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Lord Boswell of Aynho  
Chairman of the European Union Committee  
House of Lords  
London  
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CMS 300537/DC  
17 March 2017

Dear Lord Boswell

## **AUDIO VISUAL MEDIA SERVICES DIRECTIVE**

### **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**

I am writing to address the points raised in the Committee's report in response to my earlier correspondence in relation to the proposed amendments to the Audiovisual Media Services Directive ('AVMSD') in June and October 2016. Given the process that the UK is preparing to undertake to leave the European Union, our negotiating position on this Directive will remain flexible.

The negotiations are currently ongoing, there are 11 council working groups between January and April. The working group is aiming to achieve a general approach by the Education Youth Culture and Sport council meeting on 22 May. I would expect to be able to update you on the progress and potential timeframes in late March, once these discussions are more progressed. It is worth noting that in the first of these Council Working meetings in January it was made explicit that the meetings are not public and considered confidential, this will limit the information which can be circulated prior to a general approach being agreed.

1. With regard to the country of destination proposal to impose levies on a video on demand (VOD) services, this is the main area of divergence between the UK and other Member States, where there appears to be considerable support for this. This is a voluntary levy and we have concerns about the undermining of the Country of Origin principle. The UK VOD providers contribute to the diversity of content across Europe, so this levy does have the potential to impact them. We



consider that such a levy will dramatically reduce the cross-border circulation of audiovisual media services within Europe. This could directly discourage providers from offering services across borders (including UK providers). Service providers (with the exception maybe of large ones) might choose to avoid expanding into markets that impose a levy, or limit such expansion to the large markets only given the extra costs that such a levy would impose on their business. Furthermore, if smaller markets were to decide to impose such a levy, this could directly result in a reduction of the range of services on offer.

2. Member States currently have the ability to derogate on grounds of national security for on demand services. The proposal would extend this derogation to linear services. The proposal sets out that the derogation applies to a broadcast *'which prejudices or presents a serious and grave risk of prejudice to public security including safeguarding of national security and defence'*. As for other derogations, the proposal continues to require that there be two contraventions to ensure proportionality. We are working to ensure that the wording reflects and provides clarity that such measures should only be considered in extreme cases.
3. With regard to your query regarding 'European Works', this is defined to include works originating in European states party to the European Convention on Transfrontier Television of the Council of Europe. As the UK is a party to this Convention, UK works will continue to meet this definition. As 'European Works' is defined in the Directive itself (rather than in the Convention), an amendment to the Directive would be required to change this. At present there are no proposals to amend the definition as part of the renegotiation.
4. There has been much discussion in the working groups about the meaning of co-regulatory, as many Member States do not have an existing established approach for co-regulation. It does not refer to either model you described in your letter; co-regulatory refers to national models where typically there is industry as well as governmental involvement, rather than statutory regulation. This can be particularly effective when there is widespread industry support for the objectives of regulation. The Advertising Standards Authority in the UK is an example of such co-regulation.
5. Self-regulatory models are industry designed and led, allowing the industry to define an approach best suited to achieving its desired outcomes. Self-regulatory systems rely on a strong alignment between the motivation of participants and the wider public interest. For the video-sharing platform proposals within the directive, most of these are aligned to the community guidelines of larger video sharing platforms such as 'you tube', and therefore we do believe this approach should be appropriate for the current market. Our support for self-regulatory models in the directive is to allow the flexibility for government to choose the appropriate model at the time of implementation of the Directive.

6. We consider that the proposals within the AVMSD for video-sharing platforms are more aligned with the proposals within the Digital Economy Bill, as both require that age verification and other restrictive measures be in place for the content that is most likely to harm minors. Whilst we recognise that there may be some cultural differences in consideration of what is most likely to be harmful material, we believe at a minimum this would include pornographic works. The UK is committed to ensuring that minors are protected on-line and welcomes an approach across Europe that increases the protection of children from harmful material.
7. You have also asked about the proposed removal of the accessibility requirements. We consider that the arrangements in the Accessibility Act, relate largely to technical matters, and do not fully take into account the specific nature of audiovisual material, and so do not support their removal. Early indications are that a number of Member States are in agreement with this view and so we are confident of retaining some sector specific measures within the AVSMD in relation to accessibility.

I trust that this helps to provide some clarity on the current positions within AVMSD, and I remain at your disposal for any further clarifications. I should be able to provide an update at the end of March regarding the progress towards a general approach in the Council working groups.

Yours ever

A handwritten signature in black ink, appearing to read 'Matt Hancock', with a long, horizontal flourish extending to the right.

**THE RT HON MATT HANCOCK MP**