)0428.

⁽⁸⁾ OJ L 227, 29.8.2009, p. 9.

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- B. whereas audiovisual media services are as much cultural services as they are economic services;
- C. whereas the AVMSD is based on the principle of technological neutrality and thus covers all services with audiovisual content irrespective of the technology used to deliver it, guaranteeing a level playing field for all audiovisual media service providers;
- D. whereas the AVMSD guarantees a free flow of audiovisual media services as an internal market instrument, and respects the right to freedom of expression and access to information while protecting the public interest objectives, including authors' rights, media freedom, freedom of information and freedom of expression;
- E. whereas the AVMSD aims to take into account the cultural nature of audiovisual media services, which are of particular importance for society and democracy as vectors of identities and values, and to preserve independent cultural development in the Member States while safeguarding cultural diversity in the Union, particularly through minimum harmonisation and the promotion of European audiovisual works;
- F. whereas technological convergence means that consumers will in future distinguish less and less between linear and non-linear services;
- G. whereas the goal should be a level playing field, as the different levels of regulation for linear and non-linear services are no longer recognisable for consumers, which in turn can lead to a distortion of competition;
- H. whereas the audiovisual media services markets continue to experience significant changes in technology as well as developments in business practices and models, influencing the way content is delivered and accessed by viewers;
- I. whereas the accessibility of audiovisual media services is essential for guaranteeing the right of persons with a disability and of the elderly to participate and be integrated in the social and cultural life of the EU, in particular with the development of new content delivery platforms such as IPTV and Connected TV;
- J. whereas specific focus should be placed on media literacy in the context of the increasing pace of technological developments and the convergence of media platforms;
- K. whereas the on-going technological changes have made the protection of minors an even more pressing and challenging issue;
- L. whereas some Member States have not transposed the AVMSD in a timely manner or have not fully or correctly implemented it;
- M. whereas in most Member States the transposition of Article 13 of the AVMSD on the promotion of European works by on-demand services is not prescriptive enough to meet the cultural diversity objective spelled out in the directive;
- N. whereas neither a full assessment of the implementation of the AVMSD nor a thorough evaluation of its effectiveness can therefore be carried out;
- O. whereas the expansion of the audiovisual media services markets with the development of hybrid services presents new challenges with regard to a wide range of issues, such as competition, intellectual property rights, the evolution of existing and the emergence of new forms of audiovisual commercial communications, and overlay advertising which challenges programme integrity and puts into question the adequacy and effectiveness of the AVMSD, as well as its relationship with other instruments of EU law;
- P. whereas the provisions of Article 15 of the AVMSD balance the interests of all stakeholders in a fair manner by ensuring respect for, on the one hand, the public's right to access information and, on the other hand, the right to property and the freedom to conduct a business;

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State of play

1. Reminds the Commission of its commitment to the smart regulation agenda, and the importance of making timely and pertinent ex-post controls of EU legislation in order to manage the quality of regulation throughout the policy cycle;
2. Notes in this respect that, under Article 33 of the AVMSD, the Commission was under an obligation to submit the report on the application of the Directive no later than 19 December 2011;
3. Notes that the Commission has submitted its application report with a significant delay by submitting it on 4 May 2012;
4. Notes also that the Member States have implemented the AVMSD in a particularly diverse manner;
5. Stresses that the AVMSD remains the appropriate instrument to govern the EU-wide coordination of national legislation on all audiovisual media and to uphold the principles of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
6. Notes in particular that the 'country of origin' principle, when properly applied, gives broadcasters important clarity and certainty about their operational arrangements;
7. Deplores that the Commission application report does not assess the need for a possible adaptation of the AVMSD in view of these findings as required by Article 33;
8. Calls on the Commission to encourage the consistent and full implementation of the AVMSD in the Member States and, in particular, to ensure that all due account is taken of the specific definitions contained in the recitals to this Directive when it is transposed into national law;
9. Strongly supports a technology-neutral approach, in view of evolving viewing and delivery patterns, to facilitate increased consumer choice; calls, in this regard, for a full impact assessment of the current state of play on the market and of the regulatory framework;
10. Notes the Commission's intention to publish shortly a policy document on convergence with regard to Connected TV and connected devices that will launch a public consultation on all issues arising from these new developments;
11. Encourages the Commission to examine, in the event of any review of the AVMSD, to what extent, if any, uncertainties or inaccuracies in the definitions have led to difficulties in implementation in the Member States, so that these issues can be resolved in the context of this review;
12. Notes, in relation to the 'over-the-top' delivery of audiovisual content, that it is necessary to specify what is meant by 'stakeholders', these being, at the very least, public and private television companies, internet providers, consumers and creators;
13. Calls on the Commission to continue to ensure that audiovisual media services, given their dual nature as providers of cultural as well as economic services, remain excluded from any accord on liberalisation reached in negotiations on the General Agreement on Trade in Services (GATS);

