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## **Implementation of the Audiovisual Media Services Directive**

### **European Parliament resolution of 9 May 2023 on the implementation of the revised Audiovisual Media Services Directive (2022/2038(INI))**

(C/2023/1062)

*The European Parliament,*

- having regard to the competences of the Member States on developing ambitious cultural policies in the audiovisual field, in line with Article 3 of the Treaty on European Union and Articles 6 and 167 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) <sup>(1)</sup>,
- having regard to Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 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 (Audiovisual Media Services Directive) in view of changing market realities <sup>(2)</sup>,
- having regard to the Commission communication of 7 July 2020 entitled ‘Guidelines on the practical application of the essential functionality criterion of the definition of a “video-sharing platform service” under the Audiovisual Media Services Directive’ <sup>(3)</sup>,
- having regard to the Commission communication of 7 July 2020 entitled ‘Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover’ <sup>(4)</sup>,
- having regard to the European Charter for Regional or Minority Languages, in particular its provisions regarding the media,
- having regard to the Council conclusions of 4 April 2022 on building a European Strategy for the Cultural and Creative Industries Ecosystem <sup>(5)</sup>,
- having regard to the Memorandum of Understanding between the National Regulatory Authority Members of the European Regulators Group for Audiovisual Media Services (ERGA) of 3 December 2020,
- having regard to the 2022 Strengthened Code of Practice on Disinformation,
- having regard to the Commission communication of 3 December 2020 entitled ‘Europe’s Media in the Digital Decade: An Action Plan to Support Recovery and Transformation’ (COM(2020)0784),
- having regard to the study of the Policy Department for Structural and Cohesion Policies of its Directorate-General for Internal Policies of November 2022 entitled ‘Implementation of the revised Audiovisual Media Services Directive — Background Analysis of the main aspects of the 2018 AVMSD revision’,

<sup>(1)</sup> OJ L 95, 15.4.2010, p. 1.

<sup>(2)</sup> OJ L 303, 28.11.2018, p. 69.

<sup>(3)</sup> OJ C 223, 7.7.2020, p. 3.

<sup>(4)</sup> OJ C 223, 7.7.2020, p. 10.

<sup>(5)</sup> OJ C 160, 13.4.2022, p. 13.

- having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of and Annex 3 to the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
  - having regard to the opinion of the Committee on the Internal Market and Consumer Protection,
  - having regard to the report of the Committee on Culture and Education (A9-0139/2023),
- A. whereas the Audiovisual Media Services Directive (AVMSD) should play a key role in structuring the European audiovisual ecosystem, guided by the principles of protecting cultural and linguistic diversity and pluralism of opinion and promoting the distribution and production of European audiovisual media services in the European Union;
- B. whereas the latest revision of the AVMSD, adopted on 28 November 2018, provided a framework for strengthening the ‘country of origin’ principle and improving consumer protection, in particular for minors and persons with disabilities, in the online world;
- C. whereas the country of origin principle is enshrined in EU law, specifically in Article 2(1) of the AVMSD, and has successfully proved itself to be an important pillar for the free and unhindered dissemination of information and for the cross-border provision of audiovisual media services by providing legal certainty; whereas it constitutes an important basis for protecting audiovisual media service providers and enables investments in innovative and creative productions and improvements in the discoverability of European audiovisual works;
- D. whereas the role of the revised AVMSD is to support and benefit European cultural creation and cultural diversity in a changing audiovisual sector in line with other rules, such as the copyright provision of Directive (EU) 2019/790 <sup>(6)</sup>, which asks for fair remuneration for right holders;
- E. whereas creating an area without internal borders for audiovisual media services that also affords a high level of protection to objectives of general interest cannot be sufficiently achieved by the Member States alone and can therefore be better achieved at Union level;
- F. whereas new horizontal legal provisions at Union level make it necessary to clarify their interconnections under the specific legal framework for audiovisual media service providers in a consistent and coherent manner;
- G. whereas the potential for conflict and thus the need for consistency and coherence has increased significantly in recent times due to enacted or proposed legislation at EU level in the ‘digital decade’, namely, the Digital Services Act <sup>(7)</sup>, which addresses players in the distribution and value chain of audiovisual content and has direct links with the AVMSD; whereas more evident links exist in the proposals for a European media freedom act and for a regulation on political advertising, which address issues directly relevant for the audiovisual media sector;
- H. whereas information about the ownership of media service providers and video-sharing platform providers should be easily, comprehensively and publicly available, as this is of key importance in limiting further media concentration;
- I. whereas providing positive encouragement and promoting professional EU audiovisual media services can make an important contribution to the global fight against disinformation and fake news; whereas this contributes to the effective implementation of the right to information and to the promotion of public discourse based on a multitude of opinions;
- J. whereas a large number of online platforms do not provide access to audience data for works distributed by media service providers; whereas however, this data is indispensable to adjust policies and to support content creation;

