

A contribution by the Secretariat of COMECE to the consultation on

"Directive 2010/13/EU on audiovisual media services (AVMSD) A media framework for the 21st century"

The Commission of the Episcopates of the European Community (COMECE) brings together the Bishop delegates from the Bishops' Conferences of the EU Member States. For more than thirty years now, COMECE has been closely involved in the process of European integration and offering its reflections to the EU institutions. COMECE is a partner of the EU institutions in the Dialogue foreseen by Article 17(3) of the Treaty on the Functioning of the European Union. It sees the Church and itself as distinct from civil society and therefore fully supports and maintains a separate Dialogue process with the EU on the basis of Article 17 TFEU. COMECE's permanent General Secretariat, based in Brussels, analyses EU policies on a day-by-day basis, striving to bring the specific contribution of the Catholic Church into the European debate. In this context, among the various tools and channels of Dialogue at its disposal, the COMECE Secretariat appreciates the possibility of submitting a contribution to the consultation on the topic *"Directive 2010/13/EU on audiovisual media services (AVMSD) - A media framework for the 21st century"*.

In consideration of the rapid and ever-growing technological developments and advancements, the present review exercise is to be welcomed, not only as opportune but as of pressing importance. The high economical and cultural relevance of the audiovisual media sector also calls for an enhancement of the framework provided by Directive 2010/13/EU (*henceforth 'the Directive'*). It is to be noted that the COMECE Secretariat has been closely monitoring the present dossier during the last few years and that it had already contributed in 2003 to a consultation on the then Directive *"Television Without Frontiers"*¹.

As the European Commission's questionnaire addresses a large spectrum of questions having varying importance from our point of view, we will focus in our contribution only on some of the specific issues raised in it, expanding our reflection on the basis of elements provided by the questionnaire.

The COMECE Secretariat responds to this consultation as an organisation registered in the Transparency Register under its Section V (*"Organisations representing churches and religious communities"*). It takes note of the fact that such a terminology and categorisation is not used in the relevant questionnaire².

¹ The text of the contribution to the 2003 consultation is available at the link http://www.comece.org/site/article_list.siteswift?so=site_article_list&do=site_article_list&c=download&d=article%3A3199%3A1.

² Concerning the *General information on respondents* required by the consultation's questionnaire: the response is sent as "The representative of an organisation/company/institution" by Fr. Patrick H. Daly

General considerations

The Directive indicates at Recital 104 that ensuring a high level of protection of minors (as well as of human dignity and the promotion of the rights of persons with disabilities) as core objectives of the text. We would encourage the European Commission to give continuation to this focus. Respect for human dignity should continue to be one of the main pillars of the Directive in accordance with Article 1 of the Charter of Fundamental Rights of the EU. The Church has a particular responsibility in defending the transcendent human dignity belonging to each human being as created in God's likeness, including in the context at issue.

It is also essential that the technological neutrality of the Directive continues to be guaranteed, so as to allow it to encompass and tackle future means instrumental to the provision of audiovisual media services.

1. Ensuring a level playing field (*set of questions 1.1*)

With regard to content hosted by online video-sharing platforms and intermediaries, we would suggest, as a first step, to pursue option c (*Amending law(s) other than the AVMSD, notably the e-Commerce Directive. This option could be complemented by self and co-regulatory initiatives*). This in relation to the specificity of such sector compared to the ones currently covered by the AVMSD Directive. However, provisions on liability within the e-Commerce Directive should be strengthened, to allow to better tackle illegal content on the Internet.

2. Providing for an optimal level of consumer protection (*set of questions 2.1*)

It is our opinion that the existing regulatory distinction between on-demand services and linear services is not justified anymore in the context of the current digital landscape. As already stressed in a number of instances³, "media convergence" leads to less and less ability for the consumer to distinguish the two sectors (linear and non-linear services) and to understand the relevant differences of regulation.

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³ See for instance the European Parliament resolution of 22 May 2013 on the Implementation of the Audiovisual Media Services Directive, available at the link <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0215+0+DOC+XML+V0//EN>.

Provisions for non-linear services should therefore be brought in line with those concerning traditional linear services. In our view, considering the described scenario, the exponential growth of the number of minors having access to online services, and the particular vulnerability of children, the fact that "*...for on-demand services the users have a more active, "lean-forward" approach and can decide on the content and the time of viewing*" is not sufficient to justify the upholding of the aforementioned distinction. This would not exclude having provisions in the revised Directive that take into account respective, distinct features.

Concerning more specific provisions, Article 10(4) of the Directive states that "*News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes*". The provision should be preserved and possibly enhanced, in relation to the priority given to the particular situation of children within the architecture of the Directive and to the specificity, special dignity and sacred character of religious programmes. Additionally, the explicit limits for interruptions by advertisements to religious programmes foreseen by Article 11(5) of Directive 89/552/EEC should be reinstated.