Accessibility

14. Stresses that the Commission application report fails to address substantively the issue of accessibility as referred to in Article 7 of the AVMSD, and regrets that the effectiveness of the Member States' implementing rules in this regard is not addressed;
15. Notes that in many Member States the infrastructure to provide such services does not yet exist, and that it will take time for some Member States to meet these requirements; encourages the Member States concerned to attend to this matter as soon as possible in order to allow for the practical implementation of Article 7;
16. Calls on the Commission to address this deficit by providing a regular overview of the measures taken by the Member States, and an assessment of their efficacy, so as to ensure that audiovisual media services are continually made more accessible;

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17. Highlights the fact that, in an increasingly digital environment, public media services play a crucial role in ensuring that citizens are able to access information online, and acknowledges, in this regard, that the provision of internet services by public media services contributes directly to their mission;
18. Takes the view that the concentration of media ownership may undermine freedom of information and, in particular, the right to receive information;
19. Takes the view, therefore, that a proper balance should be struck between the objectives of the AVMSD and the need to safeguard the freedom to distribute and access content, in order to avoid the risks of concentration and loss of diversity;
20. Acknowledges the different business models in place to finance content, and emphasises the importance of affordability of access for different consumers;
21. Points to the need for wider accessibility of programmes, in particular those rendered via on-demand services, through further developments in, inter alia, audio description, audio/spoken subtitles, sign language and menu navigation, notably of electronic programme guides (EPGs);
22. Recognises, furthermore, that the Member States should encourage media service providers and manufacturers of supporting devices under their jurisdiction to make their services more accessible, particularly to the elderly and to people with disabilities, such as the hard of hearing and the visually impaired;
23. Welcomes the personal commitment made by Commissioner Barnier in relation to the ongoing negotiations on a Treaty on copyright limitations and exceptions for visually impaired persons and persons with print disabilities;
24. Calls on the Commission to ensure that aids for persons with impaired vision are generally available for accessing audiovisual products and services;
25. Believes that Article 7 of the AVMSD should therefore be reworded in order to include stronger, binding language, requiring media service providers to ensure that their services are made available to people with disabilities;
26. Stresses, however, that the market for non-linear services is still at a relatively early stage of development and that any new obligations placed on providers must reflect this;

Exclusive rights and short news reports

27. Calls on the Commission, in its next report on the application of the AVMSD, to assess whether the Member States have implemented this directive in a way that preserves the necessary and existing balance between, on the one hand, safeguarding the principle of freedom of access to information, especially on events of high interest to society, and, on the other hand, the protection of rights holders;
28. Welcomes the approach taken by the Commission and the European Court of Justice in relation to the interpretation of Article 14 of the AVMSD; calls for a continued broad interpretation of the term 'events which are regarded as being of major importance for society', including sports and entertainment events that are of general interest, and encourages the Member States to draw up lists of such events;
29. Calls on the Commission to include in its next report an assessment of the ways the Member States have implemented Article 15 of the AVMSD, by looking more particularly at how they ensure that events of high interest to the public, which are transmitted on an exclusive basis by a broadcaster under their jurisdiction, are used for the purposes of short news reports in general news programmes;
30. Hopes that the Member States, in their application of Article 15 of the Directive, promote a high level of diversity in the number of events of significant public interest that are shown in general news programmes through short news reports;