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<sup>(6)</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).

<sup>(7)</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

- K. whereas independent and impartial national and regional media regulatory authorities are a precondition for media freedom and pluralism, as they protect the media from undue political and commercial interference by safeguarding independent, accountable and transparently operating media services;
- L. whereas under the revised AVMSD, ERGA brings together representatives of national independent regulatory bodies in the field of audiovisual media services to advise the Commission on the consistent implementation of the AVMSD and to exchange best practices;
- M. whereas in more than half of the EU Member States, the appointment procedures for heads of media regulatory authorities risk not being effective enough in limiting the risk of political and/or economic influence<sup>(8)</sup>;
- N. whereas a large number of enterprises active in the EU audiovisual media are also small and medium-sized enterprises, which require special safeguards in order to offer a diverse range of services to a European audience;
- O. whereas in light of the omnipresence of digital media services and of the proliferation of information sources on the internet, the acquisition of media literacy by children and adolescents, as well as by adults, is an indispensable basic skill, which, in addition to functional understanding, must include the ability for critical (self-)reflection regarding media usage patterns;
- P. whereas the UN Convention on the Rights of Persons with Disabilities legally requires the EU and all its Member States to ensure the right to accessibility (Article 9 thereof), freedom of expression, opinion, and access to information (Article 21 thereof) and participation in cultural life (Article 30 thereof);
- Q. whereas the Member States' significantly delayed transposition of the AVMSD undermines its effectiveness;
1. Is critical both of the insufficient will on the part of some Member States to transpose the AVMSD in a timely manner and of the Commission's overall reluctance to initiate infringement procedures and its late publication of guidelines; encourages the Member States to implement the AVMSD without further delay;
  2. Is concerned that a full-scale evaluation is not entirely possible at present, because of the transposition delay;
  3. Recalls the Commission's obligation, as laid down in the second sentence of Article 33 of the AVMSD, to submit a report on the application of the AVMSD no later than 19 December 2022, and reminds the Member States' of their obligation under Article 7(2) of the AVMSD to report to the Commission on progress regarding accessibility by the same date; recalls, in addition, the Commission's obligation to report on the application of Article 13(1) and (2) of the AVMSD on the basis of the information provided by the Member States by 19 December 2021 and of an independent study, taking into account the market and technological developments and the objective of cultural diversity; regrets that the report on the application of the AVMSD for the 2014-2019 period has not been widely disseminated; notes that this report provides important information for the purposes of benchmarking the implementation of the revised AVMSD;
  4. Recognises the definition of 'European works' as an open and broad understanding of the concept of 'European audiovisual works', as laid down in the Council of Europe's European Convention on Transfrontier Television of 5 May 1989; recalls that the definition of European works in the AVMSD is without prejudice to the possibility of Member States laying down a more detailed definition as regards media service providers under their jurisdiction; affirms that the definition of European works should, among other things, serve the promotion of works produced in the EU to the benefit of the European creative ecosystem; recalls, in this regard, that according to the media and audiovisual action plan, the Commission plans to publish a European media outlook to study the major media trends and analyse their potential impact on media markets and business models; regrets that this report could not be published in due time; asks the Commission to evaluate the definition of European works exclusively on the basis of scientific findings obtained in cooperation with ERGA and the European Audiovisual Observatory and taking the European media outlook data directly related to the current application of the term 'European works' duly into account;

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<sup>(8)</sup> Data provided by the Centre for Media Pluralism and Media Freedom, December 2022.

