

# Commission Proposes Update to Audiovisual Media Services Directive

On 25 May 2016, the European Commission has published its proposal for a revised Audiovisual Media Services Directive (Directive 2010/12/EU) ("**AVMS Directive**") aimed at strengthening the promotion of European cultural diversity, ensuring the independence of audiovisual regulators and offering more flexibility to broadcasters over advertising. The AVMS Directive regulates all audiovisual media services across the EU, which includes the transmission of on-demand services (including Netflix and Amazon Prime) as well as traditional TV broadcasting.

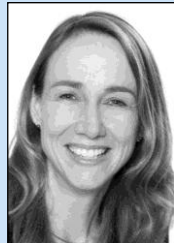
The reform package, which should be viewed in the context of the EU Digital Single Market Strategy, follows a period of public consultation during the summer of 2015 and its proposals will now be reviewed by the European Parliament and EU Member States.

In this briefing note we outline the Commission's key policy proposals, detail the next steps in the reform process and discuss the potential impact these legislative changes will have on our clients.



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## Key Proposals

### Promotion of European Works

- The Commission's proposals look to level a playing field that it sees as being tilted in favour of US content providers – who can leverage the financial clout that access to the large American market offers. On-demand services, including Netflix and Amazon Prime, will have to ensure that at least 20% of their available catalogue is reserved for European works. They will also have to ensure that this content is given sufficient prominence on viewer's screens.
- Member States will also be able to impose financial contributions (either direct investments or levies allocated to national film funds) on both on-demand service providers in their jurisdiction as well as, in certain circumstances, on-demand service providers established in another Member State but targeting their national audience.

### The Country of Origin Principle

- The "country of origin" principle, under which content providers need only comply with the broadcasting rules of the Member State under whose jurisdiction they fall, as opposed to the rules of each country in which the content is transmitted, is maintained and reinforced.
- The revamped AVMS Directive will simplify the legal framework used to determine which Member State has jurisdiction, as well as streamline cooperation procedures and improve the derogation mechanisms in cases of exceptions.

### Advertising, Product placement and Sponsorship

- The proposals will seek to achieve a better balance between competitiveness and consumer protection by allowing more flexibility for all audiovisual media services on product placement and sponsorship, while also strengthening provisions that protect minors from commercials relating to high-fat food and alcoholic beverages, among other things.
- The limit of 12 minutes per hour for television advertising slots is replaced by a daily limit of 20% of advertising during the period between the 07:00 and 23:00 (with sponsorship announcements and products placements not being included in this total). Additionally, made-for-TV films, cinematographic works and news programmes can also be interrupted more frequently (every 20 minutes, as opposed to every 30 minutes).
- There is also a call for the development of symbols and phrases warning viewers of bad language, drugs, sex and other potential harmful content, that could be used across the EU by both TV broadcasters and internet-based providers.

### Protection of Minors

- The revised AVMS Directive provides for an alignment of the standards of protection for TV broadcasting and on-demand services. Programmes that "may impair the physical, mental or moral development of minors" must only be made available in a way that ensures minors cannot normally hear or see them. Currently, this rule only applies to traditional "linear" TV broadcasters.
- The new regime will also encourage Member States to develop self- and co-regulatory codes of conduct (including descriptors and ratings) for content that may be inappropriate for minors.

## Independent Regulators

- The proposals contained within the amended AVMS Directive are also aimed at reinforcing the independence of national audiovisual regulators, with specific conditions relating to budgeting, enforcement powers and appointments and dismissals. National law must also clearly define the competences and powers of regulatory authorities, as well as the means by which they can be held accountable.
- A European Regulators Group for audiovisual media services will also be established. This will comprise of national independent regulatory authorities and be tasked with advising and assisting the Commission in achieving consistent implementation of the AVMS Directive across all Member States.

## Commentary and Next Steps

- With an increasing convergence between traditional television services and services distributed over the internet, the audiovisual media landscape in Europe is rapidly changing. Clearly, a modernised AVMS Directive was required to reflect this advance in technology and market composition.
- However, commentators are already questioning whether the reform package the Commission has proposed offers little beyond simply reinforcing the regulatory regime already in place. Other than the 20% European content requirement, many have struggled to identify any substantive new policies (or substantive amendments to existing policies).
- On the 20% requirement itself, it remains to be seen how this requirement will work in practice. First, it is likely that smaller, niche service providers (specialising in providing anime programming, for example) will have to benefit from a carve-out – as compliance would be difficult and disproportionately burdensome. Meanwhile, additional rules may be required to prevent the market dominant on-demand service providers from developing workarounds, such as satisfying quotas by purchasing low-end (and low-priced) material.
- The reform package will now be reviewed by the European Parliament and the Council of Ministers. Each Member State will also be performing its own review ahead of implementation. Importantly, the amended AVMS Directive will continue to be based on the principle of minimum harmonisation. This means that Member States, when implementing the changes at a national level, can take their own individual circumstances into account (provided, of course, that in doing so they comply with EU rules). In the past, Member States have adopted stricter rules than those set out within the Directive.

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