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Promotion of European audiovisual works

31. Highlights that while most Member States comply with the rules relating to the promotion of European works, priority is still given to national works whilst the percentage of independent works on TV is on the decline;
32. Regrets that the data provided are insufficient to draw any conclusions on the promotion of European works by on-demand services providers;
33. Calls, in this regard, for the reporting requirement on European works to include at least a breakdown by category — cinema production, fiction and non-fiction TV production, and show-type or entertainment formats — and by means of distribution, and urges the Member States to provide relevant data in this regard;
34. Stresses the lack of detailed reporting under Article 13 of the AVMSD on the dual obligation to promote the production of, and the access to, European works in on-demand services, and asks the Commission to clarify this point while also taking into account that such services are still in their infancy and that drawing conclusions about the effectiveness of promotion criteria applied to on-demand services is difficult;
35. Calls, therefore, on the Commission and the Member States to act urgently to ensure the effective implementation of Article 13 of the AVMSD;
36. Calls on the Member States to take effective measures to promote better synergies among regulatory authorities, audiovisual media services providers and the Commission, so that EU films can reach a wider audience both within and beyond the EU on linear and non-linear services;
37. Recommends strengthening the role of the European Audiovisual Observatory, as this would be an appropriate solution for collecting data concerning the promotion of European audiovisual works;

Independent works

38. Stresses the importance of implementing Article 17 of the AVMSD in a satisfactory manner with regard to the average broadcasting time for European works by independent producers, and emphasises the autonomy of the Member States in this respect; encourages the Member States and broadcasters to go beyond the minimum level of 10 % suggested in the directive;

Protection of minors

39. Takes note of self-regulatory initiatives and codes of conduct designed to limit children's and minors' exposure to food advertising and marketing, such as those launched within the framework of the Commission's Platform for Action on Diet, Physical Activity and Health;
40. Recognises the efforts made by the advertising industry and members of the EU Pledge, to respond to the AVMSD's call for codes of conduct for commercial communications, accompanying or included in children's programmes, of foods and beverages high in fat, sugar and salt;
41. Stresses that co-regulatory and self-regulatory initiatives, particularly in the field of advertising that targets minors, not least against the background of the Commission's new strategy on corporate social responsibility (CSR), which is defined as 'the responsibility of enterprises for their impacts on society', represent an advance on the prior situation because they offer a means of reacting more swiftly to developments in the rapidly changing world of the media;
42. Notes, however, that such initiatives may not always be sufficiently effective in all Member States and that they should be regarded as complementary to legal provisions in realising the aims of the AVMSD, particularly in an online context;
43. Stresses that it is essential to find the right balance between voluntary measures and mandatory regulation in this respect;

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44. Stresses, therefore, that such initiatives need to be monitored regularly to ensure that they are enforced, along with future legally binding requirements that may be necessary to ensure the effective protection of minors;
45. Calls on the Commission, in the event of a revision of the AVMSD, to give these relatively new regulatory tools a greater role in the protection of minors in the media and in the regulation of advertising; without, however, eschewing public-authority regulation or supervision;
46. Urges the Member States to continue to encourage audiovisual media service providers to develop codes of conduct with regard to inappropriate audiovisual commercial communications in children's programmes;
47. Calls on the Commission to consider how the basic requirements of the AVMSD applicable to non-linear services can be extended to other online content and services which are currently out of its scope, and what steps need to be taken to create a level playing field for all operators; calls on the Commission to present to Parliament the results of its considerations no later than 31 December 2013;
48. Acknowledges Member States' achievements in providing protection against content inciting hatred on the grounds of race, sex, nationality and religion;
49. Highlights the need for a comparative, pan-European study to provide further understanding of how children's, adolescents' and adults' media consumption behaviour is evolving; believes that such a study would be beneficial to audiovisual policymakers at EU level and in the Member States;