5. Calls on the Commission to promptly take the necessary measures to address the shortcomings and prevent any abuse of rights in the application of Article 2(4) of the AVMSD;
6. Considers that any derogation related to the country of origin principle and the introduction of any new barriers and restrictions to the freedom to provide services, as established under Articles 56-62 TFEU, need to be assessed against proportionality, flexibility, predictability and non-discrimination safeguards;
7. Calls on the Commission to review the procedures laid down in Articles 3 and 4 of the AVMSD to see whether they can be applied more quickly and effectively so as to strengthen the country of origin principle while respecting the rights of all parties concerned;
8. Notes that the different levels of regulatory strength that exist for audiovisual media services in different environments are still causing an uneven level playing field pending on the play-out via TV broadcast, on a video-sharing platform service or other online platform services; is at the same time aware that one of the reasons is that legislation is linked to whether or not the provider has editorial responsibility for the service; encourages greater efforts to seek a high level of consumer protection, protection from harmful content or protection of minors across all media types or play-out channels within the framework of the possibilities provided by the AVMSD;
9. Stresses that the scope of the AVMSD has been expanded to impose certain obligations on video-sharing platform providers under Article 28b, such as the requirement to take appropriate measures to protect minors from harmful content and all users from content containing an incitement to violence or hatred; highlights the need to ensure the proper implementation of these provisions;
10. Recalls that, according to the 2020 Commission communication on guidelines on the practical application of the essential functionality criterion of the definition of a 'video-sharing platform service' under the AVMSD, video-sharing platform services provide audiovisual content that is being increasingly accessed by the general public, and this is also true of social media services, which have become an important medium for sharing information; further recalls that, according to these guidelines, certain social media services could fall within the scope of the application of the new rules on video-sharing platforms if they meet certain criteria;
11. Recalls the key provisions of the AVMSD on protecting minors, in particular the prohibition on processing minors' data for commercial communications; considers that cross-border cooperation measures, in particular for the protection of minors, need to be strengthened by enhancing the capacity of national media regulatory authorities and other competent authorities to deal effectively with identified infringements, thus ensuring rapid and effective action, while also encouraging coordination between public and private stakeholders on preventive actions; points out once again the possibilities offered by Article 4a of the AVMSD and reiterates that codes of conduct can have an important role in this regard, taking into account the fast evolution of marketing techniques;
12. Calls on the Member States to ensure, in transposing the AVMSD, that it is clear and easy to understand, in particular for end users, whether the protection of minors from harmful content, the protection of the general public against certain illegal content and the content-related advertising restrictions of the AVMSD apply in the medium currently being used, especially online;
13. Considers that horizontal legislation applicable to audiovisual media services, such as the Digital Services Act or horizontal co- and self-regulation standards, such as the 2022 Strengthened Code of Practice on Disinformation, should always be interpreted in a manner that is consistent with the objectives of the AVMSD; stresses the need to minimise the regulatory disparities that exist between audiovisual offerings from different providers, by strengthening the legal consistency between sectoral legislation and horizontal legislation; considers that this would provide legal certainty on various European laws through a clear interpretation that would allow the sectoral law to prevail and that would remain consistent with the objectives and values of the AVMSD, such as independent supervision and the protection of editorial content, respect for human dignity, the protection of minors, public security and safety, and pluralistic and well-functioning democratic discourse, thereby leading to the implementation of high standards;