We also strongly support the confirmation of Article 20(2) of the Directive in its current formulation, which states that "*No television advertising or teleshopping shall be inserted during religious services*". As already stressed in our 2003 contribution (with reference to the corresponding provision of the "*Television Without Frontiers Directive*", Article 11(5)) "*The Directive aims to ensure respect for the broadcast of religious services... The separation of advertising from the broadcast of religious services is essential in order to maintain the dignity of the service itself and to prevent unscrupulous forms of advertising*".

Finally, as for rules on advertising that aim to protect vulnerable viewers, notably the rules on alcohol advertising or advertising of products high in fat, salt and sugars, while they are to be appreciated, the scope of the approach might be enlarged to more generally encompass healthy lifestyles.

3. User protection and prohibition of hate speech and discrimination

General viewers' protection under the AVMSD (set of questions 3.1)

As already stressed in our contribution to the Fundamental Rights Colloquium 2015⁴, we fully support the preservation of clauses such as the ones contained in Article 3(4)(a)(ii)⁵; Article 6⁶; and Article 9(1)(c)(ii)⁷ of the Directive with regard to both incitement to hatred and discrimination based on religion. Furthermore, we deem it important that Article 9(1) letter c) be amended to also include a new provision referring to the prohibition of offense to religious or political beliefs. Council directive 89/552/EEC, already provided at Article 12, letter c that “*Television advertising shall not... be offensive to religious or political beliefs*”. The provision was removed from the ensuing text without any particular justification. In our 2003 contribution we stressed the importance of the provision to guarantee social cohesion and tolerance for different religious traditions.

We would caution against inserting in the text of the Directive the term ‘hate speech’, used in the questionnaire: the current reference to ‘incitement to hatred’ is definitely preferable to the above-mentioned, non-technical and potentially pervasive term. As we stressed in our contribution to the Fundamental Rights Colloquium 2015, more robust legal definitions of key terms such as, inter alia, “hatred” and “discrimination” are needed at the EU level to avoid unclear or vague notions that undermine legal certainty and harm other fundamental rights and freedoms.

Protection of minors (set of questions 3.2)

The constant and rapid evolution of new technologies and the greater and greater use of (and ease of access to) online services by children have made it particularly challenging to deal effectively with their protection in the audiovisual media services sector.

With regard to on-demand services, appropriate provisions should be proposed to introduce restrictions for programs that are “harmful” for minors, on the basis of the

⁴ The document is available at the link <http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/contributions/comece-commission-of-the-episcopates-of-the-european-community-en.pdf>.

⁵ “*In respect of on-demand audiovisual media services, Member States may take measures to derogate from paragraph 1 in respect of a given service if the following conditions are fulfilled: the measures are necessary for one of the following reasons: public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including... the fight against any incitement to hatred on grounds of... religion*”.

⁶ “*Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on... religion*”.

⁷ “*Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements: ... audiovisual commercial communications shall not: ... include or promote any discrimination based on... religion*”.

direction currently followed for programmes that "might seriously impair" the physical, mental or moral development of minors (Article 12). As for programmes that "might seriously impair" the physical, mental or moral development of minors (in particular programmes that involve pornography or gratuitous violence), the approach currently foreseen by Article 27 for *television broadcasts* should be extended to also cover *on-demand services*. This is made particularly advisable by the enormous expansion of online audio-visual services in the last few years and by the greatly increased access to them by children. Should the Commission opt for preserving the current regulatory differentiation between linear and non-linear services, a reference emphasising the focus on programmes that involve pornography or gratuitous violence should also be integrated in Article 12 of the Directive with regard to on-demand audiovisual media services. With reference to the alternatives contained in the questionnaire, we would support in particular the alignment of the rules for broadcast and on-demand services. For further considerations on this point, please see the comments made above concerning paragraph 2 of the questionnaire.

Article 9 of the Directive currently sets out various requirements with regard to *audiovisual commercial communications* provided by media service providers under the jurisdiction of the Member States. Its paragraph 1, letter c) spells out, in particular, some prohibitions: we support the idea of including a new item in the relevant list, referring to a prohibition of pornography in all forms of audiovisual commercial communications and teleshopping, adverts, sponsorships, product placement and any other technically possible form thereof. Similar provisions should be envisaged, additionally, for degrading depictions of women, as well as for the sexualisation of children, in audiovisual commercial communications. Best practices should continue to be exchanged on measures to restrict advertising in children's programmes.

As for the role of parents, at the moment, it is only marginally touched upon in the Directive. Their primary role should be better and fully integrated in the text, including, although not exclusively, with regard to initiatives geared towards media literacy. The concept of 'media literacy' is essential in providing support for the goals of the Directive, especially with regard to child protection. Stronger provisions to this purpose should be introduced in the text. The main addressees of the relevant measures should be not only children but also their parents, in relation to the primacy of the role of the mother and the father in the education and upbringing of their children. A proactive use of EU funds is also desirable in this regard (e.g. to support research on the trends in children's use of audiovisual media services, on innovative methods and schemes to promote media literacy, on new supporting tools to help parents better protect their children). We would also advocate for more concrete provisions concerning filtering systems and labelling (for the moment merely mentioned in Recital 60 of the Directive).

