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Delegations will find attached document SWD(2016) 170 final.

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Brussels, 25.5.2016  
SWD(2016) 170 final

## **COMMISSION STAFF WORKING DOCUMENT**

**Ex-post REFIT evaluation of the Audiovisual Media Services Directive 2010/13/EU**

### *Accompanying the document*

**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**

{COM(2016) 287 final}  
{SWD(2016) 171 final}

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## 1. INTRODUCTION

### *Purpose of the evaluation*

This Staff Working Document (SWD) provides the results of the ex post evaluation under the Regulatory Fitness and Performance Programme (REFIT)<sup>1</sup> of the Audiovisual Media Services Directive (hereinafter "AVMSD").

In line with the "Better Regulation" requirements<sup>2</sup>, the evaluation assesses the effectiveness, efficiency, relevance, coherence and EU added-value of the AVMSD, and pinpoints areas where there is potential for simplification, without undermining the objectives of the Directive.

The Commission Communication "A Digital Single Market Strategy for Europe"<sup>3</sup> announces that the Commission will examine the functioning of the rules currently in force and will review the AVMSD in 2016<sup>4</sup>.

Pursuant to this commitment, this evaluation has been carried out in parallel to the Impact Assessment on policy options for the future of the AVMSD. The conclusions of this evaluation will – where relevant – feed into that Impact Assessment.

This evaluation also provides the necessary evidence base for meeting the reporting obligations set out in Article 33 of the AVMSD and Articles 16 and 17 (Reports on the promotion of European Works)<sup>5</sup>.

### *Scope of the evaluation*

The evaluation focuses on the objectives, domains and measures set out in the AVMSD. National transposition measures are not part of the scope of this evaluation.

This evaluation covers the period from December 2007, when the Directive resulting from the last revision entered into force (requiring the Member States to transpose the rules at national level by December 2009), to December 2015. The period between 1989, when the Television without Frontiers Directive<sup>6</sup> entered into force, and 2007 is not covered by this evaluation.

## 2. BACKGROUND

### 2.1 Situation prior to Directive

The EU regulatory framework in this domain is in place since 1989 and was originally only applicable to broadcast services. The rationale behind the adoption of a regulatory framework

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<sup>1</sup> The Regulatory Fitness and Performance Programme (REFIT) is the Commission's programme for ensuring that EU legislation remains fit for purpose and delivers the results intended by EU law makers.

<sup>2</sup> The AVMSD REFIT evaluation is announced in the Commission Staff Working Document "REFIT: Initial results of the mapping of the acquis" (SWD(2013) 401 final) and is part of the Commission's 2015 Work Programme (Annex 3 (COM2014) 910 final of 16.12.2014).

<sup>3</sup> COM(2015) 192 final of 6 May 2015

<sup>4</sup> The Digital Single Market strategy says that "the Commission will review the Audiovisual Media Services Directive with a focus on its scope and on the nature of the rules applicable to all market players, in particular measures for the promotion of European works, and the rules on protection of minors and advertising rules."

<sup>5</sup> The AVMSD requires the Member States to report to the Commission and the Commission to report to Parliament and Council on the state of play of the Directive according to Article 33 (Application report), and Articles 16 and 17 (Reports on the promotion of European Works).

<sup>6</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

for television broadcasting services at EU level served two primary and interconnected objectives:

- (1) Facilitate the free movement of television broadcasting services within the internal market;
- (2) Ensure the protection of fundamental public interest objectives, through minimum harmonisation of existing regulations.

In addition, the regulatory framework contributed to the fulfilment of wider complementary cultural, social, and economic aims while contributing to the protection of fundamental rights and pluralism.

The regulatory framework was amended twice (respectively in 1997<sup>7</sup> and 2007) to adapt to technological and market developments. The Directive currently in force is the result of the 2007 revision and its subsequent codification in 2010.

The last review of the regulatory framework in 2007 aimed to modernise and simplify the rules for broadcasting services and introduce minimum rules for on-demand audiovisual media services. The Commission aimed at adopting future-proof rules, as it expected that the revised Directive would regulate the internal market for broadcasting and other audiovisual media services approximately over the years 2009-2016<sup>8</sup>.

## **2.2 Baseline**

At the time the last revision was proposed in 2005<sup>9</sup>, the Commission observed that the 1997 Directive had been overtaken by technological and market developments and had to some extent become outdated. This was reflected in the Impact Assessment<sup>10</sup> accompanying the 2005 legislative proposal.

In 1989, non-national satellite commercial television was in its infancy and ICT-based fixed-line methods of service provision were not ready for the market. In 13 of the new Member States (following the 1994 and 2004 enlargements) there were no commercial channels available nationally. By 1997, trans-frontier satellite commercial television was a common phenomenon and terrestrial commercial television held a greater share of viewing than public service broadcasters in most Member States. In 2005, trans-frontier satellite commercial television had become as popular as or even more popular than local terrestrial broadcasting (with cable systems re-transmitting both).

This evolution was accompanied by exponential changes in channel capacity, increased market penetration of multichannel homes and an increasing number of platforms. Cable and satellite television multiplied the number of available pan-European channels. This enhanced the choice available to consumers, including children. Children increasingly controlled their own viewing with risks of harm, as age verification procedures and filtering were in place only in a minority of channels and households.

In light of these developments, the revision of the Directive aimed at the following objectives.

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<sup>7</sup> Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

<sup>8</sup> Section 3.1 of SEC(2005) 1625/2

<sup>9</sup> Ref. Commission proposal for a Directive amending Council Directive 89/552/ECC, COM(2005) 646

<sup>10</sup> SEC(2005) 1625/2, Commission Staff Working Document – Annex to Commission proposal for a Directive amending Council Directive 89/552/ECC, COM(2005) 646

## **1) Taking full advantage of the internal market for new services**

### Removing obstacles to free movement of audiovisual media services in the internal market

In 2005, 23 out of 25 Member States had in force national laws applicable to on-demand services for a number of AVMSD domains (particularly advertising and protection of minors<sup>11</sup>) with often diverging requirements<sup>12</sup>. This had potentially negative impacts on the internal market and on business competitiveness. The Commission considered that laying down minimum rules for these services at EU level would have provided legal certainty and allowed businesses to benefit from the AVMSD Country Of Origin (COO) principle<sup>13</sup>. According to COO, which already applied to broadcasting services since the regulatory framework was first in force, audiovisual media service providers have to abide only by the rules of the Member State with jurisdiction over them but can operate in all Member States. This does not prevent Member States from establishing higher standards at national level. However, a receiving Member State with stricter rules than those laid down by the AVMSD cannot restrict the reception of services from another Member State on the basis of those stricter rules. Exceptions apply in specific circumstances defined in the AVMSD.

Other services, such as video-sharing platforms that did not exercise editorial responsibility over the content or websites where the audiovisual content was secondary to the main service, were deliberately left out of the scope of application of the AVMSD rules. The objective was to enable Internet services to further develop in the EU.

### Level playing field for audiovisual media service providers

The Commission observed that on-demand audiovisual media services were offering identical or similar content as traditional television without being subject to the same regulatory treatment<sup>14</sup>. According to the 2005 Impact Assessment, maintaining the status quo would have aggravated unjustifiable differences in the regulatory treatment between the various forms of distribution of identical or similar content based on the delivery modes. At the same time, on-demand services were deemed to deserve lighter touch regulation than broadcasting services as users enjoy a higher degree of choice and control over the content and of the time of viewing than on traditional TV.

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<sup>11</sup> According to section 3.2.1 of the 2005 Impact Assessment, when it comes to cultural diversity, although only one Member State provided at the time rules on promotion of European productions for on-demand services (France had para-fiscal provisions in place according to Article 113, LOI n° 2004-669) and only one provided for rules on promotion of independent productions for non-linear services (the UK, as specified in its reply to the Commission's questionnaire) the lack of minimum harmonisation/coordination of future policies of Member States in the area created a risk of fragmentation of the internal market. Business models would consolidate at national level around uncoordinated national policies. In the case of absence of a relevant provision in this field, the issue would be left to the country-of-destination principle with negative impact in terms of legal uncertainty relating to likely future national rules and obstacles for the free cross border movement of media service providers. This resulted in particular from the fact that the Electronic Commerce did not affect measures promoting cultural and linguistic diversity. Additionally, if the issue were not to be addressed at EU level, there would have been an unjustified competitive advantage (lack of level playing field) for non-linear (on-demand) services vs. traditional linear services and linear services close to non-linear business models.

<sup>12</sup> See section 3.2.1 of the 2005 Impact Assessment

<sup>13</sup> The 2005 Impact Assessment observed that on-demand services were subject to the eCommerce Directive which allowed the Member States to derogate from the country of origin principle in view of public policy objectives such as "protection of minors", "fight against any incitement to hatred" or "protection of consumers". As a consequence, on-demand audiovisual media services could legitimately be subject to different rules on contents delivered in different Member States. The costs of not having an efficient country of origin principle in the area of non-linear services would be significant if nothing is done to remedy this situation. Furthermore, the eCommerce Directive did not deal with public policy issues such as protection of minors and respect for human dignity. As a result, a possible regulatory framework providing minimum rules for the delivery of audiovisual media services would not introduce a new layer of regulation, but provide basic harmonization for what is left open by the eCommerce Directive.

<sup>14</sup> This created a twofold problem. Firstly, there was unequal treatment of linear services on different platforms between traditional broadcasting and new delivery platforms. Secondly, there was lack of harmonisation at EU level for providers of non-linear services, with a risk of ineffectiveness of national rules for objectives of general interest and an un-level playing field for competing on-demand services operators established in different Member States.

## **2) Ensuring minimum harmonisation of rules in support of certain public interests**

It was deemed necessary to regulate on-demand audiovisual media services at EU level for clearly defined public interest domains including protection of minors, human dignity and safeguard of essential public interests in the area of commercial communications.

## **3) Contributing to cultural diversity**

As the promotion of European works was considered essential to contribute to cultural diversity it was deemed necessary to adopt EU rules in this domain for on-demand services.

## **4) Better regulation by reducing unnecessary regulatory burden**

New advertising techniques created opportunities for commercial communications in broadcasting services, enabling them to better compete with on-demand services. Product placement had the potential to generate substantial additional resources for providers. The regulatory framework had to be aligned to this new context, namely via more flexibility with respect to the rules for broadcasting services. This called for allowing (in certain circumstances) product placement and introducing more flexibility to the quantitative rules.

## **5) Facilitating access to information within the internal market**

In the field of broadcasting services, the Commission identified a problem in the absence of EU-level rules guaranteeing access to short extracts of events of high interest to the public. Actual or potential uncoordinated national rules were putting the internal market at risk.

In addition to the above considerations, the 2007 revision aimed at maintaining the general and specific objectives of the regulatory framework related to the internal market as well as cultural and social goals which were deemed to be still valid for the future.

Since the 2007 revision, there have been significant changes in the market and viewing patterns (Annex 3 provides the detailed figures and sources):

- TV viewing is still the prevalent mode of consumption of audiovisual content but younger consumers, in particular, increasingly watch content on-demand and online.
- Audiovisual content is offered as part of a large number of services. Not all such services are in the scope of the AVMSD rules. For example, services hosting audiovisual content in the form of user generated content (UGC) are excluded.
- Consumers often watch audiovisual content offered in innovative and namely shorter formats (e.g. short video clips), particularly on-demand and more in general online. Between 2013 and 2015, the number of minutes spent on a video online has decreased in 6 Member States<sup>15</sup>. The decrease in those Member States ranged from -5% to -36%<sup>16</sup>. Online advertising is set to overtake TV advertising.
- There are uneven rules regarding contribution to content financing between broadcasters, on-demand service providers and new online market players.

## **2.3 Description of the Directive and of its objectives**

The AVMSD pursues the *general objective* to create an internal market for audiovisual media services guaranteeing free circulation of services, a level playing field and conditions of fair competition whilst ensuring at the same time a high level of protection of objectives of

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<sup>15</sup> DE, ES, FR, GB, IT and NL

<sup>16</sup> On-demand Audiovisual Markets in the European Union (2014 and 2015 developments): <https://ec.europa.eu/digital-single-market/en/news/demand-audiovisual-markets-european-union-2014-and-2015-developments>

general interest, inter alia the protection of minors and human dignity as well as promoting the rights of persons with disabilities.

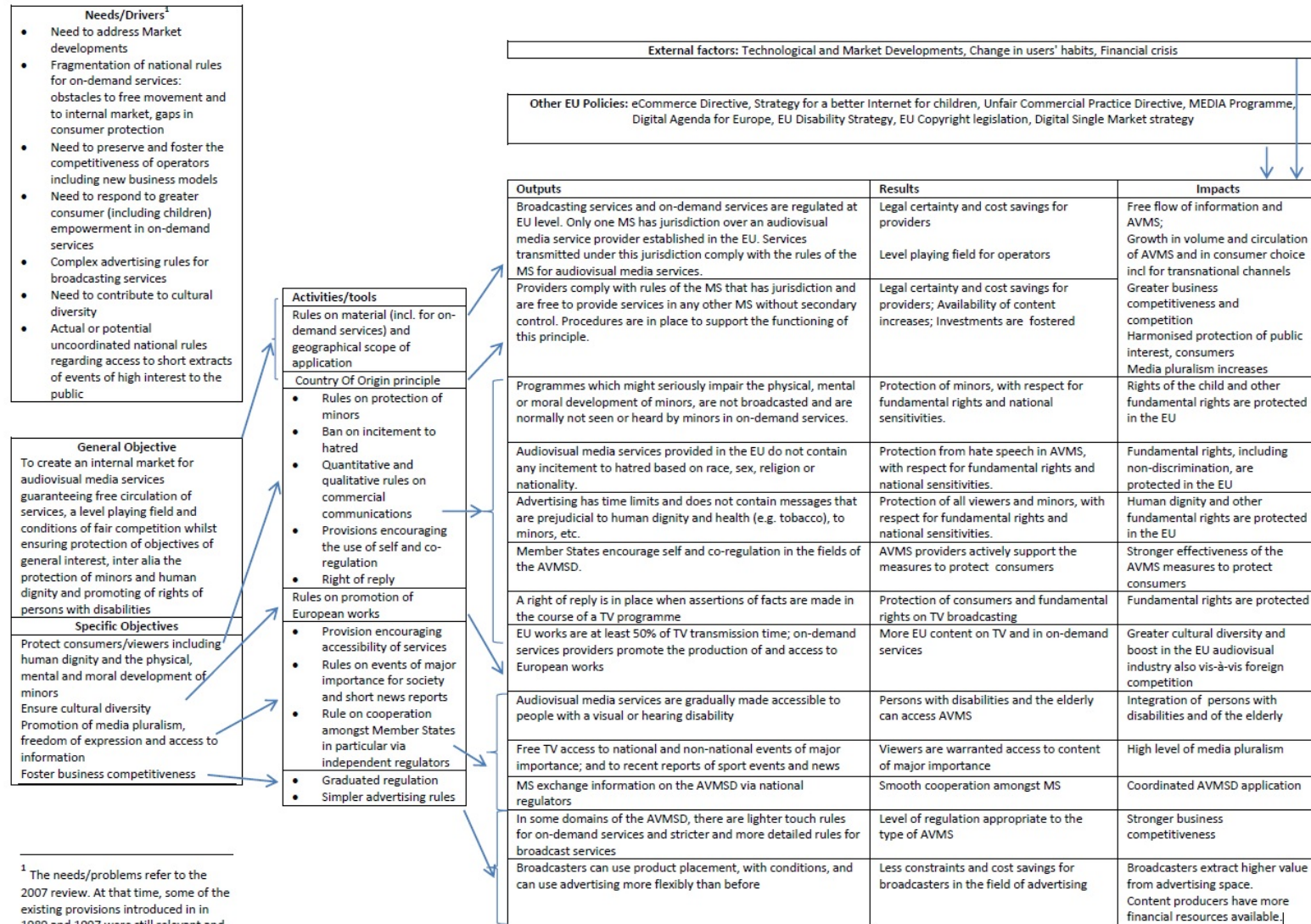
The AVMSD also pursues a number of *specific objectives*: protect consumers/viewers including human dignity and the physical, mental and moral development of minors; ensure cultural diversity by promoting European audiovisual production and distribution; promote media pluralism, freedom of expression and information; and foster business competitiveness.

As mentioned in section 2.1, the Directive is based on the Country Of Origin principle (COO)

As the AVMSD has a bearing on the market as well as on values and citizens' rights, it provides minimum harmonisation rules. It does not impinge on the competence of Member States to define stricter requirements according to national circumstances and traditions (e.g. rules regarding content harmful to minors).



## Intervention logic – 2007 revision



### 3. EVALUATION QUESTIONS

Pursuant to the Commission Better Regulation Framework, the AVMSD has been evaluated against the following criteria: relevance, EU added value, effectiveness, efficiency and coherence. The evaluation addresses specifically the following questions:

**Relevance:** In a converging media environment, to what extent have the AVMSD rules proved relevant to the needs of the EU audiovisual market and to consumers/viewers?

**Effectiveness:** To what extent have the general and specific objectives of the AVMSD been met? If not, what factors hindered their achievement?

**EU added value:** What is the additional value resulting from the AVMSD, compared to what could be achieved by MS at national and/or regional level? To what extent do the issues addressed by the AVMSD require action at EU level?

**Efficiency:** Did the AVMSD deliver good value for money, including for SMEs? Could the general and specific objectives have been achieved at a lower cost? Is there scope for streamlining and/or simplifying the procedures laid down in the AVMSD?

**Coherence:** How well does the AVMSD work together with other EU regulatory and policy initiatives? To what extent does the AVMSD take into account potential interactions or conflicts with other EU initiatives?

The questions listed above are answered throughout the report.

This evaluation covers the Directive in its entirety. It is structured around the main domains harmonised by the AVMSD, as each domain pursues one or more AVMSD objectives.

The link with the general and specific objectives is as follows:

Under the *general objective*:

- The rules on **material** and **geographical scope** of application and on **Country Of Origin (COO)**. (Chapter 6.1, 6.2 and 6.3).

Under the *specific objectives*:

- Protection of consumers/viewers is pursued mainly by the rules on **protection of minors**, the **ban on incitement to hatred**, the **rules on commercial communications**, the provisions **encouraging the use of self and co-regulation**, and the **right of reply** (see sections 6.4; 6.5; 6.6; 6.10; 6.11).
- Cultural diversity and the promotion of European audiovisual production and distribution are pursued by the **rules on promotion of European works** (see section 6.7).
- The promotion of media pluralism, freedom of expression and access to information are pursued by the rule on **cooperation amongst Member States** in particular **via independent regulators**, the provision **encouraging accessibility of services to persons with a visual or hearing disability**, the **rules on events of major importance for society** and **short news reports** (see sections 6.8; 6.9; 6.10).

The system of **graduated regulation** pursues the overall objective of **fostering business competitiveness** with a lighter touch regulation for on-demand services and stricter and more detailed rules for broadcast services on grounds that the user has more control and choice in on-demand services. The system applies to the rules on protection of minors, commercial communications, promotion of European works, right to information (short news reports and events of major

importance for society) and right of reply. This matter is therefore considered across **a number of sections:** 6.4, 6.6, 6.7, 6.10, 6.11.

Under each "domain subchapter", the five evaluation criteria are being assessed, thereby allowing for a granular analysis and for drawing – if appropriate - different conclusions for each different AVMSD domains.

#### 4. METHOD

The REFIT evaluation has been carried out on the basis of data collected from different sources. A more detailed insight is provided in Annex 1.

The evaluation took place between March and December 2015 and drew from the following main data sources:

- **Stakeholder consultations:**

- Three public consultations: 2013 Green Paper Public consultation on media convergence<sup>17</sup>; 2013 Public consultation on independence of audiovisual regulators<sup>18</sup> and 2015 Public consultation on the AVMSD<sup>19</sup> (the synopsis report is in Annex 2);
- Policy discussions with Member States in the framework of the Contact Committee<sup>20</sup> meetings;
- Discussions with regulators within the European Regulators Group for Audiovisual Media Services (ERGA)<sup>21</sup> leading to the adoption by ERGA of specific recommendations on the material and geographical scope of the AVMSD, protection of minors (also based on an "inventory paper") and the independence of regulators<sup>22</sup>;
- Structured dialogues with representatives of the affected industry and consumers ("Media talks"<sup>23</sup>).

- Recommendations, reports and policy discussions with other EU institutions, namely the European Parliament<sup>24</sup>, the Council<sup>25</sup>, the European Economic and Social Committee<sup>26</sup> and the Committee of the Regions<sup>27</sup>.

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<sup>17</sup> The 2013 Public consultation on the "Green Paper on a Converging media world" (<http://ec.europa.eu/digital-agenda/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values>)

<sup>18</sup> The 2013 Public consultation on regulatory bodies competent for audiovisual media services and on possible options for strengthening their independence (<http://ec.europa.eu/digital-agenda/en/news/public-consultation-independence-audiovisual-regulatory-bodies-read-contributions>)

<sup>19</sup> The Public consultation ran from 6 July to 30 September 2015. <http://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st>

<sup>20</sup> In the Contact Committee established pursuant to Article 29 AVMSD.

<sup>21</sup> <http://ec.europa.eu/digital-agenda/en/news/commission-decision-establishing-european-regulators-group-audiovisual-media-services> At the end of 2015, ERGA delivered to the Commission recommendations on the AVMSD review.

<sup>22</sup> ERGA report on material jurisdiction in a converged environment (<https://ec.europa.eu/digital-agenda/en/news/erga-report-material-jurisdiction-converged-environment>); ERGA report on protection of minors in a converged environment (<https://ec.europa.eu/digital-agenda/en/news/erga-report-protection-minors-converged-environment>); ERGA report on the independence of national regulatory authorities (<https://ec.europa.eu/digital-agenda/en/news/erga-report-independence-national-regulatory-authorities>).

<sup>23</sup> In the "Media Talks", the Commission discussed specific domains of the AVMSD with representatives of the relevant stakeholders. Media Talks took place in June and September 2015, as well as regularly throughout 2013 and 2014.

<sup>24</sup> The European Parliament resolution of 19 January 2016 on Towards a Digital Single Market Act (2015/2147(INI)) calls on the Commission to review the AVMSD as regards a number of aspects of the Directive. The July 2013 "Connected TV" report (Rapporteur MEP Petra Kammerevert (S&D, DE)) calls on the Commission to evaluate the extent to which it is necessary to revise the AVMSD, [http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0329&language=EN&ring=A7-2013-0212\\_B](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0329&language=EN&ring=A7-2013-0212_B)) The March 2014 report, "Preparing for a Fully Converged Audiovisual World" (Rapporteur MEP Sabine Verheyen (EPP, DE)) calls for a review of the AVMSD, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0232&language=EN&ring=A7-2014-0057>.

<sup>25</sup> Most recently, the Council conclusions adopted under the Italian Presidency of the EU in 2014 inviting the Commission to "*Urgently complete the exercise of the review of the AVMSD in the light of the rapid technological and market changes resulting from the digital shift, and on the basis of the outcome of this review submit an appropriate proposal for the revision of this Directive as soon as possible, in respect of the principle of subsidiarity.*" [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/educ/145950.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/145950.pdf). The Conclusions of the Culture Council in November 2013 invited the Member States to ensure the independence of audiovisual regulators and to strengthen cooperation amongst regulators.

<sup>26</sup> Opinion adopted in September 2013 on the Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values, <http://www.eesc.europa.eu/?i=portal.en.ten-opinions.28469>

<sup>27</sup> At its Plenary Session of 12-14 October 2015, the Committee of the Regions adopted an own-initiative opinion on the "Review of the Audiovisual Media Services Directive" – link to be published

- **Data gathered on the AVMSD costs and benefits** via a questionnaire sent to Member States' regulators within ERGA and to industry<sup>28</sup>.
- **Evidence gathered through publicly-tendered studies**<sup>29</sup> on alcohol advertising exposure, independence of audiovisual regulators, self- and co-regulation and standardisation.
- **Commission's monitoring of the AVMSD** pursuant to Article 33<sup>30</sup> of the Directive (1<sup>st</sup> Application report for the years 2009-2010<sup>31</sup>; 2<sup>nd</sup> Application report on the AVMSD<sup>32</sup> for the years 2011-2013; Articles 16 and 17<sup>33</sup>).
- Literature review (e.g. reports of the European Audiovisual Observatory<sup>34</sup> (EAO)) followed by an analysis carried out in-house by the European Commission Directorate General (DG) for Communications Networks, Content and Technology (DG CONNECT) in close cooperation with other Commission DGs in the context of the Inter-Service Steering Group on the AVMSD evaluation and review convened by the General Secretariat of the European Commission.

Time-wise, the data gathering was characterised by continuity. The Commission acknowledged the need to assess the state of play in terms of market and societal developments in 2012, following the 1st AVMSD Application report for the years 2009-2010. The Commission started stakeholder consultations in the Contact Committee, in ERGA and via the "Media talks". Two Public consultations were launched in 2013 (see above) and a third, more targeted one, in 2015. The reporting obligations according to the Directive also were the opportunity to gather data and information on the state of implementation over time. The Commission's questionnaires in this context were drafted taking into account the main needs that could be identified at that stage in terms of data.

Method-wise, the data gathering followed a participatory and circular approach and strived for triangulation. While the 2013 public consultations were of a broader nature, the questions in the 2015 Public consultation were more focused on possible changes to the AVMSD. However, all main options were considered, in order to enable the Commission to either confirm or contradict previous findings. The questions took into account concerns or views expressed in previous occasions as well as the state of the art in the market and in viewing patterns.

The questions in the ERGA questionnaire were developed by a Task force of Member States' audiovisual regulators and focused on the practical aspects of the AVMSD application. Regulators took into account the difficulty to measure the costs and benefits of the AVMSD in certain fields.

The data provided by the EAO were tailored to the needs of this evaluation and were delivered pursuant to an evaluation-specific contract with the Commission.

<sup>28</sup> A data gathering on costs and benefits of the AVMSD was sent to stakeholders via the national Regulators.

The survey gathered a total of 107 replies with 40 coming from commercial broadcasters (38 %), 20 public service broadcasters (19 %), 18 VOD providers (17 %), 12 from national associations focusing on the protection of minors (12 %), 10 from national associations representing independent producers (10 %), 4 from consumer association (4 %). One association representing broadcasters and one representing sales houses also participated. As regards the geographical spread the Commission received replies from stakeholders established in 19 Member States. As most of the information is confidential, it has been used in the Impact Assessment and the REFIT in an aggregated and anonymised way. For this reason the replies are not published

<sup>29</sup> <http://ted.europa.eu/udl?uri=TED:NOTICE:212396-2015:TEXT:EN:HTML&ticket=ST-1292379-SKem8OGQ1reJn1IxAZqVGszP2zjXhYuZOoStsF8rBu0ZCOZKgO05NbMy9k6hQrTzlimWUTdcKGfvm49lhwu7y5m-Jj71zxYb8yr5J3R6eCTiGK-TqeqixAzhASPjqjbmfnf8X5hXPzlpWbUx9btUwoJzMau>

<sup>30</sup> Article 33 of the AVMSD invites the Commission to submit regularly a report on the application of the Directive to the European Parliament, the Council and the European Economic and Social Committee.

<sup>31</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0203>

<sup>32</sup> The 2nd Application report covers the period 2011-2013. Developments related to the year 2014 are also reported where appropriate. The 2nd Application report is in Annex 7.

<sup>33</sup> <https://ec.europa.eu/digital-agenda/en/avmsd-reports-european-works>

<sup>34</sup> Public reports (<http://www.obs.int/en/publications/2015> available on-line per year of publication, the Yearbook (<http://www.obs.int/en/shop/yearbook>) and ad-hoc reports prepared for the European Commission in the context of REFIT. Whenever an EAO report is the source of data throughout this document, this will be appropriately referenced.

A circular approach was followed as much as possible. For example, meetings of the Contact Committee, ERGA and Media talks with stakeholders were held ahead of the launch of the Public consultation. After the Public consultation deadline, the Contact Committee discussed the Public consultation in two occasions. The data gathered from the sources above were analysed respectively: in house, by external contractors, and in cooperation with other Commission DGs.

Moreover, stakeholders were consulted in multiple occasions by different parties, for example, by the Commission via the Public consultation, by relevant national regulators via the ERGA questionnaire and by external contractors in the context of the studies. This circular approach enabled a satisfactory **triangulation** of data, i.e. its reliability has been confirmed via findings coming from other sources. Also, whenever the same stakeholder provided information in different contexts, the Commission compared these pieces of information so as to assure their coherence and reliability.

The evaluation process was assisted by a **Steering Group** composed of the representatives of selected Directorates General (DGs) including DG CNECT, DG COMP, DG JUST, DG GROW, DG TRADE, DG EAC, DG SANCO, DG RTD, DG NEAR together with the Secretariat-General and the Legal Service.

The Steering Group steered and monitored the progress of the exercise, ensuring the necessary quality, impartiality and usefulness of the evaluation. Being composed of members from different functions and having the necessary mix of knowledge and experience, the Steering Group brought together a range of different perspectives and provided the necessary input, in particular where the evaluation touched different policy areas.

#### *Limitations – robustness of findings*

The data collection and analysis carried out has a number of intrinsic limitations, whose impact was mitigated to a maximum possible extent:

- Measuring the effectiveness of the AVMSD rules that aim to protect values (e.g. human dignity and the physical, mental and moral development of minors) is by definition a challenging exercise whose results should be interpreted with caution;
- Despite being prompted in a number of occasions by the Commission, the national regulators and the contractors carrying out publicly tendered studies for this purpose, the industry has been reluctant or unable to deliver precise quantitative data on the compliance costs stemming from the AVMSD; given that legislation in this domain has been in place for a long time, it has been revised twice and codified once, and in some cases national legislation was already in place, it is hard for business to assess what costs and lost revenues stem from the Directive;
- When the industry did provide data, this was in some cases covered by business confidentiality. When possible, the Commission presented this data in aggregated or anonymised format. When this was not possible, data was taken into account in the evaluation but not provided (this is indicated when applicable);
- The EU audiovisual sector is primarily made of large companies and data on the specific impact of the AVMSD on SMEs is not available, also in light of the considerations made above. Accordingly, when the evaluation refers to the impact on the AVMSD rules on business, particularly on business competitiveness, this should be intended as referring in most cases to large companies;
- Some data simply does not exist because stakeholders do not generate or gather it. This is the case, for example, for figures on the number of viewers and on viewing patterns in on-demand audiovisual media services and in other services offering audiovisual content;
- The evaluation takes into account that the economic and cultural landscape as well as the state of development of the audiovisual media market differ significantly amongst the Member States;
- Given the multiplicity of the tools used to consult relevant parties, the results obtained are of different nature. While the 2015 Public consultation proposed a number of questions to

stakeholders, the discussions within ERGA went more in-depth on some issues, as regulators had a platform for regular and organised discussions;

- The evaluation takes into account the inherent limitations of the findings of Public consultations. Firstly, as in all surveys, the answers received reflect the views of a sample of relevant stakeholders and not those of the entire population who has a stake in this domain. Secondly, stakeholders' views convey an individual rather than a holistic perspective.

Based on the elements above, this evaluation has been carried out on the basis of the best available data. Whenever reliable quantitative data is lacking, this is indicated as appropriate and possibly counter balanced with qualitative data and considerations.

## **5. IMPLEMENTATION STATE OF PLAY (RESULTS)**

The implementation of the AVMSD by the Member States is monitored by the European Commission on the basis of Article 33<sup>35</sup> of the Directive. Article 33 AVMSD requires the Member States to report to the Commission and the Commission to report to Parliament and Council on the state of play of the Directive every three years at the latest.

### *Current state of play*

Following the last revision, the Member States were required to transpose the AVMSD at national level by 2009. Whereas to date all Member States have notified full transposition measures, issues of protracted implementation did occur. By the end of 2011, full transposition was notified to the Commission only from 20 Member States<sup>36</sup>.

**In 2005**, the EU audiovisual market was rapidly changing, also due to the development of the Internet. In 2004, Internet penetration had stabilized at about 65% by household, with mobile phone penetration at about 85%. In 2005, the EU enjoyed better domestic broadband penetration than the United States, with wider 3G deployment.

This evolution, together with the demand for premium content and the continuous search for new sources of revenue, had enabled the development of IPTV and other Internet-based methods of delivery. The need for new revenues was one of the sources of the emergence of triple-play: the convergence of broadband, telephony, and video. However, in 2005, there were still obstacles to IPTV growth, such as a lack of consumer awareness and acceptance of IPTV as a viable alternative to incumbent channels of delivery and the strong market position and economies of scale of the incumbents. As a result, in 2005, audiovisual revenues linked to the development of Internet were still limited.

As already mentioned, in 2005, transfrontier satellite commercial television was as popular as or even more popular than local terrestrial broadcasting (with cable systems re-transmitting both). This evolution was accompanied by exponential change in channel capacity, especially via digital cable and satellite, increased market penetration of multichannel homes (using sports and feature film premium content), and an increasing number of platforms. Consumer choice increased. Cable and satellite television multiplied the number of pan-European channels available.

Video on Demand (VoD) was making inroads into the audiovisual market, whether delivered by cable, fibre or Digital Subscriber Line (DSL). However, in 2005, VoD still generated limited revenues

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<sup>35</sup> Article 33 AVMSD also specifies that the application report shall also assess the issue of television advertising accompanying or included in children's programmes, and in particular whether the quantitative and qualitative rules contained in this Directive have afforded the level of protection required.

<sup>36</sup> Ref. 1<sup>st</sup> Application report on the AVMSD



(ca. US 60 million). As regards advertising markets in 2005, television and the Internet were gaining ground, both within Europe and on a global scale.

**In 2014**, the overall size of the European audiovisual sector was around EUR 105.8 million<sup>37</sup>. This implies an increase of 0.9% as compared to 2010. This increase primarily comes from on-demand audiovisual media services, whereas physical video registered a significant decrease.

The EU audiovisual sector mainly comprises **large companies** which account for an absolute majority (more than half) of the workforce in 10 of these. For example, large enterprises in France employed upwards of 7 out of 10 people (71.5 %) within the programming and broadcasting activities workforce in 2010, while the share of large enterprises in the total workforce peaked at 78.5 % in Germany. Upwards of 80 % of the value added generated in Spain, Poland, Italy, France, Romania and the United Kingdom was attributed to large enterprises, their share of sectoral value added peaking in the United Kingdom (90.8 %)<sup>38</sup>.

By contrast, in the relatively small EU Member States of Estonia, Lithuania, Luxembourg and Slovenia, **small and medium-sized enterprises (SMEs)** employed the whole of the programming and broadcasting activities workforce in 2010. In those Member States it was, however, more common to find that the majority of the workforce was engaged by large enterprises<sup>39</sup>.

As already remarked, in light of the composition of the EU audiovisual market and the lack of data regarding specifically SMEs, references to the impact on the AVMSD rules on business, and particularly on business competitiveness, contained in this evaluation should be intended as concerning in most cases large companies.

**At the end of 2013**, 5 141 **TV channels** (excluding local channels and windows<sup>40</sup>) were established in the EU. Almost 1989 of them (about 38% of the total established channels) targeted foreign markets (either EU or extra EU). This share has increased from 28% in 2009 - year of implementation - to 38% in 2013<sup>41</sup>. On average, 31% of the VoD services available in the Member States are established in another EU country<sup>42</sup>.

The **market for on-demand and online services** is on the rise. In 2014, there were more than 2 563 VoD services in Europe, including catch-up TV services offered by broadcasters (932 services), branded channels on open platforms (408 services), VoD services providing access to a catalogue of programs (1 126 services) and news portals (97 services)<sup>43</sup>.

From a static viewpoint, the TV broadcasting market is still the strongest part of the audiovisual market.

In 2013, **revenues** from linear television in the EU28 were EUR 83.6 bn. In comparison, total consumer revenues of VoD services amounted to EUR 2.5 bn i.e. 3% of the TV broadcasters' revenues. However, from a dynamic perspective, the domination of TV broadcast is less obvious. Their growth rate has decreased from an average annual rate of 2.8% from 2009 to 2013, to only 0.3% in 2013<sup>44</sup>.

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<sup>37</sup> EAO Yearbook 2015: <http://www.obs.coe.int/>

<sup>38</sup> Eurostat statistics: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Programming\\_and\\_broadcasting\\_statistics\\_-\\_NACE\\_Rev.\\_2](http://ec.europa.eu/eurostat/statistics-explained/index.php/Programming_and_broadcasting_statistics_-_NACE_Rev._2)

<sup>39</sup> Ibid

<sup>40</sup> Adaptations of a channel to the specificities of the target country in particular as regards advertising.

<sup>41</sup> Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - [Origin and availability of television services in the European Union](https://ec.europa.eu/digital-single-market/en/news/study-data-and-information-costs-and-benefits-audiovisual-media-service-directive-avmsd) (<https://ec.europa.eu/digital-single-market/en/news/study-data-and-information-costs-and-benefits-audiovisual-media-service-directive-avmsd>)

<sup>42</sup> EAO Yearbook 2015

<sup>43</sup> Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - [Origin and availability of On - Demand services in the European Union](#)

<sup>44</sup> Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - [Trends in linear television revenues](#)

In the EU28, total on-demand consumer revenues soared from EUR 919 million in 2010 to EUR 2.5 billion in 2014, an increase of 272% and a compound annual growth rate (CAGR) in the 5 year period of 28%<sup>45</sup>.

As regards television **viewing time**, the observed trend of stability between 2012 and 2014 (between 03:44 and 03:43) may hide an effective decrease in viewing time for live TV to the benefit of catch up services<sup>46</sup>. It should be noted that television audience measurement increasingly goes beyond the tracking of live viewing to include time-shifted viewing. In most countries, viewing is tracked during 6 or 7 days after the live transmission.

As regards viewing time online and on-demand, mobile consumption is projected to increase in the near future. The number of smartphones in Europe is expected to double by 2020, reaching 800 million. This will mean that more than 70% of mobile subscriptions will be for smartphones<sup>47</sup>. It must be borne in mind that in 2014, in Europe, Internet video stood for 64% of total consumer internet traffic. This share is expected to increase up to 80% by 2019<sup>48</sup>. The consumption of videos offered by video-sharing platforms is on the rise<sup>49</sup>.

According to the industry, by 2020, projections suggest that more than 20% of European households will have a specific, paid account with a SVoD provider. As a result of this, the projected turnover of all VoD services in Europe should increase by 15% annually to 2020, reaching EUR 6 billion<sup>50</sup>. When looking at online video advertising revenue, it is expected to grow in Europe by more than 75% between 2015 and 2018 up to EUR 4.1 bn with Google and Facebook representing 50 % of the market<sup>51</sup>.

The 1<sup>st</sup> Application report for the years 2009-2010 concluded that the AVMSD had overall struck the right balance amongst the objectives pursued and well served the interests of citizens and businesses. The report nonetheless 1) flagged issues around consumer protection (particularly protection of minors) in audiovisual commercial communications and 2) called for assessing whether the AVMSD still attains its consumer protection objectives in a converging media world.

The 2<sup>nd</sup> Application report for the years 2011-2013 is published as Annex 7 of this evaluation report. The report demonstrates the AVMSD's effectiveness in ensuring the development and free circulation of audiovisual media services in the EU. The report however flags the following issues: 1) complexities in determining jurisdiction and for applying procedures limiting freedom of reception and retransmission in specific case; 2) diversity in the approaches undertaken by Member States to promote European works on VoD services, putting the effectiveness of the procedures supporting the COO principle to the test in this specific field; and 3) concerns around the application of rules for certain types of commercial communications.

In the field of promotion of European works in broadcasting services, Member States shall provide the Commission every 2 years a report on the application of this Article 16 and Article 17 – promotion of European works in broadcasting services. The Member States have up to now complied with this

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<sup>45</sup> Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - [Trends in video-on-demand revenues](#).

<sup>46</sup> On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)

<sup>47</sup> Ericsson mobility report; <http://www.ericsson.com/res/docs/2014/emr-november2014-regional-appendices-europe.pdf>

<sup>48</sup> Cisco Visual Networking Index: Forecast and Methodology, 2014–2019 ([http://www.cisco.com/c/en/us/solutions/collateral/service-provider/ip-ngn-ip-next-generation-network/white\\_paper\\_c11-481360.pdf](http://www.cisco.com/c/en/us/solutions/collateral/service-provider/ip-ngn-ip-next-generation-network/white_paper_c11-481360.pdf))

<sup>49</sup> Today, 400 hours of videos are uploaded every minute on YouTube, equivalent to 24,000 days' worth of content uploaded every minute and 65.7 years' worth of content uploaded every day (<http://www.tubefilter.com/2015/07/26/youtube-400-hours-content-every-minute>). The amount of people watching short video clips online in the UK has almost doubled over the period 2007 to 2014 (21% to 39%, the highest increase being among 35-44s with 28 percentage points increase). The popularity of multi-platform online video services, such as YouTube, as an information source has been evident in recent years – 32% of internet users now cite it as an important (very or fairly) source for information, rising to 46% of 16-24 year olds (Ofcom's Adults' media use and attitudes, 2015 report ([http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-lit-10years/2015\\_Adults\\_media\\_use\\_and\\_attitudes\\_report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-lit-10years/2015_Adults_media_use_and_attitudes_report.pdf))). One in three consumers believes it is very important to be able to watch UGC on their TV sets at home (<http://www.ericsson.com/res/docs/2015/consumerlab/ericsson-consumerlab-tv-media-2015.pdf>).

<sup>50</sup> Promoting growth, pluralism and choice: The Country of Origin principle and Europe's audiovisual sector (<http://coba.org.uk/about-coba/coba-latest/2016/coba-launches-country-of-origin-report>)

<sup>51</sup> On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)



reporting obligation. The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The latest of these Commission reports is published as an Annex to this evaluation report (Annex 8). This report shows that the provisions of Articles 16 and 17 AVMSD have been overall correctly implemented by Member States. The current rules on promotion of European works have led to strong shares of transmission of European works, independent productions and recent independent productions. The 64.1% average of European works achieved in 2011 and 2012, well above the obligatory majority proportion set out in Article 16, reflects a generally sound application of this provision throughout the EU. Member States also met comfortably the requirement regarding the share of independent productions set down in Article 17. With 33.1% in 2011 and 34.1% in 2012 the average of independent productions was significantly above the required 10% laid down by Article 17. At the same time, the share of independent productions differs significantly among Member States. The EU average share of recent independent productions was 60.6% in 2011 and 61.1% in 2012.

However, the report also shows some shortcomings. It identifies the main reasons for non-compliance reported by Member States. An often repeated argument was the difficulty for small and specialized channels to comply with the obligatory shares. Additionally, monitoring methods of compliance vary greatly among Member States and not all Member States have put in place verification systems of the data provided by broadcasters.

On promotion of European works in on-demand services, Member States were required to report to the Commission no later than 19 December 2011, and every 4 years thereafter, on the implementation of Article 13(1) – measures to promote European works in on-demand services. Member States have up to now complied with this flexible provision, while considering that there is a general lack of data regarding shares of European works in on-demand catalogues. Also on the basis of this information the Commission shall report to the European Parliament and to the Council. In addition to this report, the Commission more recently proactively analysed and reported<sup>52</sup> on the diverse approaches taken across the Member States on promotion of European works in on-demand services.

Although the AVMSD does not impose an obligation regarding the independence of audiovisual regulatory bodies, the Commission regularly monitored the state of play as regards the independence of national regulatory bodies, through independent studies - first the INDIREG study of 2011<sup>53</sup> and then its update – the RADAR study of 2015<sup>54</sup>.

## **6. ANSWERS TO THE EVALUATION QUESTIONS**

### **6.1 Material scope of application**

The AVMSD applies<sup>55</sup> to television broadcasts and to on-demand audiovisual media services for which providers have editorial responsibility. To be covered by the Directive:

- (i) services must have as their principal purpose the provision of programmes to inform, entertain or educate the general public; and
- (ii) programmes should be comparable, in form and content, to television ("TV-like").

### ***Relevance of the current rules***

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<sup>52</sup> A document presenting a summary of those approaches has been published by the European Commission in July 2014, <https://ec.europa.eu/digital-agenda/en/news/promotion-european-works-practice>

<sup>53</sup> [http://ec.europa.eu/archives/information\\_society/avpolicy/docs/library/studies/regulators/final\\_report.pdf](http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/regulators/final_report.pdf)

<sup>54</sup> <https://ec.europa.eu/digital-agenda/en/news/study-audiovisual-media-services>

<sup>55</sup> Article 1(1) AVMSD

The rules defining the AVMSD's scope of application are overall relevant. The 2007 revision brought new on-demand audiovisual media services into the AVMSD scope and as such aligned the Directive to the market developments emerging at that time. In the 2015 Public consultation, a majority of respondents belonging to various stakeholders' categories stated that the rules are still relevant. However, some aspects of the definition of "audiovisual media services", which were relevant during the first years of application of the Directive after the 2007 revision, are no longer fully relevant in light of recent market and legal developments:

- The Directive applies to<sup>56</sup> programmes "the form and content of which are comparable to the form and content of television broadcasting" which has primarily meant an exclusion of short clips. Audiovisual content is however increasingly offered **in innovative (shorter) formats (e.g. short video clips) online**. As said above, while the number of videos viewed tends to increase, the time spent on one given video tends to decrease<sup>57</sup>. Most recently, the ECJ<sup>58</sup> clarified that videos that are short in length can qualify as audiovisual media service under the AVMSD (when the content offered competes for the same audience as television broadcasting). A majority of respondents belonging to various stakeholders' categories also affirmed in the 2015 Public consultation that the "TV-like" criterion has become outdated.
- The Directive does not apply to audiovisual material offered by services whose "**principal purpose**" is not to provide programmes, to inform, educate or entertain, to the general public. However, services such as newspapers' video sections<sup>59</sup> or social media and messaging apps hosting professional video content are increasingly present on the market. Also, the consumption of online news videos is on the rise - not necessarily on newspapers' websites but also on social media<sup>60</sup> and this often coincides with a fall in audiences for traditional TV bulletins<sup>61</sup>. In 2014, the number of children who read or watched news online almost tripled as compared to 2010<sup>62</sup>. Most recently, the ECJ<sup>63</sup> clarified that the AVMSD applies when the audiovisual media content is in content and form independent of the main service offered by a provider (whether it is messaging, audiovisual content generated by private users i.e. "user generated content" (UGC), press articles, etc.). This is the case even when the main service is of a different nature, e.g. text, and is not merely an indissociable complement to that activity, in particular as a result of the links between the audiovisual offer and the offer in text form.

In light of this, the rules defining the AVMSD's scope of application are overall relevant, although most recent developments call for further reflection.

## *Effectiveness*

The inclusion in the scope of **on-demand** services along with traditional broadcasting services in the context of the 2007 revision provided a minimum level of consumer protection on these services. In this light, the AVMSD rules on material scope have proven to be effective in an environment where consumption of TV content was primarily taking place on traditional TV or via on-demand services.

<sup>56</sup> Article 1(1) (b) AVMSD

<sup>57</sup> This is confirmed in the Google Consumer Barometer 2014 which also indicated that when asked about the length of the videos watched during their most recent online video session, 49% of European Internet users declared having watched videos shorter than five minutes. According to the IHS study (to be checked whether it can be referenced), in Italy online long-form constitutes just one minute out of 17 minutes of on-demand viewing time per person per-day. Online short-form grew by one minute in 2014 to reach six minutes per person, equating to 37% of non-linear TV viewing time.

<sup>58</sup> Judgment of the Court (Second Chamber) of 21 October 2015, *New Media Online GmbH v Bundeskommunikationssenat*, Case C-347/14 (hereinafter, "New media Online GmbH" case).

<sup>59</sup> The online versions of the main European newspapers all have dedicated video sub-sections that in some cases even offer news bulletin breaking news (e.g. the Guardian, Repubblica, Spiegel Online, El Pais, etc).

<sup>60</sup> The 2015 Reuters Institute Media report reports a significant increase in online news video views, notably in Spain (+10), Denmark (+8), UK (+5) and Italy (+5). The trend is most pronounced amongst the under 35s.

<sup>61</sup> According to the University of Oxford (Reuters Institute Digital News Report 2015, University of Oxford, in 8 EU countries (FR, DE, DK, FI, IT, ES, IE) two-thirds of smartphone users (66%) use the device to access news every week. 70% of smartphone users have a news app installed on their phone. Also, in those countries, print newspapers are only the third or fourth source of news. A significant gap separates print newspapers from TV and the Internet as sources of news (which scored respectively first and second except in IE, DK and FI where online is already the first source of news). [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Reuters%20Digital%20News%20Report%202015\\_Full%20Report.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Reuters%20Digital%20News%20Report%202015_Full%20Report.pdf)

<sup>62</sup> EU Kids Online 2014, Children's online risks and opportunities

<sup>63</sup> In the *New Media Online GmbH* case

Furthermore, by **excluding** from the application of the rules audiovisual material that is: i) merely incidental to other type of content; and ii) that is not under the editorial responsibility of a provider, the Directive (also in conjunction with the EU eCommerce Directive) contributed to avoid overregulation of online services. This fulfilled the objective to foster the online market and unlock the potential of convergence of different types of media content.

However, the most recent developments in the market, technology and viewing patterns put into question the effectiveness of the rules on material scope to ensure a level playing field and an appropriate level of viewers' protection.

