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#### COVER NOTE

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| From:            | Secretary-General of the European Commission,<br>signed by Mr Jordi AYET PUIGARNAU, Director  |
| date of receipt: | 26 May 2016   |
| To:              | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of<br>the European Union  |
| No. Cion doc.:   | SWD(2016) 169 final   |
| Subject:         | COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY<br>OF THE IMPACT ASSESSMENT Accompanying the document Proposal<br>for a Directive of the European Parliament and of the Council amending<br>Directive 2010/13/EU on the coordination of certain provisions laid down by<br>law, regulation or administrative action in Member States concerning the<br>provision of audiovisual media services in view of changing market realities |

Delegations will find attached document SWD(2016) 169 final.

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Encl.: SWD(2016) 169 final

Brussels, 25.5.2016  
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**COMMISSION STAFF WORKING DOCUMENT**  
**EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities**

{ COM(2016) 287 final }  
{ SWD(2016) 168 final }

| A. Need for action  |
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| <p><b>What is the problem and why is it a problem?</b></p> <p>The Impact Assessment has been carried out in parallel to the AVMSD ex post evaluation under the Regulatory Fitness and Performance Programme (REFIT).</p> <p>The overall conclusion is that the AVMSD objectives are still relevant.</p> <p>The REFIT evaluation has identified three main sets of problems:</p> <ul style="list-style-type: none"> <li>- Insufficient protection of minors and consumers when consuming videos on video-sharing platforms.</li> <li>- Lack of a level playing field between traditional broadcasting and on-demand services, and internal market weaknesses stemming from the fact that some of the AVMSD rules are not sufficiently precise.</li> <li>- Rules on commercial communications no longer fit for purpose</li> </ul> <p>The REFIT evaluation concluded also that there is scope for simplification, specifically of the procedures that support the application of the COO and of some commercial communications rules.</p> |
| <p><b>What should be achieved?</b></p> <p>The general objectives are to:</p> <ol style="list-style-type: none"> <li>1. Enhance consumer and minors protection</li> <li>2. Ensure a level playing field, preserve the integrity of the internal market and enhance legal certainty</li> <li>3. Simplify the legislative framework</li> </ol>   |
| <p><b>What is the added value of action at the EU level?</b></p> <p>The AVMSD is the regulatory framework underpinning the European audiovisual single market. The development of on demand services and video-sharing platforms as well as the corresponding changing viewing patterns and associated risks is a phenomenon, which affect all the Member States.</p> <p>The upcoming revision of the AVMSD is deemed to comply with both subsidiarity and proportionality by preserving the harmonization approach and cooperation mechanisms allowing Member States to take national specificities into account.</p>  |
| B. Solutions  |
| <p><b>What are the various options to achieve the objectives? Is there a preferred option or not? If not why?</b></p> <p>The options are grouped according to the specific problem they intend to address primarily. For each section, the preferred option is highlighted.</p> <p><b>1. Options addressing the problem of insufficient minors and consumers protection in video-sharing platforms</b></p> <p><u>Option A</u> encourages self-regulation for protection of minors and consumers on video-sharing platforms</p> <p><u>Option B</u> imposes an obligation of means on video-sharing platforms for protection of minors and hate speech, implemented through co-regulation.</p> <p><b>2. Options addressing the problem of the lack of a level playing field and internal market weaknesses</b></p> <p><b>a) Promotion of European works</b></p>   |

Option A gives more flexibility to both TV broadcasting and on-demand services in the way they implement the obligations to promote European works.

Option B maintains the status quo for TV broadcasting and reinforces the rules for on-demand service providers.

#### **b) Protection of minors in on-demand services**

Option A increases the level of protection of minors for on-demand audiovisual media services, simplifies the notion of harmful content and encourages EU co-regulation on content descriptors.

#### **c) Country of origin principle**

Option A simplifies and improves the jurisdiction rules and the cooperation procedures

#### **d) Independence of Regulators**

Option A requires Member States to have an independent regulatory authority and sets a number of requirements to support their independence and effectiveness. ERGA coordination and advisory role is reinforced and embedded in the AVMSD.

### **3. Option addressing the problem of the rules on commercial communications no longer fit for purpose**

Option A makes some of the rules for audiovisual commercial communications more flexible.

#### **What are the different stakeholders? Who support which option?**

The stakeholders most affected by any potential changes in the AVMSD are: national regulators, public TV broadcasters, commercial TV broadcasters, on-demand services (Catch-up TV service, video on-demand services, news/portals), video-sharing platforms (currently outside of the scope of the AVMSD), self-regulatory organisations, consumers including minors, advertisers and advertising agencies (especially in relation to commercial communications) and independent content producers and distributors (especially in relation to the promotion of European works).

The main elements that have been observed overall, across stakeholders' categories when it comes to policy options for the future:

- Convergence of views across stakeholders regarding the need for possible changes of the rules on the scope of application of the Directive, although there is no common pattern or clarity amongst stakeholders as regards the way forward, as well as on the independence of national regulators.
- Support across stakeholders for maintaining the status quo as regards the country of origin principle; must-carry/findability; accessibility for persons with disabilities; major events for society, short news reports and right of reply.
- No clear consensus among stakeholders on commercial communications, protection of minors and promotion of European works.

#### **C. Impacts of the preferred option**

#### **What are the benefits of the preferred option (if any, otherwise of main ones)?**

The preferred option is the combination of the highlighted options in section B. The main benefits are:

- Enhancing protection of minors including by setting out an obligation of protection from content harmful to minors and hate speech in video-sharing platforms.
- Securing a contribution of media services to cultural diversity adapted to different business models.
- Tackling the deficit of fair treatment between TV broadcasting and on-demand services including in the fields of protection of minors, promotion of European works and commercial communications.
- Preserving some flexibility in the way Member States will implement the AVMSD and allowing for subsidiarity considerations and national specificities.

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| - Improving the implementation of the Directive.   |
| <b>What are the costs of the preferred option (if any, otherwise of main ones)?</b>  |
| The main costs of the preferred option would be borne by on-demand services and video-sharing platforms. They would mainly relate to the implementation of the provisions intended to enhance consumer protection. However, these costs would be mitigated by the fact that some Member States have already put in place stricter rules and that large video-sharing platforms, pursuant to their corporate policies, have already voluntarily taken steps to protect consumers. |
| <b>Will there be significant impacts on national budgets and administration?</b>   |
| The main impacts on national budgets and administration would derive from the implementation of co-regulation for the protection of minors on video-sharing platforms and from the introduction of legal requirement of independence of national regulatory authorities and a minimum set of features that regulators need to meet. In the latter case, the impacts will depend on the existing level of compliance of national regulatory authorities with the set of features. |
| <b>Will there be other significant impacts?</b>  |
| No   |
| <b>Proportionality?</b>  |
| The minimum harmonization feature of the Directive will ensure the proportionality of EU action.   |
| <b>D. Follow up</b>  |
| <b>When will the policy be reviewed?</b>   |
| Continuous monitoring will be ensured through a reporting from Member States to the Commission and from the Commission to the European Parliament, the Council and the Economic and Social Committee.  |