Article 4(7) of the Directive refers to the fact that Member States shall encourage co-regulation and/or self-regulatory regimes at national level in the fields coordinated by the Directive and that these regimes *must be broadly accepted by the main stakeholders in the Member States concerned*. However, effective results can be obtained only if among such stakeholders a prominent role is assigned to associations of citizens specifically operating for the protection of minors: Article 4(7) should therefore be modified accordingly and include an explicit mention of such organisations as key reference points. Stakeholders should be fully involved in the drafting process, monitoring of the application and eventual assessment/review of the efficacy of these instruments.

With regard to co-regulation and self-regulatory regimes, we call on the European Commission, in cooperation with the Member States' competent authorities, to strictly monitor the soundness and quality of the relevant instruments, especially with regard to their key components (see the items opportunely indicated in the first report on the application of the Directive, e.g. age and audience thresholds for advertising and marketing). It is however evident that co-regulatory and self-regulatory tools can only be considered as complementary and elements supporting to legislative provisions and interventions (especially with regard to contents that are inappropriate for children and in view of child protection).

Generally, concerning the protection of minors, the revised Directive could and should constitute an incisive complement to *Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography*.

4. Promoting European audiovisual content (*set of questions 4*)

Concerning cultural diversity, we would like to restate in particular the concept formulated in our 2003 contribution, according to which *"It is not sufficient for cultural diversity to be assured by the "niches" of specialised channels. These have limited audiences; they are usually watched only by the group most immediately concerned. This risks encouraging each cultural or social group to close in on itself, even promoting intolerant behaviour. It is therefore necessary that cultural diversity is given a place on all general interest channels, particularly public service channels"*.

Audiovisual media services also constitute one of the available means for concrete expression and exercise of *religious freedom*: this aspect should emerge more clearly in the text of the Directive (Recitals). As a minimum, we would recommend to explicitly indicate, among the provisions of the EU Charter in whose particular regard the Directive should be interpreted and applied, its Articles 10 (*Freedom of thought, conscience and religion*) and 22 (*Cultural, religious and linguistic diversity*).

A level playing field for all actors, including Church-related audiovisual media services and more generally organisations the ethos of which is based on religion, is to be ensured. The revised Directive should at the same time facilitate the respect for the specificity of such entities and of their activities.

With reference to the promotion of European audiovisual content, we would again restate the remark contained in our 2003 contribution, that "*In religious broadcasting, it is... important and appropriate to give a privileged position to programmes that present an authentically European form of religious practice*". Cultural diversity is a value to be supported, but its promotion should be carried out in balance with the preservation of the cultural identity of each Member State.

5. Strengthening the single market

We deem the rules referred to in this part of the questionnaire to be appropriate, in particular as for derogations with regard to incitement to hatred, protection of minors or where broadcasters try to circumvent stricter rules in specific Member States.

6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities

We highly value the fundamental right to freedom of expression and information. Regulation of media is closely linked to such right and therefore the current reform should also be weighed in this regard. Due exceptions/limitations for specific and particularly relevant cases are to be considered as appropriate (e.g. manifest and serious incitement to hatred).

In its Social Teaching, the Catholic Church underlines that "*The media must be used to build up and sustain the human community in its different sectors: economic, political, cultural, educational and religious*"; that the information "*...provided by the media is at the service of the common good. Society has a right to information based on truth, freedom, justice and solidarity*"; and that new technologies must respect legitimate cultural differences⁸.

Already in the context of the submission regarding the Fundamental Rights Colloquium 2015, the COMECE Secretariat underlined the fundamental role and responsibility of media in avoiding creating the environment or nurturing attitudes

⁸ *Compendium of the Social Doctrine of the Church*, § 415.

that can lead to anti-Semitic or anti-Muslim acts; misrepresenting religions as a source of conflict; and in favouring respect, while countering negative/hostile stereotypes concerning religions.

Having regard to accessibility for people with disabilities (*set of questions 6.3*), we would underline that the wording of Article 7 of the Directive should be strengthened, so as to ensure that effective and specific legislative measures on accessibility (as opposed to mere "general principles") are gradually introduced at the national level. In this context, as for the 'preferred policy option', *Option b (Strengthening EU-level harmonisation of these rules)* under set of questions 6.3 would be the most preferable: binding EU provisions are essential to foster progress on the part of the Member States. Amendment of the Directive in this sense is also opportune to contribute to the full respect of Article 26 of the EU Charter on integration of persons with disabilities, which states that *"The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community"*.

Consideration should be given to the adoption of a similar approach for elderly people, especially in view of the progressive ageing of our societies and of the need for the Directive to prove responsive to medium- and long-term challenges. Again, guidance and impulse is provided by the EU Charter at Article 25⁹.

COMECE Secretariat, Brussels, 30 September 2015

⁹ *"The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life"*.