

An analysis of comparison between the Current Directives on Audiovisual Media Services and the Proposal for amendment proposed by the European parliament to amend the Directives.

First it's in regard to the Scope of application of the Media services.

- The current Directive does not apply to user-generated content offered on video-sharing platforms, such as YouTube, since the platform providers do not have editorial responsibility for the content stored on these platforms.

most significant changes is the Commission's proposal it has extended the material scope of the Directive to "**video-sharing platforms**", but only in relation to the protection of minors from harmful content (such as pornography and violence) and the protection of all citizens from incitement to violence and hatred

The revised Directive would introduce a definition of "**video-sharing platform service**" as a service that meets the following requirements:

- (a) The service consists of the storage of a large amount of programmes or user-generated videos, for which the provider does not have editorial responsibility;
- (b) The organization of the stored content is determined by the provider, including by automatic means or algorithms, in particular by hosting, displaying, tagging and sequencing;
- (c) The principal purpose of the service (or a dissociable section of it) is devoted to providing programmes and user-generated videos to the general public, in order to inform, entertain or educate; and
- (d) The service is made available by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC

- The Audio Visual Media Services Directives currently only applies to on-demand audiovisual media services that provide audiovisual content where the form and content are comparable to "**the form and content of linear television broadcasting**".

The current definition of programmes under Article (1) of the directives provides.

“ ‘programme’ means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media s

ervice provider and the form and content of which are comparable to the **form and content of television broadcasting**. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama

In the proposed revised AVMSD, this requirement to be **"TV-like"** has been removed. Accordingly, all on-demand offerings of moving images that a provider makes available to users via the Internet within a schedule or a certain catalogue of content under its editorial control would be included, no matter how short and whether or not intended for consumption on mobile devices only.

The proposal removes the phrase **"and the form and content of which are comparable to the form and content of television broadcasting"** suggesting a move away from traditional television as the benchmark and towards a more open and arguably broader conception of just **'an individual item'**

And therefore under the proposal the definition of the programme reads as;

'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider, including feature-length films, videos of short duration, sports events, situation comedies, documentaries, children's programmes and original drama;";

- Regarding the protection of minors, the revised Directive (Proposal) provides for alignment of the standards of protection for TV broadcasting and on-demand services. Article 12 requires that programmes that may impair the physical, mental or moral development of minors 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 media service providers. With a view to this alignment, Article 27 of the current Directive (applicable to TV broadcasting only) is removed. And replaced by Article (12) which will now cover **"both TV broadcasting and on-demand services"**.

Article 12 of the Proposal provides;

Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services.

The existing Article 27 on the Directive provides.,

“Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence”.

The proposed modifications aim at simplifying the obligation to protect minors against harmful content. It now says that everything that '**may be harmful**' should be restricted on all services. The most harmful content shall be subject to the strictest measures, such as PIN codes and encryption. This will apply also to on-demand services.

- Member States shall ensure that audiovisual media service providers provide sufficient information to viewers about harmful content to minors. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service.

For example the treatment of the “**Pornography**” under the new Proposal is an example of the most harmful content and therefore be subjected to the strictest measures,

- The relevant part of Article 12 of the Proposal regarding minor protection on pornography provides;

“The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures, such as encryption and effective parental controls.”;

- The proposal has gone further to suggest the kind of mechanism that may be employed to ensure protection of minor on On demand services, mechanism that do not exist in the current directives, these mechanisms includes,

“ Such measures may include selecting the time of the broadcast, age verification tools or other technical measures”.

This gives the providers the starting point of how they are going to put in place mechanism that will ensure minor protection.

- Again to expand the more minor protection, the proposal amend Article (6) of the current directives and therefore insert Article (6a) which imposes more obligation to the member state to ensure that provider of the audio visual services do provide enough information regarding the content of the audiovisual services that they tend to provide which may impair the physical, mental or moral development of minors,

The new article (6a) of the proposal provides,

“Member States shall ensure that audiovisual media service providers provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service”

This has also much to do with the achievement of the Media Literacy, In order to empower viewers, including parents and minors, in making informed decisions about the content to be watched, it is necessary that audiovisual media service providers provide sufficient information about content that may impair minors' physical, mental or moral development. This could be achieved for instance, through a system of content descriptors indicating the nature of the content. Content descriptors could be delivered through written, graphical or acoustic means, as it is stated in the current proposal.

- The amended Directive would introduce an obligation on Member States to ensure that, within their field of responsibility, video-sharing platform providers put in place,

preferably through co-regulation, appropriate measures to protect minors from content which may impair their physical, mental or moral development;

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, color, religion, descent or national or ethnic origin.

The proposal sets out what those measures can entail, as appropriate in an individual case

Article 28 (a) of the proposal provides a list of the measure that can be taken a list that do not exist in the current directives

Those measures shall consist of, as appropriate:

(a) defining and applying in the terms and conditions of the video-sharing platform providers the concepts of incitement to violence or hatred as referred to in point (b) of paragraph 1 and of content which may impair the physical, mental or moral development of minors, in accordance with Articles 6 and 12 respectively;

(b) establishing and operating mechanisms for users of video-sharing platforms to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 stored on its platform;

(c) Establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;

(d) Establishing and operating systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;

(e) Providing for parental control systems with respect to content which may impair the physical, mental or moral development of minors;