



Department for
Digital, Culture
Media & Sport

Minister of State for Digital
4th Floor
100 Parliament Street
London SW1A 2BQ

T: 020 7211 6000

www.gov.uk/dcms

Lord Boswell of Aynho
Chairman of the European Union Committee
House of Lords
London
SW1A 0PW

MC2017/06060/DC
19 October 2017

Dear Tim

9479/16: Proposal for a Directive of the European Parliament and 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

Following your letter of 8 September, I am writing to provide an update on the ongoing trilogue talks. The trilogue talks commenced in July 2017 under the Estonian presidency, with monthly meetings scheduled until the end of the year.

The trilogue process is still in its early stages, therefore no significant outcomes can be reported at this point. We are using the trilogue talks to influence the final wording of the text, particularly on the points that have impact on the UK and its audiovisual industry.

The General Approach reinstated the original wording of the jurisdiction criteria, which proposes that the jurisdiction for services where editorial decisions are made in more than one Member State will be determined by where a significant (rather than a majority) proportion of the workforce is located. It appears that the European Parliament text agrees with this approach, so we are confident the final wording will have 'significant' rather than 'majority' workforce, that was in the Commission's proposal.

The General Approach increased the quotas for European Works from 20% to 30% for video-on-demand services. Although we opposed quotas from the outset, we acknowledged that most Member States supported them, and our opposition was to ensure that the quotas did not increase to unsupportable levels. Our assessment of the UK based video-on-demand media providers shows that they exceed this quota, therefore it would not be problematic for them to comply with the proposed changes.

The General Approach introduces a set of mandatory and optional exceptions that are to be applied in the case of quotas as well as in the cross-border levies. A number of Member States with smaller media markets (e.g. Slovakia) expressed their concern about the mandatory exception for micro enterprises (i.e. fewer than 10 employees and



balance sheet lower than €2 million) as this does not take into account the smaller size of the markets of certain Member States, where the majority of media companies are micro-enterprises. The proposed language had the possible unintended consequence of existing national film fund systems being unable to operate in these small markets. The UK acknowledges that audiovisual market size varies across the EU. Simultaneously, we wish to protect small audiovisual enterprises with cross-border services, which broadcast from the UK. During the trilogue process we will seek to influence this wording.

Furthermore, we are using the trilogue talks to challenge the language which is used in relation to video-sharing platforms due to the lack of legal clarity as to its precise scope. As drafted, it would encompass any video service where the sharing of video content is an “essential functionality” of that service. We are working to make certain that there is more clarity at the trilogue stage, and ensure that this aligns with our emerging thinking on the Digital Charter.

Since the trilogue talks are still in their early stages and are ongoing, no deadline for transposition has been agreed. At the moment it is unclear whether the transposition would take place prior to the UK exiting the EU, as this is largely dependent on the progress of talks.

I will provide an update before the the next EYCS council in November in regard to the further developments in the trilogue talks and potential deadlines for transposition. I remain at your disposal if you have any further queries.

I am copying this letter to the Chair European Scrutiny Committee, to Les Saunders at DExEU, Lynn Gardner ESC, Chris Johnson EUC and DCMS scrutiny coordinator.

Yours ever

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

THE RT HON MATT HANCOCK MP