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Sir William Cash MP
Chair of the European Scrutiny Committee
House of Commons
London
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CMS 301714/DC
11 April 2017

Dear Bill

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 (9479/16, Committee Reference 37812)

I am writing to address the points raised in the Committee's request for further information in its 33rd report from 1 March. 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, we are due to be sent a revised compromise text from the Maltese presidency before the end of March, which will be followed by four further working groups. The Maltese presidency is aiming to achieve a general approach by the Education Youth Culture and Sport council meeting on 22 May, and it is unclear at this stage if this will actually be achieved. There are several issues where the council appears to be split in two or three ways, and it is difficult to see at this stage how this will resolve or in which direction. Given the confidentiality of internal working group discussions, we cannot disclose country positions (which of course could change in the process of negotiations).

An update to the negotiations so far;

- 1. Country of Origin** We have continued to resist any suggest that the country of origin principle is resisted. There is a minority group who would prefer country of destination regulation.



- 2. Derogations** The proposal to extend the derogations, which currently exist for video on demand to linear, where there is a severe risk to national security. We think that the proposals as drafted could only be used in the most severe cases. As proposed, there is a requirement for there to be two contraventions of the national rules, before a Member States could take action. It is worth noting that Lithuania suspended the Russian language service RTR Planeta for such contraventions on hate speech for a period of three months, which the Commission concluded was compatible with EU law.¹
- 3. Quotas** We have opposed the quotas for European Works on video-on-demand platforms but accept that the majority of countries do support quotas. Our assessment is that for UK providers, the 20% quota will be achievable, and so limits the market impact.
- 4. Exclusions** There has been considerable work to clarify wording for which services would be excluded to the video-on-demand levy in order to ensure regulatory certainty.
- 5. Advertising** The UK has taken a neutral view on the advertising proposals. This is an area where the working group is split into three; those who are in favour of the Commission's proposal, those who prefer the status quo, and those who prefer a compromise proposal (which is to restrict advertising minutes during peak-time to 12 minutes per clock hour, and have them more flexible as an average of 20% at other times).
- 6. Independence of national regulatory authorities**, is something that the majority of countries support in principle, and work in the working groups has surrounded the detail of the wording, which has not yet concluded.
- 7. Role of European Regulators Group**, this has split the working group, between those who do not believe that this group should have a formal role, and those who consider that the European Regulators Group currently works well and want to ensure it continues to do so.
- 8. Inclusion of Accessibility requirements.** The Commission had proposed to remove the requirements for accessibility in the audiovisual media service directive, proposing that these should be captured by the European Accessibility Act. Member States were unanimous in wanting sector specific wording, and the working group is now working on wording which could be considered acceptable to all.

¹<https://ec.europa.eu/digital-single-market/en/news/decision-suspend-broadcast-russian-language-channel-rtr-planeta-lithuania-complies-eu-rules>

- 9. Extension of scope.** The proposal for AVMSD proposed extended the scope to video-sharing platforms, to include child protection measures such as parental controls, and the ability to rate uploaded content. There has been some proposals to extend the definition of video-sharing platforms to include social media platforms. The cleared negotiating position for the UK requires that we avoid excessive burdens on video-sharing platforms, and therefore we have been opposing this in working groups. We are also being pragmatic and assessing if the proposals would cause excessive burdens, as many of the requirements are already captured in the terms and conditions of existing social media platforms. If necessary we will write-round again on this issue.

In response to your questions relating to Brexit and Free-trade deals, you have asked a number of questions:

10. Taking the first set of concerns on the FTA together. Broadcasting has previously been excluded from international trade deals due to cultural sensitivities in EU trade agreements. As noted in the Government's White Paper on 'The United Kingdom's exit from and new partnership with the European Union', the UK is currently the EU's biggest broadcasting hub, hosting a large number of international broadcasting companies. In the course of the negotiations, we will focus on ensuring the ability to trade as freely as possible with the EU and supporting the continued growth of the UK's broadcasting sector.
11. You have asked in the absence of an agreement, would the broadcasters have to relocate some or all of their operations to the EU. As noted above, we will seek the best possible outcome for the sector to ensure their continued ability to trade with the EU. We continue to engage with the sector, and have regular meetings with their industry representatives to ensure that we are aware of their concerns.
12. You have asked if we are retaining the EU rules in domestic law in order to secure market access. That is a matter for the negotiation. The Great Repeal Bill will convert current EU law into domestic law, while allowing for amendments to take account of the future negotiated UK-EU relationship.
13. You have asked to what extent the Council of Europe Convention on Transfrontier Television (CTT) guarantees that UK productions contribute to European Works. The definition of an European Work as set out in the Audiovisual Media services directive, is a work produced in an EU Member State or a country that is a signatory of the CTT.
14. You have asked if the EU could discount the CTT if they wish to further reduce market access. The EU itself is not a party to the CTT, rather a number of individual Member States are. While the EU has asserted that it has exclusive competence in this area, meaning Member States are unable to negotiate in their own capacity in relation to the CTT, it seems to us that it would be for individual Member States to withdraw from the CTT rather than the EU to disapply it.

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 will seek to provide an update at the end of April regarding the progress towards a general approach in the Council working groups.

I am copying this letter to Lord Boswell, EUC Chair, to Les Saunders at DEXEU and to Pooja Lakhani, DCMS scrutiny coordinator.

Yours ever

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

THE RT HON MATT HANCOCK MP