14. Stresses the usefulness of the MAVISE database <sup>(9)</sup>, managed by the European Audiovisual Observatory, which provides information on audiovisual media services, video-sharing platforms and their jurisdictions in Europe; calls for further efforts to expand the database's reach and facilitate its use by all interested users; calls for Article 5(2) of the AVMSD to be formulated as a Member State obligation in any future revision of the AVMSD;

15. Calls on the Commission, on the basis of the Member States' reports, in cooperation with ERGA and in dialogue with relevant organisations from civil society, to work on common qualitative and quantitative targets to promote the further development of accessible services for persons with disabilities in line with the accessibility requirements set out in the European Accessibility Act <sup>(10)</sup> for products and services and to improve the accessibility of services overall; believes that such ambitious targets with clear implementation deadlines based on the actual accessibility situation in each Member State and taking into consideration the latest technical developments should contain a percentage of accessible audiovisual content related to specific types of access services; emphasises that any reporting on improvements in accessible services must be publicly available and that, when assessing the Member States' implementation of their obligations under the AVMSD, the Commission should verify that their understandings of 'proportionate measures' are not voiding Article 7 thereof;

16. Stresses the importance of facilitating accessibility (dubbing, subtitles, audio descriptions or others) in all languages of the territory where the audiovisual media service is provided; recalls that it is fundamental to designate an easily accessible and publicly available online point of contact in every Member State without undue delay;

17. Requests greater efforts to disseminate European works representing the full range of European linguistic diversity, taking into account both official languages and regional and minority languages; finds it therefore indispensable to collect data on the linguistic dissemination of audiovisual media services, including information on the linguistic diversity of related dubbing, subtitling or audio descriptions made available alongside them, so as to be able to act in a more targeted manner;

18. Notes the potential of using artificial intelligence to increase the accessibility of audiovisual services and calls on the Commission and the Member States to promote this in a strategic and targeted manner;

19. Calls on the Commission to request European standards for access services, including icons, that respect existing practices, but that can also be used by countries lacking quality guidance;

20. Recommends that the future AccessibleEU centre create a forum for all stakeholders affected by the European Accessibility Act and the AVMSD to enable the exchange of practices and find areas of cooperation to improve media accessibility in the EU;

21. Calls on the Commission to carry out a study to measure and benchmark media accessibility between Member States;

22. Notes that the co-legislators have introduced important new items into the revised AVMSD, notably a provision recognising the Member States' ability to adopt measures promoting the prominence of audiovisual media services of general interest (Article 7a) and a provision protecting the integrity of audiovisual media services (Article 7b); highlights the need to ensure proper implementation of these provisions, considering the key role that device manufacturers and user interface providers play in enabling people to access, discover and find audiovisual media services online;

23. Considers, in addition, that the measures in Article 7a could be further strengthened and encourages the Member States to better use and exploit the opportunities that can arise from the appropriate promotion of audiovisual media services of general interest; suggests, furthermore, that ERGA help to develop guidelines for a harmonised European approach in this regard, based on an analysis of best practices; believes that progress could be made towards an obligation of prominence for audiovisual media services of general interest, under the condition that the scope and understanding of the general interest content be harmonised and not go against EU values, taking due account of existing systems in this regard and their further development;

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<sup>(9)</sup> European Audiovisual Observatory, 'MAVISE — Database on audiovisual services and their jurisdiction in Europe', accessed 3 April 2023.

<sup>(10)</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).