Specifically, the following developments led to a perceived **uneven playing field** and a lack of consumer protection:

- **Audiovisual content is increasingly offered by players who are not regulated under the AVMSD:** as said above, in 2014, around 2 563 Internet-based, OTT and VOD television providers were established in the EU. Video sharing platforms<sup>64</sup> and social media increasingly include in their offers audiovisual material (be it UGC, advertising or original content). These services often fall outside the scope of the AVMSD either because the providers do not control the selection and organisation of the content<sup>65</sup> or because their principal purpose is not to offer audiovisual content.
- **Viewing patterns, including those of children, are changing.** While TV viewing is still strong, EU audiences increasingly watch and share audiovisual content online<sup>66</sup> including on social media<sup>67</sup>. Consumer spending on digital video and this trend is related to the increasing popularity of connected TV and the soar in mobile usage<sup>68</sup>. In the UK, the amount of people watching short online clips has almost doubled over the period 2007 to 2014 (21% to 39%, the highest increase being among 35-44s with 28 percentage points increase). The popularity of multi-platform online video services, such as YouTube, as an information source has been evident in recent years – 32% of internet users now cite it as an important (very or fairly) source for information, rising to 46% of 16-24 year olds<sup>69</sup>. In the EU, 92% of Europeans in the 15-24 age group use the Internet on a daily basis (or almost daily), compared with 80% of 25-39 year-olds and 65% of 40-54 year-olds. In 2013, the share of internet users who participated in social networking was 89 % for 16-24 year olds compared with 27 % for 55-74 year olds<sup>70</sup>.

When it comes to **minors**, video viewing is one of the earliest Internet activities carried out by young children. For example in the UK children aged 12-15 spend more time online than watching television (17.2 vs. 15.7 hours per week)<sup>71</sup>. Watching video clips is the second prevalent online activity amongst minors aged 4-17, after listening music and watching films and cartoons<sup>72</sup>.

<sup>64</sup> Today 300 hours are uploaded every minute on YouTube and 3.25 billion of hours of videos are viewed each month by 900 million of unique visitors, <http://www.statisticbrain.com/youtube-statistics/>

<sup>65</sup> These services are subject to the e-Commerce Directive (ECD) which does not require intermediaries to monitor content hosted by them. Under the ECD, intermediaries are exempted from liability for the illegal content hosted when they do not have knowledge of it. However, when illegal content is identified, intermediaries should take expeditious action to disable access to or remove it to avoid liability. The rationale of this ex-post system called "notice and takedown" (NTD) lies in the fact that intermediaries cannot in principle technically control the content before it is posted. The e-Commerce Directive does not deal with harmful content.

<sup>66</sup> One in three consumers believes it is very important to be able to watch UGC on their TV sets at home. <http://www.ericsson.com/res/docs/2015/consumerlab/ericsson-consumerlab-tv-media-2015.pdf>

<sup>67</sup> Watching videos is one of the most popular Facebook activities. Facebook generates 8 billion video views a day, up from 4 billion a day in April 2015, <http://www.wsj.com/articles/auto-play-videos-catching-on-beyond-facebook-1447106795>. At the beginning of 2015 users posted 75% more videos than a year before, <http://adage.com/article/digital/facebook-users-posting-75-videos-year/296482/>

<sup>68</sup> Video viewing time on mobile is expected to soar by 55% annually in the coming years, Ericsson mobility report; <http://www.ericsson.com/res/docs/2015/ericsson-mobility-report-june-2015.pdf>

<sup>69</sup> Ofcom's Adults' media use and attitudes, 2015 report: [http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-lit-10years/2015\\_Adults\\_media\\_use\\_and\\_attitudes\\_report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-lit-10years/2015_Adults_media_use_and_attitudes_report.pdf)

<sup>70</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Internet\\_use\\_statistics\\_-\\_individuals](http://ec.europa.eu/eurostat/statistics-explained/index.php/Internet_use_statistics_-_individuals)

<sup>71</sup> Ofcom report on children and parents: media use and attitudes report: seven in ten children aged 5-15 have access to a tablet computer at home, one-third watch on-demand TV services and 20% of watch television programmes on a tablet computer .

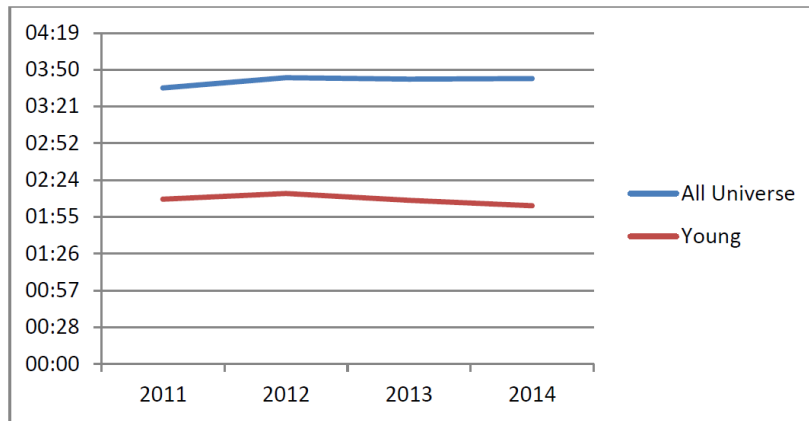
[http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes-14/Childrens\\_2014\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes-14/Childrens_2014_Report.pdf)

<sup>72</sup> Study on the exposure of minors to alcohol advertising on linear and non-linear audio-visual media services and other online services, including a content analysis, <https://ec.europa.eu/digital-single-market/news/study-exposure-minors-alcohol-advertising-tv-and-online-services>

Services such as YouTube are widely popular among children<sup>73</sup>. Connected devices such as mobile phones, tablets and games consoles are increasingly used by minors, often without adult supervision<sup>74</sup>. More than half of YouTube views come from mobile devices<sup>75</sup>.

In all Member States, young viewers watch on average 50% less television than the average viewer. The difference between time spent by the general audience and by young viewers has increased over 2011-2014<sup>76</sup>.

Figure 1: Average television viewing in the EU – 2011-2014 (hh:mm)



OBS based on Eurodata TV Worldwide

A majority of Member States, regulators, consumer organisations and a fair share of broadcasters who replied to the 2015 Public consultation, cite these developments when underlining that the rules on material scope do not ensure a level playing field for audiovisual media services. On the other hand, a small number of MS, some regulators as well as the Internet, ICT, the press publishing sector, telecom, cable, satellite and advertising industries believe that the AVMSD rules have fostered the free circulation of audiovisual media services within the EU, created a level playing field and opportunities for new entrants to reach the consumers.

As to the effectiveness of the rules on consumer protection, there are a number of concerns:

When it comes to audiovisual media content under the editorial responsibility of a service provider, there are gaps in the level of protection guaranteed across the EU. Some Member States have excluded from the scope of application of the AVMSD some programmes due to their short duration and editing style<sup>77</sup>. In other cases, online versions of newspapers were not deemed to constitute an audiovisual media service<sup>78</sup>.

As regards services without the editorial responsibility of the UGC, which is not subject to the AVMSD rules, despite initiatives being undertaken, there are concerns regarding the protection of minors, incitement to hatred and the protection of viewers on advertising.

The EU has undertaken a number of non-regulatory initiatives (e.g. self-regulation and funding) to protect minors online (see Annex 9 for more details). Moreover, the largest video-sharing platforms use software and human intervention with a view to protecting viewers from hate speech and protection of minors from harmful content. However, the criteria for content deemed "inappropriate"

<sup>73</sup> Close to 40% of boys aged 9–12 regularly watch video on video-sharing platforms; nearly a third – 29% – of 11- to 12-year-olds has a profile on a media-sharing platforms such as YouTube, Instagram or Flickr (As reported in Page 30 of "EU Kids Online 2014, Final recommendations for policy" <http://www.lse.ac.uk/media/@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/D64Policy.pdf>)

<sup>74</sup> According to the Net Children Go Mobile Project, in 2013 24% of children aged 9 to 16 years owned a desktop, 43 % a laptop, 46 % a smartphone and 20 % a tablet. 33 % used a desktop daily, 46 % a laptop, 41 % a smartphone and 23 % a tablet. Last 55 % of them have a daily use of internet in their own bedroom.

<sup>75</sup> <https://www.youtube.com/yt/press/statistics.html>

<sup>76</sup> EAO report on the measurement of fragmented European audiences, September 2015

<sup>77</sup> For example the UK regulator (OfCOM) deemed BBC Top Gear on YouTube and BBC Food on YouTube not to be audiovisual media services as the clips were not comparable to TV programmes of the same "genre" due to the short duration and the style of editing.

<sup>78</sup> See Ofcom's Sunvideo decision (<http://stakeholders.ofcom.org.uk/enforcement/video-on-demand-services/sun-video-decision-appendices/>)

(a term most commonly used by video-sharing platforms) are defined by the platforms themselves, in their terms of service/Community guidelines<sup>79</sup>. Examples of initiatives that are being undertaken include:

1. Moderation of content already posted on the platforms based on flagging by the users. Users flag content, which is deemed inappropriate according to the terms of service; an algorithm sorts out the complaints prior to sending to a moderation team for verification; if deemed inappropriate, the content is removed.
2. Age verification. For example, to access certain YouTube paid content, users need to authenticate themselves. This requires them to have an active user account, declaring to be 13+.
3. Video fingerprinting technologies, identifying and preventing the same or similar content from being re-uploaded;
4. Systems allowing the users to give feedback on the content.
5. Parental controls offered by the platforms or devices.

While today some video-sharing platforms on a voluntary basis take steps to protect minors, they verify content against their own standards, which may differ from those set in the AVMSD.

For example, the music video "College boy" of the group Indochine, containing graphic images of violent bullying of a school boy, is freely available on YouTube. However, the same video is subject to a watershed in France in application of the AVMSD<sup>80</sup>. In another case, while YouTube removed a video of a woman being forced by her husband to walk naked in the street<sup>81</sup> for violation of YouTube's Community guidelines, the same video still appears on the website Liveleak.com<sup>82</sup>.

In this context, chances that **minors** are exposed to **harmful content** exist.

Children identify video-sharing platforms as mostly linked with violent, pornographic and other harmful content risks<sup>83</sup>. Among the children who link risks to specific platforms, 32% mention video-sharing sites such as YouTube, followed by other websites (29%), social networking sites (13%) and games (10%)<sup>84</sup>.

In the UK, ATVOD<sup>85</sup> found that at least 44 000 primary school children accessed an adult website in one month alone<sup>86</sup>. ATVOD has found that 23 of the top 25 adult websites visited by UK internet users provide instant, free and unrestricted access to hardcore pornographic videos.

Video-sharing platforms employ tools like Autoplay which enable direct exposure to potentially harmful content<sup>87</sup>. Potential exposure to harmful content or content inciting to hatred may also be fostered by new social media features such as live streaming<sup>88</sup>.

A majority of Member States, regulators, consumer organisations as well as a fair share of public service and commercial broadcasters who replied to the 2015 Public consultation and the ERGA

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<sup>79</sup> Online platforms have in place community guidelines which prohibit racism, calls to violence, or other forms of abusive and discriminatory content. Any user can report, or flag, content for review and possible removal. Guidelines are updated over time. Amongst the latest updates is Facebook's ban of content "praising terrorists" or Twitter's ban of indirect threats of violence in addition to direct threats. Online platforms devote substantial resources to "moderating" UGC content (one third of total Facebook employees are in charge of content moderation and YouTube also relies on the support of a network of external organisations).

<sup>80</sup> <http://www.csa.fr/Television/Le-suivi-des-programmes/Jeunesse-et-protection-des-mineurs/Le-CSA-debat-de-la-diffusion-de-la-videomusique-College-Boy-du-groupe-Indochine>

<http://www.dailymail.co.uk/news/article-3406525/Outrage-man-forces-wife-walk-naked-street-catching-sending-nude-pictures-men.html>

<sup>82</sup> <http://www.liveleak.com/>

<sup>83</sup> The risks associated with social networking sites are more predominantly related to issues such as cyberbullying and face-to-face contacts, EU kids Online: <http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/Intheirownwords020213.pdf>

<sup>84</sup> Ibid

<sup>85</sup> Ofcom has designated the Authority for Television On Demand (ATVOD) in 2010 as a co-regulator to take the lead in regulating editorial content for video-on-demand services.

<sup>86</sup> 2014 report "For adults only? Underage access to online porn".

<sup>87</sup> In 2015, the video of two US journalists being murdered during a live broadcast spread quickly across social media. When the video was taken down after 10/15 minutes, it had already been shared 500 times on Facebook. Due to the Autoplay feature, many users saw the video unwillingly in their news feed. Since the feature debuted on Twitter in June 2015, many people reported that it auto-played all videos, including exceptionally violent ones (<http://www.theatlantic.com/technology/archive/2015/08/snuff-film-unavoidable-twitter-facebook-autoplay-roanoke/402430/>).

<sup>88</sup> Since January 2016, Periscope's broadcasts are embedded into Tweets. <https://blog.twitter.com/2016/periscope-broadcasts-live-on-twitter>). Facebook currently offers live streaming features to a limited set of users. <http://techcrunch.com/2015/08/05/facescope/#.by07nt:88lu>.

recommendations on material scope<sup>89</sup> cite these developments when underlining that the rules on material scope do not ensure a sufficient level of consumer protection. On the other hand, a small number of Member States, some regulators as well as the Internet, ICT, the press publishing sector, telecom, cable, satellite and advertising industries believe that the AVMSD rules guarantee a satisfactory level of consumer protection.

In conclusion, whereas the AVMSD rules on material scope have proven to be effective over the first years from the revision, their effectiveness has by now diminished in light of the most recent developments in the market and viewing patterns.

### **Impacts on the Internal market:**

There is fragmentation in the internal market due to diverging interpretations by Member States as to what is an on-demand service. The Member States have leeway in interpreting the definitions and this may lead to different results also in light of market developments. Diverging interpretations at national level concern specifically the following criteria:

- "Principal purpose", with similar services being considered subject to the AVMSD in some countries but not in others<sup>90</sup>.
- "TV-likeness", also being subject to diverging interpretations<sup>91</sup>.

The lack of uniform interpretation of the rules on material scope across the EU is also perceived by most regulators and broadcasters as well as by a number of Member States as shown in the 2015 Public consultation. This fragmentation has led to shortcomings in the level of legal certainty and coherence across the Union, prompting a Member State to seek clarification from the ECJ on some aspects of the AVMSD scope of application criteria in the *New Media Online* case, mentioned above.

### ***EU added value***

The 2007 revision has contributed to increase the level of harmonisation in a context of diverging national legislation applicable to on-demand audiovisual media services. However, as highlighted in the 2<sup>nd</sup> Application report on the AVMSD, the EU added value of the rules on material scope is reduced by complexities around the application of the AVMSD definitions to on-demand services (see the Effectiveness sub-section). As a conclusion, the EU added value of the rules lays in the harmonisation they provided, although some problems were observed with the interpretation of the definitions of the services falling within the material scope of the Directive.

### ***Efficiency***

The last revision of the AVMSD brought additional administrative<sup>92</sup> and compliance<sup>93</sup> costs due to the inclusion of on-demand services in the scope of application. Those costs are indicated in the Efficiency sub-sections in sections 6.4; 6.5; 6.6; 6.7, that focus on specific AVMSD domains.

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<sup>89</sup> At Page 28 of the ERGA recommendations on material scope it is mentioned that "Statutory regulations on editorially responsible providers alone is not sufficient in itself to guarantee effective protection of minors without considering the role that other actors play, in particular the growing importance that technical protection tools provided by certain intermediaries." (<https://ec.europa.eu/digital-agenda/en/news/erga-report-material-jurisdiction-converged-environment>)

<sup>90</sup> For example, while the UK regulator found that that audiovisual content provided by online versions of newspapers did not constitute an audiovisual media service (Ofcom's Sunvideo decision (<http://stakeholders.ofcom.org.uk/enforcement/video-on-demand-services/sun-video-decision-appendices/>), regulators in Sweden and Austria adopted a different approach considering services of this kind as audiovisual media services (for Sweden, see Swedish Broadcasting Commission's decisions no 12/00777, 778, 779 and 780 and for Austria see the reference for a preliminary ruling in on the New Media Online GmbH case).

<sup>91</sup> For example, in the UK OFCOM deemed BBC Top Gear on YouTube and BBC Food on YouTube not to be audiovisual media services as the clips were not comparable to TV programmes of the same "genre" due to the short duration and the style of editing. On the other hand, OFCOM deemed MTV VIVA TV to be an audiovisual media service despite the short duration because OFCOM acknowledged that some genres may be of a shorter nature and the video extracts were compared to a standard TV duration for these types of programmes. In Austria, the Verwaltungsgerichtshof (Administrative Court) referred to the ECJ the question of whether short clips (from 30 seconds to several minutes) in the video sub-section of an online newspaper (Tiroler Tageszeitung Online) were "TV-like".

<sup>92</sup> Administrative costs are the costs incurred by: 1) businesses in meeting legal requirements and provide information to the public sector in order to demonstrate compliance 2) the public sector in enforcing legislation.

<sup>93</sup> Compliance costs are costs created by the obligation to pay fees or duties; and costs created by the obligation to adapt the nature of the product/service and/or production/service delivery process to meet economic, social or environmental standards (e.g. the purchase of new equipment, training of staff, additional investments to be made).

For both broadcasters and on-demand audiovisual media services, EU-level harmonisation and the application of the COO principle ensure legal certainty and thus cost savings (see section 6.3 on COO).

As indicated by media service providers<sup>94</sup> in the 2015 Public consultation and in the ERGA questionnaire, being subject to the AVMSD rules in particular on protection of minors may give a competitive advantage to operators. Being identified as family-friendly contributes to the positive branding of an operator. This was confirmed by the British Board of Film Classification (BBFC) which reported that 86% of parents in the UK would encourage or make sure that their children watch online channels with clear age ratings<sup>95</sup>.

At the same time, the current exclusion of services offering audiovisual content has the potential to put those who are currently in the scope (both broadcast and on-demand services) at a competitive disadvantage. This was corroborated by the contributions of a significant number of stakeholders across sectors in the context of the 2015 Public consultation on the AVMSD.

### **Coherence**

The AVMSD qualifies as *lex specialis* vis-à-vis the e-Commerce Directive (ECD)<sup>96</sup> and is without prejudice to the ECD system of limited liability<sup>97</sup>. The AVMSD rules defining the scope of application for on-demand audiovisual media services are hence coherent with the ECD, including the rules limiting liability for illegal activities for information society services acting as intermediaries<sup>98</sup> set out in the ECD. The ECD and AVMSD adopt a similar approach. According to both Directives, operators are not required to abide by rules regarding information and/or content over which they have no control – provided that the conditions set out in the law are met.

## **6.2. Geographical scope**

The AVMSD applies<sup>99</sup> to audiovisual media services transmitted by service providers under the jurisdiction of a Member State. The AVMSD lays down specific criteria to determine whether a service falls under a Member State's jurisdiction. These criteria take into account, for instance, where the place of the head office is located, where editorial decisions are taken or where a significant part of the workforce operates. As a subsidiary jurisdiction criterion, the AVMSD refers to the Member State where a satellite up-link is situated or where satellite capacity is used. If an audiovisual media service provider falls under the jurisdiction of a third country, the AVMSD and its rules do not apply. Member States remain free to take whatever measures they deem appropriate with regard to audiovisual media services which do not fall within the AVMSD geographical scope, provided these measures comply with Union law and the international obligations of the Union<sup>100</sup>.

### **Relevance of the current rules**

In the 2015 Public consultation on the AVMSD, a majority<sup>101</sup> of respondents belonging to different categories of stakeholders groups flagged that the relevance of the AVMSD rules on geographical scope has been put to the test by technology and market developments. Those respondents argue that the Internet allows services to target viewers in the EU without having an establishment in the Union and thus to bypass EU regulation.

<sup>94</sup> MEDIASET (IT), WUAKI TV (ES), and DRAMAPASSION (ES)

<sup>95</sup> BBFC Online Music Video rating Research Findings study:

<http://www.bbfc.co.uk/sites/default/files/attachments/Music%20Video%20Rating%20Pilot%20-%20Presentation%20of%20findings.pdf>

<sup>96</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

<sup>97</sup> Recital 25 AVMSD. The ECD provides that online intermediaries may not be subject to a general obligation to monitor content and are not liable for the illegal content they transmit or store if, upon obtaining actual knowledge or awareness of illegal activities (e.g. via a Court order or administrative notice) they act expeditiously to remove or disable access to the information concerned.

<sup>98</sup> Services of a merely technical, automatic and passive nature implying neither knowledge of nor control over content

<sup>99</sup> Article 2 AVMSD

<sup>100</sup> Recital 54 AVMSD

<sup>101</sup> With the exception of Internet and satellite industries which consider the rules to be still relevant.



These concerns notwithstanding, the number of services targeting the EU from third countries is currently very small. According to the EAO, about 50 paying VoD services (this number includes different linguistic versions of the same service) established in the United States target one or more Member States<sup>102</sup>. In addition, most leading foreign providers of on-demand services (Netflix, iTunes, Amazon) have all set up subsidiaries in the EU and are therefore subject to the AVMSD. This confirms that the AVMSD rules are still relevant.

In light of the above, the current rules defining the geographical scope continue to be relevant.

### ***Effectiveness***

In the 2015 Public consultation, a majority of respondents belonging to various categories (in particular Member States, regulators, Public service broadcasters and consumer organisations) highlighted that, due to the exclusion of foreign providers, the current rules on geographical scope do not ensure a **level playing field** and are not sufficiently effective in terms of **consumer protection**<sup>103</sup>. On the other hand, ICT, digital, Internet companies and satellite operators who replied to the 2015 Public consultation do not see issues regarding the effectiveness of the AVMSD rules on geographical scope.

In the context of the **2<sup>nd</sup> Application report on the AVMSD**, two Member States reported cases where on-demand services provided from outside the EU offered adult content without the necessary safeguards for protecting minors<sup>104</sup>. Also, given that an important satellite operator is established on its territory, one Member State reported several issues about incitement to hatred and respect of human dignity with channels from third countries since 2012. However, given that these channels use a satellite up-link/satellite capacity in a Member State, they would be covered by the AVMSD.

The Internet undoubtedly makes it easier to deliver audiovisual content at global scale. The number and geographical spread of providers targeting EU viewers without being established in the EU may therefore grow over time<sup>105</sup>. However, the currently very small number of services targeting the EU from third countries does not suggest the existence of a problem regarding the effectiveness of the current rules. In view of the size of the problems reported, seeking to address them by changing the geographical scope would be disproportionate. In this regard it should be noted that, already under the current rules, Member States, if they so wish, can apply their national rules to providers established abroad.

In light of the above, it can be concluded that the AVMSD rules on geographical scope are still effective in ensuring a level playing field and sufficient consumer protection.

### ***EU added value***

The AVMSD rules on geographical scope have proven their worth as gate-keeper of the internal market to determine what audiovisual media services fall within the jurisdiction of an EU Member State and as such can benefit from the COO principle. This was confirmed by a majority of contributors to the 2015 Public consultation, across various stakeholder groups, who acknowledged the benefits of the rules on geographical scope for the internal market.

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<sup>102</sup> Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - [Origin and availability of On - Demand services in the European Union](#)

<sup>103</sup> Some consumer organisations identify the source of the ineffectiveness of the rules in the lack of criteria related to the targeting of the consumer.

<sup>104</sup> More precisely DE reported a wide range of pornographic content offered from abroad, for which there are no sufficient arrangements in place in terms of protecting young people (Source: 2013 annual report of jugendschutz.net). UK experienced service providers leaving EU jurisdiction, and subsequently removing measures which had been in place to protect minors whilst subject to EU regulation (see the jurisdictional debate and conclusion in the appeal by Playboy TV UK/Benelux limited: after its assets were sold to a non EU owner and editorial responsibility passed to that owner, the access control system that UK Regulator had required Playboy TV to implement was removed).

<sup>105</sup> While there are no figures or forecasts on respectively the current and future number of EU viewers targeted by services falling outside the AVMSD geographical scope, the example of "Google Play Movies and TV" can be used as a case study. This service, falling outside the AVMSD geographical scope, has the potential to grow in scale and impact in the EU in light of the increasing mobile usage in particular by the youth and the high penetration rate of Android.



### ***Efficiency***

The costs of enforcing legislation on operators who have no EU establishment and do not even use a satellite up-link/capacity in the EU would be high, while most of the relevant players are already established in the EU. Imposing on all Member States the obligation to enforce the AVMSD rules to players whose impact on the market has so far not been significant is likely to result in a negative cost-benefit ratio. If foreign providers were to be required to register/appoint a representative, this obligation would have to be monitored and enforced. If the registration/appointment of a representative were to turn out not to be sufficiently effective and real (e.g. a letterbox company), the rules would have to be enforced in a third country which could be complex. Firstly, by analogy to international cooperation in the field of competition, enforcement by the Commission in a third country may require bilateral international agreements ("dedicated agreements") or AVMSD provisions included in general agreements (e.g. Trade Agreements). However, this is likely to be complicated as providers located in the US constitute the major part of the market share of foreign providers targeting the EU. Secondly, any decision from a regulator imposing a fine or seeking a change in the behaviour of a service provider would be difficult to enforce as there would normally be no assets in the EU. In case a foreign provider targets more than one Member State, the need for coordination between regulators so as to avoid conflicts of jurisdiction would trigger further administrative costs. This is in particular the case when considering that the current rules allow Member States, if they so wish, to apply their national rules to providers established abroad.

In conclusion, and although quantitative data is not available, it can be reasonably assumed that the rules have been cost-efficient from the elements outlined above.

### ***Coherence***

As highlighted by a number of contributors to the 2015 Public consultation on the AVMSD, the rules on the geographical scope – in their essential role to promote the smooth functioning of the internal market – are part of the logic of completing the Digital Single Market.

This confirms that the current AVMSD rules on geographical scope are coherent with other EU initiatives and activities. This includes the ECD.

It should be noted, however, that the EU General Data Protection Regulation on which a political agreement was reached in December 2015 and which will most likely come into application in 2018, will apply to the processing of personal data of data subjects residing in the EU by controllers not established in the EU. The underlying logic is that Union data protection rules should still apply in relation to data of EU residents, even if data is processed outside the Union. Some contributors to the 2015 Public consultation on the AVMSD mentioned that a similar logic, according to which consumer protection is ensured whenever the consumer is targeted regardless of geographical location of the service, would be best-suited to the AVMSD. However, given the very small numbers of providers of audiovisual media services targeting one or more Member States without being established in the EU, the situation differs from the field of data protection.

## **6.3 Country of origin**

According to the COO principle, a provider under the jurisdiction of a Member State must only comply with the rules of that Member State, while being able to provide its services in any other Member States.<sup>106</sup>

Member States may restrict the reception and the retransmission of services freely circulating within the EU only in limited cases and following the procedure laid down in the AVMSD.<sup>107</sup> For broadcasting, restrictions are limited to cases of incitement to hatred and infringement of the rules on protection of minors. For on-demand services, restriction grounds include the protection of public

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<sup>106</sup> Article 3 AVMSD

<sup>107</sup> Article 3 AVMSD

health and public security. The relevant procedure includes a first cooperation phase where the Member State concerned contacts the transmitting Member State to try to reach an amicable settlement.

Member States may adopt stricter or more detailed rules in any of the fields coordinated by the AVMSD. However, a receiving Member State with higher standard levels cannot restrict the reception of services from another Member State which complies with the AVMSD requirements as transposed in the national law of the Member State of jurisdiction. If a Member State has chosen to do so and encounters issues with a television broadcast mostly or wholly directed towards its territory, it can use the circumvention procedure.<sup>108</sup> That procedure entitles the receiving Member States to adopt appropriate measures against the broadcaster concerned provided, among other things, that the broadcaster in question has established itself in the Member State of jurisdiction in order to avoid stricter rules which would otherwise be applicable to it.

### ***Relevance of the current rules***

The 2<sup>nd</sup> AVMSD Application report<sup>109</sup> and the majority of respondents to the 2015 Public consultation from all participating stakeholders' categories show that the COO principle is of continued relevance. The COO principle is critical for the internal market as it provides legal certainty and fosters investments, media pluralism and availability of content.

***Effectiveness*** At the end of 2013, 5141 TV channels (no local and windows<sup>110</sup>) were established in the EU. Almost 1989 of them (about 38% of the total established channels) targeted foreign markets (either EU or extra EU). This share has increased from 28% in 2009 - year of implementation - to 38% in 2013<sup>111</sup>. As far as VoD services are concerned, in the Member States, on average 31 % of the VoD services available, are established in another EU country.

The above mentioned figures show that the COO principle has accompanied the increase in the cross border provision of audiovisual media services. . It has also had a positive impact on cultural diversity and on the availability of content<sup>112</sup> in particular in smaller markets According to the industry, in the 10 smallest markets (by population), 75% or more of services are available via non-domestic licenses supported by the COO principle<sup>113</sup>. This was confirmed by an overwhelming majority of respondents from all stakeholder categories in the 2015 Public consultation.

The effects of the COO principle derive from the attribution of jurisdiction to one Member State only which thereby avoids regulatory inefficiencies resulting from subjecting one service to multiple jurisdictions. This limits the costs borne by service providers to one country. This also may facilitate investment in the media sector<sup>114</sup>. This was confirmed by the majority of respondents across various categories (majority of Member States, public service broadcasters, commercial broadcasters, satellite operators and representatives of the internet industry) in the 2015 Public consultation.

However, some problems in the application of jurisdiction criteria and of the derogation/circumvention procedures have contributed to reducing the effectiveness of the COO principle. This recently prompted the Commission to provide to Member States clarifications<sup>115</sup> regarding the application of the derogation and circumvention procedures.

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<sup>108</sup> Article 4 AVMSD

<sup>109</sup> Sections 2.2 and 4 of the 2<sup>nd</sup> AVMSD Application Report.

<sup>110</sup> Adaptations of a channel to the specificities of the target country in particular as regards advertising.

<sup>111</sup> EAO Refit data: *Note A1: Linear Audiovisual Media Services*

<sup>112</sup> For example, Sony Entertainment Television broadcasts in Germany with a licence from the UK. It has a roster of European drama from across the EU, with recent programmes including such series as *Gran Hotel* (ES), *Un village français* (FR), *les hommes de l'ombre* (FR), *Anna Pihl* (DK), *Clan* (BE) and *the tunnel* (UK/FR). Source: Promoting growth, pluralism and choice – The country of origin principle and Europe's audiovisual sector (<http://coba.org.uk/our-sector/coba-latest/2016/coba-launches-country-of-origin-report>)

<sup>113</sup> *Ibid*

<sup>114</sup> In the framework of the public consultation, this aspect has been highlighted by DE, LU, SE and the UK, as well as by the satellite industry, public service broadcasters, commercial broadcasters, platform operators and publishers.

<sup>115</sup> A comprehensive document regarding the application of respectively the derogation and the circumvention procedure was presented and discussed at the 42<sup>nd</sup> meeting of the Contact Committee on 4 December 2015.

Some Member States have indeed experienced problems in the transposition into national law of the **jurisdiction criteria**. Issues related, for instance, to the subsidiary jurisdiction criteria based on using a satellite up-link/satellite capacity in a Member State (Slovenia<sup>116</sup> and Cyprus<sup>117</sup>) or the transposition of the rule that services intended exclusively for reception in third countries are not covered by the AVMSD (Finland<sup>118</sup>). The application of the jurisdiction criteria revealed uncertainties and disagreements between Member States on jurisdiction over a Russian language channel in the context of the application of the derogation procedure<sup>119</sup>. Similar jurisdiction issues arose in an earlier decision of the Commission regarding notifications of serious infringements of the rules on protection of minors<sup>120</sup>. In the 2015 Public consultation, the difficulty to identify the service providers was quoted as source of problems related to the application of jurisdiction criteria.

Regarding the **derogation procedure**, certain Member States (e.g. Belgium<sup>121</sup>, Bulgaria<sup>122</sup> and Lithuania<sup>123</sup>) experienced difficulties in the *transposition into national law* of permissible derogations from the freedom of reception and retransmission regarding the substance and/or the procedure. There have also been problems regarding the *application* of the derogation procedure, notably in the cases of alleged hate speech on Russian language channels retransmitted in Latvia and Lithuania<sup>124</sup>, with concerns on the respect of procedural requirements. The absence of an urgency derogation mechanism for TV broadcasts, as opposed to the urgency procedure in place for on-demand services has been raised in the 2015 Public consultation. A Presidency discussion paper prepared by the Latvian Presidency underlines that, unlike for on-demand services, the AVMSD does not allow for a quick reaction in emergency situations for television broadcasting.<sup>125</sup> According to the outcome of the Education, Youth, Culture and Sport the meeting on 18/19 May 2015, *"the procedure to be followed by member states when they are the target of unacceptable content coming from another member state should be streamlined and accelerated, in particular in certain cases of services of non-EU origin licensed in one member state yet targeting the audience of another member state. Effective cooperation among audiovisual regulatory authorities is crucial in this respect."*<sup>126</sup>

Except for one case, the **circumvention procedure** has not been used in practice<sup>127</sup>. The only case notified to the Commission concerned alcohol advertising in Sweden<sup>128</sup> and is mentioned in the **2nd Application report** on the AVMSD. The case highlighted certain procedural problems.

The effectiveness of the COO principle is linked to the degree of harmonisation between national laws. Particularly for rules on the **promotion of European works** (section 6.7), there are significant divergences in national transpositions. The concerns of 3 Member States to ensure that service providers active on given national markets contribute their fair share to the support of local cultural production are also reflected in the levy schemes adopted (but not applied to date) in Germany and

<sup>116</sup> EU Pilot 3440/12/INSO.

<sup>117</sup> EU Pilot 2268/11/INSO.

<sup>118</sup> EU Pilot 1888/11/INSO.

<sup>119</sup> See Commission Decision of 10.7.2015, C(2015) 4609 final, [http://ec.europa.eu/newsroom/dae/itemdetail.cfm?item\\_id=24517](http://ec.europa.eu/newsroom/dae/itemdetail.cfm?item_id=24517)

<sup>120</sup> Eurotica Rendez-Vous Television, Extasi TV.

<sup>121</sup> EU Pilot 4882/13/CNCT.

<sup>122</sup> EU Pilot 1884/11/INSO.

<sup>123</sup> EU Pilot 2019/11/INSO, NIF 2013/2212.

<sup>124</sup> In 2015, Lithuania notified to the Commission measures to restrict the retransmission of a Russian language channel, broadcast from Sweden, on the basis of instances of incitement to hatred. The Directive is silent as regards the procedure to be followed at national level and does not provide many details about the procedure before the Commission. This prompted the need for Lithuania to readopt a national decision and send a supplementary notification to the Commission. In July 2015, the Commission decided that the notified measures are compatible with EU law. C(2015) 4609 final. In October 2015, Latvia notified the Commission of two alleged instances of incitement to hatred in a Russian language channel broadcast from Sweden and informed the Commission that it is seeking an amicable settlement with Sweden. On the basis of the information submitted by the Latvian authorities, there were again doubts regarding respect of the broadcaster's right to be heard to which the Commission services drew the Lithuanian authorities' attention.

<sup>125</sup> "Future European Audiovisual Policy in the framework of Digital Single Market: The functioning of the Audiovisual Media Services Directive in the context of the current geopolitical situation", 30.04.2015, Council document no. 8351/15.

<sup>126</sup> Council document no. 8965/15.

<sup>127</sup> A number of respondents to the 2015 Public consultation said that stricter national rules seem to be ineffective as they can be circumvented, with subsequent delocalisation and resulting distortions of competition (e.g. through loss of advertising revenues) both vis-à-vis providers within the EU and third-country providers targeting the EU.

<sup>128</sup> In December 2014, Sweden notified the Commission of envisaged measures (fines) in relation to two broadcasters broadcasting to Sweden from the UK for alleged circumvention of stricter Swedish rules on alcohol advertising. Sweden subsequently withdrew the notification.

France which subject certain foreign VoD providers targeting their respective markets to a levy obligation. Both Member States have notified their schemes as state aid to the Commission. The Commission's assessment is ongoing<sup>129</sup>.

### ***EU added value***

The EU added-value of the COO principle was confirmed by a majority of stakeholders from various categories (and specifically an overwhelming majority of Member States and industry players) in the 2015 Public consultation. According to most stakeholders, the main advantage of **COO** principle lies in the **legal certainty** it provides as it requires providers to abide by the legislation of the country of establishment only. This in turn facilitates investment in the media sector and fosters diversity and consumer choice as well as media pluralism.

### ***Efficiency***

The rules underpinning the operation of the COO principle are too complex and result in a difficult application of the Directive and hence an unnecessary administrative burden. This view was confirmed by many respondents to the 2015 Public consultation, who, for example, see scope for rendering the cooperation and circumvention procedures simpler and less time-consuming.

Example: In 2015, Lithuania notified to the Commission measures to restrict the retransmission of a Russian language channel, broadcast from Sweden, on the basis of instances of incitement to hatred. This case triggered extensive consultations and written exchanges between the Swedish and the Lithuanian Regulators in order to ascertain which Member States has jurisdiction over the channel.

This situation can in part be attributed to the imprecision and complexity of the procedures supporting the COO principle (ANNEX 7). The exchanges mentioned above could be equaled to a workload of 50-100 hours shared by the two regulators. As a benchmark, this case represented a workload of roughly 400 hours over three months for the case-handler, and a total additional workload of approximately 200 hours for supervisors and other Commission services involved<sup>130</sup>.

In light of the above, it can be concluded that the application of the COO principle could benefit from simplified and more precise rule and procedures.

### ***Coherence***

The COO principle is coherent with the internal market logic of the EU treaties as it ensures the free provision of audiovisual media services across the EU. It is equally coherent with the EU Digital Single market initiatives<sup>131</sup>. In addition, it is coherent with the ECD, including as regards the grounds for derogation from the freedom to provide services<sup>132</sup>.

## **6.4 Protection of minors**

The AVMSD requires Member States to ensure that audiovisual media services do not contain any incitement to hatred based on race, sex, religion or nationality. On protection of minors, TV broadcasts shall not include *seriously* harmful programmes (pornography and strong violence) but

<sup>129</sup> To a lesser extent concerns about the application of the COO principle have also been raised in connection with the protection of minors. Both the promotion of European works and the protection of minors are characterised by a comparatively low level of harmonisation which leaves a significant degree of flexibility to the Member States. It follows that the concerns raised mainly relate to a lack of harmonisation

<sup>130</sup> Based on the cost of a working hour on average in the EU (EUR 30 - <http://www.coe-rexecode.fr/public/Indicateurs-et-Graphiques/Indicateurs-du-cout-de-l-heure-de-travail-en-Europe>), the total cost for the Commission would be EUR 18 000.

<sup>131</sup> This latter point was also highlighted by a number of contributors to the 2015 Public consultation on the AVMSD

<sup>132</sup> Article 3 ECD

may include *potentially* harmful programmes (erotic content and mild violence) if children will not normally hear or see them<sup>133</sup>.

For on-demand, service providers are required to take appropriate measures so that minors would not normally hear or see seriously harmful content. There are no restrictions for potentially harmful content<sup>134</sup>.

### ***Relevance of the current rules***

The existing framework does not match the most recent developments in the market and in children's viewing patterns that were highlighted in the Effectiveness sub-section under section 6.1 on Material scope<sup>135</sup>. In light of this, the AVMSD rules, while being relevant during the first years of application of the Directive, seem no longer fully relevant in light of the increasing exposure of minors to audiovisual media content online, whether covered by the AVMSD (but subject to a lower level of protection) or outside its scope.

Moreover, when it comes to on-demand audiovisual media services, the majority of Member States have adopted stricter measures than those required by the AVMSD (see Annex 5). This puts to the test the relevance of the AVMSD rules on protection of minors in on-demand audiovisual media services. 4 Member States forbid seriously impairing content on VoD services (while the AVMSD only requires restrictions). 16 Member States mandate varying forms of protection (e.g. PIN codes, content filtering) for content for which the AVMSD does not require restrictions (i.e. content which is likely to impair the development of minors). VOD providers have flagged this issue in the 2015 Public consultation.

As also highlighted in the ERGA report on protection of minors<sup>136</sup>, certain concepts and rating systems for both broadcast and on-demand services are not harmonised at EU level<sup>137</sup>. This is the case for: the age threshold for a person to be considered a "minor"; while for "content likely to impair" there are similarities across the Member States, the concept of "content likely to seriously impair" is not even translated in formal definitions in the Member States and is assessed on a case-by-case basis; content categories (e.g. violence; sex; offensive language) are not harmonised at EU level; although labelling and rating content are widespread, there are different classification systems for audiovisual products at national level<sup>138</sup>.

In the 2015 Public consultation, stakeholders (both Member States and industry) affirmed that minimum harmonisation and flexibility on protection of minors should be maintained as it ensures that national sensitivities towards harmful content can be taken into account.

### ***Effectiveness***

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<sup>133</sup> Article 27 AVMSD provides that "1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

3. In addition, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration."

<sup>134</sup> Article 12 AVMSD provides that "Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services."

<sup>135</sup> Some figures on children's viewing patterns were already provided in the sub-section Effectiveness in section 7.1 (Material scope).

<sup>136</sup> <https://ec.europa.eu/digital-agenda/en/news/erga-report-protection-minors-converged-environment>

<sup>137</sup> Although it is unlikely that fragmentation of rating systems constitutes a negative incentive for businesses from offering services cross-border.

<sup>138</sup> This is confirmed by a European Commission 2011 Report on the application of the Council Recommendations of 24th September 1998 and 20th December 2006. The Report concluded that there was an extreme fragmentation about age-rating and content classification systems for audiovisual content and there was clearly no consensus on the helpfulness and feasibility of cross-media and/or pan-European classification systems for media content.

Clear-cut conclusions on the effectiveness of the Directive's rules on protection of minors applicable to on-demand services are difficult to draw as most Member States do not proactively monitor compliance but act primarily upon complaints and only few of them carry out on-the-spot checks<sup>139</sup>.

Whereas in the 2015 Public consultation a fair share of respondents from various stakeholder categories (with the exclusion of consumer organisations) declared the rules to be effective, there are indications that the AVMSD has not been entirely effective when it comes to protection of minors in on-demand services.

Firstly, developments in the market and viewing patterns diminish the effectiveness of the rules on protection of minors, as highlighted in section 6.1 under material scope.

A majority of Member States, regulators and unanimously by consumer organisations in the 2015 Public consultation<sup>140</sup> stated that the AVMSD rules are not effective in protecting minors because they do not apply to all online content, including video-sharing platforms.

A deficit of effectiveness of the rules may also occur due to the lighter regulatory treatment given to on-demand services, as expressed by most Member States, regulators, Public service and commercial broadcasters in the 2015 Public consultation and by ERGA in its recommendations on protection of minors. Those stakeholders believe that by not requiring sufficient protection in on-demand services<sup>141</sup>, the AVMSD is ineffective.

An additional factor that might reduce the effectiveness of the Directive is, as already mentioned, the fact that most Member States do not proactively monitor compliance with the rules. As a consequence, the Member States may not be aware of or disregard relevant developments that may inform future policies.

### ***EU added value***

The EU added-value of the rules primarily lies in:

- The minimum level of protection provided by broadcasting and on-demand services across the Union. The 2007 revision in particular brought harmonisation (and hence legal certainty) in a context where there were dissimilar rules on protection of minors in place for on-demand services in a large number of Member States<sup>142</sup>.
- The respect of the subsidiarity principle in warranting flexibility to Member States to tailor national laws to cultural and historical specificities and to certain national challenges.

### ***Efficiency***

It is difficult to draw clear conclusions on the cost-benefit ratio of the rules, given that 1) costs may vary depending on the level of protection required by national laws; 2) clear and comparable data on the costs incurred by the providers are lacking and 3) as mentioned in section 4 under Limitations- Robustness of findings, qualitative elements are very prominent in the assessment of the impact of rules on consumer protection. Moreover, it is possible to identify scope for cost-efficiency also when looking not only at legal obligations but also at the possibility to leverage self and co-regulation arrangements.

The rule strictly restricts minors' access to any kind of harmful content and compliance costs<sup>143</sup> for broadcasters did not increase since the last revision in 2007, as those providers were already subject to this rule.

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<sup>139</sup> 2<sup>nd</sup> Application report on the AVMSD. The reasons for this lack of proactive monitoring are unknown, and they possibly differ across Member States.

<sup>140</sup> On this point, the views of the industry in the context of the 2015 Public consultation were however split

<sup>141</sup> On the other hand, consumer organisations are split on this point. BEUC for example pointed to the need to analyse this issue on a case-by-case basis.

<sup>142</sup> Section 3.2.1, SEC(2005) 1625/2, Commission Staff Working Document, Impact Assessment accompanying the Commission proposal for a Directive amending Council Directive 89/552/ECC, COM(2005) 646

<sup>143</sup> Overall, there are no comprehensive figures on direct compliance costs given that these costs are primarily absorbed by the providers. Direct compliance costs stem from the requirements to comply with the following rules. When it comes to protecting minors from potentially harmful content on broadcasting, the majority of Member States impose the use of techniques based on the time at which the content is transmitted, i.e. watershed-based restrictions. For on-demand services, the majority of Member States require the use of technical measures to ensure that minors will not see or hear harmful content. The use of a PIN access code is one of the most common measures required.

In on-demand services, the level of protection is lower than on TV broadcasting. This lower standard is no longer justified since younger consumers watch about half less television than the average consumer<sup>144</sup>. Lower requirement does not imply lower costs as on-demand services have in any case incurred costs to implement technical solutions to control access and ensure transparency regarding seriously harmful content across a high volume of diverse devices (e.g. tablets, smartphones or HDMI keys, which usually require ad hoc development and investments). Against this backdrop, the rule applied to on-demand services has been less cost-efficient than the rule applied to TV broadcasting services.

In addition, the differential regulatory treatment between on-demand services and traditional broadcasting under the AVMSD, may give the former a competitive advantage, in particular vis-à-vis Pay TV services, with which they share similarities<sup>145</sup>.

Finally, as indicated by media service providers<sup>146</sup> in the 2015 Public consultation and in the ERGA questionnaire, being subject to the AVMSD rules on protection of minors may give a competitive advantage to operators. Being identified as family-friendly contributes to the positive branding of an operator. This was confirmed by the British Board of Film Classification (BBFC) which reported that 86% of parents in the UK would encourage or make sure that their children watch online channels with clear age ratings<sup>147</sup>.

### ***Coherence***

The provisions of the AVMS Directive on protection of minors are coherent with other EU-level initiatives aiming at ensuring a level of protection of children in media services, in particular the Recommendation 2006/952/EC of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity, the Communication- European Strategy for a Better Internet for Children of 2012, and the self-regulatory initiative "CEO coalition to make the Internet a better place for kids". The AVMSD rules on protection of minors are also compatible with the UN Convention on the Rights of the Child (UNCRC) that was ratified by all the EU Member States. The AVMSD rules area also coherent and complement self-regulatory initiatives such as codes of conduct on minors' protection at national level in 9 Member States or other self-regulatory systems in 12 Member States.

## **6.5 Ban on hate speech**

Article 6 AVMSD requires Member States to "ensure by appropriate means that audiovisual content provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality".

### ***Relevance***

The AVMSD rules are relevant to the purposes of protecting consumers and human dignity. Those respondents (4 Member States and industry representatives) to the 2015 Public consultation who specifically expressed an opinion on the matter<sup>148</sup> confirmed the continued relevance of the rules.

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<sup>144</sup> On-demand Audiovisual Markets in the European Union (2014 and 2015 developments): <https://ec.europa.eu/digital-single-market/en/news/demand-audiovisual-markets-european-union-2014-and-2015-developments>

<sup>145</sup> Most of their revenues come from subscription and they usually provide measures to prevent access of minors to certain type of content. According to the EAO "trends on the Pay-TV and on-demand markets confirm this direct competition: the growth of SVOD services may be coming at the expense of the Pay-TV industry".

<sup>146</sup> MEDIASET (IT), WUAKI TV (ES, and DRAMAPASSION (ES)

<sup>147</sup> BBFC Online Music Video rating Research Findings study:

<http://www.bbfc.co.uk/sites/default/files/attachments/Music%20Video%20Rating%20Pilot%20-%20-%20Presentation%20of%20findings.pdf>

<sup>148</sup> The 2015 Public consultation did not set out specific questions regarding the ban on hate speech. There is a general question on whether general consumers/viewers' protection under the AVMSD is still relevant and in this context some respondents pointed specifically to the relevance of the rules on hate speech.

However, 4 Member States<sup>149</sup> indicated that the list of grounds under which hate speech is banned in Article 6 is excessively limited<sup>150</sup>.

In light of the public consultation and in the absence of any significant implementation issues, the rule on hate speech seems relevant.

### ***Effectiveness***

The effectiveness of Article 6 could be affected by the divergence of national rules. However, to date, there have been a limited number of cross-border cases regarding hate speech on TV broadcasting<sup>151</sup>. For on-demand services, it is hard to draw conclusions as not all Member States collect quantitative data in this domain. Where data has been collected, no cases of cross-border relevance were reported<sup>152</sup>. In this light, it can be concluded that the AVMSD rules have been effective, and that the divergence of national rules did not substantially affect the effectiveness of the Directive given that there were no cross-border cases.

### ***EU added value***

In 5 Member States<sup>153</sup>, the grounds for prohibiting hate speech match precisely those of Article 6, i.e. hate speech only on grounds of race, sex, religion or nationality. In the other 23 Member States, further grounds are foreseen. In particular, most Member States prohibit also hate speech based on sexual orientation<sup>154</sup> and disability<sup>155</sup>. The EU added value of the rule lies in the provision of a minimum guarantee against incitement to hatred based on race, sex, religion or nationality. It also provides the grounds for the EU to act. In addition, the derogation procedure, an important corollary of the COO principle (see section 6.3) that allows Member States to temporarily restrict the freedom of reception, builds on the grounds for prohibition of incitement to hatred as harmonised via Article 6.

