

TRIS NOTIFICATION PROCEDURE

Contribution on the Flemish Government Draft Decree as regards financial contributions to the production of audiovisual works

May 2023

Introduction

The Computer & Communications Industry Association (CCIA Europe) welcomes the opportunity to provide its contribution to the [TRIS notification procedure](#) regarding the Flemish Government draft Decree amending the Decree of 27 March 2009 on radio broadcasting and television, as regards promoting the audiovisual sector by financial contributions to the production of audiovisual works (hereon after “draft Decree”).

The adoption of the Audiovisual Media Services [Directive](#) (AVMSD) in 2018 was an important step towards the harmonisation of national legislation on audiovisual media and has since facilitated the cross-border circulation of audiovisual services while ensuring a minimum level of harmonised rules.

In this framework, CCIA considers it highly important to ensure consistency between EU law and Member States’ legislation. Our main recommendation regarding this draft Decree is to make sure that the country of origin principle is upheld in Member State legislation, and to prevent the imposition of obligations on video-sharing platforms (VSPs) that are established outside of Flanders. We believe that this draft Decree disproportionately affects international companies and would prevent these services from continuing to operate in Flanders. We urge the European Commission to issue a detailed opinion so that the Flemish Government retracts this draft Decree.

I. Ensure that the country of origin principle is upheld

The defence of the country of origin principle is essential to avoid Member States exceeding the bounds of what is allowed within the AVMSD and extending obligations to video-sharing platforms that are not established in the Member State where the rules are being promoted.

Article 13(2) of the Audiovisual Media Services [Directive](#) (AVMSD) enables Member States to require a financial contribution to media service providers of on-demand audiovisual media services for the production of European works, including via direct investment in content and contribution to national funds.

The AVMSD was transposed in Flanders through the Flemish Media [Decree](#) in 2021, fully respecting the provisions in the Directive. On the other hand, Article 8 of the Flemish Government draft Decree amending the Decree of 27 March 2009 on radio broadcasting and television, as regards promoting the audiovisual sector by financial contributions to the production of audiovisual works includes a requirement for providers of video platform

services to participate annually to the production of audiovisual works through a direct financial contribution.

In this draft Decree, the Flemish Government more generally refers to “providers of video platform services, including providers of video platform services established in a Member State of the European Union or of the European Economic Area, which provide video platform services aimed at the Dutch-speaking area”, which exceeds the bounds of the original intention in the AVMSD and risks violating the country of origin (COO) principle. This principle is fundamental to the creation of an internal market in audiovisual media and a cornerstone of the AVMSD as well as the e-Commerce Directive (eCD). It is a mechanism that has helped avoid the establishment of non-tariff barriers in relation to goods and services and has allowed to reduce unnecessary costs, bringing certainty to businesses.

Based on the AVMSD rules, video-sharing platforms (VSPs) are subject to minimum regulatory barriers in the EU internal market. As part of the fundamental freedom to provide online services in the EU, these VSPs are subject to the regulation of the Member States where they are established. Authorities outside of the country of establishment of a service would not have jurisdiction over the services targeting their territory and would not be allowed to impose any restrictions to the provision of such service in their territory, unless exceptions are provided in EU law.

Despite some deviations from the COO principle being allowed by the AVMSD and the e-Commerce Directive, neither of the applicable exceptions would justify the imposition of an obligation on VSPs to contribute to the financing of audiovisual works. The exemptions foreseen in Article 3(4) and 3(5) of the eCD only allow the imposition of specific measures on “a given information society service”. Since the draft Decree would impose general obligations on all providers who offer their video platform services aimed at the Dutch-speaking area of Belgium, these exemptions under the eCD would not be applicable.

It is expected that the upcoming decision by the Court of Justice of the European Union on Case [C-376/22](#) will further clarify whether a general and abstract law can qualify as a measure taken against a given information society service and allow for an exception of the country of origin principle.

II. Avoid fragmented implementation of the AVMSD

A well balanced implementation of the AVMSD in Member States’ legislation is crucial for the protection of the Internal Market and for guaranteeing consistency in audiovisual media services rules throughout the European Union.

When it comes to the exceptions under the AVMSD, Article 13 of the Directive on financial contributions to European works allows Member States to require contributions from media service providers established in other Member States but targeting audiences in their territory. Nevertheless, such an exception is limited to broadcasting and on-demand video services and therefore, any extension to VSPs would go beyond what is foreseen in the AVMSD. If the European legislator did not include the possibility to include VSPs in the scope of Article 13 of the AVMSD, this must be respected by Member States when regulating the specific contributions to be paid to stimulate the production of audiovisual works.

CCIA Europe would also warn that fragmented implementation is a risk to the internal market. If the Flemish draft Decree is adopted, other Member States or regions might see it as a possibility to go beyond the AVMSD. This would defeat the purpose of the Directive and harm the benefits it brings to European consumers.

Conclusion

Given the importance of the country of origin principle and the fact that it has proven to be a cornerstone for the European Union's internal market, CCIA Europe asks the European Commission to make sure that this principle is upheld in Member States wishing to adopt measures affecting audiovisual media services.

Furthermore, it is also fundamental that obligations on VSPs remain within the limits of the law, as is the intent of the AVMSD in the first place. The European Commission should therefore ask for the removal of the draft Decree to the Flemish Government.

About CCIA Europe

The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross section of computer, communications, and internet industry firms.

As an advocate for a thriving European digital economy, CCIA Europe has been actively contributing to EU policy making since 2009. CCIA's Brussels-based team seeks to improve understanding of our industry and share the tech sector's collective expertise, with a view to fostering balanced and well-informed policy making in Europe.

For more information, visit: twitter.com/CCIAEurope or www.ccianet.org

CCIA is registered in the EU Transparency Register with number 15987896534-82.

For more information, please contact:

CCIA Europe's Head of Communications, Kasper Peters: kpeters@ccianet.org