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COMMISSION STAFF WORKING DOCUMENT

Executive summary of the ex-post REFIT evaluation of the Audiovisual Media Services Directive 2010/13/EU

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) 170 final }

Background

The EU regulates audiovisual media services (originally only traditional TV, later also on-demand services) since 1989. The objective of the regulatory framework is to facilitate free movement of services across borders, protect consumers and promote objectives of public interest, particularly cultural diversity and media freedom. The regulatory framework was amended twice over the years.

The last amendment was in 2007 and resulted in the Directive currently in force, the Audiovisual Media Services Directive (AVMSD). It aimed to modernise and simplify the rules for broadcasting services and introduce minimum rules for on-demand audiovisual media services.

After a few years of application of the Directive, and in the light of the Regulatory Fitness Programme (REFIT), the Commission decided to evaluate its performance and to examine whether it remains fit-for-purpose, delivers on its objectives at reasonable costs, is relevant, coherent and has EU added value.

In the EU's Digital Single Market strategy, adopted in 2015, the Commission also announced a review of the Directive in the light of developments in the market, technology and viewing patterns. The REFIT evaluation is part of the evidence base feeding into this review.

The REFIT evaluation of the AVMSD has been carried out in the course of 2015 and covers the Directive, from the last revision in 2007 up to 2015.

Methodology

As part of this evaluation the Commission assessed the Directive against a number of indicators pursuant to Better Regulation, namely effectiveness, efficiency, relevance, coherence and EU added-value. The Commission also looked for scope to simplify the rules, where possible, without undermining the Directive's objectives.

Robust economic data to support the assessment has been difficult to find. Statistics and other quantitative data on the compliance costs stemming from the Directive either do not exist, or are confidential and can therefore not be used. Other data, for example on the number of viewers and on viewing patterns in on-demand audiovisual media services and in other services offering audiovisual content, do not exist. To corroborate the findings of the evaluation, the evaluation process has therefore built on other sources, including three public consultations, structure dialogues, external studies and monitoring reports.

Findings

Relevance:

While the Directive's objectives are still valid, market developments and changes in viewing patterns have led to some of its rules being outdated. Consumers increasingly watch audiovisual content on-demand and online, yet video-sharing platforms and on-demand

service providers are either not regulated or subject to lighter regimes. As a result, consumer protection is not adequately ensured and broadcasters are put at a competitive disadvantage.

Effectiveness: According to the Directive, providers must abide only by the rules of their country of establishment while being free to provide services across the EU (this is referred to as "the country of origin principle"). This approach has been perceived to be an **effective** regulatory framework by most stakeholders. It has brought legal certainty by subjecting media service providers in the EU to the legislation of one Member State only and has allowed for economies of scale for providers.

Regarding cultural diversity, the evaluation found that while the Directive has enhanced cultural diversity by effectively supporting the promotion, visibility and distribution of European works in the EU, there is scope for enhancing cultural diversity in on-demand services as compared to broadcasting services.

On media freedom and pluralism, the evaluation found that the Directive's rules have been partly effective. While they have contributed to the overall objectives, the differences in independence and effectiveness of national regulators across the EU have reduced their impact. The very diverse regulatory structures of national regulators may have hampered the effective application of the AVMSD and have a negative impact on pluralism, media freedom and the level playing field.

EU added value: The evaluation found that the Directive constitutes a corollary to the free circulation of audiovisual media services offered by providers under the jurisdiction of Member States. The increase in the level of harmonisation brought by the AVMSD has contributed to the general and specific objectives of the Directive.

Efficiency: The Directive has partially proven to be an efficient regulatory framework. Within the REFIT context, the evaluation identified scope for simplification and deregulation, specifically of the procedures that support the application of the country of origin principle (i.e. the criteria determining jurisdiction and the derogation and cooperation procedures limiting freedom of reception and retransmission in specific cases) and some of the rules on commercial communications.

Coherence: The evaluation also found that the Directive is consistent with the general principles of EU law and with other EU legislation and policies, with the exception of the lack of rules on the independence of regulators which is at odds with the rules in other EU domains.

Lastly, based on the fact that the quantitative evidence which led to the conclusions on effectiveness and efficiency is limited, the evaluation also found that an effective system for monitoring the application of the Directive is lacking and should put in place in the future.