### ***Efficiency***

The costs of monitoring hate speech in AVMSD essentially stems from the application of national law. The AVMSD as such does not imply any additional administrative or compliance cost while delivering the minimum guarantee mentioned above.

### ***Coherence***

The AVMSD rules are coherent with a number of international instruments including the Charter of the United Nations (Article 51), the Convention for the Protection of Human Rights and Fundamental Freedoms, the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Article 6 is however not fully coherent with Article 21<sup>156</sup> of the EU Charter of Fundamental rights, which prohibits discrimination under broader set of grounds than those for which hate speech is prohibited in audiovisual media services.

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<sup>149</sup> FR, BE-VI, IE, LV

<sup>150</sup> Those Member States suggesting adding new grounds, i.e. FR: incitement to violence; BE-VI: sexual orientation, religion, marital status, political beliefs, language, state of health, disability, physical or genetic characteristic, social status, nationality; IE: gender identity; LV: disability, age and sexual orientation.

<sup>151</sup> Al Manar (Hezbollah) and Sahar 1 (Iran), Prohibition of the channels by French Court decision of 13 December 2004, see [http://europa.eu/rapid/press-release\\_MEMO-05-98\\_en.htm](http://europa.eu/rapid/press-release_MEMO-05-98_en.htm); OJ TV - Ban of Kurdish broadcaster Roj TV by Germany - Preliminary ruling by the ECJ (Joined Cases C-244/10 and C-245/10); Al-Aqsa TV- Prohibition of the channel by the French CSA on 28 October 2010, see [http://europa.eu/rapid/press-release\\_IP-10-1407\\_en.htm](http://europa.eu/rapid/press-release_IP-10-1407_en.htm); Planeta, approval by the Commission of a ban of a Russian channel broadcasted from the UK/SE into LT, Commission Decision of 10.7.2015, C(2015) 4609 final.

<sup>152</sup> See the overview of data regarding the efficiency of implementation of Article 6 AVMSD in the 2015 study carried out for the European Parliament relating to hate speech and blasphemy. "The European legal framework on hate speech, blasphemy and its interaction with freedom of expression", Study for LIBE Committee, September 2015, [http://www.europarl.europa.eu/thinktank/fr/document.html?reference=IPOL\\_STU\(2015\)536460](http://www.europarl.europa.eu/thinktank/fr/document.html?reference=IPOL_STU(2015)536460).

<sup>153</sup> BG, CY, IT, MT, UK for VoD

<sup>154</sup> BE-French community; BE-German community; CR; DA; FI; FR; GR; IRL; LT; NL; PT; RO; SE; UK 155155 AT; BE French community; BE-German community; CR; FI; FR; GR; LV; NL; PL; PT; UK

<sup>156</sup> Article 21 of the EU Charter of Fundamental Rights provides that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. It also provides that within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.



Article 6 is neither fully coherent with the grounds<sup>157</sup> laid down in the Framework Decision on combating hate crime 2009/913/JHA on combatting certain forms and expressions of racism and xenophobia by means of criminal law.

## 6.6 Commercial communications

The AVMSD contains rules applying to all audiovisual media services. These concern sponsorship<sup>158</sup> and product placement<sup>159</sup> as well as alcohol<sup>160</sup> and tobacco<sup>161</sup> advertising.

The AVMSD also lays down detailed rules applying only to television broadcasting. These set a maximum of 12 minutes of advertising per hour<sup>162</sup> for traditional broadcasting (so-called "12-minutes rule"), define how often TV films, cinematographic works and news programmes can be interrupted by advertisement<sup>163</sup> and set the minimum duration of teleshopping windows<sup>164</sup>.

### *Relevance of the current rules*

The rules on audiovisual commercial communications contribute<sup>165</sup> to the overarching AVMSD objectives of supporting the internal market and ensuring consumer protection.

The relevance of the AVMSD rules restricting advertising for alcohol and fatty foods<sup>166</sup> (qualitative rules) remains unquestioned<sup>167</sup> by all stakeholders.

However, in the frame of the 2015 Public consultation the majority of TV broadcasters questioned the AVMSD quantitative rules (e.g. the 12 minutes/hour cap on advertising) and other rules such as those on product placement, sponsorship and self-promotion.

It also appears that in recent years, quantitative rules appear to be less relevant due to media convergence with users watching content on TV as well as mobile devices. In addition, viewers are more likely to switch to alternative offers, in particular without advertising. For example, in the USA where there are no minutage limitations, viewers overwhelmed with TV advertising, turned to other video offers (e.g. video on-demand) thereby disciplining the behaviour of TV broadcasters, who were forced to decrease the amount of advertising on their channels<sup>168</sup>.

Moreover, television advertising in the EU has been shrinking in 2013 as compared to 2012<sup>169</sup>, while the total size of online advertising market in the EU in 2013 increased by 11.6% compared to 2012. The Internet is likely to become the main advertising platform within the next two years, given its rapid development (+8,4% vs. 2012) and its market share in 2013 (27,4%)<sup>170</sup>. In Europe, online

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<sup>157</sup> Article 1 (1) (a) AVMSD mentions race, colour, religion, descent or national or ethnic origin

<sup>158</sup> Article 10 AVMSD

<sup>159</sup> Article 11 AVMSD

<sup>160</sup> Article 9(1)(e) for all AVCC and stricter content requirements in Article 22 for television advertising

<sup>161</sup> Article 9(1)(d) AVMSD

<sup>162</sup> Article 23 AVMSD

<sup>163</sup> Article 20 AVMSD

<sup>164</sup> Article 20(2) AVMSD

<sup>165</sup> This gathered strong support in the 2015 Public consultation. Member States and regulators believe the rules are relevant (because they strike a good balance amongst consumer protection and content funding) and so do consumer organisations and industry stakeholders.

<sup>166</sup> Foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

<sup>167</sup> In the 2015 Public consultation, various stakeholders including consumer organisations (also from the health sector) acknowledged the relevance of the rules

<sup>168</sup> <http://television.telerama.fr/television/etats-unis-et-maintenant-moins-de-coups-de-publicite,138319.php>

See in particular TNT: <http://www.adweek.com/news/television/turners-chief-creative-cutting-tnt-ad-loads-50-percent-dramatic-overhaul-168893>, VIACOM: <http://variety.com/2015/tv/news/viacom-primetime-tv-advertising-cuts-1201598646/>

<sup>169</sup> In 2013, advertising represented 33% of TV broadcasters' revenues (OBS - Refit exercise: contribution of data and information by the European Audiovisual Observatory). It therefore constitutes a very important source of funding, especially for commercial channels. TV broadcasters have however experienced a 0,5 % decrease in advertising revenues (From EUR 28, 15 billion in 2012 to EUR 28,03 billion in 2013) . Spend in all types of online video advertising has on the contrary increased by 39% ( Compared to 2013, totalling EUR 1.47 billion in 2014 in 18 EU countries).

<sup>170</sup> Source: European Audiovisual Observatory/WARC

display advertising is the most dynamic form of advertising with video ads accounting for 16% of online advertising<sup>171</sup>.

In 2013, advertising on TV broadcasting represented 33% of TV broadcasters' revenues<sup>172</sup>. While those revenues increased by a 1.3% CAGR for the period 2009-2013, TV broadcasters experienced a decrease of 0.5 % in 2013.

In the meantime, the total size of the online advertising market in the EU in 2013 has increased by 11.6% compared to 2012. Online is the second medium in Europe for ad spends, just behind TV advertising, though it surpassed TV advertising in 2014 in a number of Member States<sup>173</sup>. However, within the total advertising market the share of advertising revenue for on-demand services covered by the AVMSD remains modest. For example free-to-view UK online TV services such as ITV Player and All 4 generated just GBP 240 million in advertising in 2014, equivalent to 5.6% of the total TV advertising and sponsorship market in the UK. In France, the revenues from advertising on catch-up TV services amounted to EUR 80 million in 2014<sup>174</sup> which represents 0.7% of the revenues generated by French TV broadcasters in 2013<sup>175</sup>.

However, to fully grasp the potential of this market, audiovisual services that are outside the scope of the AVMSD should be taken into account. According to the European Audiovisual Observatory, online video advertising revenues are expected to grow up to EUR 4.1 billion by 2018 with a market share of almost 60% for Facebook and YouTube. Advertising in those services is however not subject to the AVMSD rules.

### *Effectiveness*

The effectiveness of **the quantitative** rules on the free circulation of services within the internal market is hampered by the fragmentation and gold plating of national rules.

Firstly, for sponsorship announcements and product placement, national interpretations diverge on the notion of "potential undue promotional character" and of "undue prominence"<sup>176</sup>. Also, it is particularly complex to distinguish self-promotion from advertising when calculating the 12-minute limitation which also creates divergence between national laws.

When it comes to the 12-minute limitation<sup>177</sup>, at present, 13 Member States have stricter rules though those rules apply in most cases (10 Member States) to public service broadcasters' channels. The ceiling<sup>178</sup> of the 12-minutes rule was regularly exceeded in a number of Member States. This is primarily due to divergent national interpretations of various notions as mentioned above<sup>179</sup>. Consumers still have concerns about excessive advertising on TV<sup>180</sup>.

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<sup>171</sup> However, if limited to advertising in on-demand services covered by the AVMSD, growth remains far more modest. In the UK, despite the growth of advertising revenues from on-demand services, "free-to-view online TV services such as ITV Player and All 4 generated just £240m in advertising in 2014, equivalent to 5.6% of the total TV advertising and sponsorship market in the UK".

<sup>172</sup> Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - [Trends in linear television revenues](#)

<sup>173</sup> On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)

<sup>174</sup> Etude CNC l'économie de la télévision de rattrapage en 2014

<sup>175</sup> Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - [Trends in linear television revenues](#)

<sup>176</sup> In some Member States, these sponsorship announcements are frequently shorter forms of advertising spots. There may also be a lack of or unclear identification of the sponsorship agreement.

<sup>177</sup> BG, DK, DE, IE, FR, IT, LV, NL, AT, PT, RO, SK, UK

<sup>178</sup> 1<sup>st</sup> and 2<sup>nd</sup> AVMSD application reports, based on Framework contract SMART 2008/0001 "Monitoring of the compliance by audiovisual media service providers in the Member States with the provisions of Chapter IIa (Article 3e-3g) and Chapter IV of the Audiovisual Media Services Directive"

<sup>179</sup> The Commission has taken steps to address these issues. In exchanges of letters with the Member States, the Commission drew attention to the implementation issues above and to possible ways of addressing them. In one specific case, this led to an infringement case (Case C-281/09, Commission v. Spain) on the application of the definition of an advertising spot. In this light, already in the 1st implementation report on the AVMSD, the Commission considered it appropriate to update the Commission's 2004 interpretative communication on certain aspects of the provisions on televised advertising in the "Television without frontiers". This update was however postponed in light of the consultations that took place via the 2013 Green Paper on Media convergence and the subsequent decision to carry out an evaluation of the AVMSD under REFIT.

<sup>180</sup> In 2014, for example, 57% of UK viewers agreed with the statement "there are already more minutes of advertising in an hour than I am really happy with"<sup>180</sup>. However, viewers also appear to understand the relationship which exists between advertising and the funding of content: 72% of UK viewers questioned in 2014 identified without prompting that advertising represented the primary source of funding for the UK's three main free-to-air commercial television services (ITV/STV/UTV, Channel 4 and Channel 5) which between them account for 24% of UK adult television viewing and just

As to the effectiveness of **qualitative rules**, 24 Member States have adopted stricter rules for alcohol advertising (involving channels, advertised products or time slots)<sup>181</sup>. 2 Member States prohibit alcohol advertising on TV channels, while 22 others limit/ban specific content in the advertising (e.g. no advertising for spirits), channels (e.g. no alcohol advertising on public service broadcasting) or timeslots (period of the day during which no alcohol advertising can be broadcast).

The Commission's publicly procured study on minors' exposure to alcohol advertising<sup>182</sup> shows that on average, during one year (2013), a child in the EU saw 200 alcohol impacts<sup>183</sup> and an adult over 450 on television. A number of consumer organisations in favour of volume restrictions<sup>184</sup> highlight in the 2015 Public consultation that when specific protection measures are in place in an adequate form, they can have a beneficial impact. For example, in the Netherlands, where alcohol advertising cannot be broadcast between 06:00 and 21:00, the average number of impacts for alcohol advertising seen by minors aged 4-14 during peak hour<sup>185</sup> was lower than those in Germany, the UK or the Czech Republic<sup>186</sup> which do not apply watersheds. However, one pitfall of such scheduling limitations may be a shift of alcohol advertising just after peak time, at a time when minors, although less numerous, are still watching television quite massively. As the study on minors' exposure to alcohol advertising showed, when the time is not well adapted, minors may be exposed quite heavily to alcohol advertising just after the watershed<sup>187</sup>. Moreover, the analysis of a sample of commercial communications revealed that advertising frequently associates alcohol with sociability and depict drinking with humorous tone. However, although the study showed that 25% of the analysed advertisements could contain one of the elements described in the AVMSD, the study also highlighted that the advertisements were focused on associations that are possible to create within a few seconds (for example by portraying drinking among young, trendy people) but without creating causal links between the product and its effects, to which the AVMSD refers. As regards on-demand and online services, preventive measures have been put in place by the industry, although minors have the perception to have been exposed to alcohol advertising.

In the 2015 Public consultation, consumer organisations<sup>188</sup> pointed to the blurring lines between broadcast and on-demand services; to the voluntary character of some rules<sup>189</sup> and the lengthy procedures to review complaints in self-regulation arrangements; the focus on restricting the content of alcohol advertising rather than on restricting the volume of advertisement<sup>190</sup>; the links between alcohol advertising and sponsorship in sport events. Stakeholders in different industries<sup>191</sup> also ascribe the ineffectiveness of the rules to the fragmentation due to divergent national legislations.

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under £1.5bn (€2.1bn) in programme spend. Source: Ofcom's report on UK audience attitudes to the broadcast media 2014 (slides 42 and 43), [http://stakeholders.ofcom.org.uk/binaries/research/tv-research/attitudes-to-media/Annex\\_1.pdf](http://stakeholders.ofcom.org.uk/binaries/research/tv-research/attitudes-to-media/Annex_1.pdf)

<sup>181</sup> [http://ec.europa.eu/archives/information\\_society/avpolicy/docs/reg/tvwf/contact\\_comm/35\\_table\\_1.pdf](http://ec.europa.eu/archives/information_society/avpolicy/docs/reg/tvwf/contact_comm/35_table_1.pdf)

<sup>182</sup> Study on the exposure of minors to alcohol advertising on linear and non-linear audio-visual media services and other online services, including a content analysis, <https://ec.europa.eu/digital-single-market/news/study-exposure-minors-alcohol-advertising-tv-and-online-services>

<sup>183</sup> Impact is a measure of how often a spot is viewed: it yields the absolute number of times a spot was seen over a given timeframe.

<sup>184</sup> E.g. STAP, ACTIVE, EUCAM, Lithuanian tobacco and alcohol control coalition and viewers' association AUC, IOGT NTO

<sup>185</sup> Between 17:00 and 20:59

<sup>186</sup> 6,6 GRP% in NL compared to 36,7 in CZ, 24,1 in DE and 14,1 in the UK. GRP: Gross Rating Points are a measure of advertising impact and GRP% can be interpreted as the total number of times an advertising spot was seen as a percentage of the target group.

<sup>187</sup> For example, the daypart 21:00-23:59 is when minors aged 4-14 in the NL see most alcohol advertisements (27,2 GRP%) as their peak viewing time is between 20:00-21:00 (within the watershed), but there is only a slight decrease in viewing after 21:00. Many NL minors aged 4-14 are still watching TV after 21:00 when alcohol advertisements can be broadcast. In comparison, in FI where a watershed is also applied between 7:00 and 21:00, the daypart 21:00-23:59 is also the period when minors aged 4-14 see most alcohol advertisements, although in lesser proportions (7,5 GRP%). This may be due to the fact that the peak time for minors 4-14 is between 19:00-20:00 and after 21:00 (after the watershed), their viewing has already decreased substantially. Source: Study on the exposure of minors to alcohol advertising.

<sup>188</sup> A majority of the consumer organisations that participated to the Public consultation argued that the AVMSD rules on commercial communications are not effective. In particular, the associations protecting the consumers from the health consequences of alcohol deem that the AVMSD rules should restrict the volume of alcohol advertisements rather than their content.

<sup>189</sup> As regards commercial communications for foods high in fat, salt and sugar (HFSS) accompanying or included in children's programmes, Member States and the Commission must encourage the development of codes of conduct.

<sup>190</sup> As highlighted by associations protecting consumers from alcohol abuse

<sup>191</sup> Some public service and commercial broadcasters as well as advertisers who point in particular to the rules on self-and cross-promotion

Moreover, as also affirmed by 6 Member States, 4 regulators and by most broadcasters<sup>192</sup> in the 2015 Public consultation, some of the AVMSD rules do not ensure a level playing field in times of media convergence and in light of the shift of advertising revenues online. Media services compete for the same advertising market but are not all subject to the same regulatory constraints (some because they are on-demand services subject to lighter AVMSD rules than broadcasting, others because they are not regulated by the AVMSD). The consequences of this differential treatment are even more remarkable when millennials are targeted<sup>193</sup>.

### ***EU added value***

The AVMSD rules on commercial communications harmonise some concepts (for example, the definition of advertising spots) and introduce minimum rules. This facilitated the circulation of audiovisual media services across the Union. For example, product placement used to be forbidden in the Television Without Frontiers Directive and was liberalised in the revision of the AVMSD in 2007. As a result, product placement is now allowed in all Member States within the limitations of the current Directive and with only limited stricter rules<sup>194</sup>. This brought legal certainty as to the possibility for programmes which include product placement to circulate across the EU. This confirms the EU added value of the rules.

### ***Efficiency***

As regards **quantitative rules**, while they generated administrative costs for regulators (up to EUR 1.2 million per year for one regulatory authority as regards all audiovisual commercial communication-related activities and overall up to EUR 1 million for all EU regulators as regards the quantitative rules very specifically<sup>195</sup>) and compliance costs for broadcasters<sup>196</sup>, their effectiveness appeared to be sub-optimal.

While an objective of the last reform was to liberalise product placement, previously not allowed, the current AVMSD restrictions for product placement have not allowed this advertising format to unleash its full potential in terms of revenues. Some regulators and Member States<sup>197</sup> confirmed that the rules have led to legal uncertainty for stakeholders, discouraging them to invest in product placement. As a benchmark, in the US market, where there is no material regulation of product placement, this format represents almost 5% of the TV ad spend market. In the UK, it represents a share of only 0.1%<sup>198</sup>. If product placement rules were simpler, product placement revenues could see a 10%-15% increase<sup>199</sup>. Indeed, most broadcasters, in their replies to the 2015 Public consultation, agreed that product placement rules should be clarified and simplified.

As regards the **hourly limitation**, most broadcasters consider that the scarce flexibility of the 12-minutes rule and its exceptions prevent them from maximising revenues around peak periods<sup>200</sup>. As mentioned above, this limitation is regularly overpassed. According to a large commercial

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<sup>192</sup> In particular the contributions of some public service broadcasters; of advertisers, also flagging issues around surreptitious advertising in UGC; of the Internet and telecom industries, underlining issues around product placement in YouTube UGC content.

<sup>193</sup> According to UK Digital Upfronts 2015, Enders Analysis, "YouTube again emphasised its reach among 16-34s at a time when TV viewing among millennials is in steady decline. (...) This was at the heart of Google's pitch to brands last, but there was a more specific pitch this time [:] (...) brand advertisers seeking to reach 16-34s should move 24% of TV ad budgets to YouTube to optimize reach and efficiency".

<sup>194</sup> Only Denmark kept the prohibition of product placement for programmes produced in Denmark

<sup>195</sup> Study on Defining a framework for the monitoring of advertising rules under the Audiovisual Media Services Directive

<sup>196</sup> Data on administrative and compliance costs to be provided in the IA study on commercial communications and in the analysis of ERGA questionnaire. As regards substantive compliance costs for TV broadcasters, most of the respondents to the survey on costs and benefits reported low costs to their business. This may be explained in particular by the fact that Member States have stricter rules than those in the Directive (in some cases they were in place even before the adoption of the Directive). In addition, according to preliminary results from the Impact Assessment study, quantitative rules (both for volume and interruptions) have led to low costs of compliance for audiovisual media service providers in terms of resources and equipment/ technology.

<sup>197</sup> Ofcom, EL, NL

<sup>198</sup> In the US, TV ad spend for 2014 was \$69.4 billion with a mid-level forecast of \$3.5 billion for product placement. In the UK, the ad market for 2014 was worth £3.56 billion, with product placement capturing £3.5 million of this market. Source: OFCOM reply to the survey on cost and benefits of the AVMSD

<sup>199</sup> See egta report on the costs and benefits of compliance with the Audiovisual Media Services Directive "greater flexibility and less detail in product placement rules would result in significant growth, with an average of 10% to 15% increase in product placement revenues."

<sup>200</sup> Most broadcasters who replied to the 2015 Public consultation consider that the insertion rules are no longer effective. Because of these rules, schedules are not built around viewers' comfort or advertisers' demand, which is counter-productive.

broadcaster, further liberalisation of insertion rules holds a potential of up to 6-8% additional revenue (rough estimate). Most members of the association of television and radio sales houses estimate that more relaxed rules would generate a 1%-10% revenues increase. A large UK commercial broadcaster estimates a total loss of £3.3million in one year on their main channel as a consequence of the rules.

As regards **sponsorship**, more flexible rules could result in an increase in revenues up from 15% to 50%, according to some members of the audiovisual advertising sales houses (EGTA). Most broadcasters, in their replies to the 2015 Public consultation, agreed that sponsorship rules should be clarified and simplified.

It can thus be concluded that **quantitative rules** do not have a positive cost-benefit ratio. Costs stemming from some quantitative rules could be lower if rules were simpler or more flexible.

Also, at a moment where online advertising is overtaking TV advertising as the preferred media for advertisers, TV broadcasters are subject to stricter rules. In their replies to the 2015 Public consultation, advertisers, some broadcasters and several Member States claimed there is no level playing field between TV broadcasters and other media services, and in particular between TV broadcasters and on-demand service providers. This is even more relevant in those fields where these services compete for the same advertising market, i.e. when it comes to attracting the attention of millennials.<sup>201</sup> On the other hand, a few broadcasters, mainly from the UK, see the benefits of the status quo.

When it comes to **qualitative** rules, the costs have not been raised as an issue in the Public consultation mostly because the protection of the most vulnerable consumers cannot be questioned.

### **Coherence**

There is a general coherence amongst existing EU rules in the field of audiovisual commercial communications. If an online service does not fall under the definition of an on-demand audiovisual media service under the AVMSD, it will be regulated under the ECD<sup>202</sup> as an information society service. Outside the domains covered by the AVMSD that regulate specific aspects of unfair commercial practices, the Unfair Commercial practices Directive<sup>203</sup> (UCPD) applies. The AVMSD is complementary to the ECD and the UCPD. The AVMSD is also in complementarity with the numerous self- and co-regulatory initiatives in the field of advertising at Member States and EU level. Most of these initiatives build on the AVMSD but also go beyond its remit (e.g. they address online marketing beyond audiovisual commercial communications).

## **6.7 Promotion of European works**

TV broadcasters must, where practicable, **reserve** to European works a majority of their transmission time and at least 10 % of their transmission time or of their programming budget for European works created by producers who are independent of broadcasters.<sup>204</sup>

On-demand services providers, where practicable, must **promote** the production of and access to European works. However, the Directive gives examples of how this can be done in practice, leaving

<sup>201</sup> According to UK Digital Upfronts 2015, Enders Analysis, "YouTube again emphasised its reach among 16-34s at a time when TV viewing among millennials is in steady decline. (...) This was at the heart of Google's pitch to brands last, but there was a more specific pitch this time [:] (...) brand advertisers seeking to reach 16-34s should move 24% of TV ad budgets to YouTube to optimize reach and efficiency".

<sup>202</sup> The e-Commerce Directive (ECD) provides that Member States shall ensure that commercial communications which are part of, or constitute, an information society service shall be clearly identifiable as such. This provision is identical to the one in the AVMSD (Article 9(1)(a)). However, the AVMSD, as *lex specialis* to the e-Commerce Directive, provides for additional requirements that apply to both TV broadcasting and on-demand services (which are a subset of information society services).

<sup>203</sup> Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market. The UCPD applies to all unfair business-to-consumer commercial practices occurring before, during and after a commercial transaction in relation to a product. Under the UCPD, misleading (misleading actions and omissions) and aggressive commercial practices are considered unfair and are as such prohibited. In addition, the UCPD lists a number of unfair practices which shall in all circumstances be regarded as unfair. This is a sort of umbrella under which all commercial communications fall.

<sup>204</sup> Article 16 AVMSD

the choice of measures to Member States. The examples mentioned in the Directive are: i) financial contribution to the production and rights acquisition of European works; ii) a share in the catalogues and/or ii) prominence of European works in the catalogues.<sup>205</sup> Member States have chosen very different ways for implementation ranging from relatively loose requirements to a complex set of obligations sometimes combining all three mentioned examples (see Effectiveness sub-section).

### ***Relevance of the current rules***

The AVMSD rules on promotion of European works are still relevant in light of the rapid growth of the on-demand and the Internet industry which boosts availability and opens up new ways of accessing content<sup>206</sup>.

However, in the 2015 Public consultation on the AVMSD, some media and entertainment services, telecom operators, commercial broadcaster and operators from the digital and internet related industry while acknowledging the relevance of the rules, expressed the opinion that it should be primarily the demand by the audiences, rather than legal obligations, that should guide commercial broadcasters (as opposed to public service broadcasters who have to fulfil a public service mandate) when taking decisions on content offerings.

### ***Effectiveness***

For **TV broadcasting**, the First and Second Report on the application of rules on promotion of European works confirm that the majority of service providers comfortably fill the required quota for European works and independent works. Compliance with the AVMSD rules resulted in driving up the proportion of European works that were transmitted. In 2007, European works stood for 62.4 % of TV broadcasting service transmission time<sup>207</sup>. In 2011 and 2012 the average transmission time dedicated to European works by all reported channels was 64.1%<sup>208</sup>.

As regards quotas for independent productions, the EU-average proportion by all reported channels in all Member States was 33.1% in 2011 and 34.1% in 2012 while the EU-average compliance rates amounted to 80% for 2011 and 82% for 2012<sup>209</sup>.

As mentioned above, the current rules for TV broadcasters have resulted in European citizens being exposed to European works, on average 64.1 % of the average transmission time. This was particularly important in a context where viewer hours for European works have declined (down from 74 % in 2007 to 69 % in 2010)<sup>210</sup>.

For **on-demand services**, the effectiveness of the AVMSD rules on promotion of European works is reduced by a number of factors:

- The AVMSD does not impose clearly defined obligations on the promotion of European works in on-demand services. This has led to significantly diverging approaches and thus fragmentation in the level of obligations imposed across Member States<sup>211</sup>. Annex 4

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<sup>205</sup> Article 13 AVMSD

<sup>206</sup> This was already acknowledged in the 1st AVMSD Application report. It was mentioned that several major US operators are in the process of launching their services in the EU and the emergence of those new platforms will undoubtedly increase competitive pressure on the creation, financing and retail of EU works.

<sup>207</sup> Programming time should be understood as followed: broadcaster's transmission time "excluding the time allocated to news, sports events, games, advertising, teletext services and teleshopping"

<sup>208</sup> Second Report on the application of Articles 16 and 17 of Directive 2010/13/EU for the period 2011-2012 (pending publication). However, as already highlighted, the share is mostly made up of national works, on average up to 88 % in 2010.

<sup>209</sup> Second Report on the application of Articles 16 and 17 of Directive 2010/13/EU for the period 2011-2012 (pending publication).

<sup>210</sup> Study on the promotion of European works: <https://ec.europa.eu/digital-single-market/en/news/study-promotion-european-works>

<sup>211</sup> According to the Commission report "Promotion of European works in practice" (2014) measures adopted by Member States to promote European works in on-demand services are the following:

(i) Several Member States have implemented Article 13 AVMSD by imposing on VOD providers the obligation to reserve a share of European works in their catalogue. This is required either as a standalone obligation (e.g. Cyprus, Hungary, Lithuania, Malta, Slovakia) or in combination with other joint or alternative obligations (e.g. France, Croatia, Czech Republic, Italy, Poland, Romania, Slovenia, Spain). The required shares in the catalogues vary



provides an overview of the diverse national approaches adopted. Fragmentation and lack of data regarding shares of European works in on-demand catalogues<sup>212</sup> (14 Member States do not require providers to share these figures) hampers the circulation of services across the Union. It also created gaps in the supply and promotion of European content on those services.

- Whereas in some Member States on-demand services are required to either fill a mandatory share or give prominence to European works in their catalogues<sup>213</sup>, on-demand providers' investments in content production are lower than those of broadcasters<sup>214</sup> and on-demand catalogues may contain a lower share of European works than broadcasters' programmes do<sup>215</sup>.
- Some VoD service providers are established in one Member State but mainly target a different Member State<sup>216</sup> because they often choose to establish themselves in countries with the most favourable regulatory treatment ("forum shopping"). Thus on-demand providers do not contribute to the promotion obligations (particularly investment in creative production and distribution) in the Member States they target, when different from their country of establishment. This is the case for Be-Fr, FR and IT.

The differences in the rule applied to TV broadcasting and on-demand services have led to an unequal level of contribution to promotion of European works. The investment of the main TV groups in original programmes in 15 countries amounted to EUR 15.6 billion<sup>217</sup> in 2013, i.e. 24% of TV broadcasters revenues (EUR 85 billion)<sup>218</sup> while on-demand providers made a minimal or even no

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considerably between Member States (10-60%). Some Member States have also opted for a gradual raise of the share, at least during a transitory period (e.g. Malta, Croatia, France, Italy).

(ii) Some Member States implement Article 13 by requiring VOD providers to use tools that give prominence to European works. Most Member States who opted for this measure apply it jointly with other measures. Examples of specific promotion tools imposed by Member States include: indicating the country of origin in the catalogue (e.g. Romania, Poland); providing possibilities for searching for European programs (Poland); placing information and materials promoting European programs (Poland), including in the home/front page (France); highlighting European works, including works completed within the last five years (Estonia); using trailers or visuals (France).

(iii) Several Member States have introduced obligations on VOD players to contribute financially to the production and rights acquisition of European works. Some Member States combine them with other measures either as joint obligations together with a share in the catalogue (e.g. Croatia, Spain), together with promotion tools (e.g. French Community of Belgium), or together with a share in the catalogue and prominence tools (France). Other Member States combine financial obligations with other measures in an optional way, e.g. as a choice between a share in the catalogue and a financial contribution (e.g. Italy, Slovenia, Czech Republic), or between prominence tools and financial contributions (Estonia). The extent of the obligation varies between Member States; it is usually 1% to 5% (mostly around 2%) of the total yearly turnover, while in one Member State this can go up to 26% (France).

<sup>212</sup> This was indicated in the First Commission report on the application of Articles 13, 16 and 17 AVMSD (covering the period 2009-2010), published on 24 September 2012. , <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52012DC0522> as well as in the 2014 Report "Promotion of European works in practice". The 2nd Application report on the AVMSD also makes reference to this.

<sup>213</sup> On average in the EU, the catalogues of VoD and SVoD services include 35% of European works. EAO Origin of Films in VoD catalogues in the EU - Region of Origin and Age of films in selected VoD and SVoD catalogues. Also, in 2013 the Belgian CSA analysed two major VoD catalogues: out of the top 50 works, 19 were EU works of which all but 3 had been promoted. Source: Promotion of EUR works on line - Why prominence matters and what is at stake. On the other hand, according to "A report on the scale of provision of programmes meeting the definition of a 'European work' on On Demand Programme Services during the period 1st January 2012 to 31st December 2012" by the ATVO, for most on demand services consulted the proportion of the catalogue which met the definition of a European work exceeded 60% and for almost half of all services it exceeded 70%. In those Member States where rules on promotion of EU works are in place for on-demand services, the minimum share of European works in catalogues varies from 10% to 60% (see Annex 9 – national rules). As regards prominence, there are not such quantitative thresholds in the Member States. Recently, the European Audiovisual Observatory tried to identify the promotional spaces for each of the services of a sample of on-demand service providers in DE, FR, UK (EAO The visibility of films on on-demand platforms). According to this study, *"European films were allocated between 21% (in the UK) and 33% (in France) of promotional spots. In Germany, national films and European non-national films accounted for approximately the same share, whereas, in France in the UK, national films represented approximately two thirds of European films and European non-national films one third"*. As for financial contributions, 10 Member States have included such obligations for on-demand services and they vary from 1% to 12% (see Annex 4).

<sup>214</sup> According to the EAO, in 2013 on demand services located UK, FR, IT, DE, ES, SE and NL invested EUR 10.1 million in audiovisual content production as compared to EUR 15 billion invested, per year, by Europe's largest commercial broadcasters. EAO Refit exercise Note B3

<sup>215</sup> On average in the EU, the catalogues of VoD and SVoD services include 35% of European works. EAO Origin of Films in VoD catalogues in the EU - Region of Origin and Age of films in selected VoD and SVoD catalogues. Also, in 2013 the Belgian CSA analysed two major VoD catalogues: out of the top 50 works, 19 were EU works of which all but 3 had been promoted. Source: Promotion of EUR works on line - Why prominence matters and what is at stake. On the other hand, according to "A report on the scale of provision of programmes meeting the definition of a 'European work' on On Demand Programme Services during the period 1st January 2012 to 31st December 2012" by the ATVO, for most on demand services consulted the proportion of the catalogue which met the definition of a European work exceeded 60% and for almost half of all services it exceeded 70%.

<sup>216</sup> EAO report on the development of the European market for on demand audiovisual services (page 48). According to the European Audiovisual Observatory there are 195 VoD services established in EU countries which on top of their country of establishment target primarily another EU country. The United Kingdom (69), Luxembourg (29), the Czech Republic (24), France (20), Sweden (18) and the Netherlands (13) are the countries in Europe which harbour VOD services primarily targeting other EU countries. Those services are either pan-European and international VoD services which have established their centre of operations in a EU country (as in the case of the UK, LU, CZ and NL) or national services are targeting countries in which the language/culture is similar (FR, SE)

<sup>217</sup> Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - [Trends in linear television revenues](#)

<sup>218</sup> Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - [Investments in original content by audiovisual services](#)

contribution to the production and the promotion of EU works. They invested EUR 10 million in original content i.e. less than 1% of their total revenues (EUR 1.5 billion)<sup>219</sup>.

In light of the above, it can be concluded that the rules on the promotion of European works for TV broadcasting services have contributed to the development of a European audiovisual industry. The rule applied to on-demand services may have not been as effective.

Moreover, the differential regulatory treatment between broadcasting and on-demand services might create undue competitive advantages/disadvantages for operators. On the one hand, fast developing on-demand services<sup>220</sup> are subject to light touch regulation and, due to the lower constraints on their editorial policies, are able to engage in "forum shopping". On the other hand, TV broadcasters do not enjoy as much flexibility – in a context of declining viewing hours for European fiction – which puts at risk their attractiveness and competitiveness. The results of the 2015 Public consultation confirmed a perceived lack of fair treatment between TV broadcasters and on-demand services in this regard: 61% of the contributors in this context (from Member States and industry) who expressed an opinion believe that the current rules are not fair.

### ***EU added value***

The AVMSD harmonises concepts such as the definition of "European work"<sup>221</sup> and the obligations to be met by TV broadcasters<sup>222</sup> as regards promotion of European works and independent productions. It should also be considered that the obligation to promote European works "where practicable", that was meant to ensure flexibility in the modulation of measures, has resulted in practice in exemptions and remarkable differences in the national transposition of the rules. The minimum harmonisation overall confirms the EU added value of the rules.

### ***Efficiency***

For **TV broadcasting**, administrative costs mainly depend on the system put in place by national regulators to monitor compliance<sup>223</sup> and on the number of channels operating in the Member State. For compliance costs in particular for commercial broadcasters<sup>224</sup> can be high as compared to producing and/or acquiring European content from other Member States than foreign content from third countries<sup>225</sup>. The Second Report on the application of Articles 16 and 17 (Annex 6) shows that small and thematic channels could face additional difficulties in fulfilling mandatory quotas. However, it should be noted that, according to Article 18 the obligations on Articles 16 and 17 do not apply to television broadcasts that are intended for local audiences and do not form part of a national network. As regards channels with a low audience share (below 0.3%), national authorities can grant these channels individual exemptions from the reporting obligation.

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<sup>219</sup> Ibid

<sup>220</sup> EAO REFIT data - *Note B.2*: market revenues and investments – VoD revenues: according to HIS research firm, total on demand consumer revenues in the 28 European countries soared from EUR 919 million in 2010 to EUR 2.5 billion in 2014, an of 272 % increase and a compound annual growth rate in the 5 year period of 28 %. The worldwide medium term growth prospect for on-demand services is also promising. PWC Global entertainment and media outlook 2015-2019 Global electronic home video revenue is set to rise from US\$15.28bn in 2014 to US\$30.29bn in 2019. Total electronic home video OTT/streaming revenue in particular is seeing a CAGR of 19.0% as online video and streaming 5 services are beginning to attain a significant foothold in many markets

<sup>221</sup> Although some stakeholders argued in the 2015 Public consultation that this notion is unclear

<sup>222</sup> In practice, for TV broadcasters in 2010, out of 27 Member States 21 have introduced mandatory shares. Among them, 10 Member States have defined to what extent a lower proportion will be accepted. 7 Member States adopted a fully flexible approach incorporating the wording "where practicable" - or expressions to a similar effect - into national legislation [2011 Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services (Attentional study) page 24)]

<sup>223</sup> Administrative costs for regulators depend on the monitoring method chosen. Some Member States use specific software for collecting and transmitting data and/or rely on independent companies for the verification, which can generate high costs. Second Report on the application of Articles 16 and 17. In the ERGA questionnaire, broadcasters reported medium to high administrative costs stemming from reporting obligations in this domain.

<sup>224</sup> The responses to the ERGA questionnaire indicate that most commercial broadcasters surveyed experienced medium/high costs stemming from the requirement on the majority of transmission time to be reserved for European works. Costs are lower for public service broadcasters as they have been traditionally subject to strict national rules.

<sup>225</sup> Second Report on application of Articles 16 and 17



For **on-demand services**, compliance costs depend on national implementation. Whereas monitoring the application of the rules may be particularly costly<sup>226</sup> and reporting obligations for providers may be medium-high<sup>227</sup>, this does not necessarily translate in (an increased) availability of or investments on European content (see sub-section on Effectiveness).

### ***Coherence***

The rules are coherent with the MEDIA sub-programme of Creative Europe, which aims to support European film and other audiovisual industries. To this end, MEDIA provides funding for the development, promotion and distribution of European works in Europe and beyond. The AVMSD rules are also coherent with the EURIMAGES initiative of the Council of Europe, promoting the European audiovisual industry by providing financial support to European co-productions (feature films, animations and documentaries). In doing so, EURIMAGES encourages cooperation between professionals in different European countries.

The AVMSD rules on promotion of European works are also coherent with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions which establishes a series of rights and obligations, both at national and international level, with a view to protecting and promoting cultural diversity. The AVMSD rules also underpin where appropriate Cultural Cooperation Protocols to trade agreements with EU partners as a mean to implement the above-mentioned UNESCO Convention. These Protocols warrant preferential treatment to co-produced audiovisual works by extending to them the classification as European works for the purposes of the AVMSD. This is done under conditions which are defined in the Protocols themselves and reflect the modulation of this mechanism according to differing situations and characteristics in terms of development of audiovisual industries and cultural exchanges with the countries concerned<sup>228</sup>.

The upcoming reform of the EU copyright rules will also take into account objectives related to the availability and promotion of European works. The Communication on Copyright adopted by the Commission on 9 December 2015 highlights that legal offers of European works online, including European audiovisual works<sup>229</sup>, have yet to realise their full potential. The Copyright reform aims to ensure wide availability of creative content across the EU and make sure that EU copyright rules continue to provide a high level of protection for rights holders while striking a good balance with other public policy goals such as ensuring cultural diversity in terms of wider access to a variety of cultural works across the EU.

## **6.8 Independence of regulators and cooperation amongst regulators**

According to Article 30 AVMSD, Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of the Directive, in particular in particular through their competent independent regulatory bodies. Article 30 of the AVMSD does not lay down any obligation for Member States to ensure neither the creation nor the independence of national regulators. However, it considers that independent regulators play a role in the cooperation amongst Member States for an effective application of the AVMSD. Also, according

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<sup>226</sup> Supervising on demand services is a costly exercise due to (i) the high number of on demand service providers, at least in certain countries: almost 2.563 video-on-demand (VOD) established in the MS (in some countries, this figure could go up to 515); and (ii) catalogues of on demand players evolve on a daily basis. A common problem across the Member States is the lack of relevant data. Most Member States rely on data supplied by the operators without further control/systematic cross-checking and/or random controls. The frequency of requesting such data also differs: many foresee yearly reporting obligations for the providers while others rely on longer reporting periods, e.g. coinciding with the reporting obligation laid down by the Directive i.e. all four years. Random checks are only carried out in few Member States. Several countries indicated that they are discussing or planning to develop a specific software system for monitoring. (Study on "Promotion of European works in practice" from 2014). Compliance costs for on-demand services vary depending on the national rules (Report on Promotion of European works in practice – 2014)

<sup>227</sup> VoD service providers have reported medium to high administrative costs in relation to reporting obligations on the promotion of European works (ref ERGA questionnaire).

<sup>228</sup> Two Protocols on cultural cooperation are attached respectively to the EU-CARIFORUM Economic Partnership Agreement and to the EU-South Korea Free Trade Agreement.

<sup>229</sup> There are obstacles to the cross-border distribution of European audiovisual works including online. When content is available, it is difficult to discover. Furthermore, users often cannot access content distribution services available in other Member States.

to the EU treaties and relevant case law<sup>230</sup>, Member States should adopt national laws enabling the impartial application of the objectives of EU law.

### ***Relevance of the current rules***

In the 2015 Public consultation, an overwhelming majority of respondents across various stakeholder categories<sup>231</sup> confirmed the relevance of having independent, well-resourced and suitably empowered regulators. The majority of respondents to the 2013 Public consultation on independence of regulators<sup>232</sup> expressed the same opinion. In the ERGA recommendations on independence of regulators, a vast majority of audiovisual regulators across the EU consider independence to be a prerequisite for carrying out their role. This shows that, by not laying down requirements for independence of regulators, the currently rules are not relevant.

The current rules are also not relevant to the AVMSD objective to preserve free and pluralistic media and the functioning of the democratic systems in the EU and in the Member States. This was affirmed by public service broadcasters and human rights/media freedom NGOs in the 2015 Public consultation and in the 2013 Public consultation on independence of regulators.

In light of the above, there is scope for improving the relevance of the current AVMSD rules on independence of regulators to ensure an effective transposition and application of the Directive.

### ***Effectiveness***

There are structural weaknesses in a number of audiovisual regulators across the EU, combined with very diverse regulatory structures and potentially varying degrees of independence.

Since the adoption of the AVMSD, all Member States have progressively created a regulatory authority for the implementation of the AVMSD<sup>233</sup>. While most regulators fulfil what are considered the main criteria for independence<sup>234</sup>, important features for regulatory independence are missing in a number of Member States<sup>235</sup>. The Council of Europe Recommendation (2000)23<sup>236</sup> on the independence and functions of regulatory authorities for the broadcasting sector as well as a number of studies and reports<sup>237</sup>, consider that the following set of criteria would ensure an effective and independent implementation of legislation:

- i) independence from third parties or from external influence;
- ii) transparent decision-making processes and accountability to relevant stakeholders;
- iii) open and transparent procedures for the nomination, appointment and removal of Board Members;
- iv) knowledge and expertise of human resources;
- v) financial<sup>238</sup>, operational and decision making autonomy;
- vi) effective enforcement powers;
- vii) the possibility only for judicial power to review the regulatory bodies' decisions.

<sup>230</sup> Article 4(3) TEU establishing the principle of loyal cooperation and as confirmed by the case law of the ECJ (e.g. case C- 52/75 Commission v Italy) Member States need to ensure the effective application of EU law. See also Recital 94 AVMSD.

<sup>231</sup> In particular a majority of national regulators, public service and commercial broadcasters, human rights/media freedom NGOs and the Internet and ICT industries. Not many Member States governments/ministries expressed an opinion on this topic.

<sup>232</sup> <http://ec.europa.eu/digital-agenda/en/news/public-consultation-independence-audiovisual-regulatory-bodies-read-contributions>

<sup>233</sup> Estonia, Spain (at federal level), Hungary and Slovenia merged regulatory bodies and in Luxembourg an audiovisual regulator have been established since the INDIREG Report of February 2011. In 2010, the Hungarian National Media and Infocommunications Authority (NMHH) has been created; in 2011 the Slovenian Agency for communication networks and services (AKOS); in 2013 the Estonian Technical Surveillance Authority, the Spanish National Commission of Markets and Competition (CNMC), in Luxemburg – Autorité luxembourgeoise indépendante de l'audiovisuel (ALIA).

<sup>234</sup> As set out by the 2011 INDIREG study : <http://www.indireg.eu/>

<sup>235</sup> The INDIREG and RADAR studies pointed to doubts over the independence of regulatory authorities of Hungary, Romania, Malta, Estonia but also other NRAs established a number of years ago. ERGA observed that five EU MS (Cyprus, Estonia, Finland, Latvia, Lithuania) do not seem to be entirely independent (legally because they are under the trusteeship of a Ministry or part of a ministerial body ; or functionally because of budget control or issued guidance from the government.

<sup>236</sup> <https://wcd.coe.int/ViewDoc.jsp?id=393649&>

<sup>237</sup> INDIREG Final Report ( <http://www.indireg.eu/?p=360>) and Final Report of AVMS-RADAR, ERGA Report on the independence of National Regulatory Authorities (<http://ec.europa.eu/digital-agenda/en/news/erga-report-independence-national-regulatory-authorities>)

<sup>238</sup> In line with the INDIREG study, financial autonomy means "that the regulator is equipped with sufficient financial resources".

Failure to fully align with each of these criteria does not necessarily imply a lack of independence. However, they provide a formal framework to ensure the highest possible level of independence. At present, the situation across the EU is as follows:

- As regards (i), 5 national regulatory authorities<sup>239</sup> are not fully separated from ministerial bodies or government.
- As regards (ii), 4 Member States do not have any transparency provisions at the moment<sup>240</sup> and 2 Member States<sup>241</sup> do not require regulators to motivate their decisions.
- As regards (iii), a number of countries do not follow the procedures considered to guarantee the independence of the regulators.<sup>242</sup> As regards rules on conflict of interest for appointments, no such rules exist in 6 countries<sup>243</sup>, there are no rules against conflict of interest with government<sup>244</sup> in 6 countries, and 9 do not have rules on conflict of interest with Parliament and political parties.<sup>245</sup> A small number of countries neither have rules on the possible conflict of interest with industry (5)<sup>246</sup>. In a few countries, no specific rules exist to protect Board members against arbitrary dismissal (5).<sup>247</sup>
- As regards (iv), some commercial broadcasters pointed out to a lack of the requisite knowledge and expertise by the staff of several audiovisual regulators in the 2015 public consultation.
- As regards (v), large budgetary<sup>248</sup> differences exist between national regulatory authorities across the EU. The regulatory bodies of 10 countries have less than EUR 1 million of budget per year. However, this amount can be much higher in other countries<sup>249</sup>. The same can be said as regards staffing<sup>250</sup>. In this context, the RADAR study also concluded that the level of staff has been considered to be problematic for several regulators<sup>251</sup>. A more qualitative assessment by ERGA gave a close conclusion<sup>252</sup>. As regards decision making process, the regulatory powers of some regulators are limited by the power of other bodies to overturn their decisions as well as by the power of other bodies to give instructions<sup>253</sup> to regulators.
- As regards (vi), five regulators report that they do not have powers to enforce their decisions autonomously<sup>254</sup>.
- As regards (vii), no particular issue has been identified<sup>255</sup>.

<sup>239</sup> CY, EE, FI, LV, LT. Source: ERGA Report.

<sup>240</sup> Some German Länder, DK, ES and FI. Source: Final Report of AVMS-RADAR. Note that in the case of DE, the RADAR Study does not take into account the most recent developments following a judgment by the German Federal Constitutional Court which declared the current composition unconstitutional; cf. *Bundesverfassungsgericht*, Judgment of 25 March 2014, case no. 1 BvF 1/11 and 1 BvF 4/11, ECLI:DE:BVerfG:2014:fs20140325.1bvf000111

<sup>241</sup> Estonia and Luxembourg. Source: Final Report of AVMS-RADAR

<sup>242</sup> Final Report of AVMS-RADAR, p. 43-60 and ERGA Report p 17-21.

<sup>243</sup> AT, BG, DE (*some Länder*), DK, RO, UK. Source: Final Report of AVMS-RADAR

<sup>244</sup> DE (*some Länder and ZDF*), ES, PL, RO, SI, UK. Source: Final Report of AVMS-RADAR

<sup>245</sup> BE (all communities), EE, ES, FR, DE, NL, PT, RO, SI.

<sup>246</sup> BE, DE (only RBB), EE, ES and FR.

