

## The new Audiovisual Media Services Directive—protecting users of online content effectively?

04/12/2018

**TMT analysis: Romain Soiron, partner at Joffe & Associés and lecturer at the University of Panthéon Sorbonne and Aude Benichou, senior associate at Joffe & Associés, discuss whether the revisions to the new Audiovisual Media Services Directive reflect the current state of the audiovisual services market.**

### Original news

Council of the EU adopts EU rules on video streaming services, [LNB News 08/11/2018 28](#)

*The Council of the European Union has adopted EU rules on video streaming services, meaning that video sharing platforms will need to protect viewers, especially minors, from harmful content or hate speech and ensure at least 30% of their content catalogue is European. The new directive, adopted on 6 November 2018 and published in the Official Journal on 28 November 2018, aims to ensure traditional television services and on-demand media services are subject to similar rules and fairer competition.*

### What is the background to the requirement for revisions to the new directive?

Almost a decade has passed since the publication of the Audiovisual Media Services [Directive 2010/13/EU](#) (AVMS Directive). Audiovisual media has evolved significantly during this time with the emergence and growth of new types of content, a growing convergence between television and services distributed via the internet and the entrance of new players in the market such as video sharing platforms. As a result, the viewing habits of consumers have drastically changed, especially among young people.

While all these audiovisual media services have similar activities and may now be used by consumers on the same media (internet is available on the television, television services are available on mobile phones and computers, etc), they have, so far, been subject to different rules. This has not provided equal protection to users using different type of media, even though the content is substantially the same. This gap has been considered by some actors in the sector to be discriminatory and therefore detrimental to their competitiveness due to an asymmetry of obligations between the different actors, particularly in terms of financial contribution and responsibility.

### What is the latest development?

The proposals bring some major modifications to the AVMS Directive. One main aspect is the introduction of new players to be subject to the European audiovisual rules: video-sharing platforms and live video platforms, ie platforms that host user-generated videos. The definition of 'video sharing platforms' set out in the AVMS Directive is broad enough to include social networks, where the provision of audiovisual content is an 'essential functionality of the service'.

Other amendments include:

- the 'country of origin' principle is reinforced to make it simpler for players to know which Member State they depend on, and thus, which law they need to comply with
- new obligations for television services, video-on-demand services and, to some extent, video sharing platforms for an increased protection of users against harmful content, especially minors
- to enhance competitiveness among television services, the AVMS Directive loosens the rules relating to advertising
- the video-on-demand services, eg Netflix are now bound to have at least 30% of European audiovisual works in their catalogue

## What are the implications of the new directive?

The extension of the scope of the AVMS Directive to video-sharing platforms leads to an increased responsibility of the latter. New rules apply to these players whereas they were exempted until now. As a result, we can expect both organisational and content changes from them.

However, these expectations must be tempered taking into consideration several facts.

First, according to the E-Commerce [Directive 2000/31/EC](#), hosting services (ie information society services that consist in the storage of information provided by a recipient, such as a video-sharing platform) are not bound to operate an ex ante control over content hosted on their platform. The revisions to the AVMS Directive do not intend to modify this principle, which means that the new obligations to implement 'appropriate measures' in order to protect users from harmful content may not have as much impact as expected. This tricky balance between the limited liability attached to the regime of hosting services and the need for regulation considering the size and impact of such services has also been raised in the process of the adoption of the [Directive on copyright in the Digital Single Market](#) (Copyright Directive). Indeed, the Copyright Directive provides for new obligations for video-sharing platforms regarding copyright and piracy, which has been widely resisted by such platforms, but is highly necessary in order to protect authors' rights.

Second, the revisions to the AVMS Directive provide for a minimal harmonisation and rely widely on self and co-regulation of the players. Therefore, the concrete obligations will probably take some time to be implemented.

Finally, it should also be underlined that even though video-sharing platforms were not concerned by the AVMS Directive until now, it seems that the larger platforms are already in compliance with the obligations set out by the amended AVMS Directive.

While the amendments to the AVMS Directive were necessary to accommodate the realities of the audiovisual services market and self-regulation of its players, it may not provide the protection expected.

## What will happen next?

The European Parliament adopted the Directive on 2 October 2018, on 6 November 2018, the Directive was adopted by the Council and on 28 November 2018 it was published in the Official Journal. Member States now have 21 months to transpose the AVMS Directive. Member States have some room for manoeuvre in the transposition of the AVMS Directive since it provides for minimal harmonisation. One can hope that Member States will take this opportunity to enact stricter and more concrete obligations, to make video-sharing platforms more responsible.

With regard to the encouragement of self-regulation and/or co-regulation by industry and public authorities, one can expect that the players and the competent authorities will work together in order to establish and promote codes of conduct.

The AVMS Directive has strengthened and secured the role of sectoral regulatory authorities and, in particular, the European Regulators Group for Audiovisual Media Services, which now has a definition of its role in European legislation.

*Interviewed by Stephanie Boyer.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*

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