24. Points out, in this regard, that services or content of general interest are deliberately not limited to public service media, but also include services or content provided by commercial media service providers aimed at meeting social, democratic and cultural needs, as they may represent a greater range of views on the political spectrum;
25. Encourages the Member States to adopt comprehensive and effective rules in accordance with Article 7b of the AVMSD to protect signal integrity on all relevant online platforms and interfaces used to access audiovisual media services;
26. Underlines the importance of numeric buttons on remotes in ensuring the visibility and findability of audiovisual media services of general interest; notes that some manufacturers have removed these buttons from their remotes, putting at stake traditional channel numbering systems;
27. Considers that the objectives of the AVMSD are served by Member States taking measures to ensure the prominence of audiovisual media services of general interest, as well as the prominence of European works, vis-à-vis relevant user interfaces and platform services that offer their services to users in the territory of that Member State but are not themselves established there; recalls that it is important for these measures to be based on transparent and objective criteria; stresses that the Member States are free to include other types of media, such as radio, online audio or the press, when transposing the AVMSD into national law;
28. Considers that there is a need to address the use of artificial intelligence in relation to audiovisual media services in order to safeguard and advance freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas;
29. Considers it appropriate to maintain the European quota requirements as minimum targets at their current level as long as evidence does not recommend otherwise; emphasises the importance of the provisions on promoting and distributing European works, along with discoverability tools provided by ERGA to the Member States and their direct impact on local audiovisual creation and business ecosystems; calls on the Commission and ERGA to promote the exchange of best practices among Member States on deploying such discoverability tools in order to, in the long term, present proposals for specific measures to be applied by all Member States; reminds the Member States that they can go beyond the EU quota requirements at national level;
30. Highlights that the introduction of EU quota requirements was intended to promote the European creative ecosystem by increasing the exposure of EU audiences to European works and by offering more opportunities for European creations to reach viewers across the EU; considers it necessary to ensure regular monitoring of the implementation of the EU quota requirements, including the types of audiovisual works covered and volume calculations for the on-demand services quota;
31. Highlights that the most recent revision of the AVMSD introduced a derogation mechanism for the country of origin principle, in particular under Article 13(2) thereof, intended to establish a better balance of rules applying to the various players providing the same service, while ensuring cultural diversity and fair competition between all players targeting a national market and maintaining a steady and diverse European creative ecosystem in these countries; notes the use of the mechanism by 14 Member States, for example, to contribute to national funds and to direct investments;
32. Emphasises the lack of comparative data and notes that certain market players have stated that the provision will be fundamental to the objectives of promoting and diversifying the European audiovisual sector and will stimulate cultural diversity, while, at the same time, other market players have stated that those derogations will lead to undesirable effects for the single market or could create additional costs;
33. Highlights that this evaluation should comprehensively cover the promotion of European works in a disparate European media landscape that includes small and large, and regional, European and non-European providers in a section on current cultural, technical and commercially relevant developments and should present proposals for specific measures to solve identified problems;
34. Notes that, while the calculation of quotas for television broadcasters in Article 16 of the AVMSD excludes news, sports events, games, advertising, teletext services and tele-shopping, an exclusion does not exist for audiovisual on-demand services; calls on the Commission to assess the types of programmes offered by audiovisual on-demand services that are comptabilised in the share of European works present in catalogues and made available prominently aiming to ensure that the focus of the quota achieves similar objectives as Article 16;

35. Encourages, furthermore, a comprehensive study to assess the possibility, added-value and impact on the European creative ecosystem of common EU-wide minimum requirements for investment incentive schemes, as a way to complement the financial obligations provisions in the AVMSD, taking best practices in the EU and worldwide into account and including a focus on the integration of social or cultural effects that are desirable in terms of media policy, such as talent development, social obligations, inclusion, diversity, gender equality and greening;

36. Considers that equating a season of a series with one title, as set out in the guidelines pursuant to Article 13(7) of the AVMSD on the calculation of the share of European works in on-demand catalogues, should be assessed in due time, taking into consideration the effect of doing so on cinematographic works and TV series and the objective of providing European audiences with varied cultural offer; believes that, in addition, the terms 'low turnover' and 'low audience providers' should be assessed to see whether they are sufficiently clear and allow for their application to be harmonised to a sufficient extent;