<sup>247</sup> BE (VRM), DK, EE, LU, SE. Source: Final Report of AVMS-RADAR

<sup>248</sup> Final Report of AVMS-RADAR

<sup>249</sup> France (€ 35 million), several German regional regulators such as the BLM (€ 28 million in 2014) and the LFK (10 million in 2014), Netherlands (€ 6 840 million in 2013) or Ireland and Poland (more than € 5 million in 2014). In some Member States, the budget for regulators is even higher, but - as they are converged regulators - , it is difficult to establish which part of the budget is assigned to audiovisual (e.g. in UK- OFCOM: € 160 million in 2014-2015; In Spain - CNMC: € 53 million in 2014).

<sup>250</sup> Final Report of AVMS-RADAR Staff ranges from 2 persons in Iceland to 306 persons in France or 790 in the UK

<sup>251</sup> German speaking community of BE, CY, CZ, EL, HR, IE and RO .

<sup>252</sup> ERGA members considered that in 10 NRAs human resources were not adequate (Belgium-Wallonia, Belgium-MEDIENRAT, Bulgaria, Croatia, Czech Republic, Greece, Iceland, Ireland, Latvia, Luxembourg and Portugal).

<sup>253</sup> The regulatory power of CvDM of the Netherlands is only limited by the power of other bodies to overturn its decisions, but no other body has the possibility to give instructions to the regulator. The decisions of the regulator from the Flemish-speaking Community of Belgium, from Denmark and the Netherlands can be overturned by a Ministry, while the decisions of the French-speaking Community and the German-speaking Community of Belgium can be overturned by the Government. Limitations to that power to overturn the decisions of the regulator exist only in the German-speaking and French-speaking Community of Belgium and in Denmark. The regulatory powers of 11 regulators are only limited by the power of other bodies to give instruction, but no other body has the power to overturn their decisions. (Bulgaria, Cyprus, Finland, France, Ireland, Italy, Luxembourg, Malta, Romania, Sweden, United Kingdom. ). 6 regulatory authorities get instructions by a ministry (Cyprus, Denmark, Finland, Ireland, Sweden, United Kingdom. ). 5 regulators can be subjected to instructions from the Government. Belgium (all Communities), Sweden, United Kingdom. 3 regulators receive instructions from the Parliament. (Italy, Malta, Romania).

<sup>254</sup> Bulgaria, Luxembourg, Poland, Slovakia and Sweden report that they do not have powers to enforce its decisions autonomously; see ERGA report

<sup>255</sup> Final Report of AVMS-RADAR

The negative impact of these factors on the achievement of various AVMSD objectives has been observed in several respects:

- Some commercial broadcasters replying to the 2015 public consultation mentioned the recent examples of decisions by several regulators, which seemed to be problematic for their own independence and which affected negatively Public Service Broadcasters (PSB), commercial broadcasters and sometimes all players<sup>256</sup>.
- The lack of specific requirements in Article 30 was evident in the Pre-accession negotiation process, as the Commission could not rely on a binding legal instrument to require the independence of newly created audiovisual regulators<sup>257</sup>. The Commission's Country Reports pointed to problems with conflict of interest and the political nature of the nomination and appointment procedures in Bulgaria<sup>258</sup> and Romania<sup>259</sup>.
- The shortcomings of Article 30 AVMSD were pointed out by an independent study commissioned by the Commission, the INDIREG Study on "Indicators for independence and efficient functioning of audiovisual media services regulatory bodies"(2011). The Final Report showed that in some EU countries the legal framework does not guarantee an independent exercise of powers by the regulators; in other EU countries regulators are only formally independent but this is not the case in practice. The study found that compliance with legal requirements is often not sufficient to deliver on objectives. There are subtle and indirect ways to exert influence on regulators, especially for governments, and these are difficult to measure<sup>260</sup>. The final Report of the most recent RADAR study of 2015 (updating the 2011 INDIREG Study) confirms the findings of the 2011 study.
- In 2013, the Final Report of the High Level Group on Media Freedom and Pluralism<sup>261</sup> highlighted the shortcomings of Article 30. The report recommended, inter alia, that regulators should be independent and appointments should be made in a transparent manner, with all appropriate checks and balances. As a follow-up, the Commission launched in the same year the Public consultation on the independence of regulators.
- In the 2015 Public consultation, a large majority of regulators, Member States, commercial broadcasters, digital and telecom operators and representatives of consumers considered the rules of the Directive not to be effective.<sup>262</sup> The respondents to the 2013 public consultation on independence of regulators noted that lack of independence could cause problems in particular

<sup>256</sup> In Greece, Hungary, Latvia and Romania (Reply to the 2015 public consultation by the Association of Commercial Television (ACT): <http://www.acte.be/library/45/54/ACT-Response-to-AVMS-Public-Consultation>)

<sup>257</sup> As also mentioned by the Commission in the 2013 Public consultation on the independence of audiovisual regulators <http://ec.europa.eu/digital-agenda/en/news/public-consultation-independence-audiovisual-regulatory-bodies-read-contributions>. This is for example occurred for pre-accession negotiation process of Serbia and the Former Yugoslav Republic of Macedonia.

<sup>258</sup> Report On Progress in Bulgaria under the Co-operation and Verification Mechanism for the year xxx

<sup>259</sup> Report On Progress in Romania under the Co-operation and Verification Mechanism for the year 2012 (published 30 January 2013), [http://ec.europa.eu/cvm/docs/com\\_2013\\_47\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf)

<sup>260</sup> Source, INDIREG study <http://www.indireg.eu/?p=360> According to this report, the flaws of Article 30 became apparent in the nomination and appointments procedures adopted in several Member States (Hungary, Bulgaria, Romania, Malta, France, Greece and the Netherlands). The procedures of appointment and dismissal of members of the Board of national regulators in Denmark, Ireland and Poland also triggered doubts regarding the independence of those national regulator

<sup>261</sup> The Group was set up in 2011 to examine limitations of media freedom including state interference and the role and independence of regulatory authorities and to issue recommendations for the Commission. The objective was to foster a wide debate with Members of Parliament, Member States and representatives from the media and civil society. The Group published in 2013 its final report, independent and non-binding for the Commission, which includes a number of recommendations.

<sup>262</sup> They pointed out that the independence of media regulatory authorities is far from guaranteed in a number of European markets. Commercial broadcasters pointed in this context also to the recent problems affecting publicly-funded broadcasters, sometimes also commercial broadcasters or all players, for example in Greece, Hungary, Latvia and Romania.

Organisations representing consumers pointed to conflict of interests as in many countries the regulation of audiovisual media services is managed by stakeholder committees dominated by commercial operators.

Also citizens pointed to the ineffectiveness of Article 30 AVMSD. A number of Czech citizens raised the issue of politically motivated nominations into boards of Czech public TV and radio broadcasters, while UK/LV/SE/DE citizens considered that AVMSD should do more to ensure the independence of regulators and lay down formal regulations.

in the domains of audiovisual commercial communications, jurisdiction and protection of minors.<sup>263</sup>

- Since the way regulatory authorities function can differ significantly from one Member State to the other, it can translate into different levels of user protection across the EU. In markets with weak regulators, consumer rights risk not to be sufficiently protected<sup>264</sup>.
- Moreover, regulatory authorities lacking independence are not in a position to guarantee media freedom and pluralism<sup>265</sup>. In many countries where independence of national regulatory bodies is weak, challenges to media freedom and pluralism over the last years have been reported<sup>266</sup>. This was the case for Romania in the period from 2007 to 2012, where the Commission identified problems with ensuring media freedoms and with the independence of the audiovisual regulatory body<sup>267</sup>. The same happened in Hungary in 2010, where a number of provisions of a draft law raised concerns related to media pluralism. The Commission<sup>268</sup>, the European Parliament<sup>269</sup>, the OSCE Representative on Freedom of the Media<sup>270</sup>, the Council of Europe<sup>271</sup> and other international bodies and NGOs active in the area of human rights and civil liberties, and Member States have also all raised concerns related to both media freedom and the independence of the regulator. The recent amendment to the media law in Poland (The Broadcasting Act of 1992) could lead to the limitation of the powers of the Media Regulatory Authority. As such, it might raise issues related to media pluralism and to the independence of public service broadcasting in the country, which in turn may affect the independence of audiovisual regulators.

In this light, Article 30 does not provide sufficient safeguards to ensure an effective coherent application of the AVMSD across the European Union.

### *EU added value*

As the AVMSD does not contain any formal obligation for Member States to create an independent regulatory body if one does not exist already nor does it indicate any characteristics for such body. Neither does the AVMSD set any requirement for Member States to have an independent regulatory body.

The absence of a formal obligation has contributed to diverse regulatory structures and varying degrees of independence. Yet, regulatory independence both from political bodies and commercial interests is essential to ensure effective internal market supervision, proper application of the rules of the Directive and guarantee media freedom and pluralism. In many countries where independence of national regulatory bodies is weak, challenges to media freedom and pluralism over the last years have been reported<sup>272</sup>. This was the case for Romania in the period from 2007 to 2012, where the Commission identified problems with ensuring media freedoms and with the independence of the

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<sup>263</sup> Results of the 2013 public consultation on the independence of audiovisual regulatory bodies: <http://ec.europa.eu/digital-agenda/en/news/public-consultation-independence-audiovisual-regulatory-bodies-read-contributions>

<sup>264</sup> E.g. reply to the 2015 public consultation by UK Government or FOX International channels.

<sup>265</sup> Recital 94 AVMSD "In accordance with the duties imposed on Member States by the Treaty on the Functioning of the European Union, they are responsible for the effective implementation of this Directive. They are free to choose the appropriate instruments according to their legal traditions and established structures, and, in particular, the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently. **More specifically, the instruments chosen by Member States should contribute to the promotion of media pluralism.**"

<sup>266</sup> Culture Council Conclusions of 26 November 2013.

<sup>267</sup> Progress Reports [http://ec.europa.eu/cvm/docs/com\\_2013\\_47\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf)

<sup>268</sup> The Commission noted that "the recently adopted Hungarian Media Act raises specific concerns regarding the respect for the fundamental media freedoms such as freedom of expression and media pluralism"; see press release: [http://europa.eu/rapid/press-release\\_SPEECH-11-6\\_en.htm?locale=FR](http://europa.eu/rapid/press-release_SPEECH-11-6_en.htm?locale=FR)

<sup>269</sup> Weber Report: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0203&language=EN&ring=A7-2013-0117> and

Tavares Report: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0229+0+DOC+XML+V0/en>

<sup>270</sup> Press release: <http://www.osce.org/fom/90823> and <http://www.osce.org/fom/74687>

<sup>271</sup> [http://www.coe.int/t/dghl/cooperation/media/publications/Hungary/Hungary%20Media%20Acts%20Analysis%20-%20Final%2014-05-2012%20\(2\).pdf](http://www.coe.int/t/dghl/cooperation/media/publications/Hungary/Hungary%20Media%20Acts%20Analysis%20-%20Final%2014-05-2012%20(2).pdf)

<sup>272</sup> Culture Council Conclusions of 26 November 2013.

audiovisual regulatory body<sup>273</sup>. The same happened in Hungary in 2010, where a number of provisions of a draft law raised concerns related to media pluralism. The Commission<sup>274</sup>, the European Parliament<sup>275</sup>, the OSCE Representative on Freedom of the Media<sup>276</sup>, the Council of Europe<sup>277</sup> and other international bodies and NGOs active in the area of human rights and civil liberties, and Member States have all raised concerns related to both media freedom and the independence of the regulator. The OSCE Representative also recently called for respect of regulator's independence in Latvia following the dismissal of the Regulator chairman<sup>278</sup>.

A captive regulator may treat differently the various players competing on the same market clearly distorting competition. There is also evidence that the independence of audiovisual regulatory authorities has an impact on the providers' willingness to establish in an EU Member State and serve audiences in several Member States<sup>279</sup>.

As a result, the lack of independence of the Regulators may undermine the functioning of the audiovisual internal market.

On these grounds, it can be affirmed that Article 30 AVMSD does not have in general EU added value.

It should however be considered that Article 30 did play a role in facilitating the setting up of the ERGA in 2014. ERGA has facilitated cooperation among existing independent regulators and the Commission on cross-border issues.

### ***Efficiency***

The efficiency of Article 30 AVMSD as regards independent regulators cannot be assessed given the absence of a specific obligation.

However, it should be noted that the independence of regulatory authorities both from political bodies and from commercial interests is essential to ensure an objective supervision of markets<sup>280</sup>. A lack of independence can result in an unfair treatment between players competing on the same market and have a negative economic impact on service providers. This is why many EU regulatory frameworks in other domains (i.e. telecom, gas, electricity, postal services and personal data protection) mandate regulatory independence.

As an example, in the context of the Klubrádió case, the company sued the national regulator in Hungary for economic loss resulting from an alleged unfair treatment which led to a deal in the granting of a license<sup>281</sup>. A number of EU based companies also lodged complaints with the European Commission against Hungary and the Hungarian converged regulatory authority - Media and

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<sup>273</sup> Progress Reports [http://ec.europa.eu/cvm/docs/com\\_2013\\_47\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf)

<sup>274</sup> The Commission noted that "the recently adopted Hungarian Media Act raises specific concerns regarding the respect for the fundamental media freedoms such as freedom of expression and media pluralism"; see press release: [http://europa.eu/rapid/press-release\\_SPEECH-11-6\\_en.htm?locale=FR](http://europa.eu/rapid/press-release_SPEECH-11-6_en.htm?locale=FR)

<sup>275</sup> Weber Report: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0203&language=EN&ring=A7-2013-0117> and

Tavares Report: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT+REPORT+A7-2013-0229+0+DOC+XML+V0//en>

<sup>276</sup> Press release: <http://www.osce.org/fom/90823> and <http://www.osce.org/fom/74687>

<sup>277</sup> [http://www.coe.int/t/dghl/cooperation/media/publications/Hungary/Hungary%20Media%20Acts%20Analysis%20-%20Final%2014-05-2012%20\(2\).pdf](http://www.coe.int/t/dghl/cooperation/media/publications/Hungary/Hungary%20Media%20Acts%20Analysis%20-%20Final%2014-05-2012%20(2).pdf)

<sup>278</sup> <http://www.osce.org/fom/167586>

<sup>279</sup> Survey and data gathering to support the Impact Assessment of a possible new legislative proposal concerning Directive 2010/13/EU (AVMSD) and in particular the provisions on media freedom, public interest and access for disabled people

<sup>280</sup> ERGA statement on the independence of NRAs in the audiovisual sector:

<https://ec.europa.eu/digital-agenda/en/news/erga-statement-independence-nras-audiovisual-sector>

<sup>281</sup> The National Media and Infocommunications Authority (Nemzeti Média- és Hírközlési Hatóság, NMHH) refused to renew a license for the use of frequencies for Klubrádió, one of the few remaining radio stations opposing the government. The office did not execute the legally binding judgment of the court obliging it to grant the frequencies. The Commission sent in this context two administrative letters (EU Pilot letter 3161/12/INSO and administrative letter Ares (2013) 3366906). Klubrádió sued NMHH for a multi-billion compensation for the lost advertising income alleging that there was causation between the breach of law of NMHH and the fall in their advertising revenues. The ruling is expected on 16 February 2016 (<http://www.financialobserver.eu/ce/nervous-moves-on-the-hungarian-media-market/>).



Infocommunications Authority (NMHH). Liberty Global also lodged a complaint against the Hungarian Media regulator<sup>282</sup> that led to the preliminary ruling by ECJ.<sup>283</sup>

There is also evidence that independence of audiovisual regulatory authorities has an impact on the providers' willingness to establish in an EU Member State and serve audiences in several Member States<sup>284</sup>.

### **Coherence**

Existing EU legislation in a number of domains (i.e. telecom, energy and postal regulatory frameworks, personal data protection) mandate the Member States to ensure the independence of national competent authorities (see the considerations under the section on Relevance). For example, the EU Framework Directive for electronic communications requires the Member States to ensure that regulators act independently and do not seek or take instructions from any other body in relation to the exercise of certain key regulatory tasks assigned to them. Only appeal bodies may suspend or overturn decisions by national regulatory authorities, and the head of a national regulatory authority and other members of the collegiate body fulfilling that function may be dismissed only if they no longer fulfil the conditions required for the performance of their duties laid down in advance in national law. This shows that the AVMSD is not coherent with existing EU frameworks in other domains.

The lack of coherence of the AVMSD with EU legislation in other domains was also pointed out by the Centre for Media Pluralism and Media Freedom which noted that the lack of harmonisation in the audiovisual domain is "particularly blatant compared to electronic communications framework that regulates issues which **are closely related and complementary** to those in the AVMSD". It further stresses that in times of convergence, it could be both valuable and reasonable to consider the establishment of the same requirements for audiovisual regulatory authorities as foreseen for the electronic communications regulators, particularly as in some Member States electronic communications and audiovisual media services are already under the supervision of the same regulator.

The AVMSD provisions are not coherent either with a number of relevant international instruments endorsing the principle of independence of regulators. This is the case for, amongst others, the Council of Europe's Committee of Ministers' Recommendation (2000)23<sup>285</sup> on the independence and functions of regulatory authorities for the broadcasting sector; the Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration<sup>286</sup>; and Resolution No. 2 of the 7th European Ministerial Conference on Mass Media Policy<sup>287</sup> on cultural diversity and media pluralism in times of globalisation. Notably, the Council of Europe Recommendation (2000) 23 unequivocally states: "*The rules governing regulatory authorities for the broadcasting sector, especially their membership, are key elements of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces and economic interests*".

## **6.9 Accessibility for persons with disabilities**

Article 7 AVMSD requires Member States to encourage audiovisual media service providers to gradually provide for accessibility services for hearing and visually-impaired viewers.

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<sup>282</sup> The case was launched under 1971/11/INSO in Pilot following formal complaint CHAP(2011)00417), subsequently infringement procedure was initiated No 2011/4127.

<sup>283</sup> Case C-475/12

<sup>284</sup> <http://curia.europa.eu/juris/document/document.jsf?text=&docid=151525&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1257558>

<sup>285</sup> Survey and data gathering to support the Impact Assessment of a possible new legislative proposal concerning Directive 2010/13/EU (AVMSD) and in particular the provisions on media freedom, public interest and access for disabled people

<sup>286</sup> [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

<sup>287</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1089615>

<sup>288</sup> [http://www.coe.int/t/dghl/standardsetting/media/doc/DH-MM\(2006\)004\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/doc/DH-MM(2006)004_en.pdf)

### ***Relevance of the current rules***

All the respondents to the Public consultation of 2015 shared the opinion that accessibility of audiovisual content by all viewers, including those with visual and hearing disability, must be guaranteed. This confirms the relevance of Article 7 AVMSD.

### ***Effectiveness***

As indicated in the 2<sup>nd</sup> Application report on the AVMSD, the proportion of audiovisual media services accessible to people with visual or hearing disabilities has increased in some Member States since the 1<sup>st</sup> Application report on the AVMSD of May 2012. For example, the level of subtitling services has increased since 2010 (reporting period for the 1<sup>st</sup> Application Report), either due to the regulatory action by the Member States<sup>288</sup> or voluntary commitments by the audiovisual media service providers<sup>289</sup>. Voluntary codes for broadcasting services have been introduced in 7 Member States<sup>290</sup> and for on-demand in 5<sup>291</sup>.

Commercial broadcasting channels however lag behind as compared to public service broadcasters, which are subject to stricter rules in many countries. The average share of programmes broadcast in the Member States with subtitles by the two main public channels reached in 2012 between 56% and 61%, respectively, while the share for the two main commercial broadcasters amounts to only 44% and 48% respectively.<sup>292</sup>

There is divergence in the conditions of accessibility for consumers leading thus to a fragmentation across the European Union. While subtitles are available in most Member States, the amount of content subtitled varies considerably between countries (from almost all programmes in the UK or France to only specific ones, such as news, in Lithuania).

The availability of access services for the visually impaired is much lower. The average volumes broadcasted with audio description range between 4% and 11%. Some Member States such as the Netherlands or Finland do not provide any audio description, while other Member States such as Slovakia (from 7 to 10 % of overall programmes) and UK (15 to 24 %) do.<sup>293</sup> The provision of sign language interpretation is the least available access service. On average it is below 5% of the overall programmes across all countries covered by the Commission's study of November 2013, on assessing and promoting e-accessibility. Member States such as Portugal or the UK perform better in this regard (between 7 and 16 % and 5 to 7 % respectively) than the majority, including some that according that study do not provide any signing (e.g. Germany or Luxembourg).<sup>294</sup> Overall, persons affected by disabilities still face significant barriers when accessing audiovisual content in the EU.<sup>295</sup>

In the 2015 Public consultation, viewers and regulators<sup>296</sup> expressed dissatisfaction resulting from the fact that some programmes are only accessible on linear broadcast but not on-demand. A majority of regulators and many Member States, as well as commercial broadcasters, disability groups and manufacturers also considered that the rules are not sufficient to ensure accessibility. They argue that in the absence of a legal obligation, the EU cannot achieve a barrier-free access to audiovisual media

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<sup>288</sup> E.g. in Austria, in 2009, the subtitling on ORF amounted to 35% of programming - equivalent to 6,170 hours of coverage per year - and in 2012 was increased to 10,546 (60 percent of the ORF programming). The amount of hours of the audio described programmes on ORF increased from 112 hours in 2009 to 752 hours in 2012 – thus by more than six and a half times. Similarly, in Finland the government introduced as of 2014 the gradually increasing quotas on subtitling services that range from 80% for PSb and 40 % for commercial broadcasters in 2014 to 100 % and 50 % respectively in 2016. Also in Germany, the law of 2013 expanded the barrier-free TV: the proportion of programmes with subtitles increased from 40% and 49% respectively in 2012 to 70% and 90% in 2014 respectively (ZDF, ARD).

<sup>289</sup> 1<sup>st</sup> and 2<sup>nd</sup> Application reports on the AVMSD.

<sup>290</sup> DE, FR, CY, LT, MT, PL, NL

<sup>291</sup> AT, DE, CZ, IE, UK

<sup>292</sup> E-accessibility study: <https://ec.europa.eu/digital-agenda/news-redirect/12306>

<sup>293</sup> Ibidem

<sup>294</sup> Ibidem

<sup>295</sup> For example, the level of access services, especially audio-description, remain very low. Thus people with a hearing impairment and to a bigger extent, people with sight impairment are still excluded from accessing much of the audiovisual content.

<sup>296</sup> ATVOD, OFCOM, ES CNMC.



content for all citizens. On the other hand, about half of the Member States believe that the AVMSD is effective for it leaves the flexibility required by the heterogeneity of the national markets and the challenges faced in each Member State.

Finally, evidence<sup>297</sup> shows that specific obligations in legislation and/or by the regulators deliver better results in terms of provisions of accessibility services. This is confirmed by the view point expressed by manufacturers in the 2015 public consultation. They reported that, despite their best efforts, the overall accessibility depends on the accessibility of other parts of that ecosystem, i.e. audiovisual content.

In light of the above, it can be concluded that the AVMSD had an incentive effect for Member States to take action to increase the accessibility to audiovisual media services across the EU.

### ***EU added value***

In the absence of mandatory EU-level accessibility rules, there are considerable variations across Member States in terms of the extent to which different types of accessibility measures are in place for TV broadcasting services, as well as in the proportion of programming covered.

Almost all Member States<sup>298</sup> have introduced statutory rules requiring providers to adopt measures to facilitate accessibility. While some Member States have very detailed statutory<sup>299</sup> or self- or co-regulatory rules<sup>300</sup>, others have only very general provisions. Some limit the accessibility obligation to public service broadcasters (included in the public service contracts)<sup>301</sup>. In some Member States, an accessibility obligation is included in the broadcasters' licenses for the provision of broadcasting services.<sup>302</sup> As regards on-demand services, only 2 countries (Belgium and Greece) impose targets on the share of accessibility services<sup>303</sup>.

The current rules also allow for the development of co- or self-regulatory schemes which often complement national rules.

Furthermore, as confirmed in the 1<sup>st</sup> and 2<sup>nd</sup> Application Report on the AVMSD, the fact that the Commission monitors and reports on the state of the art in this domain constitutes an incentive to take action both for Member States and broadcasters.

In light of the above, it can be concluded that Article 7 laid the ground at EU level for an action of the Member States to increase the accessibility to audiovisual media services.

### ***Efficiency***

The efficiency of Article 7 cannot be assessed given that it sets out no obligations and as such there are no costs directly linked to it.

It is worth highlighting that accessibility is overall guaranteed despite the absence of legal obligations in the AVMSD. Some Member States<sup>304</sup> argue that if more stringent rules on accessibility were in place, this would create obstacles for compliance by Member States and commercial broadcasters.

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<sup>297</sup> E-accessibility study

<sup>298</sup> All the Member States with the exception of BG, LU, LV

<sup>299</sup> All the Member States with the exception of LU and LV require services providers to adopt accessibility measures but only the following MSs set quotas for accessibility of linear services: BE (fr), CZ, DE, IE, EL, ES, FI, FR, IT, HU, NL, AT, PT, PL, SE, SK, UK, for on-demand services only BE (fl) and EL.

<sup>300</sup> DE, FR, CY, LT, MT, PL, NL and for on-demand AT, DE, CZ, IE, UK

<sup>301</sup> BE, DK, ES, FR, UK, HR, IE, PT, RO, SE;

<sup>302</sup> BG, DE, DK, EE, SE, UK

<sup>303</sup> E.g. In Belgium (Flemish speaking community) the regulation concerning accessibility services is identical for linear and on-demand services: 95 % of programming of PSBs have to be subtitled by teletext and for commercial broad caters all news programmes and 90 % of other current affairs programmes. In Greece, on-demand providers shall transmit 20% of the content with subtitles.

<sup>304</sup> BE, EE, FI, FR, LU, NL, UK

However, the lack of EU-level harmonisation has led to an uneven treatment for TV broadcasters and on-demand service providers. In most Member States, the latter are not subject to accessibility requirements and even content that was available with assistive services on TV is no longer accompanied by those assistive services when accessed as a catch-up service<sup>305</sup>.

At Member State level, national law has generated varying degrees of compliance costs. For TV broadcasting, the yearly costs of providing accessibility services represent less than 0.1 % of large broadcasters' revenues.<sup>306</sup> To the same extent, for TV channels of major broadcasters, the additional production costs of subtitles usually make up less than 1% of the production budget for the programme itself. However, for niche channels using archive and third-party programming, or for broadcasters in small countries, costs may reach 25-30% of the channel's production budget. For many television broadcasters, live programming accounts for an increasing proportion of overall output<sup>307</sup>.

The costs for on-demand services are similar to those incurred by TV broadcasting services. When using subtitling, audio description and signing originally created for broadcasting services, on-demand services incur costs related to adapting the services for their platforms<sup>308</sup>.

### ***Coherence***

The AVMSD is coherent with EU activities aimed at promoting the active inclusion and full participation of disabled people in society, in line with the EU human rights' approach to disability issues. As such, the AVMSD rules are coherent with the European Commission's European Disability Strategy 2010-2020<sup>309</sup> that builds on the UN Convention on the Rights of People with Disabilities (UNCRPD), and takes into account the lessons learnt from the European Disability Action plan 2004-2010<sup>310</sup>. As such, the AVMSD is coherent with EU initiatives promoting the active inclusion and full participation of disabled persons in society, in line with the EU human rights approach to disability issues.

The AVMSD is also coherent and complementary to other EU-level initiatives that aim at the inclusion of people with disabilities, in particular the proposal for a Directive on the accessibility of the public sector bodies' websites (DG CNECT). The AVMSD may not be fully coherent with the final outcomes of the proposal for a Directive on the harmonisation of the laws of the Member States relating to accessibility requirements of goods and services – the European Accessibility Act (DG EMPL)<sup>311</sup>. This proposal also covers audiovisual services. It provides an information requirement about the functioning of the service and about its accessibility characteristics and facilities as well as the general requirement of "including functions, practices, policies and procedures and alterations in the operation of the service targeted to address the needs of persons with functional limitations". If the proposal for a European Accessibility Act were to be finally adopted by the co-legislators in its present form, it would mean that audiovisual media services would be subject to stricter rules than those currently set out in the AVMSD. As a result, the rules laid down in the AVMSD would become irrelevant.

The AVMSD is coherent with the UN convention on the Rights of Persons with disabilities (UNCRPD) that was ratified by all EU Member States. The AVMSD rules are also coherent and complement national initiatives such as quotas of accessible programmes to be filled by providers or with state aid measures mentioned in the Effectiveness sub-section.

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<sup>305</sup> Reply by OFCOM and ATVOD to the 2013 Green paper Public consultation on AVMSD and to the 2015 AVMSD Public Consultation

<sup>306</sup> Sky plc reported a EUR 6.3 million, Canal + Groupe EUR 2.1 million of yearly costs.

<sup>307</sup> Peter Olaf Looms, The production and delivery of DTV Access Services, EBU Technical review – 2010 Q3

<sup>308</sup> Ibidem

<sup>309</sup> COM(2010) 636 final

<sup>310</sup> COM(2003) 650 final

<sup>311</sup> <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2400&furtherNews=yes>

## 6.10 Events of major importance for society and short news reports

The AVMSD leaves to the Member States the prerogative to prohibit the exclusive broadcasting of events which they deem to be of **major importance for society**, where such broadcasts would deprive a substantial proportion of the public of the possibility to follow those events on free-to-air television<sup>312</sup>. The AVMSD mentions the football World Cup and the European football championship as examples of such events<sup>313</sup>. When a Member State notifies a list of events of major importance, the AVMSD requires the Commission to assess its compatibility with EU law. If deemed compatible, the list will benefit from 'mutual recognition'.

The 2<sup>nd</sup> Application report on the AVMSD mentions the adoption of a positive decision<sup>314</sup> on the list of events of major importance for society proposed by Italy in December 2011. In 2014, the Commission approved the Polish list. In 2015, the Danish list was approved.

According to a recent judgement by the Court of Justice, the Commission should only review what effect a Member State's designation of events as being of major importance has on the freedoms and rights recognised under EU law and if it exceeds those which are intrinsically linked to such a designation<sup>315</sup>.

To warrant the public's access to information on events of high interest, Member States must ensure that any broadcaster established in the Union gives access to **short extracts** of such events to the public which are transmitted on an exclusive basis. According to the AVMSD, Member States shall define the modalities and conditions for the provisions of such short news reports.<sup>316</sup> In so doing, Member States can also provide for compensation arrangements but compensation shall not exceed the additional costs incurred in providing access. In reply to a request for a preliminary ruling, the Court of Justice held that this limitation is in line with the Charter of Fundamental Rights, in particular the right to property. Although it restricts the freedom to conduct a business, such restriction is justified and in line with the principle of proportionality<sup>317</sup>.

### *Relevance of the current rules*

Most respondents across all stakeholder categories in the 2015 Public consultation on the AVMSD stated that the rules are relevant.

However, for events of major importance for society, some commercial broadcasters have indicated that the system of lists is outdated as nowadays the market has the instruments to address the public's demand for major events. In light of the above, it can be concluded that the AVMSD rules are still relevant.

### *Effectiveness*

Most respondents across all stakeholders categories (including most Member States and regulators) in the 2015 Public consultation on the AVMSD stated that the rules on **events of major importance for society** have been effective.

In the frame of the 2015 Public Consultation, one regulator, consumer associations, telecom and ICT industry flagged some elements reducing the effectiveness of the Directive: According to them, the notion of "events of major importance for the society" is not clear enough and consequently seems to

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<sup>312</sup> Article 14 AVMSD

<sup>313</sup> Recital 49 AVMSD

<sup>314</sup> OJ L 187 of 17.07 2012, pages 57-61

<sup>315</sup> The Court considered that, for the purpose of determining events of major importance, the World Cup and the EURO tournaments must be considered divisible into different matches or stages. Member States need to communicate to the Commission the reasons justifying why they consider the final stage of the World Cup or the EURO, in its entirety, to be a single event.

C-205/11 P - FIFA v Commission <http://curia.europa.eu/juris/documents.jsf?num=C-205/11>, C-204/11 P - FIFA v Commission

<http://curia.europa.eu/juris/documents.jsf?num=C-204/11>, C-201/11 P - UEFA v Commission <http://curia.europa.eu/juris/documents.jsf?num=C-201/11>

<sup>316</sup> Article 15 AVMSD

<sup>317</sup> Case C-283/11 Sky Österreich GmbH v Österreichischer Rundfunk <http://curia.europa.eu/juris/liste.jsf?num=C-283+/11>

be stretched and overused by national authorities in charge of creating the lists; the rules are less effective in times of media convergence as they do not apply to "new" services (mentioned by some Member States and public service broadcasters). Also, according to several consumer organisations, the rules do not support the specific AVMSD objectives related to consumer protection as they allow sport events listed as "of major importance" to be sponsored by alcohol producers.

The rules on **short news reports** have proven to be effective to date. Whereas there have been some issues with the transposition of the definition of the source of short news and the lack of time limits, these issues were addressed and solved with the Member States concerned and did not highlight problems with the effectiveness of the rules as such. This was confirmed by a majority of respondents across all stakeholder categories in the 2015 Public consultation.

In light of the above, the AVMSD rules on events of major importance for society and short news reports have proven to be overall effective for sustaining media pluralism and right of information.

### ***EU added value***

The AVMSD restricts broadcasters' freedom to conclude exclusive deals that would prevent citizens from accessing information and events of major importance for society. By warranting EU-wide mutual recognition to national decisions in this domain, the AVMSD has delivered EU added value.

The AVMSD requires Member States to ensure that any broadcaster established in the Union has access, on a fair, reasonable and non-discriminatory basis, to events of high interest to the public for the purposes of short news reports. The AVMSD rules thus constitute an important corollary to the free circulation of audiovisual media services offered by providers under the jurisdiction of Member States. This confirms the European added value of the rules.

### ***Efficiency***

In the framework of the Public consultation, stakeholders did not flag any lack of proportionality between the cost resulting from the application of the provision of events of major importance for society and the objective to ensure access to these events.

However, Public service broadcasters indicated that there is scope for simplification and speeding up of the notification procedure. Also, one Member States and a few public service broadcasters indicated that the rules create unequal market conditions amongst operators active in different Member States as the lists cannot be enforced against exclusive right holders outside the relevant territory.

For short news reports, in the 2015 Public consultation, some commercial broadcasters mentioned that there is scope for de-regulation as broadcasters already have access to short news reports under self-regulatory and contractual arrangements.

### ***Coherence***

The designation of events of major importance for society does not give rise to issues of coherence with other EU initiatives and activities. The AVMSD functions in a complementary framework with Member States' decisions on the designation of events of major importance for society.

The right to short news reports does not give rise to issues of coherence with other EU initiatives and activities. The AVMSD functions in a complementary framework with Member States' legislation regarding the modalities of exercising that right, including compensation arrangements, the maximum length of short extracts and time limits regarding their transmission.

## 6.11 Right of reply

Article 28 of the AVMSD warrants a "right of reply" that applies to television broadcasting (on-demand audiovisual media services are excluded from the application of this rule). Any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies.

### *Relevance of the current rules*

Most respondents across all stakeholders' categories in the context of the 2015 Public consultation on the AVMSD stated that the AVMSD rules are relevant. This confirms that the rules on the right of reply are still relevant.

### *Effectiveness*

Most respondents across all stakeholders' categories in the 2015 Public consultation on the AVMSD perceive the AVMSD rules to be effective. A number of stakeholders however, called for extending the rules to cover all audiovisual media services in order for the rules to be truly effective. The implementation of the provision has never given rise to any situation where the achievement of objectives was challenged. In light of the above, it can be concluded that the rules on the right of reply are perceived to be effective.

### *EU added Value*

By providing a common level of protection in television broadcasting, the AVMSD has brought a clear EU added value. It should however be considered that, in the 2015 Public consultation on the AVMSD, public service and commercial broadcasters highlighted that there is a case for extending the AVMSD rules on the right of reply to all audiovisual media services, to ensure alignment with national trends (which have followed soft law – see below under Complementarity - and applied the rules beyond television broadcasting) and hence better harmonisation.

### *Efficiency*

Despite the Public consultation and the studies supporting the REFIT evaluation, it has not been possible to conclude on the efficiency of the right of reply. However, neither the results of the 2015 Public consultation nor other elements suggest that there are more cost-effective options to ensure a right of reply in television broadcasting.

### *Coherence*

The rules on the right of reply are coherent with soft law measures in this field, in particular the 2006 Council and Parliament Recommendation on the Protection of Minors and on the Right of Reply<sup>318</sup> (which is also coherent with the Recommendation of the Council of Europe (2004) 161 on the right of reply in the new media). The Recommendation is a "soft law" measure calling on the Member States to ensure the right of reply online or equivalent remedies. In including the right of reply in online media, the 2006 Recommendation extended the scope of a pre-existing 1998 Recommendation<sup>319</sup>.

## 6.12 Self/co-regulatory initiatives in the context of the AVMSD

The AVMSD encourages Member States to use self and co-regulation in the fields coordinated by the Directive, and particularly in the field of commercial communications in children's programmes<sup>320</sup>.

### *Relevance of the current rules*

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<sup>318</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006H0952&from=EN>

<sup>319</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998H0560&from=EN>

<sup>320</sup> In the area of audiovisual media service communications in children's programmes for sweet, fatty or salty foods or drinks, Member States must encourage audiovisual media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications in children's programmes.

A large number of respondents from Member States, broadcasters, the Internet sector and consumer organisations to the AVMSD Public consultation 2015 and to the 2013 Green Paper on media convergence stated that the self and co-regulatory initiatives encouraged in the AVMSD are of continued relevance to ensure an appropriate level of consumer protection, in particular in the fields of audiovisual commercial communications, protection of minors and accessibility of audiovisual content. This confirms the relevance of the AVMSD rules encouraging the use of self and co-regulation.

### *Effectiveness*

At present, the domains where self-and co-regulation is most frequently used at national level are audiovisual commercial communication (in particular addressed to children and concerning audiovisual commercial communications of alcohol and HFSS foods), protection of minors and accessibility of audiovisual content. While the majority of countries have self- or co-regulatory schemes in place for audiovisual commercial communications, in the field of the protection of minors from harmful audiovisual content, statutory regulation prevails. The majority of codes lacks specified targets and objectives which makes their proper evaluation difficult. Where monitoring processes are in place they are often not formalised and implemented systematically. Complaints are often used as an indicator to measure the performance of a self- or co-regulatory scheme; however they form a relatively ambiguous indicator. The existence of a legislative backstop is an important success factor in promoting compliance with a self- or co-regulatory code. Graduated sanctions which maintain an element of proportionality are usually considered to be an effective approach in enforcing a scheme<sup>321</sup>.

Already at the time of the last revision in 2007, Member States had put in place self and co-regulatory regimes in the fields covered by the Directive, such as for protection of minors. This saw a spur following the entry into force of the Directive as testified by the 1<sup>st</sup> Application report on the AVMSD, which mentioned that in all but two Member States self- or co-regulatory schemes existed, or encouragement provisions had been directly included in the media legislation. The 2<sup>nd</sup> AVMSD Application report mentions that since the previous Application report, four additional Member States<sup>322</sup> adopted new self-/co-regulation systems, mostly in the field of protection of minors (in particular in on-demand services) and accessibility.

In the field of **alcohol advertising**, a comparison of the 1<sup>st</sup> and the 2<sup>nd</sup> Application report on the AVMSD shows that the number of media services and Member States involved in self-regulation of marketing and advertising of alcoholic beverages<sup>323</sup> increased substantially from 2007 to 2010 and remained stable from 2010 to 2014.

**Codes of conduct on audiovisual commercial communications of food and beverages high in fat, salt and sugars (HFSS)** to children codes are already in place in all Member States but two. The 2<sup>nd</sup> AVMSD Application report mentions that as compared to the 1<sup>st</sup> Application report most Member States did neither update the current codes nor develop new codes of conduct<sup>324</sup>. There are still a number of Member States where there are no relevant measures in place<sup>325</sup> or the existing legislation only encourages the developments of such codes<sup>326</sup>. In many cases the existing codes do not specifically address audiovisual commercial communications of HFSS food products addressed to children (e.g. SK, CZ) but in general to the advertising of food products or focus on the promotion of a healthy diet. Only in eight cases codes have been updated or new codes were set up since the last

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<sup>321</sup> See Annex 10.

<sup>322</sup> BE (fr), IE, ES, PL

<sup>323</sup> In the context of the EU Platform for Action on Diet, Physical Activity and Health which has so far promoted a total of more than 300 stakeholder commitments, some of which cover the area of food and drink marketing (namely targeting children). In 2007, leading food and drink producers signed the EU Pledge to change the way they advertise towards children under the age of 12. One of the core commitments of the EU Pledge consists in not advertising products to children under 12 years, except for products which fulfil common nutritional criteria. For the purpose of this initiative, "advertising to children under 12 years" means advertising to media audiences with a minimum of 35% of children under 12 years.

<sup>324</sup> MS with new codes: EE, EL, PL; MS where codes were updated: IE, ES, NL, FR, PT.

<sup>325</sup> LU, HU, MT – but now legislation has been proposed

<sup>326</sup> CY, LT, LV

Application Report. In two Member States, new legislation or co-regulatory measures are at a drafting stage (HR, MT). In two other Member States, new self-regulation is being developed (CY, FI).

According to estimates from the WHO's Childhood Obesity Surveillance Initiative (COSI), around 1 in 3 children in the EU aged 6-9 years old were overweight or obese in 2010. This is a worrying increase compared to 2008, when estimates were 1 in 4<sup>327</sup>. This situation derives from varied behavioural risk factors including minors' exposure to food advertisements and other marketing tactics. An evaluation of the Platform for Action on Diet, Physical Activity and Health concluded that stakeholders' initiatives in the field of marketing and advertising showed good progress, but that their impact could be further strengthened<sup>328</sup>.

As regards **protection of minors**, many Member States have in place codes of conduct on minors' protection<sup>329</sup> or other self-regulatory systems<sup>330</sup>.

As regards **hate speech**, self-regulatory arrangements are in place in a number of Member States (AT, BE, DE, EL, HU, IT, NL, PL, FI, DK)<sup>331</sup> whereas there is no information on the use of co-regulation.

The results of the 2015 Public consultation have provided some indications as to the effectiveness of these arrangements in various fields covered by the Directive<sup>332</sup>.

As regards **commercial communications**, in the majority of Member States, co-regulatory systems are in place.

Some commercial broadcasters, advertisers, the food and drink industry, the Internet, telecom ICT sector indicated that self and co-regulatory initiatives are an effective tool to be further promoted. However, consumer organisations and public health agencies in the Member States believe that the self- and co-regulation has not been effective in particular when it comes to alcohol advertising and advertising targeting children, in light of blurring lines between broadcast and on-demand services and the voluntary character of self-regulatory mechanisms. Also, self- and co-regulation systems are deemed to have excessively lengthy procedures to review complaints.

When it comes to **protection of minors**, self and co-regulation appears to be an effective tool given the satisfactory take up in the Member States (see above) and the fact that both the ERGA<sup>333</sup> and a large number of stakeholders from various sectors (broadcasters, the Internet and ICT industry, commercial broadcasters, consumer organisations) see this as an effective complement to regulation. ERGA also stressed the importance of self and co-regulation in filling regulatory gaps (i.e. to ensure protection in online services that are not in the AVMSD scope). ERGA has highlighted best practices in co-regulation, such as the shared responsibility between the Dutch Media Authority and NICAM (the Netherlands Institute for the Classification of Audiovisual Media<sup>334</sup>). Most VOD service providers established in the Netherlands have voluntarily adapted the NICAM classification system to their services.

As regards services not covered by the AVMSD, video-sharing platforms have in place self-regulatory tools to protect users from illegal or harmful content. They have in place community guidelines which prohibit racism, calls to violence, or other forms of abusive and discriminatory content. Any user can report, or flag, content for review and possible removal. Guidelines are updated over time. Amongst

<sup>327</sup> EU Action Plan on Childhood Obesity 2014-2020

([http://ec.europa.eu/health/nutrition\\_physical\\_activity/docs/childhoodobesity\\_actionplan\\_2014\\_2020\\_en.pdf](http://ec.europa.eu/health/nutrition_physical_activity/docs/childhoodobesity_actionplan_2014_2020_en.pdf))

<sup>328</sup> 1<sup>st</sup> Application Report of May 2012 (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0203&from=EN>)

<sup>329</sup> AT, BE-V, BE-Fr, BG, CZ, DE, ES, IE, IT, SE

<sup>330</sup> EL, FR, HU, LV, LU, MT, NL, PL, PT, RO, SI, UK

<sup>331</sup> [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL\\_STU\(2015\)536460\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU(2015)536460_EN.pdf)

<sup>332</sup> In the context of the AVMSD Public consultation of 2015, self and co-regulation schemes were presented as possible options for the future of the AVMSD in some of the domains covered by the Directive, along with other options. As such, the Public consultation indicates to what extent self and co-regulation is considered a viable way forward but it does not necessarily deliver results as to whether existing arrangements have proven effective.

<sup>333</sup> ERGA recommendations on protection of minors in a converged environment

<sup>334</sup> Considered a showcase for the co-regulation of content across the media thanks to the integrated approach through all regulated audiovisual sectors regarding age classification system and content categorization.

the latest updates is Facebook's ban of content "praising terrorists"<sup>335</sup> or Twitter's ban of indirect threats of violence in addition to direct threats. Video-sharing platforms devote substantial resources to "moderating" UGC content (one third of total Facebook employees are in charge of content moderation and YouTube also relies on the support of a network of external organisations<sup>336</sup>). Activists have demonstrated that Facebook enacts different standards for content moderation i.e. nudity images are removed more quickly than incitement to violence<sup>337</sup>. YouTube primarily relies on the number of complaints received to review content<sup>338</sup> and this has shortcomings<sup>339</sup>. The Council of Europe reported that community guidelines are ineffective against hate speech<sup>340</sup>.

### ***EU added value***

Encouraging Member States to use self and co-regulation warrant that Member States take action in fields like advertising of HFSS foods to children which are not regulated at EU level. In addition self and co-regulation are in line with the EU better regulation agenda (for further details, see the sub-section on Coherence).

### ***Efficiency***

It is not possible to assess efficiency as such given that there is no obligation to the use self and co-regulation in the AVMSD. The efficiency of self and co-regulatory systems primarily depends on the way they are designed. The Member States and the industry have the flexibility to design and run self and co-regulatory mechanisms in the way they see it mostly cost-effective and adapted to the market and other circumstances. Indeed, in the 2015 Public consultation, most broadcasters, advertisers as well as the food and drinks sector emphasised the efficiency of self and co regulation in the commercial communications domain.

One quantitative reference that can be given to estimate the costs of administering a co-regulatory scheme is the cost of running the UK co-regulator for on-demand services AT VOD, which is estimated to be 3000 p/a per service provider affiliated. AT VOD itself, in its contribution to the 2015 Public consultation, highlighted the efficiency of co-regulatory systems.

As indicated in the 2<sup>nd</sup> AVMSD Application report, the majority of regulators exercise monitoring activities only in co-regulatory schemes. In the case of self-regulation, they rely on monitoring by relevant self-regulatory bodies, only few of which report to the regulator in cases of non-compliance. In those Member States where statutory rules were adopted, the monitoring and enforcement activities are carried out regularly by the regulatory bodies.

Based on information regarding self-regulatory initiatives on protection of minors, costs may range between 100 000 Euros (incurred for a pilot tool developed to inform parents and children on the content of user generated video) and 320 000 Euros (incurred by a major Danish ISP to conduct parental control, website, education and information).

The co-regulatory systems in place for commercial communications in the majority of Member States are either funded by membership fees or a levy system from the industry and their cost ranges from EUR 250 000 to EUR 1 000 000. For HFSS advertising, the self-regulation organisations' secretariats budget currently range from small (with just one to five members of staff and a budget up to EUR 250

<sup>335</sup> <http://venturebeat.com/2015/12/06/social-media-companies-step-up-battle-against-militant-propaganda/>

<sup>336</sup> YouTube's "Trusted Flagger" program allows groups ranging from a British anti-terror police unit to the Simon Wiesenthal Center, a human rights organization, to flag large numbers of videos as problematic and get immediate action.

<sup>337</sup> <http://www.theverge.com/2015/11/3/9662836/facebook-hate-speech-germany-protest-topless-photo-racism>

<sup>338</sup> Online activists have called activists to report collectively some abusive content, thus prompting YouTube to more expeditiously review and eventually taken down content. <http://www.entrepreneur.com/article/253631>

<sup>339</sup> Facebook suspended or restricted the accounts of many pro-Western Ukrainians after they were accused of hate speech by multiple Russian-speaking users in what appeared to be a coordinated campaign, said former Facebook security staffer Nick Bilogorskiy. Vietnamese activists said that a coordinated campaign attributed to Vietnamese officials temporarily blocked content by government critics.

<sup>340</sup> [https://www.coe.int/t/dg4/youth/Source/Resources/Publications/2014\\_Starting\\_Points\\_for\\_Combating\\_Hate\\_Speech\\_Online.pdf](https://www.coe.int/t/dg4/youth/Source/Resources/Publications/2014_Starting_Points_for_Combating_Hate_Speech_Online.pdf)



000) to large (up to over 100 members of staff with budgets up to and over EUR 1 000 000) and cover the whole advertising field. SROs' secretariats mainly receive the complaints, gather any necessary information about the complainant and evidence of the advertiser in order to prepare the case for jury. These SROs are either funded by membership fees (18 of them) or a levy system (5) from the industry.<sup>341</sup>

### **Coherence**

The 2001 White Paper on European Governance<sup>342</sup> recognised the need to develop and improve self- and co-regulation in order to better achieve EU policy objectives. The 2003 Inter-institutional Agreement on better law making<sup>343</sup> defined these two forms of soft law. The importance of soft-law as alternative means of regulation was further recognised in the Commission Communication on Better regulation for Growth and Jobs in the European Union<sup>344</sup> which made it compulsory to consider it as an option in all impact assessments.