Advertising

50. Notes that the 12-minute hourly advertising limit has been breached in some Member States;
51. Urges the Member States concerned to implement fully, correctly and without delay the provisions of the AVMSD in this respect;
52. Reiterates that the proportion of televised advertising and teleshopping spots should not exceed 12 minutes per hour;
53. Is concerned that the 12-minute limitation is regularly breached in some Member States;
54. Urges the Commission, while monitoring compliance with existing rules setting out qualitative and quantitative stipulations on advertising, to have an eye to future challenges, e.g. that of Connected TV, in terms of the competitiveness and the sustainable financing of audiovisual media services;
55. Highlights, in particular, the need to monitor commercial formats devised to circumvent this restriction, especially surreptitious advertising, which can confuse consumers;
56. Asks the Commission to submit, as soon as possible, the clarifications needed of the issues it has identified in the field of commercial communications concerning sponsorship, self-promotion and product placement;
57. Calls on the Commission to analyse the effectiveness of the regulations in place and to monitor compliance with the rules on advertising aimed at children and minors;
58. Calls, furthermore, for a ban on prejudicial advertising, as described in Article 9 of the AVMSD, during programmes for children and young people; recommends, as a basis for future reform of the legislative framework, an analysis of the best practices followed in this field in certain countries;
59. Regrets that the necessary, updated version of the interpretative communication on certain aspects of the provisions on televised advertising has still not been issued;

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60. Welcomes the Commission's intention to update its interpretative communication on certain aspects of the provisions on televised advertising in 2013;

Media literacy

61. Takes note of the findings by the Commission with regard to the level of media literacy in the Member States;

62. Notes that access to channels, and the choice of audiovisual services, has increased significantly;

63. Stresses that, in order to achieve a true digital single market in Europe, further efforts are therefore needed in the field of improving media literacy among citizens, and calls on the Commission and the Member States to promote media literacy for all EU citizens, in particular children and minors, through initiatives and coordinated actions, in order to increase the critical understanding of audiovisual media services, and to stimulate public debate and civic participation, whilst encouraging the active participation of all stakeholders, in particular the media industry;

64. Encourages, in particular, the Member States to integrate media literacy and e-skills, especially in relation to digital media, into their respective school curricula;

Future challenges

65. Regrets that the Commission only partially carried out its reporting task in keeping with its obligation under Article 33 of the AVMSD, and calls for an interim evaluation before the next Commission application report;

66. Calls on the Member States to increase cooperation and coordination in the framework of the contact committee as established under Article 29 of the AVMSD, in order to increase implementation efficiency and coherence;

67. Calls on the Commission to monitor closely the development of hybrid services in the EU, in particular Connected TV, to establish in its Green Paper on Connected TV the various issues they raise and to pursue those issues through public consultation;

68. Asks the Commission to take into consideration the following aspects when launching public consultations on connected or hybrid television: standardisation, technological neutrality, the challenge of personalised services (especially for persons with disabilities), problems related to multi-cloud security, accessibility to users, protecting children and human dignity;

69. Calls on the Commission to address, in particular, the uncertainties surrounding the use of the term 'on-demand audiovisual media services' and, with an eye both to greater consistency in EU legislation affecting on-demand audiovisual services and to likely developments in media convergence, to establish a clearer definition of the term so that the regulatory aims of the AVMSD can be achieved more effectively;

70. Is convinced — given both the market practices of media services providers and platform operators and the developing potential of the relevant technology — that the level of data protection needs to be improved and standardised throughout the EU, while continuing to provide for anonymity in the use of audiovisual media services as the norm;

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71. Instructs its President to forward this resolution to the Council and the Commission.
