

Comments on the draft Electronic Media Act

AmCham is pleased to see that the Croatian Government is taking steps to transpose the Audiovisual Media Services Directive ("AVMSD") into Croatian law through the proposed Electronic Media Act ("draft Law"), which has passed first reading in Parliament.

AmCham appreciates the general alignment of the draft Law with the AVMSD provisions. However, we are concerned that Article 6 as currently drafted would be in contradiction with the AVMSD principles, in particular with its country-of-origin principle (enshrined in Art. 3 AVMSD) which is the cornerstone of the AVMSD ensuring that the provision of online services, usually characterized by its cross-border nature, is subject to minimum regulatory barriers in the EU. Furthermore, AmCham would like to underscore, that Article 6 as currently drafted would also be in contradiction with the e-Commerce Directive, in particular Art. 3, (as implemented through the Electronic Trade Act ("ZET")) and the Directive on services in the internal market (as implemented through the Services Act ("ZOU")).

In particular, Article 6 paragraph 2 of the draft Law sets out that "video-sharing platform services based in another EU Member State (...) may permanently operate in the Republic of Croatia if enrolled in the court or other appropriate register and has an editorial office in the Republic of Croatia". This seems to suggest that registration and physical presence in Croatia via an editorial office is a prerequisite for the provision of video-sharing platform services by a provider established in another EU Member State to Croatian users.

The rationale behind the extension of the scope of these requirements set out in this article to video-sharing platform services established in another Member State is not clear to us and would be in contradiction with a series of regulations, namely (i) Article 3 paragraph 1 of AVMSD, (ii) Article 5 of ZET, and (iii) Article 15 of ZOU.

The aforementioned regulations stipulate the general freedom of cross-border service provision and govern possible derogations to it. However, AVMSD does not provide for the possibility to limit the free cross-border provision of services by requiring registration with a court or other applicable registry. Also, ZET prescribes that the provision of information society services may not be preconditioned by approval or fulfilment of conditions with the same effect of a notification requirement. Finally, ZOU determines that the service provider with a registered seat in another EEA signatory state (...) may not have its freedom of provision of services limited (...) by registration into a registry as a condition for performance of business activity.

As such, the imposition of the above requirements to video-sharing platforms provided from another Member State would present a disproportionate burden considering that most of the video-sharing services available to Croatian citizens are established in another Member State. In order to harness the benefits of AVMSD for consumers and business, including those established in Croatia, it is therefore essential that all Member States respect the harmonized principles of European law. The contrary would mean the raising of barriers to the completion of the European internal market, which ultimately also harms Croatian consumers and businesses.

Based on the above, we would like to respectfully request the Croatian Ministry of Culture and Media to amend Article 6, paragraph 2 by removing the reference to video-sharing platforms so that the part "and video sharing platform services" is deleted.





American Chamber of Commerce in Croatia Američka gospodarska komora u Hrvatskoj

Article 6

(2) By way of derogation from paragraph 1 of this Article, a provider of electronic publications and video sharing platform services based in another EU Member State or another Contracting State to the Agreement on the Participation of the Republic of Croatia in the European Economic Area may permanently operate in the Republic of Croatia if enrolled in the court or other appropriate register and has an editorial office in the Republic of Croatia.

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