In this light, policies supporting self- and co-regulation are coherent with other EU initiatives that are part of the Better Regulation Agenda as well as with existing statutory and self/co-regulatory rules in the domains coordinated by the Directive.

## **6. CONCLUSIONS**

The evaluation found that while the AVMSD objectives are still **relevant**, some of its rules are no longer fit to attain these objectives, primarily due to market developments and changes in viewing patterns.

The AVMSD, namely via its COO approach has been perceived to be an **effective** regulatory framework by most stakeholders. It seems to have accompanied the **development and free circulation** of audiovisual media services across the Union. The COO principle has brought legal certainty by subjecting media service providers in the EU to the legislation of one Member State only. By allowing for economies of scale, the COO principle in turn facilitates investment in the media sector<sup>345</sup>. These considerations are valid for both traditional TV broadcasting services and on-demand services. With the last revision, on-demand audiovisual media services have become subject to a harmonised set of rules at EU level and to a single jurisdiction as opposed to multiple, possible diverging, rules and jurisdictions in the EU.

The AVMSD has been partially **effective** in ensuring a satisfactory and coherent level of **consumer protection**. While in the first years following its latest revision in 2007, the minimum harmonisation achieved via the AVMSD has allowed the Member States to craft legislation taking into account their cultural and historical sensitivities and addressing the specific challenges they face, there are today a number of concerns as to the effectiveness of the rules on consumer protection.

As a result of changes in viewing patterns, with audiovisual services being increasingly consumed on-demand and online, consumers, in particularly the younger ones, are less protected.

Firstly, all viewers and particularly minors are less protected (specifically from content harmful to them) when watching audiovisual content on video-sharing platforms which are not covered by the AVMSD. Secondly, the lighter rules applicable to on-demand services have resulted in a lower level of cultural diversity in relation to on-demand services. Thirdly, the fragmentation resulting from minimum harmonisation has impaired consumer protection in some domains such as accessibility of services to hearing and visually impaired viewers.

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<sup>341</sup> Source: EASA (European Advertising Standards Alliance)

<sup>342</sup> COM (2001) 428.

<sup>343</sup> OJ C 321, 31.12.2003.

<sup>344</sup> COM (2005)97 final

<sup>345</sup> In the public consultation, this aspect has been highlighted by DE, LU, SE and the UK, as well as by the satellite industry, public service broadcasters, commercial broadcasters, platform operators and publishers.

The evaluation also found that self and co-regulatory arrangements may effectively complement the AVMSD in ensuring consumer protection. However, a proper monitoring mechanism and a regulatory backstop are needed.

From a level playing field viewpoint, the Internet services that are not regulated in the AVMSD but are increasingly competing with those regulated in the AVMSD are at a **competitive** advantage. The competitiveness of broadcasters is undermined by the fact that on-demand services are subject to lighter touch rules. This is particularly evident in the fields of commercial communication and promotion of European works.

The evaluation found that while the AVMSD has enhanced **cultural diversity** by supporting the promotion, visibility and distribution of European works in the EU, there is scope for enhancing cultural diversity in on-demand services as compared to broadcasting services.

The AVMSD rules, notably through its rules on broadcasting events of major importance for society and short news reports, has contributed to **media freedom and pluralism**. However, **these values may be in danger given the differences in independence and effectiveness of national regulators** across the EU. The AVMSD does not require Member States to have in place independent regulators. Yet, regulatory independence both from political bodies and commercial interests is essential to guarantee media freedom and pluralism. In many countries where independence of national regulatory bodies is weak, challenges to media freedom and pluralism over the last years have been reported<sup>346</sup>. This may hamper the effective application of the AVMSD and have a negative impact on pluralism, media freedom and the level playing field.

The increase in the level of harmonisation brought by the AVMSD has contributed to the general and specific objectives of the Directive. Indeed, when the AVMSD objectives were not attained in full, this was in many cases due to fragmentation across the EU caused by insufficient harmonisation. Particularly in light of an increasingly transnational audiovisual media services market, and with the advent of the online world, the issues addressed by the AVMSD **require action at EU level**.

The AVMSD has to some extent proven to be an **efficient** regulatory framework. In the context of the REFIT programme, the evaluation identified potential for removing unnecessary regulatory burden and provide simplification specifically of the procedures that support the application of the COO principle (i.e. the criteria determining jurisdiction and the derogation and cooperation procedures limiting freedom of reception and retransmission in specific cases) and the rules on commercial communications applicable to broadcasting services.

The country of origin principle guarantees legal certainty for providers and avoids additional costs linked to compliance with several legislations.. The AVMSD also created to some extent a virtuous circle of business opportunities. For example, by protecting the consumer and taking steps to promote EU works, providers have gained competitiveness or contributed to the competitiveness of other industries (e.g. the content industry). Self and co-regulation also proved to be convenient and flexible means to implement the AVMSD rules.

The evaluation also found that the AVMSD is **coherent** with the general principles of EU law and with other EU legislation and policies. The lack of requirements on the independence of regulators is at odds with the rules in other domains, such as in Telecoms or energy.

Lastly, based on the fact that the quantitative evidence which led to the conclusions on effectiveness and efficiency is limited, the evaluation also found is that an effective system for monitoring the application of the Directive is lacking and it should put in place in the future.

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<sup>346</sup> Culture Council Conclusions of 26 November 2013.

## **7. ANNEXES**

1. Procedural information concerning the process to prepare the evaluation including stakeholders consultations
2. Synopsis report on the results of the 2015 Public consultation on the AVMSD
3. Figures on market developments and viewing patterns
4. Implementation of the provisions on the promotion of EU works at national level.
5. Implementation of the provisions on protection of minors at national level
6. Implementation of the provisions on commercial communications at national level
7. 2<sup>nd</sup> Application report of the AVMSD
8. Report on Articles 16 and 17 AVMSD (Reports on the promotion of European Works)
9. European Commission's non-regulatory initiatives on a safer Internet for minors
10. Analysis of the results of the data gathering questionnaire to ERGA
11. Effectiveness of self and co-regulation in the context of the implementation of the AVMSD

## ANNEX 1 - PROCEDURAL INFORMATION

**Lead DG: DG Communications Networks, Content and Technology**

**Agenda planning: 2015/CNECT/006**

### **Organisation and timing:**

The evaluation took place between March and December 2015. The evaluation draws from evidence gathered prior to and during this evaluation period. Preparatory work on the evaluation of the AVMSD started as early as in 2013, following the acknowledgement in the 1<sup>st</sup> AVMSD Application report for the years 2009-2010 of the need to test the AVMSD against market developments.

The evaluation has been carried out by Unit G.1 "Converging Media and Content" of the European Commission, DG Communications Networks, Content and Technology. The evaluation was carried out in close cooperation with other Commission DGs in the context of the Inter-Service Steering Group on the AVMSD evaluation and review convened by the General Secretariat of the European Commission. The following DG participated to the Steering group: DG CNECT, DG COMP, DG JUST, DG GROW, DG TRADE, DG EAC, DG SANCO, DG RTD, DG NEAR together with the Secretariat-General and the Legal Service.

Five meetings [possibly to be completed] took place respectively on 12 March, 20 May, 25 November 2015, 14 January and 15 April 2016.

### **1. Evidence used. The Commission gathered qualitative and quantitative evidence from various sources. The following elements constituted the evidence base:**

- **Stakeholder consultations** (see ANNEX 2).
- The findings of the **Commission's monitoring of the AVMSD** pursuant to Article 33<sup>347</sup> of the Directive (1<sup>st</sup> Application report for the years 2009-2010<sup>348</sup>; 2<sup>nd</sup> Application report on the AVMSD<sup>349</sup> for the years 2011-2013; reports on Articles 16 and 17<sup>350</sup>).
- Policy recommendations from **other EU institutions**, namely the EP<sup>351</sup>, the Council<sup>352</sup>, the European Economic and Social Committee<sup>353</sup> and the Committee of the Regions<sup>354</sup>.

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347 Article 33 of the AVMSD invites the Commission to submit regularly a report on the application of the Directive to the European Parliament, the Council and the European Economic and Social Committee.

348 <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0203>

349 The 2nd Application report covers the period 2011-2013. Developments related to the year 2014 are also reported where appropriate. The 2nd Application report will be published as an Annex to this SWD.

350 <https://ec.europa.eu/digital-agenda/en/avmsd-reports-european-works>

351 Three Own-initiative reports adopted by the European Parliament. A) The European Parliament resolution of 19 January 2016 on Towards a Digital Single Market Act (2015/2147(INI)) calls on the Commission to review the AVMSD as regards a number of aspects of the Directive; B) the July 2013 "Connected TV" report (Rapporteur MEP Petra Kammerevert (S&D, DE)) calling on the Commission to

- **Survey on AVMSD cost and benefits.** The survey was developed in the form of a questionnaire by a Task force of Member States' audiovisual regulators convened in the spring of 2015 by the European Commission. The questionnaire was submitted to Member States' regulators within the European Regulators Group for Audiovisual Media Services (ERGA<sup>355</sup>), as well as to the industry in relevant sectors and to consumer organisations. The questionnaire was sent in May/June 2015. The deadline for replies was 30 September 2015. The questionnaire asked what have been the benefits and downsides of certain AVMSD rules possibly accompanied by quantitative evidence in terms of annual revenues/direct and indirect costs of compliance. It covered rules on:
  1. Commercial communications
  2. European works
  3. Protection of minors
  4. The country of origin principle

The reference period for the quantitative questions was 2010 to 2014, inclusive.

The survey gathered a total of 107 replies with 40 coming from commercial broadcasters (38 %), 20 public broadcasters (19 %), 18 VoD providers (17 %), 12 from national associations focusing on the protection of minors (12 %), 10 from national associations representing independent producers (10 %), 4 from consumer association (4 %). One association representing broadcasters and one representing sales houses also participated. The stakeholders who replied are established in 19 Member States.

- **Studies and opinions of the European Regulators Group for Audiovisual Media Services (ERGA).** In its 2015 Work Programme, ERGA committed to deliver analyses and reports on 4 main topics: the independence of audiovisual regulatory authorities; material jurisdiction in a convergent audiovisual world; protecting minors in a converged environment; tackling the issue of territorial jurisdiction in the EU context. Each topic was dealt with by sub-groups comprising ERGA members. The first three reports were adopted via written procedure (in line with Article 11 of the ERGA Rules of Procedure) in December 2015. The report on territorial jurisdiction will be adopted in the course of 2016.
- **Publicly-tendered studies<sup>356</sup>** on alcohol advertising exposure, independence of audiovisual regulators, self- and co-regulation and standardisation:
  - **Study on Alcohol advertising exposure**, to assess whether rules on audiovisual commercial communication for alcoholic beverages have afforded minors the level of protection required<sup>357</sup>.
  - **Study on the independence of audiovisual regulators**, updating a previous study on independence of regulatory authorities. It will update on recent changes and developments in Member States and

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evaluate the extent to which it is necessary to revise the AVMSD,  
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0329&language=EN&ring=A7-2013-0212> B) The March 2014 report, "Preparing for a Fully Converged Audiovisual World" (Rapporteur MEP Sabine Verheyen (EPP, DE)) which calls for a review of the AVMSD, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0232&language=EN&ring=A7-2014-0057>.

<sup>352</sup> Most recently, the Council conclusions adopted under the Italian Presidency of the EU in 2014 inviting the Commission to "Urgently complete the exercise of the review of the AVMSD in the light of the rapid technological and market changes resulting from the digital shift, and on the basis of the outcome of this review submit an appropriate proposal for the revision of this Directive as soon as possible, in respect of the principle of subsidiarity." [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/educ/145950.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/145950.pdf)

<sup>353</sup> Opinion adopted by the in September 2013 on the Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values, <http://www.eesc.europa.eu/?i=portal.en.ten-opinions.28469>

<sup>354</sup> At its Plenary Session of 12-14 October 2015, the Committee of the Regions adopted an own-initiative opinion on the "Review of the Audiovisual Media Services Directive" – link to be published

<sup>355</sup> <http://ec.europa.eu/digital-agenda/en/news/commission-decision-establishing-european-regulators-group-audiovisual-media-services>

<sup>356</sup> <http://ted.europa.eu/udl?uri=TED:NOTICE:212396-2015:TEXT:EN:HTML&ticket=ST-1292379-SKem8OGQ1reJn1lxAZqVGszP2zjXhYuZOoStsF8rBu0ZCOZKgO05NbMy9k6hQrTzlimWUTdckGfvm49lhww7y5m-Jj71zxYb8yr5J3R6eCTiGK-TqeqixAzhASPjbjbmfn8X5hXPzlpWbUx9btUwoJzMau>

<sup>357</sup> <https://ec.europa.eu/digital-single-market/en/news/study-exposure-minors-alcohol-advertising-tv-and-online-services>

candidate countries as regards the independence and efficient functioning of the audiovisual media services regulatory bodies. The draft final report was delivered to the Commission in October 2015 and published<sup>358</sup> on 8 December 2015.

- **Study on Self-regulation** that will review existing self-regulation approaches in a range of Member States and aim at providing information about relevant evidence of existing schemes and their effectiveness. The Final report is due in Q2 2016.
- **Study on standardisation** that aims at collecting data regarding the complete standards landscape in the area of TV sets with added Internet connectivity. Furthermore, it will also cover national and industry specification requirements and the cost of adapting them. It should also provide an overview of the reasons for applying diverging standards and give an outline of research needs that exist in the sectors with a view to overcoming fragmentation challenges. The Final report is due in Q2 2016.
- **4 Studies on survey and data gathering to support the impact assessment** of a possible new legislative proposal concerning the AVMSD commissioned in the context of Framework Contract EAC-22-201<sup>359</sup>. These studies cover the following areas: commercial communication, protection of minors, cultural diversity and media freedom/public interest and access for persons with disabilities. The draft final reports of the study will be provided to the Commission in Q2 2016.
- **Two reports of the European Audiovisual Observatory (EAO)** ("Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD)"<sup>360</sup> and "on-demand markets in the European Union – 2014 and 2015 developments"<sup>361</sup>) provided in the context of Framework Contract PN/2011-27/A6. These two reports focus on
  - Measurement of audiences
  - Online advertising in the EU
  - The EU Subscription video-on-demand market in 2014
  - The visibility of films in on-demand services
  - proportion of European fiction works on a sample of TV channels
  - on-demand audiovisual services including their revenues and investment in original programming
  - linear audiovisual services including their revenues and investment in original programming
- **Desk research and literature review done in-house by DG CONNECT and by the contractors.** The main sources used are:

MAVISE <sup>362</sup>	Number of linear and non-linear service providers.
IRIS Merlin <sup>363</sup>	Changes in media legislation in MS.
Eurostat	General social and economic statistics.
EPRA database <sup>364</sup>	Annual reports of national regulators. National legislation in MS, synthesis, analytical reports.
EU infringement cases <sup>365</sup>	Data on infringement cases related to AVMSD.
Freedom of press index	Data on media freedom.
AVMSDdatabase <sup>366</sup>	National legislation transposing specific AVMSD Articles
National audiovisual services	Data on market share of audiovisual service providers

<sup>358</sup> <http://ec.europa.eu/digital-agenda/en/news/study-audiovisual-media-services>

<sup>359</sup> <http://ted.europa.eu/udl?uri=TED:NOTICE:279501-2014:TEXT:EN:HTML>

<sup>360</sup> <https://ec.europa.eu/digital-single-market/en/news/study-data-and-information-costs-and-benefits-audiovisual-media-service-directive-avmsd>

<sup>361</sup> <https://ec.europa.eu/digital-single-market/en/news/demand-audiovisual-markets-european-union-smart-20120028>

<sup>362</sup> <http://mavise.obs.coe.int/>

<sup>363</sup> <http://merlin.obs.coe.int/>

<sup>364</sup> <http://www.epra.org/articles/media-legislation> and <http://www.epra.org/organisations>

<sup>365</sup> [http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/?lang\\_code=en](http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement-decisions/?lang_code=en)

<sup>366</sup> <http://avmsd.obs.coe.int/cgi-bin/search.php>

## 2. External expertise. The Commission drew from external expertise in particular in the context of the studies mentioned above.

### 3. Consultation strategy/process and stakeholders consulted.

The Commission has engaged extensively with all relevant stakeholders in a view of assessing the state of the audiovisual media market, and to determine how to improve conditions for establishing a Digital Single Market. Stakeholders were consulted in the following occasions:

- In 2013, the Commission published the Green Paper<sup>368</sup> "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values" and invited stakeholders to share their views on the changing media landscape and borderless Internet in particular on market conditions, interoperability and infrastructure, and implications for EU rules. The outcomes of the Green Paper are reflected in the feedback document and executive summary of the replies published by the Commission in September 2014<sup>369</sup>.
- In 2013, the Commission launched a Public consultation<sup>370</sup> on the independence of audiovisual regulatory bodies. The Commission sought the views of stakeholders on the need to strengthen cooperation between regulatory authorities and reinforce their independence.
- A Public consultation on "Directive 2010/13/EU on Audiovisual Media Services (AVMSD) - A media framework for the 21st century" was launched on 6 July and ran until 30 September 2015. The public consultation, available in the 24 official languages of the EU, sought inputs on the functioning and impact of the AVMSD to date (feeding into the evaluation of the Directive) and on policy options for its future.<sup>371</sup>
- Survey on AVMSD costs and benefits sent to Member States regulators within the ERGA as well as to industry and consumer organisations.
- Policy exchanges and opinions of the Member States representatives gathered in the Contact Committee set up via the AVMSD<sup>372</sup>.
- Discussions with Member States audiovisual regulators within the ERGA<sup>373</sup>.
- Interviews with relevant stakeholders held in the context of the studies on alcohol advertising exposure, independence of audiovisual regulators, self- and co-regulation and standardisation as well as in the context of the Impact Assessment studies.
- Structured dialogue with representatives of the affected industry (SMEs and large organisations) and consumers ("Media talks"). In the Media Talks, the Commission discussed specific domains of the AVMSD with relevant stakeholders. Media Talks took place in June and September 2015, as well as regularly throughout 2013 and 2014.
- Recommendations, reports and policy discussions with other EU institutions, namely the European Parliament<sup>374</sup>, the Council<sup>375</sup>, the European Economic and Social Committee<sup>376</sup> and the Committee of the Regions<sup>377</sup>.

<sup>367</sup> For example, <http://www.tns.it/>, <http://www.tns.lv/>, <http://www.finnpanel.fi/>, <http://www.agtt.at/>, <http://www.kek-online.de/>.

<sup>368</sup> <http://ec.europa.eu/digital-agenda/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values>

<sup>369</sup> <https://ec.europa.eu/digital-agenda/en/news/publication-summaries-green-paper-replies>

<sup>370</sup> <http://ec.europa.eu/digital-agenda/en/news/public-consultation-independence-audiovisual-regulatory-bodies-read-contributions>

<sup>371</sup> <https://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st>

<sup>372</sup> The Agendas and minutes of the AVMSD Contact Committee meetings are available online at <https://ec.europa.eu/digital-agenda/en/avmsd-contact-committee>

<sup>373</sup> Relevant ERGA documents, including the annual work programmes as well as the agendas and minutes of the Plenary meetings, are available online at <https://ec.europa.eu/digital-agenda/en/audiovisual-regulators>

<sup>374</sup> Two Own-initiative reports adopted by the European Parliament. A) The July 2013 "Connected TV" report (Rapporteur MEP Petra Kammerevert (S&D, DE)) calling on the Commission to evaluate the extent to which it is necessary to revise the AVMSD, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0329&language=EN&ring=A7-2013-0212> B) The March 2014 report, "Preparing for a Fully Converged Audiovisual World" (Rapporteur MEP Sabine Verheyen (EPP, DE)) which calls for a review of the AVMSD, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0232&language=EN&ring=A7-2014-0057>.

The consultation strategy followed a **participatory** and **circular approach** and strived for **triangulation**. In the consultation process public events were combined with more targeted consultations to achieve the required breadth and depth of stakeholder inputs.

While the 2013 public consultations were of a broader nature, the questions in the 2015 Public consultation were more focused on possible changes to the AVMSD. However, all main options were considered, in order to enable the Commission to either confirm or contradict previous findings. The questions took into account concerns or views expressed in previous occasions as well as the state of the art in the market and in viewing patterns.

A circular approach was followed as much as possible. For example, meetings of the Contact Committee, ERGA and Media talks with stakeholders were held ahead of the launch of the Public consultation. After the Public consultation deadline, the Contact Committee discussed the Public consultation in two occasions. The data gathered from the sources above were analysed respectively: in house, by external contractors, and in cooperation with other Commission DGs.

Moreover, stakeholders were consulted in multiple occasions by different parties, for example, by the Commission via the Public consultation, by relevant national regulators via the ERGA questionnaire and by external contractors in the context of the studies. This circular approach enabled a satisfactory **triangulation** of data, i.e. its reliability has been confirmed via findings coming from other sources. Also, whenever the same stakeholder provided information in different contexts, the Commission compared these pieces of information so as to assure their coherence and reliability.

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<sup>375</sup> Most recently, the Council conclusions adopted under the Italian Presidency of the EU in 2014 inviting the Commission to "*Urgently complete the exercise of the review of the AVMSD in the light of the rapid technological and market changes resulting from the digital shift, and on the basis of the outcome of this review submit an appropriate proposal for the revision of this Directive as soon as possible, in respect of the principle of subsidiarity.*" [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/educ/145950.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/145950.pdf). The Conclusions of the Culture Council in November 2013 invited the Member States to ensure the independence of audiovisual regulators and to strengthen cooperation amongst regulators.

<sup>376</sup> Opinion adopted by the in September 2013 on the Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values, <http://www.eesc.europa.eu/?i=portal.en.ten-opinions.28469>

<sup>377</sup> At its Plenary Session of 12-14 October 2015, the Committee of the Regions adopted an own-initiative opinion on the "Review of the Audiovisual Media Services Directive" – link to be published



## ANNEX 2 - STAKEHOLDER CONSULTATION

### SYNOPSIS REPORT

#### **Report on the Contributions to the Public Consultation on *Directive 2010/13/EU on Audiovisual Media Services (AVMSD) - A media framework for the 21st century***

**06 July-30 September 2015**

#### **I. INTRODUCTION**

The Public Consultation<sup>378</sup> on Directive 2010/13/EU on Audiovisual Media Services<sup>379</sup> (AVMSD) - A media framework for the 21st century, took place from 06/07/2015 to 30/09/2015.

The public consultation is part of the evaluation of the AVMSD under the Regulatory Fitness and Performance Programme (REFIT) of the Commission's Better Regulation Framework. Its objective was to gather evidence and views on the functioning of the AVMSD on policy options for its revision, announced in 2016 by the EU Digital Single Market strategy.

The AVMSD has paved the way towards a single European market for audiovisual media services. It has harmonised the audiovisual rules of the Member States and facilitated the provision of audiovisual media services across the EU on the basis of the country of origin principle.

Since 2007, when the regulatory framework was revised for the last time, the audiovisual media landscape has changed significantly due to media convergence. The review of the AVMSD is featured in the Commission Work Programme for 2015, as part of the Regulatory Fitness and Performance Programme (REFIT). In its Communication on a Digital Single Market Strategy for Europe<sup>380</sup>, the Commission announced that the AVMSD would be revised in 2016. The Commission identified the following issues to be considered in the evaluation and review of the AVMSD:

1. Ensuring a level playing field for audiovisual media services;
2. Providing for an optimal level of consumer protection;
3. User protection and prohibition of hate speech and discrimination;
4. Promoting European audiovisual content;
5. Strengthening the single market;
6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities.

#### **II. EXECUTIVE SUMMARY**

##### **1. Main conclusions from the summary and analysis of contributions in each of the consultation sections (including potential distinction(s) among stakeholder groups)**

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<sup>378</sup> <http://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st>

<sup>379</sup> 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. Official Journal of the European Union, L 95, 15 April 2010

<sup>380</sup> COM (2015) 192 final, 6 May 2015.

The main elements that have been observed overall, across stakeholders' categories when it comes to Policy options for the future:

- Convergence of views across stakeholders regarding the need for possible *changes of* the rules on the scope of application of the Directive, although there is no common pattern or clarity amongst stakeholders as regards the way forward, as well as on the independence of national regulators.
- Support across stakeholders for *maintaining the status quo* as regards the country of origin principle; must-carry/findability; accessibility for persons with disabilities; major events for society, short news reports and right of reply.
- *No clear consensus* among stakeholders on commercial communications, protection of minors and promotion of European works.

**2. Summary analysis of trends identified across different consultation sections** (including potential distinction(s) among stakeholder groups and potential linkage between answers across topics).

Some general trends were observed in the replies received. There is a call from a fair share of representatives of the broadcasting sector to ensure a level playing field either by regulating new services and/or warranting more flexibility of existing rules. Consumer organisations' call for strengthening the AVMSD rules aimed at protecting viewers, particularly vulnerable ones. The internet, telecom and ICT industries call for refraining from new regulation, in order to preserve innovation. The content industry calls for strengthening the rules aimed at promoting European works, across all audiovisual media services.

### III. OVERVIEW OF RESPONDENTS TO THE PUBLIC CONSULTATION

The Public consultation drew a total of 438 replies. 376 replies were given by organisations whereas 62 replies were given by individuals.

The central governments of BG, CZ, CY, HR, HU and MT did not participate to the Public consultation.

#### Breakdown of respondents per stakeholder category<sup>381</sup>

Survey Category	Number of Respondents	%
Commercial broadcasters & thematic channels	27	6%
European-level representative platform or association	47	11%
Free and pay VOD operators	4	1%
Individual	62	14%
IPTV, ISPs, cable operators including telcos	15	3%
National administration	32	7%
National regulator	20	5%
National representative association	76	17%
Non-governmental organisation	79	18%
Public service broadcasters	14	3%
Regional authority	4	1%
Research body/academia	4	1%
Small or medium-sized business	6	1%
Other	48	11%
Micro-business	0	0%

<sup>381</sup> Based on the categories chosen by the respondents amongst those listed in the Public consultation questionnaire

Pay TV aggregators	0	0%
Press or other	0	0%
<b>TOTAL</b>	<b>438</b>	

### Breakdown of respondents per country

Country	Number of Respondents
Austria	23
Belgium	29
Bulgaria	2
Croatia	1
Czech Republic	9
Denmark	7
Estonia	3
Finland	19
France	25
Germany	32
Greece	2
Hungary	6
Iceland	1
Ireland	4
Italy	24
Latvia	5
Lithuania	4
Luxembourg	1
Netherlands	11
Norway	4
Poland	20
Portugal	8
Romania	7
Slovakia	4
Slovenia	2
Spain	24
Sweden	14
Switzerland	2
United Kingdom	49
Pan-European	49
Other	47

Not all respondents replied to all questions. In particular, the sections of the PC dedicated to Events of major importance for society; Short news reports; and Right of reply gathered a considerably lower number of replies than the other sections of the PC.

#### IV. Consultation topics

### 1. Ensuring a level playing field for audiovisual media services

#### 1.1 Services to which the AVMSD applies

While a majority of stakeholders across sector consider the rules still relevant, a majority of them consider the rules not to be fair. Stakeholders are split when it comes to the effectiveness of the rules.

As regards options for the future, 5 **Member States** and 1 **regulator** support maintaining the status quo. 2 MS and 5 regulators support the adoption of guidance at EU level. 1 MS calls for amending the ECD.

13 MS and 9 regulators (11 if we include also EFTA regulators) call for extending the scope of application of the AVMSD to new type of services (services that are not "TV-like" and/or services that are not under the editorial responsibility of a provider).

**Public service and commercial broadcasters** overall call for removing the "TV-like" requirement. A fair share of them calls for extending the scope of application beyond services that are under the editorial responsibility of a provider. The others call for maintaining the status quo.

**Internet companies, cable, satellite, telecoms, press and publishing sector, advertisers** and one **NGO promoting fundamental rights** call for maintaining the status quo.

**Consumer organisations** advocate for an extension of the AVMSD scope beyond "TV-like" and services under the editorial responsibility of a provider.

The views of **citizens** are equally split amongst those calling for maintaining the status quo and those calling for an extension of the scope of application of the rules.

**Main conclusion:** The option of extending the scope of application of the AVMSD is the one that proportionately gathered the largest share of support from stakeholders. There is however no unitary pattern as to what an extension would entail. Some parts of the industry are particularly vocal in calling for maintaining the status quo.

#### 1.2 Geographical scope of the AVMSD

Concerning the geographical scope of the AVMSD, views are split. Even though most of the stakeholders consider the current regulation still relevant, its effectiveness and fairness are debated.

5 **Member States** and 5 **regulators** are in favour of maintaining the status quo. 9 Member States and 12 regulators support an extension of the geographical scope to third country providers targeting EU audiences, underlining the importance of creating a level playing field. Of those in favour of an extension, 4 Member States and 8 regulators support linking the extension of the geographical scope to providers' significant market presence in the EU.

**Public Service Broadcasters** are mainly open to consider an extension of the geographical scope to taken into account today's digital and online environment. **Commercial broadcasters** are equally open to an extension if the Commission has evidence of problems with the current approach.

The majority of **advertising companies** supports maintaining the status quo. According to them, an extension of the geographical scope would be difficult to enforce.

**NGOs and consumer organisations** raised concerns regarding a perceived lack of level playing field resulting from the current approach. At the same time, a few organisations pinpointed to the fact that an extension of

the geographical scope would increase the legal burdens and multiply the regulatory requirements, negatively affecting the EU audiovisual market. A number of **ICT, Digital and Internet companies** support maintaining the status quo because they reckon that changes in the geographical scope will potentially pose threats to media pluralism and innovation, making the European market less attractive and less competitive.

The **satellite industry** supports maintaining the status quo and points out that the Directive already applies to third-country service providers using a satellite uplink situated in or appertaining to a Member State. As a result, they claim that the AVMSD covers a very wide scope of European and non-European channels.

**Main conclusion:** The majority of respondents across stakeholders' categories favour an extension of the geographical scope but there is no consensus as to how to go about an extension.

## 2. Providing for an optimal level of consumer protection (Commercial communications)

Although the majority of respondents across stakeholders' categories consider that the existing rules are still relevant, their effectiveness and fairness is very much debated.

Among **Member States**, none is in favour of maintaining the status quo while 7 **regulators** support this option. 8 Member States and 2 regulators are in favour of more flexibility in general while some others (7 Member States and 5 regulators) would like to reinforce rules to protect vulnerable viewers, especially in the areas of alcohol and fatty foods. 10 Member States and 6 regulators also favour other options, going in different directions (either keeping some of the current rules while clarifying and simplifying other provisions, or introducing rules on signal integrity, or further extending some of the current rules to on-demand services or other online services).

**Public service broadcasters** mainly favour another option, with some calling for simplification and clarification, for the extension of the rules on audiovisual commercial communications to other players and for rules on signal integrity. Commercial broadcasters are mainly calling for more flexibility, especially on the quantitative advertising rules (12-minute advertising limitation, interruption rule, rule on isolated spots) and on sponsorship and product placement rules. Yet, a few broadcasters would prefer maintaining the status quo.

**Advertisers** favour either the status quo or more flexibility while the food and drink industry favours the status quo, especially on alcohol advertising and fatty food advertising. They consider that the current framework, complemented by self- and co-regulation, functions properly. **Consumer organisations** (representing viewers and the public health sector) favour tighter rules to protect vulnerable consumers, in particular on alcohol and fatty food advertising (e.g. via watersheds, stricter rules on product placement and sponsorship for these products or even a possible ban). Internet, telecoms and cable operators call for maintaining the status quo or for more flexibility in general. Among citizens, the views are varied and are also almost equally split between the different options.

**Main conclusion:** No clear consensus emerged amongst respondents across stakeholders categories when it comes to the preferred policy option on commercial communications. The respondents' views are almost equally split between the four options. However, those options are not necessarily mutually exclusive and could be combined to a certain extent.

## 3. User protection and prohibition of hate speech and discrimination

### 3.1 General viewers' protection under the AVMSD

As regards protection of minors and the current distinction between the rules applicable broadcasting and on-demand, views are split. 8 Member States consider that the distinction between broadcasting and on-demand content provision is not anymore relevant, effective and fair. 6 Member States have expressed the view that it is still relevant. The majority of Regulators (10) consider these rules to be no longer relevant. 7 Regulators believe that these rules are still relevant.

When it comes to the question of the effectiveness of the AVMSD in protecting children, the majority of Member States (7) and Regulators (8) who replied consider that the AVMSD has not been effective in protecting minors.

9 **MS** and 12 **regulators** did not provide an opinion on the AVMSD rules on incitement to hatred. 2 MS consider the AVMSD rules on incitement to hatred still relevant, effective and fair. 4 MS consider that further grounds for prohibition of incitement to hatred should be introduced in the Directive. The following are mentioned: incitation to violence; sexual orientation; religion; marital status; political beliefs; language; state of health; disability; physical or genetic characteristic; social status; nationality; gender. 1 MS also calls for aligning those grounds to Article 9 of the EU Charter of Fundamental rights. 4 MS consider that the rules for suspension under Article 3 should be reviewed in order to strengthen the protection from content inciting to hatred. 1 MS suggested that a revision of the directive should give consumers the right to know who the ultimate beneficiaries of audiovisual media services are i.e. who is trying to influence their decisions.

2 regulators believe that hate speech should be dealt with on all platforms. 1 regulator calls for aligning the grounds to Article 9 of the EU Charter of Fundamental rights. Another regulator opposes modifications to the AVMSD while another one suggests introducing transparency as regards the beneficiaries of audiovisual media services.

Most **industry** stakeholders (public service and commercial broadcasters, telecom operators, VOD providers, Internet and ICT) and consumer organisations did not express an opinion regarding the existing rules on incitement to hatred.

### 3.2 Protection of minors

No **Member States** and only 1 **Regulator** are in favour of maintaining the status quo. 4 Member States and 10 regulators favour more self- and co-regulation. 7 MS and 14 Regulators are in favour of more harmonisation, although their comments to do follow a unitary pattern (they refer to either harmonisation of classification, or common definitions/clarifications of key-concepts). 8 Member States and 9 Regulators call for removing the distinction between linear and on-demand services (levelling up). 6 Member States and 6 regulators call for extending the AVMSD rules on protection of minors to other online content.

A limited number of Member States and 7 regulators also favour other options or a combination of various options. They however follow different directions. They refer to: ensuring a higher level protection of minors when it comes to their exposure to pornographic, racist or anti-Semitic content; matching the regulation for linear and non-linear services by levelling up the rules; and continue working with industry to encourage self-regulation for other platforms; applying the rules on protection of minors to all audiovisual media services including those not under editorial responsibility by means of graduated protection; removing the distinction between broadcast and on-demand services and allow a more graduated approach to potentially harmful content.

**Commercial broadcasters** mainly favour self and co-regulatory measures (8) and the extension of the scope of the AVMSD (7). Amongst **Public Service Broadcasters**, some (8) favour self and co-regulatory measures, others (7) call for extending the scope of the AVMSD, or (7) suggest (standalone or combined) other options.

**Internet companies, Telecoms, VoD** mainly advocate for maintaining the status quo or favour complementing the AVMSD with self- and co-regulatory measures.

**Consumer organisations** (representing minors) favour further harmonisation and call for an extension of the AVMSD to Internet platforms.

Views expressed by citizens vary and equally split among the options with no clear trend.

**Main conclusion:** No clear consensus emerged amongst respondents across stakeholders categories when it comes to the preferred policy option on protection of minors.

#### 4. Promoting European audiovisual content

Some **Member States** (4) and **regulators** (6) support maintaining the status quo. They all agree that current regulation for the promotion of EU works is sufficient and should not be amended. Other Member States (7) and National regulators (6) call for introducing more flexibility for Member States and service providers in their choice or implementation of the measures on the promotion of European works to adapt to their respective markets. Several Member States (6) and a few National regulators (3) call for reinforcing existing rules. Most of them support, in particular, strengthening regulation on non-linear services by clarifying and harmonizing provisions under Article 13 in order to avoid distortions of competition among players. Finally, some Member States (5) and National regulators (3) suggest other options. Some of them favour more flexibility in regulation while others call for reinforcing current rules and exploring solutions focused on the supply side.

Public service broadcasters generally back other options, namely to adapt rules for on-demand services to reflect recent changes in the audiovisual market. Some commercial broadcasters call for more flexibility while other favour repealing the rules as they believe the current market of European works is already successful.

The **digital/Internet industry and VOD** operators support maintaining the status quo. On the contrary, the **Cinema, Film and TV industry** primarily favours reinforcing the existing rules and some call for the imposition of financial contribution on on-demand services.

**Telecom operators** call in general for more flexibility and support measures based more on marked dynamics rather than on quota systems. The majority of right holders support reinforcing the rules and most of them believe measures mentioned on Article 13 should be made mandatory.

Views expressed by **citizens** are also split among the options with no clear trend.

**Main conclusion:** There is no clear consensus amongst respondents across stakeholders' categories as regards policy options on promotion of European works.

#### 5. Strengthening the single market

The majority of respondents across stakeholders' categories consider that the current approach is still relevant, but there are doubts about its effectiveness (in particular as regards the functioning of the cooperation procedures) and fairness.

12 **Member States** and 15 **Regulators** support maintaining the country of origin principle accompanied by stronger cooperation practices and/or simplified jurisdiction criteria. A further 4 Member States express principled support for the country of origin principle. 5 Member States and 5 Regulators ask for moving to a different approach whereby providers would have to comply with some rules (e.g. on protection of European works) of the countries where they deliver their services. 4 Member States and 4 Regulators favour other options.

**Public services broadcasters** mainly call for maintaining the country of origin principle together with strengthening existing cooperation practices/revising the rules on cooperation and derogation mechanisms.

To a lesser extent they ask for additional safeguards to avoid undermining the effectiveness of national rules. **Commercial broadcasters** mostly call for maintaining the status quo, while showing some support for stronger cooperation practices/mechanisms and simplified jurisdiction criteria. The **satellite industry** supports the country of origin principle and calls for strengthening existing cooperation practices/revising the rules on cooperation and derogation mechanisms.

**Advertisers** favour maintaining the status quo and, to a lesser extent, ask for strengthening existing cooperation practises. **Internet, telecoms and cable operators** mainly call for maintaining the status quo or other options. **Consumer organisations** (representing viewers and the public health sector) mostly argue for (limited) departures from the country of origin principle towards a country of destination principle. **Citizens** mainly favour maintaining the status quo together with revising the rules on cooperation and derogation mechanisms and simplifying the jurisdiction rules.

**Main conclusion:** Regarding the set of questions on strengthening the internal market, there is strong support for maintaining the country of origin principle across various stakeholders categories.

## **6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities**

### **6.1 Independence of regulators**

Most of those who replied to this question considered that the current provisions of the Directive are relevant and fair but not effective. Consequently, the majority of respondents across stakeholders' categories supported the reinforcement of the AVMSD rules on independence of the audiovisual regulatory bodies. Those respondents favoured either laying down an obligation to ensure the independence of audiovisual regulatory bodies or providing for a set of criteria that regulators need to meet to ensure their independence. The latter option gathered a slightly larger support.

5 **Member States** and 6 **regulators** considered that the provisions in the Directive are relevant, effective and fair, while 6 Member States and 7 regulators pointed out that Article 30 AVMSD is not effective. A majority of public service broadcasters considered that the rules are relevant, effective and fair. A large majority of commercial broadcasters considers that the rules of the Directive are relevant but only a small minority of them considers that they are relevant, effective and fair.

4 Member States and 6 regulators called for maintaining the status quo. 6 Member States and 9 regulators from 6 Member States supported the option to impose an obligation on the independence of regulatory authorities. 6 Member States and 9 regulatory authorities from 7 Member States supported laying down minimum mandatory requirements for regulatory authorities. 2 Member States and 1 regulator supported other options.

Most **public service broadcasters** called for maintaining the status quo. Most **commercial broadcasters** called for strengthening of the current rules (by laying down in the AVMSD an obligation of the independence of regulatory authorities (9) and laying down criteria of independence (13)).

**VOD operator, digital and Internet companies** generally called for maintaining the status quo, although some called for strengthening the rules. **Cinema, film and TV producers, consumer organisations and NGO promoting fundamental rights** mostly called for strengthening the current rules. Most of the **citizens** who replied to this question favoured reinforcing the rules.

**Main conclusions:** The majority of respondents across stakeholders' categories supported the reinforcement of the AVMSD rules on independence of the audiovisual regulatory bodies.



## 6.2 Must Carry/Findability (Prominence of content of general interest)

A large majority of **Member States** (20) and **regulators** (15) who replied called for maintaining the status quo. 4 Member States and 9 regulators call for introducing a provision on prominence of content of general interest in the AVMSD.

**Public service broadcasters** advocate for including a rule on discoverability of content of general interest in the AVMSD. **Commercial broadcasters** mainly call for a broader coverage of "content of public interest" than provided by public service broadcasters. **Telecom providers** generally call for maintaining the status quo and oppose new rules on findability at EU or at national level.

The **Internet sector** calls for maintaining the status quo, stressing that Internet platforms are not gatekeepers and that users retain control over the content they access. The **press** calls for ensuring a level playing field - for instance by ensuring non-discrimination on platforms - via an intervention outside the AVMSD. Amongst **citizens**, views vary.

**Main conclusions:** As regards findability, the option of maintaining the status quo is the one that proportionately gathered the largest share of support from stakeholders, followed by the one of introducing findability rules in the AVMSD. The remaining options received a fair share of support from stakeholders. Those options are however not necessarily mutually exclusive and could be combined.

## 6.3 Accessibility for people with disabilities

A majority of respondents across stakeholders' categories expressed the view that the current rules are effective in providing fair access to audiovisual content to persons with hearing and vision disabilities.

As regards options for the way forward, while the **Member States** were split as regards maintaining the status quo (6) or laying down in the AVMSD requirements for accessibility (6), the majority of **regulators** who replied (6) called for laying down in the AVMSD requirements for accessibility. 2 regulators favoured maintaining the status quo. 1 Member State and 7 regulators called for self-/co-regulatory measures in this field.

**Public service broadcasters** and **commercial broadcasters** called for maintaining the status quo. **Disability and consumer organisations**, as well as the **ICT and Internet industry** called for harmonising accessibility requirements at the EU level.

**Main conclusions:** Most respondents across stakeholders' categories opted for maintaining the status quo, while around a quarter of respondents called for strengthening the rules.

## 6.4 Events of major importance for society

An overwhelming majority of respondents across stakeholders' categories consider that the current rules are still relevant, effective and fair.

As regards the way forward, a majority of **Member States** (7) and **regulators** (18) who replied call for maintaining the status quo.

Whereas a slight majority of the **public service broadcasters** (11) who replied supports maintaining the status quo, 7 of them chose other option.

A majority of those **commercial broadcasters**, **cable operators** and **VOD operators** supports maintaining the status quo. A minority share of the industry calls for abolishing the system of lists. Others call for simplifying the notification procedure. Some others call for requiring the Member States to draw up lists.

A number of **health-related NGOs** and **national agencies** calls for addressing problems related to alcohol advertising, as the AVMSD allows sport events listed as "of major importance" to be sponsored by alcohol producers.

**Main conclusions:** A majority of respondents across stakeholders' categories call for maintaining the status quo as regards events of major importance for society.

## 6.5 Short news reports

A majority of respondents across stakeholders' categories find the current rules to be relevant, effective and fair.

A majority of the **Member States** (11) and **regulators** (12) who replied called for maintaining the status quo.

**Public broadcasters** (8) were mainly in favour of the status quo. A majority of the **commercial broadcasters** (20) who replied to this question called for maintaining the status quo. Some commercial broadcasters however call for removing the current rules.

Whereas the **Internet, telecoms and cable operators** primarily did not take a position on this issues, those who replied called for maintaining the status quo.

Those stakeholders supporting other option called for either: extending the rules to on-demand audiovisual media services; harmonising the rules at EU level; or clarifying certain aspects of the existing rules.

**Main conclusions:** A majority of respondents across stakeholders' categories call for maintaining the status quo as regards short news reports.

## 6.6 Right of reply

The majority of respondents across stakeholders' categories consider that the current rules are still relevant, effective and fair.

8 **Member States** and 9 **regulators** (11 regulators, if EFTA countries are considered) are in favour of maintaining the status quo. 2 Member States and 6 Regulators called for extending the scope of the rules to on-demand audiovisual media services and online intermediaries.

Whereas a slight majority of **Public service broadcasters** called for maintaining the status quo, a number of them are in favour of extending the scope of the rules to non-linear services, in line with Council of Europe Recommendation (2004)<sup>161</sup> on the right of reply in the new media environment. A large majority of **commercial broadcasters** call for maintaining the status quo.

**Telecom operators, cinema, print and publishers** stakeholders are in favour of maintaining the status quo.

Whereas a majority of **NGOs** called for maintaining the status quo, a few of them advocated for an extension of the right of reply to on-demand audiovisual media services. **Citizens** mainly favour maintaining the status quo, although a few of them indicate difficulties with pursuing complaints.

**Main conclusions:** A majority of respondents across stakeholders' categories call for maintaining the status quo as regards the right of reply.

### ANNEX 3 - MAIN DEVELOPMENTS AFFECTING THE EU MARKET FOR AUDIOVISUAL MEDIA SERVICES

- The audiovisual sector mainly comprises **large companies** which account for an absolute majority (more than half) of the workforce in 10 of these. Large enterprises in France employed upwards of 7 out of 10 people (71.5 %) within the programming and broadcasting activities workforce in 2010, while the share of large enterprises in the total workforce peaked at 78.5 % in Germany. Upwards of 80 % of the value added generated in Spain, Poland, Italy, France, Romania and the United Kingdom was attributed to large enterprises, their share of sectoral value added peaking in the United Kingdom (90.8 %).<sup>382</sup>
- By contrast, in the relatively small EU Member States of Estonia, Lithuania, Luxembourg and Slovenia, **small and medium-sized enterprises (SMEs)** employed the whole of the programming and broadcasting activities workforce in 2010. It was, however, more common to find that the majority of the workforce was engaged by large enterprises.<sup>383</sup>
- The overall size of the European audiovisual sector in 2014 was around EUR 105.790 million<sup>384</sup>. This implies an increase of 0.9% as compared to 2010. This increase primarily comes from on-demand audiovisual media services, whereas physical video registered a significant decrease.
- The market is evolving. Connected **Smart TVs** in 21 EU markets<sup>385</sup> have moved from about 5 million installed devices at the end of 2011 to more than 39 million in 2014 and are foreseen to reach the level of almost 118 million in 2018<sup>386</sup>. In the same markets, the overall number of **connected devices** increased from 590 million in 2011 to 935 million in 2014 and is expected to reach almost 1,3 billion in 2018<sup>387</sup>.

Audiovisual content is increasingly offered by **new players**. The number of Internet-based, OTT and VoD television providers targeting EU viewers has increased. In 2014, almost 2 563 VoD services were established in Europe, including catch-up TV services of broadcasters (932 services), branded channels on open platforms (408 services), VoD services providing access to a catalogue of programs (1 126 services) and news portals (97 services). The UK is the Member State hosting the largest number of VoD services (about 515), followed by France (412) and Germany (274)<sup>388</sup>.

Providers of video streaming services, including from third countries, have entered the market. Sometimes, they fall outside the EU jurisdiction because they are established abroad or because they offer new services that fall outside the definition of audiovisual media services laid down in the AVMSD. Internet platforms and social media (Facebook, Snapchat, Twitter) are increasingly offering, along other types of content, audiovisual material either uploaded by the users (User-Generated-Content, UGC), by themselves or by advertisers. This type of audiovisual content falls outside the scope of the AVMSD because it is not editorial (for UGC) or because, despite being editorial, it is offered by a platform whose principal purpose is not to offer audiovisual services. 47% of Europeans now use them at least once a week, i.e. +3 percentage points versus autumn

<sup>382</sup> Eurostat statistics: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Programming\\_and\\_broadcasting\\_statistics\\_-\\_NACE\\_Rev.\\_2](http://ec.europa.eu/eurostat/statistics-explained/index.php/Programming_and_broadcasting_statistics_-_NACE_Rev._2)

<sup>383</sup> Ibid

<sup>384</sup> EAO Yearbook 2015

<sup>385</sup> AU, BE, HR, CZ, DK, Fin, FR, DE, GR, HU, Irl, IT, LX, NL, PL, PT, SK, SL, ES, SW, and UK

<sup>386</sup> Data covering 21 MS. Source: IHS technology database.

<sup>387</sup> Data covering 21 MS. Source: IHS technology database

<sup>388</sup> EAO REFIT Data – Note A2 on-demand audiovisual services

2013 and +12 versus autumn 2011. Almost a third of Europeans use social networks every day or almost every day (32%, +2 versus autumn 2013 and +12 versus autumn 2011). 2014 eurobarometer three-quarters of Europeans in the 15-24 age group use social networks every day or almost every day (75%), compared with 50% of 25-39 year-olds, 27% of 40-54 year-olds and 8% of those aged 55 or over; The daily or near-daily use of online social networks is particularly widespread in Denmark (55%), Sweden (53%) and the Netherlands (48%). It is less prevalent in Poland (24%), Germany (24%) and the Czech Republic (24%).

- While **TV viewing** is still **strong**, viewers - particularly **minors** - increasingly **consume content online**.

The average TV viewing time for the whole EU population in 2013 was 223 minutes per day <sup>389</sup>. However, viewing habits differ widely among Member States. In some countries, like Austria, Finland and Sweden these numbers are lower: 2:42, 2:56 and 2:33 minutes per day respectively. In countries like Romania, Portugal and Hungary the viewing time reaches 5:42, 4:56 and 4:49 minutes per day respectively.