37. Understands that, as regards the broadcasting of events of major importance and the general public's ability to watch them, some Member States, in their implementation of Article 14 of the AVMSD, have adopted disproportionate rules on the volume of events covered, negotiations with qualified bidders, qualifying criteria and their overall fitness for the current competitive landscape, for example vis-à-vis the online availability of events; calls on the Commission to closely monitor the implementation of the rules to ensure that events of major importance remain accessible to as many people as possible in free-to-air TV broadcasts;

38. Points out that data collection related to the available audiovisual media services on online platforms gives these platforms a competitive advantage;

39. Welcomes the fact that the gatekeepers under the Digital Markets Act<sup>(1)</sup> have to share some of the data they generate and that gatekeepers are prohibited from favouring their own content over that of third parties; believes that this may not be sufficient to ensure fair competition and a diverse audiovisual media landscape; calls on the Commission to assess appropriate measures to avoid these market imbalances to ensure that audiovisual media service providers are able to access all data relating to the use of their services;

40. Emphasises furthermore that the necessary data must, at the very least, be accessible to the respective national regulatory authorities or bodies, so that they can determine whether the proper prominence of audiovisual media services of general interest or the prominence of European works in catalogues of on-demand audiovisual media services has been achieved;

41. Calls for the potential of co- and self-regulation to be fully used and for their respective impacts on audiovisual media service providers to be evaluated regularly in order to provide the best possible quality and impact;

42. Calls on the Commission to further investigate the fast-growing options for audiovisual media services produced by online influencers, with a focus on youth and consumer protection, and to fully enforce the clear and recognisable separation between advertising and own content; recognises that the failure to identify commercial communications as such is increasingly becoming a problem in terms of competition and has a negative impact on protecting minors and consumers;

43. Calls on the Member States and the Commission to ensure wherever possible that the identity of the audiovisual media service provider is clearly identifiable by users, including online, by means of a logo or other type of branding;

44. Urges the Member States to fulfil their obligation under Article 30(4) of the AVMSD regarding the financial and human resources of national regulatory authorities or bodies in the light of their increasingly complex tasks and to promote cross-border cooperation; insists on the need to safeguard the independence required by the AVMSD; stresses the importance of providing ERGA with effective means and tools to monitor compliance with the obligations laid down in the AVMSD, as well as sanctions in the event of non-compliance; requests that ERGA be given more independence by, among other things, setting up a secretariat for it independent from the Commission;

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<sup>(1)</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).

45. Insists that, irrespective of future legislation, the Commission ensure a consistent and comprehensive implementation of the AVMSD and its objectives in the Member States, paying special attention to Article 30 thereof, which, in any case, requires continual, careful monitoring and timely reactions to any undesirable developments; demands that the Commission act swiftly if there are indications that any national regulatory authority or body may exercise its powers in a manner incompatible with the objectives and values of the EU, particularly in the case of suspected violations of the rights and freedoms enshrined in the Charter of Fundamental Rights of the EU;

46. Urges the Commission to issue in good time the guidelines required under Article 33a(3) of the AVMSD on the scope of the Member States' reports on the implementation of measures for the development of media literacy skills, so that the timely submission of these reports is not further delayed; reiterates that recipients of media services within the EU have a right to receive and impart information pursuant to Article 11 of the Charter of Fundamental Rights of the EU and recalls that this right and the ability to access free and pluralistic media services in the EU cannot be enjoyed by all unless they are accompanied by sufficient media literacy education, which was particularly addressed in the revised AVMSD; emphasises that media literacy should not be limited to learning about tools and technologies, but should rather aim to equip people with the critical thinking skills required to exercise judgement, analyse complex realities and recognise the difference between opinion and fact;

47. Notes that challenges to the right to receive and impart information and to the ability to access free and pluralistic media services are often compounded as a result of the predominance of certain online platforms; recommends therefore that consideration be given to creating levies on these platforms from which funding could originate for the establishment and strengthening of media literacy initiatives across the Member States;

48. Instructs its President to forward this resolution to the Council and to the Commission.

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