Since 2012, television viewing has reached a plateau in average in the European Union. As time-shifted television viewing has been increasingly included in television audience measurement, this stability implies that live television viewing has declined <sup>390</sup>.

Europeans predominantly watch television on a TV set (94% at least once a week, -1 percentage point). Although Europeans are far less likely to watch television over the Internet, this practice continues to gain ground: 20% of Europeans watch television online at least once a week (+2% versus autumn 2013 and +3% versus the EB78 report of autumn 2012). Europeans in the 15-24 age group are the most likely to watch television via the Internet: 40% do so at least once a week. We note that the proportion of respondent who watch television via the Internet decreases gradually with age: 26% of 25-39 year-olds, 18% of 40-54 year-olds and 8% of those in the 55-plus age group watch television via the Internet at least once a week. Watching television via the Internet is particularly widespread in Sweden (48% do so at least once a week) and Finland (39%), but less so in Bulgaria (11%), Greece (12%) and Portugal (12%) <sup>391</sup>.

Television is the most frequently used source of European political news by all age groups, but respondents in the 55+ age group are the most frequent users of this medium (83%);

Audiovisual content consumption is increasingly moving online: According to IHS research firm, total on demand consumer revenues in the 28 European countries soared from EUR 919 million in 2010 to EUR 2.5 billion in 2014, an of 272% increase and a Compound Annual Growth Rate (CAGR) in the 5 year period of 28% <sup>392</sup>.

A recent Eurobarometer <sup>393</sup> report shows that as of August 2015 59% of EU internet users had accessed or downloaded audiovisual content at least once in the past 12 months, in particular the young (80%). 30% of them had paid for that content.

Younger viewers <sup>394</sup> watch about half less than television than the average viewer. Their average TV viewing in 2014 was 2:03 minutes per day. Also in this case, viewing patterns differ from country to country: in Slovenia, Finland and Sweden, for the age group 15-24, the viewing time is at 1:24, 1:17, 1:12 minutes per day, respectively. In Romania, Portugal and Hungary it remains at rather high levels: 3:34, 3:45 and 2:44 minutes per day, respectively. A key factor behind the decline of TV viewing on TV sets is the rapidly growing population of portable screens like smartphones and tablets.

Video viewing is now one of the earliest Internet activities carried out by young children. For example, YouTube is the second favourite site for children under 5 in the UK (Childwise, 2012).

<sup>389</sup> EAO based Eurodata TV worldwide report – The development of the European market for on-demand audiovisual services, page 319. The figures include linear TV as well as short term catch-up (up to 7 days in some countries.)

<sup>390</sup> EAO report on measurement of fragmented audiovisual audiences (2015 update)

<sup>391</sup> <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/yearFrom/1973/yearTo/2014/surveyKy/2041>

<sup>392</sup> EAO REFIT data – Note B2 market revenues and investments – VoD revenues

<sup>393</sup> Eurobarometer 411, "Cross border access to online content", August 2015

<sup>394</sup> EAO report on measurement of fragmented audiovisual audiences (2015 update)

According to the preliminary draft study report [not yet published] on "The exposure of minors to alcohol advertising on linear and non-linear audio-visual media services and other online services", amongst minors aged 4-17, watching video clips is the second-most prevalent online activity (reported by 61% of the surveyed) after listening music and watching films and cartoons. 99% of minors surveyed responded that YouTube is the online service they use the most to watch video clips while Netflix is the second most commonly used service among these age groups for that purpose (40.2% and 30.7% of minors in 14-17 and 9-13 age groups respectively indicated that they visit this online service).

- **Audiovisual content** is increasingly offered in **innovative (namely shorter) formats**. Mobile video traffic grew to 55% by the end of 2014<sup>395</sup>. It is estimated that nearly 3/4 of the world's mobile data traffic will be video by 2019<sup>396</sup>. Presently, 400 hours of video are uploaded to YouTube every minute (see 2.1.2).

Also, according to the EAO Study on measurement of fragmented European audiences, while the number of videos viewed tend to increase, the time spent on one given video tend to slightly decrease in certain countries (for example, the number of minutes spent on a video has decreased in all countries from a sample analysed by ComScore, from -5% in the Netherlands, to -36% in Italy.)

**Online advertising is increasingly prominent and is set to overtake TV advertising.** While TV remains the preferred media for advertising (32% of the market), the Internet is likely to become the main advertising platform within the next two years, given its rapid development (+8,4% vs. 2012) and the market share already captured in 2013 (27,4%)<sup>397</sup>.

In 2014, Internet advertising spend was higher than TV advertising spend in a number of EU countries: CZ, DE, DK, NL, SE, UK.

According to the EAO Study on online advertising in the EU<sup>398</sup>, the total size of the online advertising market in the EU in 2013 was €27.2 billion, an increase of 11.6% compared to the total of €23.2 billion in 2012. On the other hand, television advertising in the EU lost in 2013 more than EUR 300 million out of EUR 27.748 million overall investments (-1,1% vs. 2012)<sup>399</sup>.

According to the EAO, online drives the advertising market: the global European advertising market modestly grew of 1.4% in 2014. Without online ad spend, the market would have decreased by -2.4%.

In Europe, online display advertising is the most dynamic form of advertising (+14,9% investments 2013/2012) and captured 33,8% (about EUR 9,2 billion) of all online advertising in 2013. Video ads account for 16% of online advertising.

There are **asymmetries in content offerings and financing**. The emergence of new players, primarily offering services on-demand, paired with viewers increasingly moving online, has an impact on content offerings and financing.

The year 2014 witnessed the closing of local/regional channels in the EU (-14,1% in 2014 vs. 2013). However, national and international TV channels (targeting other Member States and/or third countries) continued to develop (+7,4% vs. 2013).

EU TV channels are increasingly internationally oriented: in 2013, 1 989 TV channels established in the EU targeted other Member States and third countries (+ 24,6% vs. 2012) and represented 42% of the total national and international channels established in the EU (19,3% in 2012)<sup>400</sup>.

Within this transnational market though, the established EU broadcasting market is increasingly facing competition of on-demand providers, some of which are not established in the EU.

Netflix and Amazon Prime, increasingly prominent in the EU market also at the expenses of established European broadcasters, invest in original content. However that is not necessarily European content.

<sup>395</sup> [http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white\\_paper\\_c11-520862.html](http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white_paper_c11-520862.html)

<sup>396</sup> Source: Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update 2014–2019 White Paper

<sup>397</sup> Source: European Audiovisual Observatory/WARC

<sup>398</sup> Published in September 2015

<sup>399</sup> Source: WARC

<sup>400</sup> Source: European Audiovisual Observatory; Yearbook 2014 and 2012

Netflix expects to invest nearly \$5bn on acquired and original content in 2016 with a progressively increasing trend over the next years. In 2015 Netflix is expected to debut at least 48 originals. They also announced series shot in the EU, like Marseille or The Crown. This latter is however a marketing effort that is not related to contribution to the production of European content. Amazon announced that it will invest more than \$100 million in the third quarter of 2015 to produce original content globally.

EU broadcasters counterbalance this trend. In 2009, they invested around 1 / 3 of their revenues in EU quality content. In that year, out of the EUR 34,5 billion programme spend in the EU by broadcasters approximately EUR 15,6 billion was spent on acquiring rights, EUR 5,8 billion on sports rights and EUR 9,8 billion on film and TV acquisitions.

## ANNEX 4 – IMPLEMENTATION OF THE PROVISIONS ON THE PROMOTION OF EU WORKS AT NATIONAL LEVEL

### Article 13

Member State	No specific national measures	National measures implementing Article 13.1			Summary of the national regulations	National legal basis (translation from original language)
		Quotas	Prominence	Financial Contribution		
Austria		Public services - Yes (50%)  Commercial services - No	Public services - No  Commercial services - Yes	Public services - No  Commercial services - No	On demand services offered by the Austrian Broadcasting Corporation shall reserve the majority proportion of programmes to European works. Other on demand services providers shall give European works due prominence in their catalogues or appropriately designate them	<u>Federal Act on Audio-visual Media Services</u> (AMD-G) - consolidated 30 July 2015 - <u>Article 40</u> : <i>Media service providers of on-demand audiovisual media services shall promote European works in the presentation of their catalog of programs by giving due prominence to or appropriately designating such works.</i> <u>Federal Act on the Austrian Broadcasting Corporation</u> (ORF-G) - consolidated 13 August 2015 - <u>Article 12</u> : <i>Without prejudice to the requirements of § 4e and § 4f in connection with the provisions of Part 1a, the majority proportion of programmes in on-demand services offered by the Austrian Broadcasting Corporation or its subsidiaries, where practicable and subject to the use of reasonable means, shall consist of European works in accordance with Art. 1 paragraph 1 (n) and paragraphs 2 to 4 of 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</i>

						<i>Directive), OJ No. L 95, of 15 April 2010, page 1.</i>
<b>Belgium FL</b>	X	No	No	No	On demand services will, insofar as it is feasible and by appropriate means, promote European works. By means of example through: financial contributions, shares and/or prominence measures.	<u>Act on Radio and Television Broadcasting</u> - Consolidated 12 August 2014 – <u>Article 157</u> : <i>The non-linear television broadcasters will promote the production of and access to European productions, insofar as this is feasible and by appropriate means. Such promotion could relate, inter alia, to the financial contribution made by the non-linear television broadcasters to the production and rights acquisition of European productions or to the share and/or prominence of European productions in the catalogue of programmes offered by the on-demand programme catalogue of the non-linear television service.</i> <i>A considerable share of the promotional resources, referred to in the first indent, has to be used for Dutch-language European productions.</i> <i>The Flemish Government can lay down the potential resources and measures, as mentioned in the first indent.</i>
<b>Belgium FR</b>		No	Yes	Yes (up to 2,2% of all revenues for editors and either 2 euros per user or 2,5% of all revenues for distributors) The service provider can choose to contribute in the form of a <b>levy</b> .	On demand services must place particular emphasis on European works by using an attractive presentation in their catalogues. Two types of financial contribution: For "éditeurs de services télévisuels": up to 2,2% of all revenues generated by audio-visual services (valid for broadcasters as well as VoD service providers). If a audiovisual service provider	<u>Audiovisual media services decree</u> - consolidated 29 January 2015 - <u>Article 46</u> : <i>In their non-linear television services, the RTBF and service editors must ensure that they place particular emphasis on the European works in their catalogue, including original works by authors from the French-speaking Community of Belgium, by using an attractive presentation to highlight the list of European works available.</i>



					offers programmes in French and Dutch, only the French-speaking programmes will be taken into account for the revenue calculation. For "tout distributeur de services télévisuels": either 2€ per user or 2,5% of the revenues. Financial contributions can be made directly to co-productions and/or acquisition of rights OR in the for of a levy to the Cinema and Audiovisual Center.	<u>Article 41:</u> <i>The financial contribution can be of 0% of editor's annual turnover when this is less than EUR 300.000, up to a maximum of 2.2% of editor's turnover when this is over EUR 20 million.</i>
<b>Bulgaria</b>		No	Yes	No	On demand services shall use an accesible and attractive presentation of European works on their catalogues.	<u>Radio and Television Act - Consolidated version of 24 December 2014 - Article 19 (2)-(3):</u> <i>(2) The creation of and access to European works in the case of on-demand audiovisual media services shall be promoted, where practicable and by appropriate means.</i> <i>(3) Audiovisual media service providers shall use hardware and software for the accessible and attractive presentation of European works in the catalogue of programmes offered by the audiovisual media service.</i>
<b>Croatia</b>		Yes (20%)  OR	Yes  OR	Yes (in proportion with EU works missing from programme catalogue to comply with the quota)	On demand services will, insofar as it is feasible and by appropriate means, promote European works. By means of example through: financial contributions, shares and/or prominence measures.	<u>The Electronic Media Act - Consolidated 8 July 2011 - Art. 21 (1)-(3):</u> <i>(1) The on-demand audiovisual media service providers shall use their best efforts in order that their on-demand audiovisual media services promote, where practicable and by appropriate means, the production of and access to European works.</i> <i>(2) Promotion of the works referred to in paragraph 1 of this Article could relate, inter alia, to the financial</i>

						<p>contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.</p> <p>(3) The on-demand audiovisual media service providers shall attain and increase the financial contribution or the share and/or prominence of European works in the catalogue of programmes referred to in paragraph 2 of this Article in accordance with the criteria and method laid down by the ordinance adopted by the Electronic Media Council under Article 42 para 2 of this Act .</p> <p>Electronic Media Act, OG 153/09,84/11,94/13,136/13, unofficial consolidated text</p>
<b>Cyprus</b>		Yes (20%)	No	No	<p>On demand audiovisual services providers shall ensure that their catalogues include at least 20% of European works titles.</p> <p>*Please note that according to the suggested amendment of the Radio and Television Organizations Laws (1998-2015), that has been submitted to the House of Parliament awaiting examination) <b>the percentage is 10%.</b></p>	<p><u>Law on Radio and Television Stations - Article 31A.</u> (2) (a) and (b):</p> <p>(a) Audiovisual media service providers shall ensure that on-demand audiovisual media services promote, where practicable and by appropriate means, the production of and access to European works.</p> <p>(b) In order to comply with the obligation referred to in subparagraph (a), on-demand audiovisual media service providers shall ensure that their catalogue of works available to users includes at least 20% European works titles,</p> <p>It being understood that the above percentage may be revised periodically by the Authority following consultations with the audiovisual media service providers.</p>
<b>Czech</b>		Yes (10%)	No	Yes (1% total revenues)	On demand services must	<u>Act 132/2010 on On-demand</u>

<b>Republic</b>					<p>reserve at least 10% of the total number of programmes in their catalogues to European works OR spend at least 1% of their total revenues on production or right acquisition of European works.</p>	<p><u>Audiovisual Media Services - Article 7. (1) and (2):</u>  <i>(1) An on-demand audiovisual media service provider shall, where practicable, reserve for European works<sup>8</sup>) at least 10% of the total number of programmes offered in its service's catalogue of programmes during a reporting period. The total number of programmes forming the basis for determining the proportion of European works shall not include news programmes, recordings of sports events, or competitive programmes.</i>  <i>(2) The obligation under paragraph (1) above shall be regarded as satisfied if an on-demand audiovisual media service provider spends at least 1% of total revenues generated by the service in a reporting period on:</i>  <i>a) the production of European works, or</i>  <i>b) the paid acquisition of rights to use European works through the on-demand audiovisual media service.</i></p>
<b>Denmark</b>	X	No	No	No	<p>On demand services shall use appropriate means to promote European works when possible.</p>	<p><u>Executive Order on Registration-Based Programme Activity and On-Demand Audiovisual Programme Activities</u> - Consolidated nr. 100 of 28 January 2010 - <u>Section 10 (1):</u>  <i>Providers of on-demand audiovisual media services shall use appropriate means to promote the production of and access to European works, see Annex 1, and do so when possible.</i>  <i>The Radio and Television Broadcasting Act - consolidated 6 May 2010 - Article 48:</i>  <i>The minister for Culture may lay down rules about the programming activities, including rules about the</i></p>

						<p><i>content, promotion of European works and rules of the availability of programs. In context with rules about the broadcasting programs the minister may lay down rules on protection of minors. Furthermore rules banning incitement to hatred based on race, sex, religion or nationality and sexual observation may be laid down.</i></p> <p>Furthermore rules banning promotion of terrorism may be laid down.</p>
<b>Estonia</b>		No	Yes	Yes (not specified)	On demand services shall promote European works by, among other means, providing financial support for production or rights acquisition AND highlighting European works in their catalogues (including recent works) presenting their origin and year of production.	<p><u>Media Service Act - Article 24:</u>  <i>On-demand audiovisual media service shall promote production of and accessibility to European works, taking account of the specific nature and opportunities of the service. Promotion of the production of and accessibility to European works means, among other, for on-demand audiovisual media service provider:</i></p> <ol style="list-style-type: none"> <li><i>1) provision of financial support for the production of European works, ordering of the works or obtaining the rights for the transmission thereof;</i></li> <li><i>2) highlighting European works in the programme catalogue, including the works completed during last five years, presenting the country of origin and the year of completion of such works;</i></li> <li><i>3) highlighting the works that are in compliance with the features of own production and highlighting the year of their completion in the programme catalogue.</i></li> </ol>
<b>Germany</b>		No	No	No	No national implementation measures have been notified for the promotion of European works.	<p>Art. 11d <u>Interstate Broadcasting Treaty:</u></p>

<b>Finland</b>	X	No	No	No	On demand services shall promote European works by, as a means of example, financial contributions, enhanced visibility or other means.	<p><u>Information Society Code</u> - consolidated 18 September 2015 – <u>Article 209</u>:</p> <p><i>A broadcaster shall reserve a major part of its annual broadcasting time for European works.</i></p> <p><i>The broadcasting time referred to above does not include time reserved for:</i></p> <p><i>1) news;</i></p> <p><i>2) sports events;</i></p> <p><i>3) competitive entertainment programmes;</i></p> <p><i>4) advertising;</i></p> <p><i>5) teletext services;</i></p> <p><i>6) teleshopping.</i></p> <p><i>Further provisions on what is considered European works referred to in subsection 1 in accordance with Article 1 of Directive 2010/13/EU of the European Parliament and of the Council 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) shall be issued by Government Decree.</i></p> <p><i>Video-on-demand audiovisual service providers shall promote the production and distribution of European works with the help of financial contributions to productions, programme acquisitions, enhanced visibility of European works or similar means.</i></p>
<b>France</b>		Yes (60%)	Yes	Yes (15%-26% net revenues) In the form of a <b>levy (extraterritorial application envisaged)</b>	On demand services shall promote European works by means of: (i) reserving 60% share (progressively applied)	<p><u>Law n° 86-1067 of 30 September 1986 on the Freedom of communication</u> - consolidated 16 October 2015 - <u>Articles 3-5 and 12 of Decree No.</u></p>

					<p>of their catalogues to European works; displaying an adequate proportion of European works in their homepage; and financially contributing to the development of European cinematographic and audiovisual works by at least 12% to 26% (depending on the kind of service) of their net revenues.</p>	<p><u>2010-1379 of 12 November 2010:</u></p> <p><i>Art. 3</i>  <i>Catch-up television services shall devote each year part of their net annual revenues of the previous financial year to expenditure contributing to the development of the production of both European cinematographic works and original French-language works, the proportion of which shall be identical to that to which the provider of services is subject in respect of the operation of the television service from which the catch-up service has originated.</i>  <i>The provisions of the previous paragraph shall not be applicable to catch-up television services whose revenues are included in the resources of the television service from which they have originated, by application of the Decree of 2 July 2010.</i></p> <p><i>Art. 4</i>  <i>I. — Subscription-based services shall devote each year a proportion of their net annual revenues of the previous financial year to expenditure contributing to the development of, on the one hand, the production of European cinematographic and audiovisual works and, on the other hand, original French-language works. The proportion shall respectively be at least:</i>  <i>1. 26% and 22% when they offer at least 10 full-length cinematographic works a year within a period less than twenty-two months after their cinema release in France;</i>  <i>2. 21% and 17% when they offer at least 10 full-length cinematographic</i></p>
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						<p><i>works a year within a period less than thirty-six months and equal to or more than twenty-two months after their cinema release in France;</i></p> <p><i>3. 15% and 12% in other cases.</i></p> <p><i>II. — Expenditure resulting from the application of the provisions of section I shall be invested in the production of cinematographic and audiovisual works but excluding those mentioned in the fifth paragraph of Article 1609 sexdecies B of the General Tax Code, in accordance with the shares of each of these two genres of works in the total number of items downloaded or viewed by users of the service during the previous financial year. When the service offers less than 10 full-length cinematographic works or less than 10 audiovisual works a year, the expenditure shall be invested only in the production of works in respect of which the threshold has been reached.</i></p> <p><i>Art. 5</i></p> <p><i>I. — Services other than those mentioned in Articles 3 and 4, especially pay-per-view services, shall devote each year:</i></p> <p><i>1. 15% at least of their net annual revenues of the previous financial year resulting from the exploitation of cinematographic works to expenditure contributing to the development of the production of European cinematographic works, of which at least 12% to expenditure contributing to the development of the production of original French-language cinematographic works;</i></p> <p><i>2. 15% at least of their net annual revenues of the previous financial year resulting from the exploitation of</i></p>
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						<p>audiovisual works other than those mentioned in the fifth paragraph of Article 1609 sexdecies B of the General Tax Code to expenditure contributing to the development of the production of European audiovisual works, of which at least 12% to expenditure contributing to the development of the production of original French-language audiovisual works.</p> <p>II. — The proportion of turnover originating from revenues other than those referred to in section I shall be taken into account when calculating the revenues mentioned in paragraphs 1 and 2 of section I in proportion to the respective amounts of the latter. Decree (tables of exemptions).</p> <p>Art. 12</p> <p>At all times, providers of services shall reserve out of the total number respectively of full-length cinematographic works and audiovisual works made available to the public a proportion at least equal to:</p> <p>1. 60% for European works;</p> <p>Art. 13</p> <p>On their homepages, providers of services ensure that a substantial proportion is devoted to works, which promotion is ensured by other means than the reference to the title, to european works (...)</p>
Greece	X	No	No	No	On demand services will, insofar as it is feasible and by appropriate means, promote European works. By means of example through: financial contributions, shares and/or prominence measures.	<p>Decree No. 109 - Article 14 ( 1):</p> <p>On-demand audiovisual media services shall promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial</p>



						<i>contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.</i>
<b>Hungary</b>		Yes (25%)	No	No	On demand services shall allocate at least one quarter of the total annual length of programmes available to European works.	<u>Act CLXXXV of 2010 on Media Services and Mass Media - Consolidated July 2015</u> <u>Article 20:</u> <i>(1) The media service provider</i> <i>a) shall allocate over half of its annual total transmission time of linear audiovisual media services to broadcasting European works and over one-third of its transmission time to broadcasting Hungarian works;</i> <i>b) shall allocate at least ten percent of its annual total transmission time of linear audiovisual media services to broadcasting such European works, and at least eight percent of its transmission time to broadcasting such Hungarian works that were ordered by it from an independent production company, or were purchased from an independent production company within five years of production.</i> <i>(2) Over one-quarter of the total length of the programmes made available in a given calendar year in the form of on-demand audiovisual media services shall be European works, and at least ten percent shall be Hungarian works.</i>
<b>Ireland</b>	X	No	No	No	On demand services will, insofar as it is feasible and by appropriate means, promote European works. By means of	<u>European Communities (Audiovisual Media Services) Regulations 2010 (S.I. No. 258 of 2010) – Article 11 (1)(2)(3):</u>

					example through: financial contributions, shares and/or prominence measures.	<p><i>(1) On-demand audiovisual media services provided by media service providers shall promote, where practicable and by appropriate means, production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.</i></p> <p><i>2) Where a request is made by the Minister or relevant regulatory body to an audiovisual media service provider for information necessary to enable the Minister to make a report referred to in Article 3i of the Directive, it shall be complied with by the audiovisual media service provider.</i></p> <p><i>(3) Audiovisual Media Service providers of on-demand audiovisual media services shall notify the Minister or the relevant regulatory body of their intention to provide or continue to provide such services in such manner as the Minister or the relevant regulatory body decides.</i></p>
<b>Italy</b>		Yes (20%)  OR	No	Yes (5% total revenues)	On demand services shall promote European works by reserving a 20% share for European works in their catalogues (5% during a	<p><u>Audiovisual Media Services Code - Consolidated 13 August 2015 - Article 44 1., 4. and 7.:</u></p> <p><i>1. Audiovisual media services providers, both linear and non-linear,</i></p>

					<p>transition period of 4 years) OR by contributing financially with a 5% of their revenues (2% during a transition period of 4 years) to the production or right acquisition of European works. In 2015, after a public consultation, the regulation establishing the EU quotas has been amended, with the introduction of prominence as a third criterion for promoting EW on VOD. Due to the co-regulatory principle expressed in art. 44, para 7, of the Italian AVMS Code, the definition of the technical and editorial criteria of prominence has been determined by a Technical Table seeing the participation of the interested stakeholders (AVMS providers, associations representing authors and producers). The adherence to prominence is voluntary.</p>	<p><i>shall promote the development and circulation of European audiovisual production.</i></p> <p><i>4. On-demand audiovisual media services providers under Italian jurisdiction shall, taking market conditions into account, gradually promote the production of European works and access to the same, in accordance with the methods defined by the Authority in its regulations which shall be adopted within three months.</i></p> <p><i>7. The Authority shall, by means of co-regulation procedures, provide for the preparation of detailed regulations, replacing the existing ones, consistent with the principles set out in this Article and those in Article 3i of Directive 89/552/EEC of 3 October 1989 and of the Council, as amended, under which, with reference to on-demand audiovisual services, the promotion may concern, inter alia, the financial contribution made by such services to the production and rights acquisition of European works or to the share or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service, without prejudice to the provisions of Article 40a.</i></p> <p><u>Regulation no. 188/11/CONS:</u> requirement for the presence of European works inside of catalogs for a percentage equal to 20 % of the hours, or alternatively in an investment of 5% of revenues from on demand audiovisual media services.</p>
<b>Latvia</b>		Yes (not specified)	No	No	<p>On demand services shall include European works in their catalogues</p>	<p><u><i>Electronic Mass Media Law - Section 23. (5):</i></u> <i>An electronic mass medium which</i></p>

						<i>provides on-demand audiovisual services shall include European audiovisual works in its catalogue.</i>
<b>Lithuania</b>		Yes (50%)	No	No	On demand services shall ensure that their catalogues include at least 50% of European titles.	<i>Law on the Provision of Information to the Public - Consolidated 7 January 2016 - Article 40-4: 1. Providers of on-demand audiovisual media services falling under the jurisdiction of the Republic of Lithuania shall promote, where practicable and by appropriate means, the production of and access to European works. 2. In pursuing the activities specified in paragraph 1 of this Article, providers of on-demand audiovisual media services shall ensure that at least half of the programmes in the catalogue of on-demand audiovisual media services are European works.</i>
<b>Luxembourg</b>	X	No	No	No	On demand services will, insofar as it is feasible and by appropriate means, promote European works.	<u>Grand ducal regulation of 17 December 2010 amending the grand ducal regulation of 5 April 2001 setting the rules on content in European works and in the works of independent producers of television programmes deemed to fall within Luxembourgish jurisdiction under the European Television without Frontiers Directive - Art. 5bis (1):</u> <i>On-demand audiovisual media service providers shall promote, where practicable and by appropriate means, the production of European works as well as access to said works.</i>
<b>Malta</b>		Yes (10% the first two years and 15% from the third year)	No	No	On demand services will, insofar as it is feasible and by appropriate means, promote European works. By means of example through: financial contributions, shares and/or prominence measures.	<u>Broadcasting Act 350 - consolidated as latest amended in 2015 - 16N (1) (2):</u> <i>On-demand audiovisual media services provided by media service providers shall promote, where practicable and by appropriate means, the production of and access to</i>

						<p><i>European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and, or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.</i></p> <p>The RA has Subsidiary Legislation 350.34 Notification of On-Demand Audiovisual Media Services Order in place which specifically deals with <i>The Notification of on Demand and Audiovisual Media Services Order</i>. Para 4 of this SL states that, “ A provider of on-demand audiovisual media services shall encourage the promotion of European works and culturally diverse programming. A minimum of 10% of European works shall be available in the first two years of operation rising to 15% in the third year</p>
<b>Netherlands</b>	X	No	No	No	On demand services promote the production and access to European works.	<p><u>Act no 552 amending the Media Act 2008 and the Tobacco Act for the implementation of the Audio-Visual Media Services Directive - Art. 3.29c:</u></p> <p><i>A media organisation that provides a commercial media service on demand promotes the production and the access to European productions in the sense of article 1 of the European directive.</i></p>
<b>Poland</b>		Yes (20%)	Yes	No	On demand services shall promote European works in particular by: (i) giving prominence by identifying the origine of works, creating a search option for European	<p><u>Broadcasting Act - Consolidated 12 October 2012 - Art. 47f:</u></p> <p><i>Art. 47f.</i></p> <p><i>1. Providers of on-demand audiovisual media services shall promote European works, including works</i></p>

					works and providing information and materials; AND (ii) reserving at least 20% of their catalogues to European works.	<p><i>produced originally in the Polish language, in particular by:</i></p> <p><i>1) proper identification of origin of programmes available in the catalogue of programmes as well as providing the option to search for European works, including works produced originally in the Polish language, or</i></p> <p><i>2) placement of information and materials promoting European works, including works produced originally in the Polish language.</i></p> <p><i>2. Providers of on-demand audiovisual media services shall allocate at least 20% of the content in their catalogue for European works, including works produced originally in the Polish language, and shall provide adequate visibility to such programmes in the catalogue.</i></p> <p><i>3. The percentage referred to in paragraph 2, shall be calculated based on the total duration of the programmes multiplied by the total broadcasting time of the programmes in the catalogue during a given calendar quarter.</i></p> <p><i>4. Paragraph 2 shall not apply to the catalogues, in which only audiovisual programs other than European works are provided to the general public.</i></p>
<b>Portugal</b>		Yes (not specified)  OR Financial Contribution	Yes	Yes (at least 1% of revenues) Amounts not directly invested into production and/or rights acquisition are allocated in the form of a <b>levy</b>	On demand services shall promote European works through a financial contribution to their production OR their progressive incorporation to their catalogues AND giving them particular visibility. (Article 45 (2) and (3) of the TV Act 2007). Financial	<p><u>Television Act 2007 - Article 45 2. and 3:</u></p> <p><i>2 - On-demand audiovisual services shall contribute to the promotion of European works, namely through financial contributions to their production or through their progressive incorporation into the respective catalogue.</i></p> <p><i>3 - On-demand audiovisual services</i></p>

					contribution goes directly in production and rights acquisition and the amounts not allocated to investment are delivered to the Cinema and audiovisual institute. (Article 16 (2),(3) and (4) of Law 55/2012).	<i>are to give particular visibility to European works in their catalogue, implementing features which enable the public to search for such works by their origin.</i>  Article 16 of Law 55/2012, amended by Laws 28/2014 and 82-B/2014 – Law on the fostering, development and protection of the cinema and cinematographic and audiovisual activities)
<b>Romania</b>		Yes (20%)	Yes	No	On demand services will, insofar as it is feasible and by appropriate means, promote European works. By means of example through: financial contributions, shares and/or prominence measures.	<u>The Audiovisual Law</u> - consolidated 22 November 2009 - <u>Art. 23 (1)</u> : <i>On-demand audiovisual media services promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the percentage and/or prominence of European works in the catalogue of programs offered.</i>  Decision NAC 320/2012 concerning the provision of on demand audiovisual media services art.26 alin.(1) establishes a mandatory share of 20%. Decision NAC 320/2012 concerning the provision of on demand audiovisual media services art.26 alin.(2) <i>Providers are required to promote the home page of the web site, equally, and European audiovisual works of fiction available in the catalog.</i>
<b>Slovakia</b>		Yes (20%)	No	No	On demand services shall promote European works by	<u>Act 308/2000 on Broadcasting and Retransmission and on the amendment</u>

					reserving a 20% share for European works in their catalogues.	of Act No. 195/2000 on <u>Telecommunications</u> - consolidated 3 February 2015 - § 27a (1): <i>The provider of on-demand audiovisual media services shall be obliged to reserve at least 20 % of total time of programmes offered in the catalogue of programmes per calendar month to European works, for each on-demand audiovisual media service individually; for the purpose of the calculation of total time the news, sports events and games shall be excluded.</i>
<b>Slovenia</b>		Yes (10%)  OR	No	Yes (1% total revenues)	On demand services shall promote European works by reserving a 10% share in their catalogues OR, if not met, by financially contributing with at least 1% of their total revenues.	<u>Audiovisual Media Services Act (ZAvMS) - Art. 16 (2) and (3):</u> <i>(2) European audiovisual works must account for at least 10% of the programmes in the catalogue of programmes of an on-demand audiovisual media service in an individual calendar year, unless this Act determines otherwise.</i> <i>(3) A provider of on-demand audiovisual media services that fails to attain the proportion referred to in the preceding paragraph must, every calendar year, earmark funds amounting to at least one per cent of all revenues from its audiovisual media services in that calendar year for the production of or acquisition of the rights to European audiovisual works that it provides via its on-demand audiovisual media services.</i>
<b>Spain</b>		Yes (30%)  AND	No	Yes (5% of turnover)	On demand services shall reserve 30% of their catalogues for European works (half of these in an Spanish official language) AND shall financially contribute to the funding of	<u>General Law No 7/2010 of 31 March on Audiovisual Media</u> - consolidated 1 May 2015 - <u>Article 5 2. and 3:</u> <i>Article 5 2. para. 2</i> <i>[...]</i> <i>Providers of a catalogue of programmes shall reserve 30% of the</i>



					audiovisual content with at least 5% of their turnover.	<p><i>catalogue for European works. Half of this amount shall be in one any of Spain's official languages.</i></p> <p><i>[...]</i></p> <p><i>Article 5 3 para. 1</i></p> <p><i>Audiovisual service providers of national or regional coverage shall contribute annually to the early financing of European production of motion pictures , television movies and series , and documentaries and animation films and series , with 5% of the revenues earned in the previous year according to their operating account corresponding to the channels that broadcast these audiovisual products with less than seven years old from the date of production.</i></p> <p><i>Article 5 3. para. 9</i></p> <p><i>[...]</i></p> <p><i>Electronic media service providers who transmit television channels and providers of catalogue of programmes services shall also be subject to the funding obligation laid down in this article.</i></p> <p><i>[...]</i></p>
<b>Sweden</b>	X	No	No	No	On demand services shall, when practicable, use suitable methods to promote European works.	<p><u>The Radio and Television Act</u> - consolidated 17 June 2010 - <u>Chapter 5. 8§:</u></p> <p><i>Any party providing on-demand television by a means other than via wireline networks transmission shall, where practicable and by appropriate means, promote the production of and access to programmes of European origin.</i></p>
<b>United Kingdom</b>	X	No	No	No	On demand services shall, where practicable and by appropriate means, promote production and access to European works.	<p><u>Electronic Communications Broadcasting - The Audiovisual Media Services Regulations 2009 - 368C (3) and 368Q (3):</u></p> <p><u>368C (3)</u></p>

						<p><i>The appropriate regulatory authority must ensure that providers of on-demand programme services promote, where practicable and by appropriate means, production of and access to European works (within the meaning given in Article 1(n) of the Audiovisual Media Services Directive).</i></p> <p><i>368Q (3)</i></p> <p><i>It is the duty of the Welsh Authority in the provision of any on-demand programme service to promote, where practicable and by appropriate means, production of and access to European works (within the meaning given in Article 1(n) of the Audiovisual Media Services Directive).</i></p>
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**ANNEX 5 – IMPLEMENTATION OF THE PROVISIONS ON THE PROTECTION OF MINORS AT NATIONAL LEVEL (FROM THE 2015  
EAO IRIS BONUS "COMPARATIVE TABLES ON THE PROTECTION OF MINORS IN AUDIOVISUAL MEDIA SERVICES)**

**The protection of minors in audiovisual media services in a converged environment**

*Comparative table of legal obligations across Europe*

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON- LINEAR SERVICES
<b>AT</b>	Audiovisual Media Services Act – (Art. 39: on-demand services and Art. 42: television programmes). ORF guidelines on protection of minors	Some elements of self and co-regulatory system for linear and for non-linear services. Includes a code of conduct regarding the protection of minors from harmful content by TV broadcasters.	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	<p>“<i>Seriously impair</i>”: (pornography; gratuitous violence): banned.</p> <p>“<i>Likely to impair</i>”: allowed with some form of protection.</p> <p>On-screen icons required by law + technical filtering devices or software used by broadcasters.</p>	<p>“<i>Seriously impair</i>”: allowed with access restriction.</p> <p>“<i>Likely to impair</i>”: allowed without restriction.</p>
<b>BE (Flemish Comm.)</b>	Act on radio and television broadcasting of 18.03.2009 Art. 42 (linear TV services) / Art. 45 (non-linear services).	Some elements of self and co-regulatory system for linear and for non-linear services. Includes a code of conduct regarding the protection of minors from harmful content by TV broadcasters.	Graduated approach between linear and non-linear services regarding “seriously impair” contents	<p>“<i>Seriously impair</i>” (pornography, unnecessary violence): banned</p> <p>“<i>Likely to impair</i>”: allowed with some form of protection</p> <p>On-screen icons or acoustic warnings required by law.</p>	<p>“<i>Seriously impair</i>”: allowed with access restrictions (PIN codes)</p> <p>“<i>Likely to impair</i>”: allowed without restriction</p>
<b>BE (French Comm.)</b>	Décret SMA, as modified – Art. 9.2 a) and b) Order of the Government of	Some elements of self and co-regulatory system for linear and for non-linear services.	Stricter legal approach: general prohibition for “seriously impair” content on VOD services	“ <i>Seriously impair</i> ” (pornography, violence): banned	“ <i>Seriously impair</i> ” (pornography, violence): banned on VOD

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
	21.02.2013	<p>The law provides the basis for minor's protection and the regulator has developed it through rules and codes (Ethics Code of 2007 and CSA's Recommendation on the protection of minors, both of which are not legally binding).</p> <p>The Regulatory authority is in charge of the regulation of on-demand AVMS in relation to age-related classification of content and the development of technical measures to prevent minors from accessing harmful contents.</p> <p>Further to the law, broadcasters participate in the system of protecting minors through the creation of internal viewing committees in charge of deciding on age rating of programmes.</p>		<p><i>"Likely to impair"</i>: allowed with some form of protection</p> <p>Watersheds / or access code + on-screen age-related icons on electronic programme guide and acoustic warning or screen icon during diffusion if no access code (Art. 9.2a) SMA).</p> <p>In practice, acoustic warning is not currently used.</p>	<p><i>"Likely to impair"</i>: allowed with some form of protection</p> <p>Parental code (PIN code) + on-screen age-related icons on electronic programme guide and catalogues (Art. 9.2b) SMA).</p>
BG	<p>Radio and Television Act (Art. 19 on-demand services)</p> <p>Bill amending the RTA of 14.5.2014</p>	<p>Regulatory authorities have issued rules and general guidance for the protection of minors on audiovisual media services, whether linear or on-demand.</p> <p>The Council for Electronic Media and State Agency for Child Protection drew up criteria for the assessment of harmful contents. All kinds of online business communication fall within the scope of the National Self-Regulation Board's Code of Ethics.</p>	<p>Integrated approach across all audiovisual media services regarding protection of minors (including general prohibition for "seriously impair" content on VOD).</p>	<i>"Seriously impair"</i> : banned.	<i>"Seriously impair"</i> (restrictive definition): banned on VOD services.
				<p><i>"Likely to impair"</i>: allowed with access restrictions.</p> <p>On-screen icons or acoustic warnings required by law + technical filtering devices or software used by broadcasters.</p>	<p><i>"Likely to impair"</i>: allowed with some form of protection.</p> <p>Technical access restrictions, such as filtering, encryption, pre-locking/PIN codes or other age verification systems).</p>
CY	<p>Law on Radio and Television Stations Art. 29(1)-(3): linear services / Art. 31A(1)(a)-(b): non-linear services</p> <p>Cyprus Broadcasting Corporation Law</p>	<p>Some elements of self and co-regulatory system for linear and for non-linear services: The age classification of programs is determined by the television organisations / audiovisual media service providers.</p>	<p>Graduated approach between linear and non-linear services regarding "seriously impair" contents.</p>	<i>"Seriously impair"</i> (pornography, gratuitous violence): banned	<p><i>"Seriously impair"</i>: allowed with access restrictions.</p> <p>Age rating, content filtering and parental access codes.</p>

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
	Art. 19(5) (a)-(c): linear services / Art. 181 (1) – (2): non-linear services  Regulations of Radio and Television Stations Reg. 21(6)-(7)	Media literacy policies are encouraged.  Acoustic warnings of news stories unsuitable for minors are given more than once (that is required by law).		“Likely to impair”: allowed with some form of protection  Appropriate time of broadcast, technical measures, acoustic warnings, on-screen icons – applicable only to unencoded programs.	“Likely to impair”: allowed without restriction.
CZ	Radio and TV Broadcasting Act On-demand Audiovisual Service Act ( <a href="#">Section 6(3) on-demand services</a> )	Some elements of self and co-regulatory system for linear and for non-linear services. Includes a code of conduct regarding the protection of minors from harmful content by TV broadcasters.	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	“Seriously impair” (pornography, gross gratuitous violence): banned.	“Seriously impair”: allowed with access restrictions.  Qualified disclaimer with general warnings (Czech Council for Radio and Television Broadcasting’s statement of 19 October 2010) + technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems).
				“Likely to impair”: allowed with some form of protection.  On-screen icons + acoustic warnings required by law.	“Likely to impair”: allowed with some form of protection.
DE	Youth Protection Act (age rating for films (cinema, feature films DVD, computer games)  Interstate Treaty on the Protection of Minors (JMStV); definition of harmful contents - Art. 4	Co-regulatory system applicable to both linear and non-linear services: organisations of voluntary self-regulation formally approved by the Commission for the Protection of Minors in Electronic Media (KJM) under the JMStV or part of classification agreements with the federal states (German “Länder”)	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	“Seriously impair” (absolute illegal content / pornography, certain indexed content and contents which seriously impairs minors: ex. violence, sexual, etc.): banned.	“Seriously impair”: allowed on VOD by means of a closed user group + age verification systems (KJM has developed key criteria for a two-step process based on identification and authentication) – except illegal content which is banned.

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
	(Länder), Art. 5, Art. 11 (applicable to broadcasting and telemedia services)	<p>under the Youth Protection Act, check that the provisions of the JMStV are adhered to by their members.</p> <p>The KJM checks whether decisions taken by self-regulatory organisations are in compliance with their legal scope of assessment. If a self-regulatory body exceeds its scope, the KJM may take legal action. The KJM also draws up statutes and directives which the self-regulatory organisations must comply with. Organisations seeking certification by the KJM as self-regulatory organisations must file an application. In order to be certified, the organisation must meet certain requirements in relation to the protection of minors (KJM sets out a catalogue of criteria for the regulation in broadcasting and AVMS ('telemedia') in order to guide the assessment of depictions of violence and sexuality). KJM is also the competent supervisory body for all providers that do not submit to the codex of a self-regulatory body.</p> <p>Organisations of voluntary self-regulation can also be established for on-demand AVMS. The multimedia voluntary self-regulatory association FSM is one of the biggest self-regulatory organisations. Its code of conduct for providers covers both linear and nonlinear audiovisual media services.</p> <p>Contractually selected rating services under the Youth Protection Act, such as the Voluntary Self-Regulatory Organisation of the Film Industry – FSK) for films and the Voluntary Self-Regulatory Organisation of the Entertainment Software Industry – USK) for video games take the rating</p>		<p><i>"Likely to impair"</i>: allowed with some form of protection.</p> <p>Watershed + on-screen icons or acoustic warnings required by law + technical filtering devices or software used by broadcasters.</p>	<p><i>"Likely to impair"</i>: allowed with some form of protection:</p> <p>Watersheds, electronic labelling - which has to be compatible with formally approved filter software (technical systems for the protection of minors), namely the age-de.xml specification -, or other technical measures. Electronic labelling is not deemed a sufficient technical measure on platforms where no technical systems for the protection of minors has been approved (currently for instance iOS, Android, Consoles), here additional technical measures have to be implemented, e.g. PINs, webcam checks, credit card checks, passport number checks and combinations thereof.</p> <p>"Telemedia" providers shall provide clear references to any existing labelling in the content provided if the content is wholly or largely identical with films or games which are labelled or have been cleared for the respective age group pursuant to Article 12 of the German Youth Protection Act. Certified technical systems for the protection of minors for "telemedia" content which could impair minors (Art. 11 JMStV).</p>

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
		<p>decisions (with a Länder representative taking part and having a veto right); the Länder then take over the decision and issue the formal administrative act. Under the JMStV, however, both the USK online and the FSK online are formally approved bodies, too. The rating in this case is being decided without any state representative.</p> <p>In addition, all TV broadcasters, providers of impairing telemedia services and search engines providers in Germany are obliged under the JMStV to have a competent youth protection officer who is responsible in advising the management in all protection related issues; he/she usually decides on all age classification within companies.</p>			
DK	<p>Radio and Television Broadcasting Act (Section 48).</p> <p>Order no. 100 of 28.01.2010 as amended by Order no. 894 of 23.08.2012, Order no. 882 of 28.06.2013 and Order no. 1109 of 13.08.2013. (applying to both linear and non-linear services).</p>	<p>In the Danish Radio and Television Broadcasting Act, section 48 describes in broad terms that the Minister of Culture has the authority to make specified rules about the protection of minors.</p>	<p>Graduated approach between linear and non-linear services regarding “seriously impair” contents.</p>	<p>“<i>Seriously impair</i>” (pornography, unnecessary violence): banned (Art. 6)</p>	<p>“<i>Seriously impair</i>” (pornography, gratuitous violence): allowed with some type of protection (labelling of the service that makes the viewers aware of the harmful content, for example – Art. 11).</p>
		<p>Such rules are provided in secondary legislation, i.e. Order no. 100 of 28 January 2010 as amended by Order no. 894 of 23 august 2012, Order no. 882 of 28 June 2013 and Order no. 1109 of 13 August 2013 (applying to both linear and non-linear services).</p>	<p>Danish authorities envisages establishing a coordinated classification and labelling scheme for films, DVDs, TV and VOD services that would extend across all technologies and would cover any content that might be “seriously” or “mildly” harmful to minors.</p>	<p>“<i>Likely to impair</i>” (e.g. sexually explicit content): allowed with some form of protection (by choice of programming or installing technical device: acoustic warning or visual icons on screen required by law during the whole time the program is on air – Art. 6).</p> <p>The main public service broadcaster, DR, has the same rule as all the other linear services in a clause written about the protection of minors in their public service contract and in Order no. 102 of 28 January 2010, Article 6 for linear services and Article 9 for non-linear</p>	<p>“<i>Likely to impair</i>” (e.g. sexually explicit content): allowed without restrictions</p>

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
				<p>services.</p> <p>The commercial public service broadcaster, TV 2, has the same as all the other linear services written about the protection of minors in a clause in their public service license and in Order no. 881 of 28 June 2013, Article 4.</p> <p>All regional television broadcasters have the same rule as all the other linear services about protection of minors in Order no. 1578 of the 27 December 2014, article 6.</p> <p>All local non-commercial television broadcasters have the same rule as all the other linear services in Order no. 145 of 18 February 2014 as amended by Order no. 1136 of 13 October 2014, Article 13.</p>	
EE	Media Services Act: <a href="#">§19(2)-(6) (linear TV services / §19(7) (on-demand services)</a>	Broadcasters had announced in 2011 the launching of a self-regulation system for the protection of minors. As of March 2015, broadcasters were doing active work, in order to examine current rules (whether they are sufficient and into what extent) and mechanisms to assess the need for additional measures. Some tangible progress were expected for the second half of 2015.	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	“ <i>Seriously impair</i> ” (pornography, promotion of violence or cruelty): banned.	“ <i>Seriously impair</i> ”: allowed with some form of protection
				<p>“<i>Likely to impair</i>”: allowed with some forms of protection</p> <p>Watersheds + Acoustic warnings required by law.</p>	<p>“<i>Likely to impair</i>”: allowed without protection</p> <p>Technical access restrictions available (such as filtering, encryption, pre-locking/PIN codes or other age verification systems).</p>
ES	Spanish General Law 7/2010 of Audiovisual Communication (Art. 7.2)	<p>Almost all of free to air DTT national providers in Spain signed a Self-regulation Code for the audiovisual content and minors.</p> <p>Non-compliance with self-regulatory codes constitutes a breach of administrative law and operators can</p>	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	“ <i>Seriously impair</i> ” (pornography, gratuitous violence, gender violence and mistreatment): banned.	“ <i>Seriously impair</i> ” (pornography, gratuitous violence, gender violence and mistreatment): allowed with access restrictions (dedicated areas in catalogues) and using age rating and digital coding that allows the exercise of parental control systems.



Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
		<p>be penalized accordingly.</p> <p>Integrated approach in Cataluña: among detailed age classification rules and watersheds applicable to linear services, all television audiovisual media service providers, including on-demand providers shall use a digital coding for their contents rating which allows the exercise of parental control.</p>		<p><i>“Likely to impair”</i>: allowed in linear services with some forms of protection: age rating + on-screen icons + acoustic warnings for content rated as 18 + watersheds + technical filtering devices or software used by broadcasters (using digital coding for the age rating that allows the exercise of parental control systems).</p>	<p><i>“Likely to impair”</i>: allowed in non-linear service with some protection (age rating and using digital coding for the age rating that allows the exercise of parental control systems).</p>
FI	<p>Amendment to Act No. 744/1998 on Radio and Television Broadcasting (<i>Laki television-ja radiotoiminnasta</i>)</p> <p>Acts nos. 306/2010 and 712/2011 and Act No. 710/2011 on audiovisual programmes (<i>Kuvaohjelmaki</i>) / classification and labelling of various types of audiovisual content.</p> <p>For on-demand services: Act. No. 458/2002 on the provision of information society services, complemented by Act no. 460/2003 on the exercise of freedom of expression in mass media</p>	<p>Some elements of self and co-regulatory system for linear and for non-linear services.</p> <p>The Finnish Centre for Media Education and Audiovisual Media (MEKU) is responsible for the supervision of audiovisual programme provision (classification of films, protection of minors) and the coordination and promotion of national media education.</p>	<p>Graduated approach between linear and non-linear services regarding “seriously impair” contents.</p> <p>(Measures or initiatives pending to introduce greater consistency).</p>	<p><i>“Seriously impair”</i>: Banned</p>	<p><i>“Seriously impair”</i>: allowed with spome form of protection.</p>
				<p><i>“Likely to impair”</i>: allowed with some form of protection.</p> <p>Age-rating, on-screen icons + acoustic warnings required by law.</p>	<p><i>“Likely to impair”</i>: allowed with some form of protection</p>
FR	<p>Law n° 86-1067 of 30/09/1986 related to the freedom to communicate Art. 1 and 15</p> <p>Recommendation of 7/06/2005 to TV services</p>	<p>Some elements of self and co-regulatory system for linear and for non-linear services. Restrictions on content that is “likely to impair” are laid down through recommendations and deliberations of the CSA. Age</p>	<p>General prohibition for “seriously impair” content on TV and on VOD. There is a light touch approach on VOD with minimum watershed and adapted rules as regards technical</p>	<p><i>“Seriously impair”</i>(criminally unlawful material; (attempt to human dignity: violence, sexual perversion, degrading to the human person; child pornography; hard-core violence); banned</p>	<p><i>“Seriously impair”</i>: banned on VOD</p>

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
	<p>publishers regarding youth rating and classification of programmes, as modified by the CSA deliberations n° 2012-57 of 23/10/2012 and n° 2014-17 of 5/03/2014</p> <p>Deliberation of the CSA of 15.12.2004 on the broadcasting on television of programmes unsuitable to under 18s</p> <p>Deliberation of the CSA of 20.12.2011 on the protection of young audiences, deontology, and the accessibility of programme on on-demand audiovisual media services</p>	categories and definitions are common to linear and non-linear audiovisual services.	protection tools.	<p>“Likely to impair”: allowed with some form of protection</p> <p>“-18” (pornographic and extremely violent): only on specific TV pay services with age rating obligations + watersheds + broadcast time restrictions + restricted access system including access code</p> <p>“-16” and “-12” (erotic material, violent content) / physical or psychological violence / theme that may trouble children under 12): Available in cinema and PPV services and other services with age rating obligations + watersheds + broadcast time restrictions</p> <p>“-10” (contents which are likely to shock children under 10): no restriction.</p>	<p>“Likely to impair”: allowed with some form of protection</p> <p>All programmes must be rated and the warning symbols shall be displayed on catalogues, programmes and trailers. Pin codes are mandatory for -18 programmes, which cannot be offered for free. There are two separate areas: a “trust zone” which contains only programmes which are suitable for all audiences and “an adult zone” which contains all programmes which are not suitable to under 18s. There is only one watershed, on -16 programmes offered for free (22:30 to 5:00)</p>
<b>GB</b>	<p>Broadcasting Act 1996</p> <p>Communications Act 2003 (sections 3(4)(h) and 319(2)(a) and (f))</p> <p>Audiovisual Media Services Regulations 2009 (Art. 368E - harmful material and ODAVMS)</p> <p>Audiovisual Media Services Regulations 2010</p> <p>Audiovisual Media Services Regulations 2014</p>	<p>Fully-fledged self and co-regulatory system implemented specifically for on-demand audiovisual media services.</p> <p>Linear TV services: Ofcom required by law to draw up a code for TV and radio (Ofcom Broadcasting Code): section 2 (harmful contents) + section 1 (protecting under-18)</p> <p>On-demand audiovisual media services: Co-regulation between Ofcom and ATVOD (regulatory authority for notifications and for on-demand editorial content (including Art. 368E). Ofcom retains legislative backstop competences, including the competence to impose statutory sanctions on providers who contravene the relevant requirements. ATVOD’s Rules and Guidance of 26.2014 sets out the statutory rules and non-binding guidance for providers of on-demand</p>	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	<p>“Seriously impair”: illegal content, extremely violent pornography, R18+: banned.</p>	<p>“Seriously impair”: material likely to incite hatred based on race, sex, religion or nationality: banned on VOD.</p> <p>Material which might seriously impair the physical, mental or moral development of persons under the age of 18: allowed with access restrictions.</p> <p>ATVOD guidance considers that there should be in place an effective Content Access Control System (“CAC System”), which verifies that the user is aged 18 or over at the point of registration or access by the mandatory use of technical tools (ex. + PIN code).</p> <p>Since new legislation of 1 December 2014, content stronger than R18 (i.e. “seriously impair”) is now also</p>

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
		<p>programme services (Rule 11).</p> <p>Other codes: Ofcom broadcasting code, BBC Editorial Guidelines, BBFC ratings for films, PEGI scheme for electronic games, BBFC for mobile visual content (self-regulatory scheme), CAP and BCAP (advertising) codes.</p> <p>Co-regulatory system of Ofcom with the Advertising Standards Authority in relation to TV advertising, including rules for the protection of minors. For on-demand audiovisual media services, co-regulation system by the Advertising Standards Authority and the Association for Television On-Demand, which providers of on-demand audiovisual media services are required to notify.</p> <p>Classification framework set out by the British Board of Film Classification (BBFC) as a basis for some protection tools which are mandated for film content on linear broadcasting, and also for mandatory access controls on regulated on-demand services.</p>		<p><i>“Likely to impair”</i> : allowed with some form of protection (except hard-core porn R18, which is banned on TV, based on a decision taken by Ofcom in its 2005 Code Review, in part on the basis that the protection tools in place were insufficiently developed to ensure children would definitely not access R18 content on TV).</p> <p>Watershed, on-screen icons or acoustic warnings required by law + technical filtering devices or software used by broadcasters.</p>	<p>banned on non-linear services.</p> <p><i>“Likely to impair”</i>: allowed with some form of protection.</p>
GR	Presidential Decree 109/2012 Art. 13 (on-demand AVMS)  Art. 26 (linear TV services)	TV and radio broadcasters are obliged by the Broadcasting law to draw up multilateral self-regulating agreements.	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	<i>“Seriously impair”</i> : banned.	<i>“Seriously impair”</i> : allowed with access restrictions. Watershed + labelling restrictions (age classification) + technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems.
				<i>“Likely to impair”</i> : allowed with some form of protection.  Classification of contents + on-screen icons + acoustic warnings required by law.	<i>“Likely to impair”</i> : allowed without protection.

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
HU	<p>Act CLXXXV of 2010 on Media Services and Mass Media (Art. 9: Linear TV services) / (Art. 11: on-demand AVMS)</p> <p>Act CIV 2010 on the fundamental rules of the freedom of the press and media contents (Press and Media Act): Art. 19(2) protection of minors from harmful contents in on-demand AVMS</p> <p>Rules on Protection of minors, Art. 2, par 1. OG 60/10:</p> <p>Recommendation of 19.07.2011 of the Media Council of the National Media and Communications Authority</p>	Some elements of self and co-regulatory system for linear and for non-linear services. The media regulator issue recommendations regarding effective technical solutions. On-demand audiovisual media services providers are obliged to notify the regulatory authority, the National Media and Infocommunications Authority.	Stricter legal approach: general prohibition for “seriously impair” content on VOD services (different authorities competent for film distribution and broadcasting, but which generally come to the same rating and classification).	“ <i>Seriously impair</i> ”: (category VI): banned.	“ <i>Seriously impair</i> ”: allowed with some form of restrictions.
				<p>“<i>Likely to impair</i>”: allowed with some form of protection.</p> <p>Rating +on-screen icons + acoustic warnings required by law.</p>	<p>“<i>Likely to impair</i>”: allowed with some form of restrictions.</p> <p>Technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems).</p>
HR	<p>Electronic Media Act (EMA)</p> <p>Art. Art. 20 (on-demand services) / Art. 26 (linear TV services)</p> <p>Rulebook of the Council for Elektronik Media on TV broadcasters for the purpose of the protection of minors, of April 2008</p>	<p>Regulatory authorities have issued rules and general guidance for the protection of minors on audiovisual media services, whether linear or on-demand.</p> <p>The Agency for Electronic Media has issued rules on the protection of minors. Article 14. OG 60/10 deals with on-demand media service providers.</p>	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	“ <i>Seriously impair</i> ”: (pornography; gratuitous violence): banned.	“ <i>Seriously impair</i> ”: allowed with access restrictions
				<p>“<i>Likely to impair</i>”: allowed with some form of protection.</p> <p>Watershed + technical tools of access restrictions required by law.</p>	<p>“<i>Likely to impair</i>”: allowed with some form of protection.</p> <p>Visual symbols + labelling restrictions (age classification) + PIN code.</p>
IE	Audiovisual Media Service Regulation 2010 Art. 18(2) (linear TV	Fully-fledged self and co-regulatory system implemented specifically for on-demand audiovisual media services.	Graduated approach between linear and non-linear services regarding “seriously impair”	“ <i>Seriously impair</i> ” (pornography, gratuitous violence): banned.	“ <i>Seriously impair</i> ”: allowed with access restrictions.

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
	services) / Art. 6(2) (On-demand services)	<p>The Broadcasting Authority of Ireland does not regulate on-demand audiovisual media services beyond approving draft Codes of implementation of the AVMS Directive for these services. A voluntary Code of conduct was drafted in May 2011 by the self-regulatory authority ODAS and approved by the BAI.</p> <p>The BAI deals with appeals for non-compliance with the voluntary programming codes and implements the AVMS Directive requirements for linear services. The Code is fairly general in its wording and does not include detailed provisions concerning the protection of minors on VOD.</p>	contents (classification for cinema, but not for DVDs).	<p><i>“Likely to impair”</i>: allowed with some form of protection.</p> <p>Requirement to schedule appropriately or encode and where unencoded to either provide an acoustic prior warning or apply visual classification throughout the duration of the programme.</p>	<i>“Likely to impair”</i> : allowed with some form of protection.
IT	<p>Italian AVMS Code as revised in July 2014 (Art. 1, modifying Art. 34 on protection of minors)</p> <p>Self-regulation Code on TV and minors of 29.11.2002, as amended</p>	<p>When it comes to the elaboration of technical measures, Article 34 of the Italian AVMS Code provides for a co-regulatory approach. According to this principle, the Italian Communications Authority (AGCOM) has established a Committee composed of all stakeholders involved in the provision of on-demand services aiming at developing technical measures to prevent minors from viewing on demand content that “might seriously impair” their development.</p> <p>Following the conclusions of the Technical Committee, AGCOM has adopted two deliberations in May 2013: Deliberation of AGCOM (No. 51/13) (technical tools to protect minors, PIN codes); Deliberation of AGCOM (No. 52/13) (criteria for the classification of programmes)</p> <p>Industry self-regulation exists also in Italy.</p> <p>In 2002, all Italian broadcasting</p>	Graduated approach between linear and non-linear services regarding “seriously impair” contents, except for public service broadcasters, subject to stricter rules than commercial broadcasters.	<p><i>“Seriously impair”</i> (gratuitous or insistent or brutal violence or pornography, including cinematographic works classified as unsuitable for minors under 18): banned.</p>	<i>“Seriously impair”</i> : allowed with access restriction: parental control systems + PIN code, except for VOD by PSB (banned).
				<p><i>“Likely to impair”</i>: Allowed with some form of protection</p> <p>Rating, watersheds, on-screen icons + acoustic warnings required by law and also by codes of conduct + technical filtering devices or software used by broadcasters.</p>	<i>“Likely to impair”</i> : allowed without protection.

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
		companies signed the TV and Minors Self-Regulations Code, which is referred to in primary legislation since 2004 as binding also for non-signing broadcasters. According to the Code, broadcasters are required not to broadcast at certain hours any content which might impair physical, mental or moral development of minors.			
LT	<p>Law on the protection of minors against the detrimental effect of public information (10.9.2002 – No IX-1067), as last amended on 14 July 2009 – No. XI-333): Art. 4 + Art.6</p> <p>Law on Provision of Information to the Public, as amended Art. 40.3 (protection of minors in public audiovisual information services/ on-demand AVMS) + Art.17</p>	Some elements of self and co-regulatory system for linear and for non-linear services.	Stricter legal approach: general prohibition for “seriously impair” content on VOD.	“ <i>Seriously impair</i> ”: (physical or psychological violence or vandalism: restrictive definition) banned.	“ <i>Seriously impair</i> ”: banned on VOD (restrictive definition).
				<p>“<i>Likely to impair</i>”: allowed with some form of protection.</p> <p>Watersheds + on-screen icons + acoustic warnings required by law.</p>	<p>“<i>Likely to impair</i>”: allowed with some form of protection.</p> <p>Technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems).</p>
LU	<p>Law of 27 July 1991 on Electronic Media, as amended (17.12.2010): Art. 27ter (linear TV services) / Art. 28quater (on-demand services)</p> <p>Regulation on Protection of Minors in Audiovisual Services of 08.01.2015</p>	<p>As a result of Art. 12 of the AVMS Directive, the government of Luxembourg adopted a regulation on the protection of minors in audiovisual media services based on the Law of Electronic Media.</p> <p>The new regulation introduces a system of self-classification which asks broadcasters established in Luxembourg to classify their content along 5 categories of age groups: all audiences, not suitable for minors under 10, 12, 16 and 18. The new system applies both to providers of linear and on-demand audiovisual media services.</p>	<p>On top of the local classification, broadcasters of linear audiovisual media services established in Luxembourg, but principally targeting the audience of another EU member state can opt for the classification system of that particular member state provided this regime has a level of protection that the regulatory authority ALIA regards as equivalent. In addition, providers of on-demand services can pick, as a third system, the classification granted in the country of origin of the program. ALIA must be notified to change regime; local classification is considered be the default system.</p>	“ <i>Seriously impair</i> ” (pornography, gratuitous violence): banned.	“ <i>Seriously impair</i> ”: allowed with access restrictions.
				“ <i>Likely to impair</i> ”: allowed with some form of protection (watersheds + on-screen icons + text display warnings required by law).	“ <i>Likely to impair</i> ”: allowed with some form of protection (age classification labels).

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
LV	Law on Electronic Media implementing the AVMSD 28.7.2010  Art. 24(10) (on-demand AVMS)	Some elements of self and co-regulatory system for linear and for non-linear services.	Same approach between linear and non-linear services with respect to “seriously impair” content, allowed with access restrictions. Graduated approach between linear and non-linear services regarding “likely to impair” contents, allowed without restrictions in non-linear services.	“ <i>Seriously impair</i> ”: Banned	“ <i>Seriously impair</i> ”: allowed with access restrictions.  Watershed, restricted access control tools, audible warning signal + visual symbol required by law+Technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems (providers are required to cover harmful pictures and to replace rude words with a noise).
				“ <i>Likely to impair</i> ”: allowed with some form of protection.  Watershed, restricted access control tools, audible warning signal + visual symbol required by law + Technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems (providers are required to cover harmful pictures and to replace rude words with a noise).	“ <i>Likely to impair</i> ”: allowed without protection.
MT	Broadcasting Act, 1991 (Act No. XII of 1991), consolidated version 2011 Art. 16N(1) (on-demand AVMS)  Draft Code for the Protection, Welfare and Development of Minors on the Broadcasting Media	Though the regulatory authority remains in charge of the regulation of on-demand audiovisual media services, some self-regulation and co-regulation practices are taking place in relation to classification and labelling of content and the development of technical measures to prevent minors from accessing harmful contents.	Graduated approach between linear and non-linear services regarding “seriously impair” contents, except for public service broadcaster.	“ <i>Seriously impair</i> ”: banned.	“ <i>Seriously impair</i> ”: allowed with access restrictions (PIN code), except for VOD by public service broadcaster.
				“ <i>Likely to impair</i> ”: allowed with some form of protection.  On-screen icons + acoustic warnings required by law -, except for VOD by public service broadcaster (banned).	“ <i>Likely to impair</i> ”: allowed with some form of protection, except for VOD by public service broadcaster (banned).

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
NL	Dutch Media Act 2008 (Mediawet) Art. 4.1 - 4.6	<p>In the Netherlands there is a shared responsibility between The Dutch Media Authority (Commissariaat voor de Media, CvdM) and NICAM (the Netherlands Institute for the Classification of Audiovisual Media). The integrated approach of NICAM's Kijkwijzer system through all regulated audiovisual sector regarding age classification system and labelling (with certain specificities for each sector) has been a showcase for the co-regulation of content across the media. Kijkwijzers' co-regulatory design consists of a three-party construction. The actual classification and rating is conducted by the industry itself. System responsibility is installed with NICAM. On a meta level, both the functioning and the output of NICAM, is supervised by CvdM.</p> <p>According to the Media Act 2008, public service media, and private media that intent to broadcast linear audio-visual content, are obliged to be affiliated with and obey to the regulations of NICAM. Should they not comply with this, they may only broadcast programmes suitable for all ages and will be subject to direct supervision of the CvdM.</p> <p>Also media service providers that are not legally obliged to join Kijkwijzer increasingly sign up as a member of NICAM and voluntary comply with the Kijkwijzer-rules.</p> <p>Rules on seriously harmful media content are directly supervised by the CvdM. CvdM has created a special Advisory Committee to advise the regulator on issues regarding serious harmful content.</p>	<p>Public service media is subject to stricter regulation than private media.</p> <p>Rules that apply to linear and non-linear content of public service media, and linear content of private media:</p> <ul style="list-style-type: none"> <li>- Seriously harmful programs are absolute forbidden (directly supervised by CvdM)</li> <li>- Harmful programs are only allowed if broadcaster joins NICAM.</li> </ul> <p>Rules that apply to non-linear content of private media:</p> <ul style="list-style-type: none"> <li>- Seriously harmful videos are only made available in such a way as to ensure that minors will not normally hear or see them</li> <li>- No rules regarding harmful videos.</li> </ul>	<p>"<i>Seriously impair</i>": banned</p> <p>"<i>Likely to impair</i>": allowed with access restrictions: if a media service provider is affiliated with NICAM, respects the watersheds and shows the applicable symbols (age and content descriptors based on Kijkwijzer system).</p>	<p>"<i>Seriously impair</i>": allowed with access restrictions, except for non-linear content of public service media (banned).</p> <p>"<i>Likely to impair</i>": allowed for private media. Allowed for public service media with access restrictions: if public service media is affiliated with NICAM, respects the watersheds and shows the applicable symbols (age and content descriptors based on Kijkwijzer system).</p>



Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
PL	Broadcasting Act of Dec. 29, 1992, as amended in 2011	<p>Some elements of self and co-regulatory system for linear and for non-linear services. However, an initial self-regulatory system was replaced by legal regulation because broadcasters did not comply with their self-commitments.</p> <p>Further to the new Act, which entered in force on 28 February 2013, one of the National Broadcasting Councils (NBC) tasks is to initiate, support and promote self-regulation in media services. Media service providers may create and join codes of good practice whose creation the NBC supports and promotes. In the current legal system the NBC isn't able to cede its rights to other bodies.</p> <p>There is an area in protection of minors field which gives the possibility of self-regulation:</p> <ol style="list-style-type: none"> <li>1) in determining effective technical security measures in non-linear media services</li> <li>2) in placing advertisements of the so-called unhealthy foods in children's programmes - in linear media services.</li> </ol> <p>On 13 October 2014, the NBC, fulfilling its statutory obligation to initiate and support self-regulation, took an active part in consultations regarding the creation of a "Code of Good Practice on the Protection of Minors in VOD services" and readily accepted it. The document was signed by six Polish on-demand service providers, who committed themselves to take effective technical measures to prevent minors from accessing harmful content.</p> <p>As regards to advertisements of the so-called "unhealthy food", at the end of</p>	Graduated approach between linear and non-linear services regarding "seriously impair" contents.	" <i>Seriously impair</i> ": banned	" <i>Seriously impair</i> ": allowed under specific conditions - effective technical security measures -.
				<p>"<i>Likely to impair</i>": allowed with some form of protection</p> <p>Watershed + on-screen icons required by law</p>	" <i>Likely to impair</i> ": allowed with on-screen icons required by law.

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
		October 2014 broadcasters signed an agreement which provide that, since 1 January 2015, programmes for children aged up to 12 will not be accompanied by advertisements for food and beverages that do not meet “Nutritional Criteria to the self - regulation on food advertising aimed at children under 12 years”. The document was prepared on the request of the Polish Federation of Food Industry and approved by the Ministry of Health; it is attached to the Broadcasters’ Agreement.			
PT	Law of 11 April 2011 amending the Television Act of 2007 Art. 27(3)-(5) (linear TV services) / Art. 27(10) (on demand AVMS)	Some elements of self and co-regulatory system for linear and for non-linear services.  The Regulatory Body for Media Communications encourages television operators to develop a common classification system for television programmes + codes of conduct of TV broadcasters to respect the classification by the entertainment classification commission when broadcasting cinematographic works and video recording.  Accordingly, the three mainstream broadcasters have agreed on specific agreement, which lay down a classification system for TV programmes in relation to protection of minors.	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	“ <i>Seriously impair</i> ”: Banned.	“ <i>Seriously impair</i> ”: allowed with access restrictions (based on voluntary system, on-demand AVMS work with a PIN code access, which is sent to the client. The PIN code restricts access to content according to a graduated classification (high-average-low restrictions / unrestricted). By default, all TV boxes are delivered to clients with low level of active constraints, i.e. with access to all contents except adult content.
				“ <i>Likely to impair</i> ”: allowed with some form of protection.  Watersheds + on-screen icons required by law and also by codes of conduct.	“ <i>Likely to impair</i> ”: allowed with some form of protection.
RO	Radio and Television Broadcasting Act, consolidated version 2009 Art. 39 (linear TV services) / Art 39.1 (on demand AVMS)  Decision No. 220, of 24.02.2011 regarding the	Some elements of self and co-regulatory system for linear and for non-linear services. Includes a code of conduct regarding the protection of minors from harmful content.	Graduated approach between linear and non-linear services regarding “seriously impair” contents, except for public service broadcaster (subject to stricter rules than commercial broadcasters).	“ <i>Seriously impair</i> ”: banned.	“ <i>Seriously impair</i> ”: allowed with access restrictions, except for VOD by public service broadcaster (banned).
				“ <i>Likely to impair</i> ”: allowed with some form of protection.  On-screen icons + acoustic warnings required by law +	“ <i>Likely to impair</i> ”: allowed with some form of protection, except for VOD by public service broadcaster (banned).

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
	Regulatory Code of Audiovisual Content			technical filtering devices or software used by broadcasters + Pre-locking systems for the transmission of over-18 content.	Labelling restrictions (age classification) + technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems).
SE	Swedish Radio and Television Act of 17.6.2010 Chapter 5 - 1 (linear TV services) and 2 (on-demand AVMS)  Broadcasting License	Some elements of self and co-regulatory system for linear and for non-linear services. Includes a code of conduct regarding the protection of minors.  The Swedish Media Council encourages broadcasters to create self-regulating instruments.	Same approach between linear and non-linear services regarding “seriously impair” contents (allowed in both services), with some differences in the level of protection required.  Graduated approach with respect to “likely to impair” content (allowed with some form of protection in linear services and without protection in non-linear services).	“ <i>Seriously impair</i> ”: Banned	“ <i>Seriously impair</i> ”: (depiction of violence of a true-to-life nature or pornographic images): must be provided in such a way that it does not create a considerable risk for children viewing the programmes.
				“ <i>Likely to impair</i> ”: allowed with some form of protection. Acoustic warnings required by law for programmes containing portrays of violence of realistic nature or pornographic. On-screen icons are encouraged but not required by law.  According to the broadcasting licenses, the broadcasting organisations shall take into account the impact of radio and television in terms of format, topics and time of transmission. This provision is applied in the evaluation of programmes that contain or deal with subject matter such as violence, sex and drugs and implies that broadcasting organisations should exercise caution. In the matter of protection of minors, programmes that contain violence and sex which are likely to impair children shall only be broadcast after 21.00.	“ <i>Likely to impair</i> ”: allowed without protection.  Restrictions concerning material which is “likely to impair” are included in broadcasting licences. However, VOD service providers are only required to register with the Swedish Broadcasting Authority).
SI	Law concerning protection of minors in audiovisual media adopted in November 2011 Audiovisual Media Services Act on Audiovisual Media Services, Art. 14(1) – (3)	Some elements of self and co-regulatory system for linear and for non-linear services, in relation to the classification and labelling of content and the development of technical measures to prevent minors from accessing harmful contents.	Graduated approach between linear and non-linear services regarding “seriously impair” contents.	“ <i>Seriously impair</i> ” (pornography, gratuitous violence): banned.	“ <i>Seriously impair</i> ” (hard pornography): allowed with access restrictions.  PIN code or other adequate technical restriction).

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
	<p>(linear TV services) / Art. 15 (on-demand AVMS)</p> <p>Statutory act complementing it (English version) adopted in October 2013.</p>	<p>Regulatory authorities have issued rules and general guidance for the protection of minors on audiovisual media services, whether linear or on-demand. (see AKOS Recommendation of November 2011 for the safe use of AVMS + APEK guidance on protection of minors from harmful content in linear and non-linear services). It provides criteria for the identification of “seriously impair” content, proposes levels and modes of the recommended protection, elaborates guidelines for classification and scheduling and provides proposals for labelling.</p> <p>Self-regulatory system for VOD services was established in Slovenia by Internet, cable and mobile service. AKOS followed and supported the preparation of the self-regulatory agreement and of the code of conduct. AKOS, however, does not have any backstop powers nor plays any other role in this self-regulatory system. In 2013, the eight most important VOD providers renewed the agreement and the code of 2011.</p>		<p>“Likely to impair”: allowed with some form protection.</p> <p>Watersheds or technical protection of access restriction required by law required by law.</p>	<p>“Likely to impair” (explicit sexual content): allowed with some forms of protection.</p> <p>PIN code + classification of any sexual content labelled 18 in special section of the catalogue.</p>
SK	<p>Broadcasting and retransmission Act 308/2000, consolidated version</p> <p>Section 20(2) (on-demand AVMS)</p> <p>Decree No. 589/2007, Coll., as amended on 14 March 2014</p>	<p>Integrated approach through all regulated audiovisual sector regarding age classification system and labelling (with certain specificities for each sector).</p>	<p>Graduated approach between linear and non-linear services regarding “seriously impair” contents</p>	<p>“Seriously impair”: banned in linear services</p>	<p>“Seriously impair”: allowed with access restrictions.</p> <p>Labelling restrictions (age classification)</p>
				<p>“Likely to impair”: allowed with some form protection</p> <p>On-screen icons required by law.</p>	<p>“Likely to impair”: allowed without protection</p>

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
NO	<p>Law on the protection of minors against harmful content in audiovisual programmes of 15.12.2014 Norwegian Broadcasting Act of 10.12.2012 Section 2-7 (protection of minors)</p> <p>Film and Video Act of 5.5.2006</p>	<p>Integrated approach through all regulated audiovisual sector regarding age classification system and labelling (with certain specificities for each sector).</p>	<p>The new law on the protection of minors, which might come into force on the 1 July 2015, introduces a platform-independent approach. Its scope includes linear television, on-demand audiovisual services, screening at public gatherings in Norway (including at a cinema) and making videograms available to the public (including distribution of DVD/Blu-ray).</p>	“ <i>Seriously impair</i> ”: banned.	“ <i>Seriously impair</i> ”: banned.
				“ <i>Likely to impair</i> ”: allowed with some form of protection: rating + PIN codes, watershed, payment by credit card (although no binding access restriction by law).	“ <i>Likely to impair</i> ”: allowed with some form of protection: rating + PIN codes, watershed, payment by credit card (although no binding access restriction by law).
				<p>The same protection tools will apply to all platforms and all audiovisual programmes have to be classified according to age limit. The Act also introduces a duty to ensure the age limits are met and to inform the public about the age limit. This includes a duty to label all audiovisual programmes with a set age limit. The Norwegian Media Authority (<i>Medietilsynet</i>) will still be responsible for setting the age limits for cinematographic works. For all audiovisual programmes, the age limits shall be set by the distributor of the programme, on the basis of guidelines drawn up by the Norwegian Media Authority.</p>	

### Watershed period in broadcasting services

#### Comparative table across Europe<sup>401</sup>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
<b>AT</b>	Audiovisual Media Services Act – (Art. 39: on-demand services and Art. 42: television programmes).  ORF guidelines on protection of minors	Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence. In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.	<i>“Seriously impair”</i> : (pornography; gratuitous violence): banned in linear services / allowed with access restriction in non-linear services.  <i>“Likely to impair”</i> : allowed with watershed or other measures in linear services (on-screen icons required by law + technical filtering devices or software used by broadcasters) / without restrictions in non-linear services.	Public service broadcaster’s channels: - Before 20:15: “Likely to impair” programmes not allowed (programmes must be “family-friendly”) - From 22:00, when fictional programmes “not suitable for children” or “only for adults” are aired, an X or O, respectively, is added to the digital on-screen graphic. A “K” for positive content for children (“Okodoki”) is also added to programmes particularly suitable for children.
<b>BE (Flemish Comm.)</b>	Act on radio and television broadcasting of 18.03.2009  Art. 42 (linear TV services) / Art. 45 (non-linear services).	Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence. In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.	<i>“Seriously impair”</i> (pornography, unnecessary violence): banned in linear services / allowed with access restrictions (PIN codes) in non-linear services  <i>“Likely to impair”</i> : allowed with some form of protection in linear services (watersheds / or access code + on-screen icons on electronic programme guide or acoustic warning + screen icon if no access code (Art. 9.2a) SMA) / allowed in non-linear services with parental code (PIN code) + on- screen icons on electronic programme guide (Art. 9.2b) SMA) + labelling restrictions (age classification)	General watershed from 20:00/22:30 (different classification and subsequent scheduling of programmes apply depending on Flemish television channels).
<b>BE (French Comm.)</b>	Décret SMA, as modified – Art. 9.2 a) and b) Order of the Government of 21.02.2013	Material that might seriously impair the physical, mental or moral development of people under 18 must not be broadcast. Broadcasters must take all necessary steps to protect young people from material that is unsuitable to them by appropriate rating and through the choice of the time of transmission.  “Signalétique”: Programmes likely to impair minors are rated and accompanied by access restrictions (on-screen icon for the duration of the programme and	<i>“Seriously impair”</i> (“hard” pornography, violence): banned in linear services and in VOD services.  <i>“Likely to impair”</i> : allowed in linear services with some form of protection (watersheds, access code + on-screen age-related icons on electronic programme guide or acoustic warning + screen age-related icons if no access code (Art. 9.2a) SMA) / allowed in non-linear services with some form of protection (parental code (PIN code) + on- screen age-related icons on electronic programme guide and catalogues (Art. 9.2b) SMA).	-10: (programmes containing certain scenes susceptible to harm the physical, mental or moral development of children under 10). -12: (repeated scenes of physical or psychological violence): not allowed in linear services from 6:00 to 20:00 (22:00 on the eve of public holidays) -16: (erotic or very violent scenes): not allowed between 6:00 and 22:00 -18: (pornographic or hugely violent scenes): only between 24:00 and 5:00 in crypted

<sup>401</sup> Table updated as of March 2015.

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
		watersheds on linear services or parental PIN code).		channels and only accessible through parental access code.  These watersheds are not applied to non-linear services (VOD) or to linear services accessible by personal access code.
<b>BG</b>	Radio and Television Act (Art. 19 on-demand services)  Bill amending the RTA of 14.5.2014	Integrated approach across all audiovisual media services regarding protection of minors, according to which material that might seriously impair the physical, mental or moral development of minors is banned in linear and VOD services; Material that is likely to impair is allowed with access restrictions in linear and in non-linear services.	<i>“Seriously impair”</i> : banned in linear services / banned on VOD services (restrictive definition)  <i>“Likely to impair”</i> : allowed with access restrictions in linear services (on-screen icons or acoustic warnings required by law + technical filtering devices or software used by broadcasters) / allowed with some form of protection in non-linear services (technical access restrictions, such as filtering, encryption, pre-locking/PIN codes or other age verification systems).	+ 18 rated programmes are restricted by watersheds.  They can only be broadcast between 23:00 and 06:00.
<b>CY</b>	Law on Radio and Television Stations Art. 29(1)-(3): linear services  Art. 31A(1)(a)-(b): non-linear services  Cyprus Broadcasting Corporation Law Art. 19(5) (a)-(c): linear services  Art. 181 (1) – (2): non-linear services  Regulations of Radio and Television Stations Reg. 21(6)-(7)	Television broadcasts shall not include programmes which may seriously impair the physical, mental or moral development of minors and particularly programmes containing pornographic scenes or scenes of gratuitous violence. In the case of programmes which are likely to impair the physical, mental or moral development of minors, it must be ensured, through the selection of the appropriate time of the broadcast or by other technical measures, that minors will not normally watch or hear these broadcasts. When such programmes are broadcasts in an encoded form, broadcasting organisations must ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.  Audiovisual media services providers of non-linear services, which may seriously impair the physical, mental or moral development of minors, must ensure that they are made available in such a way that minors will not normally watch or hear them. They must provide, in addition to the rating of programs, additional technical means, in particular a user-friendly system of content filtering and access codes to such content, with which parents of minors will be provided when subscribing to a service provider, so that they will be able to ensure the blocking of the access of minors to services which may seriously	<i>“Seriously impair”</i> (pornography, gratuitous violence): banned in linear services / allowed with access restrictions in non-linear services (age rating, content filtering and parental access codes).  <i>“Likely to impair”</i> : allowed with some form of protection in linear services (appropriate time of broadcast, technical measures, acoustic warnings, on-screen icons – applicable only to non-coded programs) / allowed without restriction in non-linear services.	“Family Zone” means the period during which programmes in unencoded form that are suitable for viewers under the age of 15 are broadcast. The zone starts at 5.30 and ends at 21.00 for the nights which are followed by working days and at 22.00 for the nights which are followed by non-working days (Saturday, Sunday, holidays and school vacations).  Warnings must be given regarding the nature of the programs: verbal warning before the start of the broadcast and visual warning, with a visual indication every ten minutes, in the left lower part of the screen: (K) in green for programs suitable for universal viewing; (12) in yellow for programs unsuitable for viewers under the age of 12; (15) in blue for programs unsuitable for viewers under the age of 15; (18) in a red for programs unsuitable for viewers under the age of 18; (A) for programs of intense sexual content.  Programs classified under the categories (12), (15) and (18) may be shown only outside the family zone.

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
		impair their physical, mental or moral development.		Television stations of unencoded broadcasts are forbidden to show broadcasts, which come under category (A). Stations of encoded broadcast may show broadcasts of the category (A) only between the hours 24.00 - 5.30.
<b>CZ</b>	Radio and TV Broadcasting Act On-demand Audiovisual Service Act ( <a href="#">Section 6(3) on-demand services</a> )	Some elements of self and co-regulatory system for linear and for non-linear services. Includes a code of conduct regarding the protection of minors from harmful content by TV broadcasters.	<p><i>“Seriously impair”</i> (pornography, gross gratuitous violence): banned in linear services / allowed with access restrictions in non-linear services + technical access restrictions (such as filtering, encryption, pre-locking / PIN codes or other age verification systems).</p> <p><i>“Likely to impair”</i>: allowed with some form of protection in linear services (on-screen icons + acoustic warnings required by law) / allowed with some form of protection in non-linear services.</p>	<p>Only programmes that "can be watched by children" can be aired until 22:00.</p> <p>After 22:00, adult-orientated programmes may be aired.</p>
<b>DE</b>	<p>Youth Protection Act (age rating for films (cinema, feature films DVD, computer games))</p> <p>Interstate Treaty on the Protection of Minors (JMStV): definition of harmful contents - Art. 4 (Länder), Art. 5, Art. 11 (applicable to broadcasting and telemedia services)</p>	<p>The JMStV introduced a regime applicable to electronic information and communication media (broadcast and telemedia services). Under Article 5 JMStV, providers are required to ensure that children and teenagers do not see or hear content impairing their development by the use of technical means or scheduling restrictions. The Commission for the Protection of Minors in Electronic Media (KJM) coordinates the work of the State media Authority at the national level in this field and ensures that the providers act in compliance with the JMStV.</p> <p>In addition, all TV broadcasters, providers of impairing telemedia services and search engines providers in Germany are obliged under the JMStV to have a competent youth protection officer who is responsible in advising the management in all protection related issues; he/she usually decides on all age classification within companies.</p>	<p><i>“Seriously impair”</i> (illegal content / pornography, certain indexed content and contents which seriously impair minors: ex. violence, sexual, etc.): banned in linear services / allowed on VOD by means of a closed user group which is ensured by using age verification systems (KJM has developed key criteria for a two-step process based on identification and authentication).</p> <p><i>“Likely to impair”</i>: allowed with some form of protection (watershed + on-screen icons or acoustic warnings required by law + technical filtering devices or software used by broadcasters) / allowed with some form of protection in non-linear services (watershed + labelling restrictions (age classification) or technical access restrictions (such as filtering, encryption, pre-locking / PIN codes or other age verification systems).</p> <p><i>“Telemedia”</i> providers shall provide clear references to any existing labelling in the content provided if the content is wholly or largely identical with films or games which are labelled or have been cleared for the respective age group pursuant to Article 12 of the German Protection of Young Persons Act.</p> <p>Certified technical systems for the protection of minors for ‘telemedia’ content which could impair minors (Art. 11 JMStV).</p>	<p>- +16: allowed between 22:00 and 06:00 - +18: allowed between 23:00 and 06:00</p> <p>This means that programmes marked "Keine Jugendfreigabe" (not approved for minors) by the voluntary self-regulation organisation FSK may only be shown after 23:00. Blacklisted movies may not be aired at any time.</p> <p>For some content “+12”, the watershed is between 20:00 and 06:00, but there is no general watershed for such content.</p> <p>If a commercial broadcaster wants to air a programme not rated by the FSK, the programme’s watershed is usually rated by the FSF (Freiwillige Selbstkontrolle Fernsehen – Voluntary Self-Regulation for TV) instead.</p> <p>A programme with neither an FSK nor FSF rating is not usually aired by commercial broadcasters, as the KJM (Kommission für Jugendmedienschutz – Commission for the Protection of Minors in the Media) may charge a fine if it finds the content inappropriate.</p> <p>To avoid the original watershed for a programme or to air a blacklisted movie, commercial broadcasters can ask the FSF to tell them how to cut the movie for another rating.</p>



Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
<b>DK</b>	<p>Radio and Television Broadcasting Act (Section 48 provides that the Minister of Culture has the authority to make specified rules about the protection of minors).</p> <p>The rules on protection of minors are detailed through secondary legislation, by: Order no. 100 of 28.01.2010 as amended by Order no. 894 of 23.08.2012, Order no. 882 of 28.06.2013 and Order no. 1109 of 13.08.2013. (applying to both linear and non-linear services).</p>	<p>The possessor of a broadcasting licence must ensure that no programme are transmitted that could damage to any serious degree the physical, mental or moral development of minors, exercising particular control over programmes that include pornography or unjustified violence. This also counts for programmes that can damage the physical, mental or moral development of minors, unless it is ensured – by choice of programming hours or by installing of technical devices – that minors will not watch or listen to the programmes.</p>	<p><i>“Seriously impair”</i> (pornography, unnecessary violence): banned in linear services (Art. 6) / allowed with some type of protection (labelling of the service that makes the viewers aware of the harmful content, for example – Art. 11).</p> <p><i>“Likely to impair”</i> (e.g. sexually explicit content): allowed with some form of protection in linear services (by choice of programming or installing technical device: acoustic warning or visual icons on screen required by law during the whole time the program is on air – Art. 6) / allowed without restrictions in non-linear services.</p>	<p>All pornographic films are automatically rated at 16 years and above. However, the law does contain no explicit regulations concerning the question of violence.</p> <p>The Public Service Television Danmark’s Radio uses an informal watershed of 21:00 and there is also a standard provision for all broadcasters that those programmes that are considered harmful to minors can only be shown after 24:00.</p> <p>A watershed is not necessary if a decoder is used to receive programme.</p> <p>The guidelines used by Danmarks Radio are inspired by EBU.</p>
<b>EE</b>	<p>Media Services Act:</p> <p><a href="#">Art. 19(2)-(6) (linear TV services / Art. 19(7) (on-demand services)</a></p>	<p>Contents that may seriously impair the physical, mental or moral development of minors shall not be emitted. In the case of contents which are likely to impair minors, it must be ensured through the choice of the time of transmission or by other measures that minors will not normally perceive them.</p>	<p><i>“Seriously impair”</i> (pornography, promotion of violence or cruelty): banned in linear services / allowed with some form of protection in non-linear services</p> <p><i>“Likely to impair”</i>: allowed with some forms of protection in linear services (watersheds + acoustic warnings required by law) / allowed without protection (technical access restrictions available (such as filtering, encryption, pre-locking/PIN codes or other age verification systems</p>	<p>General watershed from 6:00 until 22:00 for “likely to impair” contents.</p> <p>Such programmes shall be accompanied by appropriate symbol indicating that it is unsuitable for minors.</p> <p>A watershed is not necessary if a decoder is used to receive programme.</p>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
ES	Spanish General Law 7/2010 of Audiovisual Communication (Art. 7)	Contents that may seriously impair the physical, mental or moral development of minors shall not be emitted. In the case of contents which are likely to impair minors, it must be ensured through the choice of the time of transmission or by other measures that minors will not normally perceive them.	<p>“<i>Seriously impair</i>” (pornography, gratuitous violence, gender violence and mistreatment): banned in linear services / allowed in non-linear services with access restrictions (dedicated areas in catalogues) and using age rating and digital coding for the age rating that allows the exercise of parental control systems.</p> <p>“<i>Likely to impair</i>”: allowed in linear services with some forms of protection: age rating + on-screen icons + acoustic warnings for content rated as 18 + watersheds + technical filtering devices or software used by broadcasters (using digital coding for the age rating that allows the exercise of parental control systems) / allowed in non-linear service with some protection (age rating and using digital coding for the age rating that allows the exercise of parental control systems).</p>	<p>According to the Self-regulation agreement for audiovisual content and minors signed by almost all free to air DTT national providers the age rating system is: All / +7 /+12 / +16 /+18.</p> <p>Two watersheds for free to air television:</p> <ul style="list-style-type: none"> <li>- General watershed (from 06:00 to 22:00: during this time slot any program considered inappropriate for minors under 18 cannot be broadcast. Programs rated as +18 are only allowed between 22:00 and 06:00.</li> <li>- Special watershed: during which this time slot any program considered inappropriate for minors under 13 cannot be broadcast.</li> <li>- Working days: from 08:00 to 09:00 and from 17:00 to 20:00.</li> <li>- Saturdays, Sundays and festive days: from 09:00 to 12:00.</li> </ul>
FI	<p>Amendment to Act No. 744/1998 on Radio and Television Broadcasting (<i>Laki television-ja radiotoiminnasta</i>)</p> <p>Acts nos. 306/2010 and 712/2011 and Act No. 710/2011 on audiovisual programmes (<i>Kuvaohjelmaki</i>) / classification and labelling of various types of audiovisual content.</p> <p>For on-demand services: Act. No. 458/2002 on the provision of information society services, complemented by Act no. 460/2003 on the exercise of freedom of expression in mass media</p>	<p>Before airing a programme, the channel must provide the related rating information to the governmental bureau Finnish Centre for Media Education and Audiovisual Media, which replaced the now-defunct Finnish Board of Film Classification in this capacity at the beginning of 2012.</p> <p>The Finnish Centre for Media Education and Audiovisual Media (MEKU) is responsible for the supervision of audiovisual programme provision (classification of films, protection of minors) and the coordination and promotion of national media education.</p>	<p>“<i>Seriously impair</i>” : Banned in linear services / Allowed with some form of protection (age-rating) in non-linear services.</p> <p>“<i>Likely to impair</i>”: allowed in linear services with some form of protection (on-screen icons + acoustic warnings required by law).</p>	In Finland, all the major television companies (Yle, MTV Media, Nelonen Media, SBS Finland and Fox International) have agreed not to show 16-rated content before 21:00 and 18-rated content before 23:00. Television channels use their own discretion to decide the ratings.
FR	<p>Law n° 86-1067 of 30/09/1986 related to the freedom to communicate Art. 1 and 15</p> <p>Recommendation of 7/06/2005 to TV services publishers regarding youth rating and classification of programmes, as modified by the CSA deliberations n° 2012-57 of 23/10/2012 and n° 2014-17 of 5/03/2014</p> <p>Deliberation of the CSA of 15.12.2004 on the broadcasting on television of</p>	<p>“Signalétique jeunesse”: Programmes likely to impair minors are rated and accompanied by access restrictions (on-screen icon for the duration of the programme) and watersheds.</p> <p><u>Rule:</u></p> <ul style="list-style-type: none"> <li>- Material that might seriously impair the physical, mental or moral development of people under 18 must not be broadcast.</li> <li>- Broadcasters must take all necessary steps to protect young people from material that is unsuitable to them by appropriate rating (under the age of 10/12/16/18) and scheduling time.</li> </ul>	<p>“<i>Seriously impair</i>” (criminally unlawful material; (attempt to human dignity; violence, sexual perversion, degrading to the human person; child pornography; hard-core violence): banned on TV and on VOD services.</p> <p>“<i>Likely to impair</i>”: allowed with some form of protection in linear services.</p> <p>“-18” (pornographic and extremely violent): only on specific TV pay services with age rating obligations + watersheds + broadcast time restrictions + restricted access system including access code.</p> <p>“-16” and “-12” (erotic material, violent content) / repeated physical or psychological violence / theme that may trouble</p>	<p>-10: not allowed in programmes for children.</p> <p>-12 rated programmes/films: not allowed in general channels before 22:00; exceptionally (16 max.) allowed at 20:30 but never on Tuesdays, Fridays, Saturdays and on the eve of public holidays (for the films prohibited under 12: 4 max. per year, and per channel). For movie channels: not allowed on Wednesdays before 20:30.</p> <p>-16/-18 rated programmes/films: not allowed in general channels before 22:30 and 20:30 on movie channels respectively.</p>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
	<p>programmes unsuitable to under 18s</p> <p>Deliberation of the CSA of 20.12.2011 on the protection of young audiences, deontology, and the accessibility of programme on on-demand AVMS</p> <p>Tableau signalétique 2014</p>		<p>children under 12): Available in cinema and PPV services and other services with age rating obligations + watersheds + broadcast time restrictions.</p> <p>“-10” (contents which are likely to shock children under 10): no restriction.</p> <p>In non-linear services, allowed with some form of protection. All programmes must be rated and the warning symbols shall be displayed on catalogues, programmes and trailers. Pin codes are mandatory for -18 programmes, which cannot be offered for free.</p>	<p>-18 rated programmes/films: not allowed on general channels; Certain satellite and cable channels can air them in a limited number per year subject to prior information of subscribers. Not allowed between 5:00 and 24:00. The access to these programmes is locked with PIN code.</p> <p>The watershed for all ratings finishes at 06:00 the following morning.</p> <p>In non-linear services, allowed with some form of protection. All programmes must be rated and the warning symbols shall be displayed on catalogues, programmes and trailers. Pin codes are mandatory for -18 programmes, which cannot be offered for free. There are two separate areas: a ‘trust zone’ which contains only programmes which are suitable for all audiences and ‘an adult zone’ which contains all programmes which are not suitable to under 18s. There is only one watershed, on -16 programmes offered for free (22:30 to 5:00).</p>
<b>GB</b>	<p>Broadcasting Act 1996</p> <p>Communications Act 2003 (sections 3(4)(h) and 319(2)(a) and (f))</p> <p>Audiovisual Media Services Regulations 2009 (Art. 368E - harmful material and ODAVMS)</p> <p>Audiovisual Media Services Regulations 2010</p> <p>Ofcom Guidance Notes, Section 1</p>	<p>Ensure that people under 18 are protected.</p> <p><u>Rule:</u></p> <ul style="list-style-type: none"> <li>- Material that might seriously impair the physical, mental or moral development of people under 18 must not be broadcast.</li> <li>- Broadcasters must take all necessary steps to protect people under 18.</li> <li>- Children must also be protected by appropriate scheduling from material that is unsuitable to them (under 15)</li> </ul>	<p>“Seriously impair” content (illegal content, extremely violent pornography, R18+, hard-core porn R18, material likely to incite hatred based on race, sex, religion or nationality: banned on TV + VOD.</p> <p>“Likely to impair”: Material which might seriously impair the physical, mental or moral development of persons under the age of 18: allowed with access restrictions.</p>	<p>Watershed only applies to:</p> <ul style="list-style-type: none"> <li>- Free-to-air TV: between 21:00 and 05:30</li> <li>- Not protected premium or pay-per-view services: from 20:00 to 06:00.</li> <li>- Protected (by pin code) premium or pay-per-view services: No watershed</li> </ul> <p>There should be a gentle transition to adult material and 18-rated content must not air until 22:00 on most channels that are without PIN protection. However, channels that are dedicated to airing adult content may be allowed to start 18-rated content at 21:00 without PIN protection. R18-rated material is not allowed at all, and must be edited to fit 18-rated content guidelines if shown on television.</p> <p>Advertisements also have to comply with the same set of rules, and can be restricted when shown outside the watershed.</p>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
GR	<p>Presidential Decree 109/2012 Art. 13 (on-demand AVMS)</p> <p>Art. 26 (linear TV services)</p>	<p>Contents that might seriously impair the physical, mental or moral development of minors shall not be broadcasted in linear services. They are allowed in non-linear services with access restrictions. With respect to contents which are likely to impair minors, they must be accompanied by some form of technical protection in linear services and may be offered without restriction in non-linear services.</p>	<p><i>Seriously impair</i>': banned in linear services / allowed in non-linear services with access restrictions (watershed + labelling restrictions (age classification) + technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems).</p> <p><i>"Likely to impair"</i>: allowed in linear services with some form of protection (classification of contents + on-screen icons + acoustic warnings required by law) / allowed without protection.</p>	<p>Triple-tier watershed, along with a five-tier colour-coded decal scheme, displayed in the beginning and in regular intervals during all broadcasts except for news bulletins.</p> <ul style="list-style-type: none"> <li>- A white rhombus in green or a white circle in blue indicates unrestricted programming.</li> <li>- A white triangle in orange indicates programming that could upset younger children, and is only allowed between 19:00 and 06:00.</li> <li>- A white square in purple indicates programming that may be unsuitable for children, and is only allowed between 21:00 and 06:00.</li> <li>- A white X in red indicates programming which by law must not air until midnight. Programmes with foul language will typically fall into this category. Content with this rating before midnight is punishable by fine, except when used in the context of a suitably labelled film, theatrical play or other media.</li> </ul> <p>The colour-coded ratings are mandatorily displayed and verbally announced at the beginning of each broadcast. These provisions are enforced by the National Radio and Television Council (ESR), an independent authority, the executive members of which are appointed by the leaders of all parliamentary parties, preferably by unanimous consent and in extremis by an 80% supermajority.</p>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
HU	<p>Act CLXXXV of 2010 on Media Services and Mass Media (Art. 9: Linear TV services) / (Art. 11: on-demand AVMS)</p> <p>Act CIV 2010 on the fundamental rules of the freedom of the press and media contents (Press and Media Act): Art. 19(2) protection of minors from harmful contents in on-demand AVMS</p> <p>Rules on Protection of minors, Art. 2, par 1. OG 60/10:</p> <p>Recommendation of 19.07.2011 of the Media Council of the National Media and Communications Authority</p>	<p>Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors. In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.</p> <p>The media regulator issue recommendations regarding effective technical solutions. On-demand audiovisual media services providers are obliged to notify the regulatory authority, the National Media and Infocommunications Authority.</p>	<p><i>Seriously impair</i>: (category VI): banned in linear services / allowed with some form of restrictions in non-linear services.</p> <p><i>“Likely to impair”</i>: allowed in linear services with some form of protection (rating +on-screen icons + acoustic warnings required by law) / allowed in non-linear services with some form of restrictions (technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems).</p>	<p>Six classification categories:</p> <ul style="list-style-type: none"> <li>- Category I / “-6” (programmes that may be viewed or listened to by persons of any age: no watershed.</li> <li>- up to Category VI, (programmes that may seriously impair the physical, mental or moral development of minors, particularly because they involve pornography or extreme and/or unnecessary scenes of violence): can be aired only in an encrypted form or by the use of another effective technical solution.</li> </ul> <p>The Recommendation describes the psychological characteristics and the media competence of the different age groups in relation to the classification categories that have been set out in the Media Law Act. Furthermore, it illustrates by several examples which genres, harmful elements or problem areas can appear in each specific category and which content shall be classified as falling into a higher (stricter) category.</p>
HR	<p>Electronic Media Act (EMA) Art. Art. 20 (on-demand services) / Art. 26 (linear TV services)</p> <p>Rulebook of the Council for Electronik Media on TV broadcasters for the purpose of the protection of minors, of April 2008</p>	<p>Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors. In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.</p> <p>The Agency for Electronic Media has issued rules on the protection of minors. Article 14. OG 60/10 deals with on-demand media service providers.</p>	<p><i>“Seriously impair”</i>: (pornography; gratuitous violence): banned in linear services / allowed with access restrictions in non-linear services.</p> <p><i>“Likely to impair”</i>: allowed in linear services with some form of protection (watershed +technical tools of access restrictions required by law.) / allowed in non-linear services with some form of protection (visual symbols + labelling restrictions (age classification) + PIN code).</p>	<ul style="list-style-type: none"> <li>- Category 18: not allowed between 07:00 and 23:00. During the entire broadcast the following mark must be visible: a transparent circle with the number “18” written in red.</li> <li>- Category 15: not allowed from 07:00 to 22:00. The complete broadcast must be marked with a transparent circle with the number “15” written in orange.</li> <li>- Category 12: not allowed between 07:00 and 21:00 and must carry, for the duration of the broadcast, a transparent circle with the number “12” written in green.</li> </ul>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
<b>IE</b>	Broadcasting Act (2009) Audiovisual Media Service Regulation 2010 Art. 18(2) (linear TV services) / Art. 6(2) (On-demand services) BAI Code of Programme Standards (CPS) (new revised code to come into effect on 1.03.2015)	Children (under 18) shall not be exposed to programming that would seriously impair their moral, mental and physical development, in particular, programmes involving pornography or gratuitous violence. Broadcasters share a responsibility with parents and guardians for what children listen to and watch and in protecting children from exposure to inappropriate and harmful programme material.  BAI defines children's programmes as programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age.	<i>Seriously impair</i> ' (pornography, gratuitous violence): banned on traditional TV / allowed with access restrictions in non-linear services.  <i>"Likely to impair"</i> : allowed with some form of protection in traditional TV (requirement to schedule appropriately or encode and where unencoded to either provide an acoustic prior warning or apply visual classification throughout the duration of the programme) and non-linear services.	In Ireland, there is no statutory requirement for a watershed. The CPS of the Broadcasting Authority of Ireland (BAI) requires television and radio broadcasters to use at least one of three methods to advise viewers of content, namely: an explicit watershed for adult-oriented programmes; prior warnings before potentially offensive programming; and/or a descriptive classification system.  The BAI CPS code states that, in general terms, programmes broadcast after 21:00 are not regarded as children's programmes. After this time, the primary responsibility for what a child is watching is seen to lie with the parents/guardians. The Code recognises, however, that children's viewing does not end abruptly at 21:00 and, therefore, the Code will offer some protection in the hour between 21:00 and 22:00. RTÉ Television implements a watershed of 21:00 (ending at 06:30), as well as an onscreen classification system. Programmes with the MA ("mature audience") classification may only be shown after the watershed.
<b>IT</b>	Italian AVMS Code as revised in July 2014 (Art. 1, modifying Art. 34 on protection of minors)  Self-regulation Code on TV and minors of 29.11.2002, as amended	Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors. In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.  Primary and secondary legislation adopted by the Communications Authority (AGCOM), especially with regard to technical measures and classification of programmes. Italian AVMS Code as revised in July 2014 and self-regulatory provisions were defined in the TV and minors Code in 2002.	<i>"Seriously impair"</i> (gratuitous or insistent or brutal violence or pornography, including cinematographic works classified as unsuitable for minors under 18): banned in linear services / allowed with access restrictions (parental control systems + PIN code, except for VOD by PSB (banned)).  <i>"Likely to impair"</i> : Allowed with some form of protection in linear services (rating, watersheds, on-screen icons + acoustic warnings required by law and also by codes of conduct + technical filtering devices or software used by broadcasters) / allowed in non-linear services without protection.	<ul style="list-style-type: none"> <li>- Between 07:00 to 23:00: all channels must broadcast "general audience" programmes.</li> <li>- +14 programmes: allowed after 23:00</li> <li>- +18 programmes: prohibited from television altogether, with the only exception of satellite and cable premium adult channels and VOD</li> </ul> <p>Specific measures to protect minors during the hours of programming from 16:00 and 19:00 and within programs directly aimed at minors particularly regarding advertising, promotion and all other forms of audiovisual commercial communication are detailed in self-regulatory instruments.</p>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
LT	<p>Law on the protection of minors against the detrimental effect of public information (10.9.2002 – No IX-1067), as last amended on 14 July 2009 – No. XI-333): Art. 4 + Art. 6</p> <p>Law on Provision of Information to the Public, as amended: Art. 40.3 (protection of minors in public audiovisual information services/ on-demand AVMS) + Art. 17</p> <p>Rules for the categorization and dissemination of information, which might have a negative effect on minors (came into force on 1.11.2010)</p>	<p>Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors.</p> <p>In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.</p>	<p><i>“Seriously impair”</i>: (physical or psychological violence or vandalism: restrictive definition) banned in linear services / banned on VOD (restrictive definition).</p> <p><i>“Likely to impair”</i>: allowed with some form of protection (watersheds + on-screen icons + acoustic warnings required by law) / allowed with some form of protection in non-linear services (technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems).</p>	<p>Broadcasters themselves are obliged to assess and determine if the “to-be-published information” might have a negative effect on minors.</p> <p>The Rules provide three TV programme categories:</p> <ul style="list-style-type: none"> <li>- N-7 (programmes for viewers under 7).</li> <li>- N-14 (under 14).</li> <li>- S (under 18): allowed from 23:00 to 06:00.</li> </ul> <p>The Rules set one more new requirement: to visually or orally warn the viewers with a note that the “Information might have a negative effect on minors” prior to the beginning of the programme in case the respective programme might contain such information, but is allowed to be transmitted by law.</p>
LU	<p>Law of 27 July 1991 on Electronic Media, as amended (17.12.2010): Art. 27ter (linear TV services) / Art. 28quater (on-demand services)</p> <p>Regulation on Protection of Minors in Audiovisual Services of 08.01.2015</p>	<p>As a result of Art. 12 of the AVMS Directive, the government of Luxembourg adopted a regulation on the protection of minors in audiovisual media services based on the Law of Electronic Media.</p> <p>The new regulation introduces a system of self-classification which asks broadcasters established in Luxembourg to classify their content along 5 categories of age groups: all audiences, not suitable for minors under 10, 12, 16 and 18. The new system applies both to providers of linear and on-demand audiovisual media services.</p>	<p><i>“Seriously impair”</i> (pornography, gratuitous violence): banned in linear services / allowed with access restrictions in non-linear services</p> <p><i>“Likely to impair”</i>: allowed in linear services with some form of protection (watersheds + on-screen icons + text display warnings required by law) / allowed in non-linear services with some form of protection (age classification labels)</p> <p>On top of the local classification, broadcasters of linear audiovisual media services established in Luxembourg, but principally targeting the audience of another EU member state can opt for the classification system of that particular member state, provided this regime has a level of protection that the regulatory authority ALIA regards as equivalent. In addition, providers of on-demand services can pick, as a third system, the classification granted in the country of origin of the program. ALIA must be notified to change regime; local classification is considered be the default system.</p>	<p>According to the regulation:</p> <ul style="list-style-type: none"> <li>- No age distinction: programmes appropriate for all audiences;</li> <li>-10: classified as unsuitable for minors under 10</li> <li>-12 (physical and psychological violence in a systematic and repeated manner): may not be broadcast in unencoded form between 06:00 and 20:00</li> <li>-16 (erotic character or great violence): allowed in uncoded form after 22:00 and before 06:00</li> <li>-18 (sexually explicit or highly violent character): encoded + personal access code + broadcast only between 24:00 and 05:00.</li> </ul>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
LV	Law on Electronic Media implementing the AVMSD 28.7.2010  Art. 24(10) (on-demand AVMS)	Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors.  In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.	Seriously impair*: Banned in linear services / allowed in non-linear services with access restrictions (watershed, restricted access control tools, audible warning signal + visual symbol required by law + technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems (providers are required to cover harmful pictures and to replace rude words with a noise).  “Likely to impair”: allowed in linear services with some form of protection (on-screen icons + acoustic warnings required by law + technical filtering devices or software used by broadcasters) / allowed in non-linear services without protection.	Audio and audiovisual works displaying physical or psychological violence, bloody or horror scenes, scenes relating to sexual acts and the use of drugs or containing foul language may not be transmitted between 07:00 and 22:00.
MT	Broadcasting Act, 1991 (Act No. XII of 1991), consolidated version 2011 Art. 16N(1) (on-demand AVMS)  Broadcasting Code for the Protection of Minors  Draft Code for the Protection, Welfare and Development of Minors on the Broadcasting Media	Though the regulatory authority remains in charge of the regulation of on-demand audiovisual media services, some self-regulation and co-regulation practices are taking place in relation to classification and labelling of content and the development of technical measures to prevent minors from accessing harmful contents.  New provisions proposed for inclusion in the draft Code require broadcasting stations to have officers in charge of programme rating. Programme promotions should not include gratuitous violence and any other material suitable only for a mature audience. Programme promotions may be broadcast during the day, so long as each specific episode is rated. Minors are defined as persons who are under 16.	“ <i>Seriously impair</i> ”: banned in linear services / allowed in non-linear services with access restrictions (PIN code), except for VOD by public service broadcaster.  “ <i>Likely to impair</i> ”: allowed with some form of protection in linear services (on-screen icons + acoustic warnings required by law -, except for VOD by public service broadcaster (banned) / allowed in non-linear services, except for VOD by public service broadcaster (banned).	No material which primarily exists for sexual arousal or stimulation may be broadcast in programmes aimed at minors or before 21:00  When legal restrictions apply to prevent the identification of any person, broadcasters must pay particular attention to withholding any information which could identify minors who are or may be victims, witnesses, defendants or authors in cases of a sexual offence in the civil or criminal courts.  Broadcast related to the paranormal (exorcism, occult practices) are not allowed between 06:00 and 21:00
NL	Dutch Media Act 2008 (Mediawet) Art. 4.1-4.6	Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors. In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.  In the Netherlands there is a shared responsibility between The Dutch Media Authority (Commissariaat voor de Media, CvdM) and NICAM (the Netherlands Institute for the Classification of Audiovisual Media).	“ <i>Seriously impair</i> ”: banned in linear services / allowed in non-linear services with access restrictions, except for VOD by public service broadcaster (banned).  “ <i>Likely to impair</i> ”: allowed for private media in non-linear services / Allowed for private media in linear services and public service broadcaster (in linear and non-linear services) if the media service provider is affiliated with NICAM, respect the watersheds and shows the applicable symbols (age and content descriptors based on Kijkwijzer system).	All ages / +6 / +9 programmes can be broadcast all day: no watershed. +12: allowed from 20.00 to 06.00 +16: allowed from 22.00 to 06.00



Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
<b>PL</b>	Broadcasting Act of Dec. 29,1992, as amended in 2011	<p>Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors.</p> <p>In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.</p>	<p><i>“Seriously impair”</i>: banned in linear services / allowed in non-linear services under specific conditions / effective technical security measures).</p> <p><i>“Likely to impair”</i>: allowed in linear services with some form of protection (watersheds + on-screen icons required by law / allowed with on-screen icons in non-linear services.</p>	<p>Double-tier watershed system, as well as five age ratings.</p> <p>All age ratings must be displayed throughout the whole of the programme, with the exception of commercial breaks and news bulletins.</p> <p>The ratings are ‘All’ (indicated on-air by a smiling face), “7” (blue background), “12” (yellow background), “16” (orange background) and “18” (red background with a key in the middle). The number in the age rating indicates the lowest age for which it is suitable.</p> <ul style="list-style-type: none"> <li>- “12” programmes (war theme and/or stronger violence): not allowed within children's schedules.</li> <li>- “16” programmes (very strong violence, bad language and/or erotic situations): not allowed within children's schedules or before 20:00 on mainstream channels.</li> <li>- “18” programmes (explicit violence, explicit situations, racist comments): not allowed within children's schedules or between 06:00 and 23:00 on mainstream channels (+ rating).</li> </ul>
<b>PT</b>	Law of 11 April 2011 amending the Television Act of 2007 Art. 27(3)-(5) (linear TV services) / Art. 27(10) (on demand AVMS)	<p>Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors.</p> <p>In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.</p>	<p><i>“Seriously impair”</i>: Banned in linear services / allowed in non-linear services with access restrictions (based on voluntary system, on-demand AVMS work with a PIN code access, which is sent to the client. The PIN code restricts access to content according to a graduated classification (high-average-low restrictions / unrestricted). By default, all TV boxes are delivered to clients with low level of active constraints, i.e. with access to all contents except adult content.</p> <p><i>“Likely to impair”</i>: allowed in linear services with some form of protection (watersheds + on-screen icons required by law and also by codes of conduct) / allowed in non-linear services with some form of protection.</p>	<p>“16” and “18” programmes: allowed on open-air channel only between 23:00 and 06:00.</p> <p>No watershed on cable television, except for pornography which cannot be broadcast at all if the signal is not encrypted, requiring an IRD to be seen.</p>
<b>RO</b>	Radio and Television Broadcasting Act, consolidated version 2009 Art. 39 (linear TV services) / Art 39.1 (on demand AVMS)  Decision No. 220, of 24.02.2011 regarding the Regulatory Code of	<p>Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors.</p> <p>In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other</p>	<p><i>“Seriously impair”</i>: banned in linear services / allowed in non-linear services with access restrictions, except for VOD by public service broadcaster (banned).</p> <p><i>Likely to impair</i>: allowed in linear services with some form of protection (on-screen icons + acoustic warnings required by law + technical filtering devices or software used by</p>	<ul style="list-style-type: none"> <li>- All categories: no restrictions nor watersheds</li> <li>- “AP” programme: only with parents’ permission for minors under 12</li> <li>- “12” prohibited under 12: allowed after 20:00 + warning sign</li> </ul>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
	Audiovisual Content	measures, that minors will not normally perceive such programmes.	broadcasters + pre-locking systems for the transmission of over-18 content) / allowed with some form of protection (labelling restrictions (age classification) + technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems) in non-linear services, except for VOD by public service broadcaster (banned).	<ul style="list-style-type: none"> <li>- “15”: allowed between 23:00 and 06:00 + warning sign</li> <li>- “18” prohibited under 18 other than pornographic audiovisual productions (horror or erotic movies, extremely violent movies..): allowed between 01:00 and 06:00 + warning sign during all the duration of the programme</li> <li>- “18+” (detail sexual intercourse): shall not be broadcast or retransmitted by media service providers under the jurisdiction of Romania / under the jurisdiction of EU member states, may be introduced in the offer of service distributors if encrypted and included in the optional packages specially dedicated to adults only available between 01:00 and 05:00 for analogue retransmission.</li> </ul>
SE	Swedish Radio and Television Act of 17.6.2010 Chapter 5 - 1 (linear TV services) and 2 (on-demand AVMS)  Broadcasting License	Same approach between linear and non-linear services regarding “seriously impair” contents (allowed in both services), with some differences in the level of protection required. Graduated approach with respect to “likely to impair” content (allowed with some form of protection in linear services and without protection in non-linear services).  The Swedish Media Council encourages broadcasters to create self-regulating instruments	“Seriously impair” (portrayals of violence of a realistic nature or pornographic images): Banned in linear services / allowed in non-linear services with access restrictions (either preceded by a verbal warning or warning text continuously displayed on the screen throughout the broadcast) (must be provided in such a way that it does not create a considerable risk for children viewing the programmes).  “Likely to impair”: allowed in linear services with some form of protection (Acoustic warnings required by law for programmes containing portrays of violence of realistic nature or pornographic. On-screen icons are encouraged but not required by law) / allowed in non-linear services without protection (restrictions concerning material which is “likely to impair” are included in broadcasting licences. However, VOD service providers are only required to register with the Swedish Broadcasting Authority).	Programmes unsuitable for children must be broadcast after 21:00.
SI	Law concerning protection of minors adopted on October 2013  Audiovisual Media Services Art. 14(1) – (3) (linear TV services) / Art. 15 (on-demand AVMS)  Statutory act complementing it (English version) adopted in October 2013.	Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors.  In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.	“Seriously impair” (pornography, gratuitous violence): banned in linear services / allowed in non-linear services with access restrictions (PIN code or other adequate technical restriction).  “Likely to impair”: allowed in linear services with some form of protection (watersheds or technical protection of access restriction required by law required by law) / allowed in non-linear services with some forms of protection (PIN code + classification of any sexual content labelled 18 in special section of the catalogue).	<ul style="list-style-type: none"> <li>- “PG” (includes scenes that might upset children under 12, or might not be understandable without adult supervision): no watershed but rating (PG) for supervision of parents or legal guardians.</li> <li>- “-12” (occasional and moderate violence, horror scenes, use of tobacco/alcohol, inappropriate language, discreet sex scene.): allowed after 21:00 + rating.</li> <li>- “-15”(frequent moderate violence, dangerous scene, horror, discrimination, sex</li> </ul>

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
				<p>scenes, etc.) : allowed after 22:00 + rating.</p> <ul style="list-style-type: none"> <li>- “-18” (severe violence, suffering, intense horror scene, nudity and sex, discrimination, etc.): allowed after 24:00 + rating.</li> <li>- Explicit sexual programming content may only be broadcast on TV channels or through on-demand AVMS if access to such content is restricted and only enabled to adults by assigning users a PIN code or applying an equivalent protection system.</li> </ul>
<b>SK</b>	<p>Broadcasting and retransmission Act 308/2000, consolidated version Section 20(2) (on-demand AVMS) Decree No. 589/2007, Coll., as amended on 14 March 2014</p>	<p>Television channels must not contain programmes that may seriously impair the physical, mental or moral development of minors.</p> <p>In the case of television programmes, which are likely to impair minors, it must be ensured, through the choice of the time of transmission or by other measures, that minors will not normally perceive such programmes.</p>	<p>“<i>Seriously impair</i>”: banned in linear services / allowed in non-linear services with access restrictions (labelling restrictions (age classification))</p> <p>“<i>Likely to impair</i>”: allowed in linear services with some form protection (on-screen icons required by law) / allowed without protection.</p>	<p>+12: (expressive or aggressive language) may be broadcast all day long but only in the form and intensity suitable for minors aged 12 and over.</p> <p>+15 programme only allowed after 20:00 (the so-called “second watershed” applies both to linear and VOD services (but also to radio programmes, cinemas, video and DVD rentals, CD and DVD distributors).</p>
<b>NO</b>	<p>Law on the protection of minors against harmful content in audiovisual programmes of 15.12.2014</p> <p>Norwegian Broadcasting Act of 10.12.2012 Section 2-7 (protection of minors)</p> <p>Film and Video Act of 5.5.2006</p>	<p>The new law on the protection of minors, which might come into force on the 1 July 2015, introduces a platform-independent approach. Its scope includes linear television, on-demand audiovisual services (limited to on-demand services that are competing with traditional television broadcasts), screening at public gatherings in Norway (including at a cinema) and making videograms available to the public (including distribution of DVD/Blu-ray).</p>	<p>“<i>Seriously impair</i>”: banned in linear and non-linear services</p> <p>“<i>Likely to impair</i>”: allowed with some form of protection in linear and non-linear services (rating + PIN codes, watershed, payment by credit card (although no binding access restriction by law).</p> <p>The same protection tools will apply to all platforms and all audiovisual programmes have to be classified according to age limit. The Act also introduces a duty to ensure the age limits are met and to inform the public about the age limit. This includes a duty to label all audiovisual programmes with a set age limit. The Norwegian Media Authority (Medietilsynet) will still be responsible for setting the age limits for cinematographic works. For all audiovisual programmes, the age limits shall be set by the distributor of the programme, on the basis of guidelines drawn up by the Norwegian Media Authority.</p>	<p>New age limits are introduced in the new Act: All / 6 / 9 / 12 / 15 / 18.</p> <p>The aim is to better reflect the stages of development of children and the youth. The previous age limits were: All / 7 / 11 / 15 / 18.</p>

## ANNEX 6 – IMPLEMENTATION OF THE PROVISIONS ON COMMERCIAL COMMUNICATIONS AT NATIONAL LEVEL

### Transposition of Product Placement rules (Article 11(2)-(4) AVMSD)

MS	STRICTER REGULATION	LEGAL BASIS	Art. 11 (2)	Art. 11 (3)	Art. 11 (4)
AT	<p>YES for regional TV programmes (see § 16 (2) last sentence and § 16 (4) last two sentences of the ORF-Act)</p> <p>No product placement for spirits (§ 13 (4) ORF-Act and § 42a AMS-Act)</p>	<p>Federal Act on Audio-visual Media Services (AMD-G) - consolidated 30 July 2015 –</p> <p>See also § 32 AMS-Act and § 13 (2) ORF-Act as far as product placement is included</p>	<p>§ 38. (1) Product placement shall be prohibited, subject to the provisions of paragraphs 2 and 3.</p>	<p>§ 38. (2)-(4)</p> <p>(2) The provision free of charge of certain goods or services, such as production props and prizes, with a view to their inclusion in a program, shall be excluded from the prohibition of paragraph 1.</p> <p>(3) Cinematographic works, films made for television and television series as well as sports programs and light entertainment programs shall be excluded from the prohibition of paragraph 1. This exception shall not apply to children's programs.</p> <p>(4) Programs that contain product placement shall meet the following requirements:</p> <ol style="list-style-type: none"> <li>1. Their content, and in the case of television channels their scheduling, shall in no circumstances be influenced in such a way as to adversely affect the editorial responsibility and independence of the Austrian Broadcasting Corporation.</li> <li>2. They shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services.</li> <li>3. They shall not give undue prominence to the product in question.</li> <li>4. In order to avoid any confusion on the part of the viewer, they shall be appropriately identified at the start and the end of a program and when a program resumes after an advertising break.</li> </ol>	<p>§ 38. (5) Notwithstanding the provisions of § 33, programs are not permitted to contain any product placements for the benefit of undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.</p> <p>§ 16. (4)</p>

		Federal Act on the Austrian Broadcasting Corporation (ORF-G) - consolidated 13 August 2015	§ 16. (1) Product placement (§ 1a paragraph 1 subparagraph 10) shall be prohibited, subject to the provisions of paragraphs 2 and 3.		Notwithstanding the provisions of § 13, programmes may not include product placement for the benefit of undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products. Product placement and provisions free of charge pursuant to § 1a subparagraph 10 last sentence shall also be prohibited in regionally broadcast television programmes.
<b>BE (Flemish Community)</b>	YES  Production props and prizes seem not allowed in children's programmes in PSB - could amount to a stricter rule.	Act on Radio and Television Broadcasting - Consolidated 12 August 2014		Art. 50 (3) The television broadcaster of the Flemish Community is prohibited from relying on sponsorship for its children's programmes and using product placement in children's programmes. Art. 99 Product placement is allowed with regard to: 1° the inclusion or reference to a product or service or related trade name in return for payment. In such a case, product placement is only allowed in (television) films, series, sports programmes and light entertainment programmes, excluding children's programmes; 2° goods or services that are supplied free of charge, such as production props and prizes, with a view to including these in a programme. In such a case, product placement is allowed in all types of programmes, excluding children's programmes of the public broadcaster of the Flemish Community. The Flemish Government can extend this prohibition to children's programmes of the other broadcasters. Art. 100 § 1. Programmes that contain product placement shall meet at least all of the following requirements: 1° the content, and in the case of linear broadcasts, the scheduling, will never be influenced as such that the	Art. 101 In any event programmes shall not contain product placement of: 1° tobacco products or cigarettes or enterprises whose principal activity consists of the manufacture or sale of cigarettes and other tobacco products; 2° specific medicinal products or medical treatments, which are only available on prescription in Belgium.

				<p>responsibility and the editorial independence of the broadcaster shall be affected;</p> <p>2° they shall not directly encourage the viewer to purchase or rent goods or services, by specifically recommending these products or services;</p> <p>3° they shall not give undue prominence to the product or the service in question;</p> <p>4° if the programme in question is produced or ordered by the broadcaster or by an enterprise associated with it, the viewers will be clearly informed of the presence of product placement. The programme shall be flagged in a suitable manner, at the beginning and at the end, or if it is reprised after an ad break, in order to avoid any confusion on the part of the viewers. To this end, the Flemish Government can lay down further rules.</p> <p>§ 2. The conditions of paragraph 1 are applicable to programmes which have been produced after the commencement of this Act.</p>	
<b>BE (French Comm.)</b>	<p>YES</p> <p>No derogation concerning PP in the children programmes and television news even with product props.</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider</p>	Audiovisual media services decree - consolidated 29 January 2015	Art. 21 § 1. Product placement is forbidden.	<p>Art. 21 § 2</p> <p>Further to the exemption stated in § 1er, product placement is admissible:</p> <p>1° in film and televisual works of fiction as well as in sports or entertainment programmes, or</p> <p>2° when there is no fee involved but only the supplying for free of certain goods or services such as the supply of production accessories and prizes with a view to include them in a programme.</p> <p>These exemptions do not apply to programmes for children or to television news.</p> <p>Programmes that involve product placement comply at least with all the following conditions:</p> <p>1° Their content and, in the case of linear services, their broadcasting, must not in any case be influenced so as to infringe the responsibility and the editorial independence of the service editor;</p> <p>2° They do not encourage to buy or hire goods or services, especially with particular promotional references to these products or services;</p> <p>3° They do not put the said product forward in an unjustified manner;</p>	

				<p>4° They are clearly identified as being composed of product placement by visual and sound effects at the beginning and at the end of the broadcasting as well as when they return after an advertisement break, so as to avoid any confusion for viewers. The last condition applies only to programmes produced or ordered by the service editor or a company who is directly or indirectly its shareholder or in which it is directly or indirectly a shareholder.</p>	
<b>BE (German Com m.)</b>	<p>NO</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider</p>	<p>Decree on Radio Broadcasting and Cinema Presentations - consolidated 2 March 2015</p>	<p>Art. 10.1 § 1 Product placement is prohibited.</p>	<p>Art. 10.1 § 2 In deviation from § 1, product placement is allowed under the following provisions: 1. in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, or 2. if no payment is involved, but only specific goods or services, such as production props and prizes towards their inclusion in a programme, the allocation is free of charge. The deviation, in accordance with Section 1 (1), does not apply to children's programmes. Programmes that contain product placements must meet at least all of the following requirements: 1. Their content and - in television programmes - their programme place may not be affected in such a way that the editorial responsibility and independence of the media service provider are affected. 2. They may not directly encourage the purchase, rental or leasing of the goods or services, especially not by making special promotional references to those goods or services. 3. They may not expose the relevant product too strongly. 4. The viewers must be clearly informed about the existence of a product placement. Programmes with product placement are to be appropriately marked at the beginning of the programme, as well as when the programme resumes after an advertising break, in order to avoid any possible viewer confusion. This requirement applies only to programmes, produced by the media service provider himself or produced by a company affiliated to the media service provider or produced on commission.</p>	
<b>BG</b>	<p>YES</p> <p>PP prohibited in the news, religious programmes (without derogations) and</p>	<p>Radio and Television Act - Consolidated version of 24 December 2014</p>		<p>Art. 83</p> <p>(1) Product placement in news, religious programmes and in audiovisual media services of public-service providers shall be prohibited.</p> <p>(2) Product placement in children's programmes, including in</p>	<p>Art. 84 (3)</p> <p>Programmes must not contain product placement of:</p> <p>1. cigarettes or tobacco products or product placement</p>

	<p>audiovisual media services of public-service providers (derogations concerning cinematographic works, in films and series made for audiovisual media services)</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider</p>		<p>programmes referred to in Paragraph (3), shall be prohibited.</p> <p>(3) Product placement shall be admissible in cinematographic works, in films and series made for audiovisual media services, in sports and light entertainment programmes, as well as in other programmes which are not expressly indicated in Paragraph (1). Product placement in the programme services of the public-service providers shall be admissible in cinematographic works, in films and series made for audiovisual media services.</p> <p>(4) Product placement shall not be the case where a product or a service is not included in a particular programme against payment but is provided to meet the needs of the programme of costumes, production props, prizes or other such and the products and services involved are not of significant value.</p> <p>(5) "Significant value", within the meaning given by Paragraph (4), shall be a value which exceeds the quintuple average value of the commercial communications transmitted in the relevant programme, according to pre-announced rates of the media service provider concerned.</p> <p>(6) Providers shall have the right to announce, by appropriate means, the provision of goods and services referred to in Paragraph (4) in the closing credits of the relevant programme.</p> <p>Art. 84</p> <p>(1) Programmes that contain product placement must meet the following requirements:</p> <ol style="list-style-type: none"> <li>1. their content and, in the case of programme services, their programming, must not be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;</li> <li>2. they must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</li> <li>3. they must not give undue prominence to the product in question;</li> <li>4. viewers must be clearly informed of the existence of product placement.</li> </ol> <p>(2) Programmes containing product placement must be appropriately identified at the start and at the end of the programme, as well as when a programme resumes after an</p>	<p>of similar products from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;</p> <p>2. specific medicinal products available only on prescription, or medical treatment available only on prescription.</p>
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				advertising break, in order to avoid any confusion on the part of the viewer. This requirement shall not apply to a programme which has neither been produced nor commissioned by the media service provider itself or by a person affiliated to the media service provider.	
<b>CY</b>	<p>YES</p> <p>Production props and prizes not allowed in children's programmes.</p> <p>No product placement for toys</p> <p>Maximum 3 minutes in cinematographic films and 1 minute for series, sports and light entertainment programmes</p> <p>*It is noted that according to the suggested amendment of the Radio and Television Laws (1998-2015), that has been submitted to the House of Parliament awaiting examination, the requirement provided in Art.30G (3) (d) (ii) has been deleted.</p>	Law on Radio and Television Organizations (1998-2015)	Art. 30G. (1) Product placement in programmes shall be prohibited.	<p>Art. 30G. (2) and (3)</p> <p>(2) By way of derogation from paragraph (1), product placement shall be admissible in the following cases:</p> <p>(a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes;</p> <p>(b) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme; It being understood that the derogations referred to in subparagraphs (a) and (b) shall not apply to children's programmes.</p> <p>(3) Programmes that contain product placement shall meet all of the following requirements:</p> <p>(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the audiovisual media service provider;</p> <p>(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</p> <p>(c) they shall not give undue prominence to the products in question, including display thereof in close-up or/and for a prolonged time.</p> <p>(d) Viewers shall be clearly informed of the existence of product placement as follows:</p> <p>(i) programmes containing product placement shall be appropriately identified, visually and audibly, at the start and the end of the programme and when a programme resumes after an advertising break or any other interruption, in order to avoid any confusion on the part of the viewer;</p> <p>(ii) the total time allocated to promoting and/or referring to goods/services in product placement messages shall be kept to a minimum in the total length of the programme in which they</p>	<p>Art. 30G. (4) (a) and (b)</p> <p>Notwithstanding any other provision, programmes shall not contain product placement of:</p> <p>(a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;</p> <p>(b) specific medicinal products or medical treatments available only on prescription in the Republic;</p> <p>(c) Toys, in accordance with the provisions of paragraph (5), article 33 of this legislation.</p> <p>(d) any other product, goods or services which are forbidden from advertising according to this law and its regulations.</p>

				<p>have been placed and shall not, under any circumstances, exceed three (3) minutes in the case of cinematographic works and films and one (1) minute in the case of episodes of serials and sports and light entertainment programmes,</p> <p>It being understood that programmes not produced or commissioned by the audiovisual media service provider itself or a company affiliated to the audiovisual media service provider may be exempted from the provisions of this paragraph, provided that the service provider does not benefit financially or in some other way from the product placement.</p>	
CZ	<p>NO</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider</p>	Act 132/2010 on On-demand Audiovisual Media Services		<p>§ 10. (1)-(3)</p> <p>(1) Product placement in programmes shall be admissible only:</p> <p>a) in cinematographic works, films and series made for on-demand audiovisual media services or for television broadcasting, and in sports and entertainment programmes, provided that they are not children's programmes,</p> <p>b) where there is no payment but only the provision of certain goods or services free of charge, including, but not limited to, production props and prizes for competitors, with a view to their use in a programme.</p> <p>(2) Programmes containing product placement shall meet the following requirements:</p> <p>a) their content shall not be influenced in such a way as to affect the editorial responsibility and independence of the on-demand audiovisual media service provider,</p> <p>b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services, and</p> <p>c) they shall not give undue prominence to the product in question.</p> <p>(3) Programmes containing product placement shall be clearly identified as programmes containing product placement at the start and end of the programme and when a programme resumes after an advertising break in order to avoid any confusion on the part of the viewer as to the nature of these programmes. The obligation under the first sentence shall not apply to programmes which have not been produced or commissioned by the on-demand audiovisual media service</p>	<p>§ 10. (4)</p> <p>(4) Programmes shall not contain product placement of:</p> <p>a) cigarettes or other tobacco products or product placement from persons whose principal activity is the manufacture or sale of cigarettes or other tobacco products,</p> <p>b) medicinal products or medical treatments available only on prescription in the Czech Republic.</p>

		Act 231/2001 on Radio and Television Broadcasting and on amendment to other acts - Consolidated 21 April 2010		<p>provider or a person affiliated to the on-demand audiovisual media service provider as a controlling or controlled entity under other legislation).</p> <p>§ 53a. (1)-(3)(1) Product placement in programme units shall be admissible only:a) in cinematographic works, films and series made for television broadcasting or for on-demand audiovisual media services, in sports and entertainment programmes, provided that they are not children's programmes, orb) where there is no payment but only the provision of certain goods or services free of charge, including, without limitation, production props and prizes for competitors, with a view to their use in a programme.(2) Programme units containing product placement shall meet the following requirements:a) their content and scheduling shall not be influenced in such a way as to affect the editorial responsibility and independence of the on-demand audiovisual media service provider,b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services,c) they shall not give undue prominence to the product in question.(3) Programme units containing product placement shall be clearly identified as such at the start and end of the programme unit and when a programme unit resumes after an advertising or teleshopping break in order to avoid any confusion on the part of the viewer as to the nature of these programme units. The obligation under the first sentence shall not apply to programme units which have not been produced or commissioned by the television broadcaster itself or a person affiliated to the television broadcaster as a controlling or controlled entity under specific legislation).</p>	<p>§ 53a. (4)(4) Programme units shall not contain product placement of:a) cigarettes or other tobacco products or product placement from persons whose principal activity is the manufacture or sale of cigarettes or other tobacco products; orb) medicinal products or medical treatments available only on prescription in the Czech Republic.</p>
DE	YES Narrow definition of the "Light entertainment programmes"	Interstate Treaty on Broadcasting and Telemedia - consolidated 1 January 2013		<p>Article 7 (7) Surreptitious advertising, product placement and thematic placement as well as similar practices shall be prohibited. As far as exceptions are admissible pursuant to Articles 15 and 44, product placement must meet the following requirements: 1. Editorial responsibility and independence concerning content and scheduling must not be</p>	<p>Article 21b (3) product placements in programs produced after December 19, 2009 for the benefit of tobacco products or for the benefit of a company whose principal activity is the</p>

	<p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider</p>	<p>Provisional Tobacco Act - consolidated 31 August 2015</p>	<p>prejudiced;  2. the product placement shall not directly encourage the purchase, rental or lease of goods or services, in particular not by making special promotional references to such goods or services,  and  3. the product shall not be unduly prominently placed; this shall also apply to goods of minor value provided free of charge. There shall be clear information concerning product placement. Product placement shall be identified at the beginning and at the end of a programme as well as at its continuation following an advertising break, or on radio by a similar adequate identification. Obligatory identification shall not apply for programmes not produced by the broadcaster itself or produced or commissioned by a company affiliated to the broadcaster, if it is not possible to establish at reasonable expense whether they contain product placement; information to this effect shall be given. The broadcasting corporations forming the ARD association, the ZDF and the state media authorities shall stipulate a uniform system of identification.</p> <p>Article 15  In derogation from Article 7 (7), sentence 1, product placement shall be admissible in broadcasting  1. in cinematographic works, films and series, sports programmes and light entertainment programmes which are not produced by the broadcaster itself or produced or commissioned by an company affiliated to the broadcaster, unless they are children's programmes, or  2. where there is no payment, but only the provision of specific goods or services free of charge such as production props and prices with a view to their inclusion in a programme, unless the programmes concerned are news programmes, current affairs programmes, advice and consumer programmes, programmes for children or religious broadcasts.</p> <p>Light entertainment programmes shall exclude in particular programmes which - alongside elements of entertainment - are of a predominantly informative nature, are consumer programmes or advice programmes including elements of entertainment.</p>	<p>maufacture or sale of tobacco products are prohibited.</p> <p>[Prohibition of medical products included in § 10 HWG.]</p>
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				<p>Article 44</p> <p>In derogation from Article 7 (7), sentence 1, product placement shall be admissible in broadcasting</p> <p>1. in cinematographic works, films and series, sports programmes and light entertainment programmes unless they are children's programmes, or</p> <p>2. where there is no payment, but only the provision of specific goods or services free of charge such as production props and prices, with a view to their inclusion in a programme, unless the programmes concerned are news programmes, current affairs programmes, advice and consumer programmes, programmes for children or religious broadcasts.</p> <p>Light entertainment programmes shall exclude in particular programmes which - alongside elements of entertainment - are of a predominantly informative nature, are consumer programmes or advice programmes including elements of entertainment as well as programmes in regional window services and window services pursuant to Article 31.</p>	
<b>DK</b>	<p>YES</p> <p>No PP in programmes produced in Denmark (OK in certain purchased programs produced abroad)</p>	<p>The Radio and Television Broadcasting Act - consolidated 20 March 2014</p> <p>Detailed rules</p>	<p>§ 85 a. (1)</p> <p>Product placement in programmes on television and in on-demand audiovisual media services shall not be permitted</p> <p>§ 31. (1)</p>	<p>§ 85 a. (3)-(4)</p> <p>(3) Subsection 1 shall not prevent the inclusion of or the making of reference to a good, a service or a trade mark in a programme (product sponsorship) if</p> <p>1) the good, service or trade mark is of no material value and</p> <p>2) no relevant media service provider or associated person has received payment or other consideration in connection with the inclusion of or reference to the good, service or trade mark in the programme.</p> <p>(4) The Minister for Culture may lay down detailed rules with respect to product placement, including exemption from the ban on product placement in subsection 1, and detailed rules on product sponsorship.</p> <p>§ 32. (1) 1)-4), (4) and (5)</p>	<p>§ 32. (1) 5)-6)</p> <p>5) Programmes must not include product placement of tobacco products or goods used mainly in connection with the smoking of tobacco — see the Prohibition of Tobacco Advertising etc. Act, or goods from businesses whose principal activity is to produce or sell tobacco products or other goods used mainly in connection with smoking.</p> <p>6) Programs must not include product placement of medicinal products dispensed only on prescription pursuant to the Medicinal Products Act.</p>

		with respect to product placement are laid down in Executive Order on advertising and sponsorship - consolidated 21 June 2013	Product placement in programmes on television and in on-demand audiovisual media services shall be prohibited; but see Section 32	<p>(1) Notwithstanding section 31 (1), product placement in purchased programs produced abroad on the television and in on-demand audiovisual media services within the categories of short and documentary films, feature films, films and series produced for television or on-demand audiovisual media services, sports programmes and light entertainment programmes shall be permitted in accordance with the following rules:</p> <p>1) The content and programming must not be influenced in such a way as to affect the responsibility and editorial independence of the media service supplier with respect to the programmes.</p> <p>2) The programme must not incite to the purchase or hire of goods or services; in particular, these must not be given special prominence with a view to finding a market for them.</p> <p>3) The programme must not give the goods concerned an unnecessarily prominent role.</p> <p>4) Viewers shall be informed clearly that the goods, services or trade marks are shown or referred to in the programme. This identification shall be done in an appropriate way at the beginning and end of the programme, and when a television programme resumes after a commercial break; see Section 3(2).</p> <p>(4) Authorisation for product placement according to the rules in subsections 1-3 shall not be granted in respect of programmes aimed at children under 14 years of age.</p> <p>(5) Notwithstanding section 31 (1), product placement in programs on television and on demand audiovisual media services within the categories of feature films and short and documentary films, which DR and TV 2/DANMARK A/S are obliged to engage themselves financially in, shall be permitted in accordance with the rules in subsections 1-4.</p>	
<b>EE</b>	<p>YES</p> <p>Besides product placement, production props and prizes are not allowed in children's</p>	Media Service Act	§ 31. (2) Product placement shall be prohibited except in the cases provided for in this section.	<p>§ 31. (3)-(5) and (7)</p> <p>(3) Product placement shall be admissible:</p> <p>1) in films made for the cinema and television, and television series or serials;</p> <p>2) sports programmes;</p> <p>3) light entertainment programmes;</p> <p>4) where there is no payment but only the provision of certain</p>	<p>§ 31. (6)</p> <p>(6) Product placement shall be prohibited with regard to the following products:</p> <p>1) tobacco products or cigarettes or the goods of such undertakings whose principal</p>

	<p>programmes - could amount to a stricter rule.</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.</p>			<p>goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.</p> <p>(4) A programme containing product placement shall meet the following requirements:</p> <p>1) product placement shall not affect the responsibility and editorial independence of the media service provider;</p> <p>2) the programme shall not directly encourage the purchase or rental of goods or services, in particular, by making special promotional references to those goods or services;</p> <p>3) in the programme they shall not give undue prominence to the product in question;</p> <p>4) with the purpose of informing the viewers clearly and understandably of the existence of product placement, the programmes containing product placement shall be appropriately identified at the start and end of the programme, and when a programme resumes after an advertising break with a corresponding text or a common symbol agreed upon by means of self-regulation.</p> <p>(5) Product placement in children's programmes shall be prohibited.</p> <p>(7) The requirement provided for in clause (4) 4) of this section shall not be applied to the programme that is produced by an undertaking located outside a Member State or a State Party to the Convention.</p>	<p>activity is the manufacture and sale of cigarettes and other tobacco products;</p> <p>2) prescription medicinal products or medical treatments available only on a medical prescription.</p>
<b>ES</b>	<p><b>YES</b></p> <p>Production props and prizes seem not allowed in children's programmes - could amount to a stricter rule.</p> <p>More detailed rule "significant value"</p> <p>Detail: MS chose to</p>	<p>General Law No 7/2010 of 31 March on Audiovisual Media - consolidated 1 May 2015</p> <p>Royal Decree 1624/2011 of 14 November</p>		<p>Article 171. Audiovisual media service providers shall have the right to broadcast product placements in cinematographic feature films, film shorts, documentaries, films made for television and series, sports programmes and light entertainment programmes. Product placement shall be admissible in other programmes only in exchange for the provision of goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme. 2. Where a programme has been produced or commissioned by the service provider or by one of its subsidiaries, the public must be clearly informed about the product placement at the start and at the end of the programme and when a programme resumes after a commercial break. 3. Product placement must not influence editorial independence.</p>	

	use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.			<p>Nor must it directly encourage the purchase or rental of goods or services, or make special promotional reference to the latter or give undue prominence to the product in question.4. Product placement shall be prohibited in children's programmes.</p> <p>Article 14 – Decree 1624/2014 Product placement is ok when there is no payment to place the goods and the value of them are below 10% of the price a regular advertisement at that period of the day</p>	
<b>FI</b>	<p>NO</p> <p>More detailed on the way to indicate that a programme contains PP: This identification shall not take the form of advertising.</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.</p>	[FI] Information Society Code - consolidated 18 September 2015		<p>220 § Any form inclusion of or reference to a product, a service or the trade mark thereof within an audiovisual programme, in return for payment or for similar consideration (product placement) shall be prohibited. By way of derogation from subsection 1 above, product placement shall be admissible in the following cases: 1) in cinematographic works; 2) films and series made for audiovisual content services; 3) sports programmes; 4) light entertainment programmes. The derogation provided for in subsection 2 shall not apply to children's programmes. The provision of goods or product prizes for an audiovisual programme free of charge is considered to be product placement if they are of significant value. Product placement in the form of goods or product prizes is admissible with the exception of children's programmes.</p> <p>221 § Product placement shall not: 1) influence the content of programmes or how they are placed in the programme; 2) encourage the purchase or rental of goods or services; 3) constitute advertisements or otherwise refer to products; 4) give undue prominence to products.</p> <p>Viewers shall be clearly informed of the existence of product</p>	<p>221 § Product placement of the following products is prohibited: 1) tobacco products; 2) products from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; 3) specific medicinal products or medical treatments available only on prescription.</p>



				<p>placement in audiovisual programmes by means of text or signal that is used uniformly by all audiovisual content service providers. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break. This identification shall not take the form of advertising.</p> <p>By way of exception, product placement need not be identified provided that the audiovisual programme in question has neither been produced nor commissioned by the content service provider itself or an undertaking affiliated with the content service provider and knowledge of the product placement cannot be obtained with reasonable effort.</p>	
<b>FR</b>	<p>YES</p> <p>PP allowed only in TV and cinematographic films and in music videoclips.</p> <p>Stricter list of products not allowed to be placed in TV programmes (alcohol, baby food, weapons)</p>	<p>Law n° 86-1067 of 30 September 1986 on the Freedom of communication - consolidated 08 January 2016</p> <p>Délibération n° 2010-4 du 16 février 2010 relative au placement de produit dans les programmes des services de télévision</p>		<p>Art 14 1.</p> <p>The Higher Council for the Audiovisual Sector shall determine the conditions under which the programmes of audiovisual communication services, in particular music videos, may include product placement.</p> <p>The Higher Council for the Audiovisual Sector shall ensure that the programmes including product placement are in compliance with the following requirements:</p> <ol style="list-style-type: none"> <li>1. Their content and, in the case of television broadcasting, their programming shall not be influenced on any account so as to undermine the responsibility and the editorial independence of the producer of media services.</li> <li>2. They shall not incite the purchasing or the renting of the products or services of a third party and shall not in particular include any specific promotional references to these products or to these services.</li> <li>3. They shall not give undue prominence to the product in question.</li> <li>4. Television viewers shall be clearly informed of the presence of product placement. Programmes including product placement shall be identified appropriately at the beginning and at the end of their broadcasting and when a programme starts again after a commercial, so as to prevent television viewers becoming confused.</li> </ol> <p>IV. - Emissions pouvant comporter du placement de produit</p>	<p>V. - Produits et services ne pouvant faire l'objet d'un placement</p> <p>Les produits suivants ne peuvent faire l'objet d'un placement :</p> <ul style="list-style-type: none"> <li>- les boissons comportant plus de 1,2 degré d'alcool ;</li> <li>- le tabac, les produits du tabac et les ingrédients définis à l'article L. 3511-1 du code de la santé publique ;</li> <li>- les médicaments au sens de l'article L. 5111-1 du code de la santé publique, qu'ils soient ou non soumis à prescription médicale ;</li> <li>- les armes à feu et munitions, sauf sur les services de télévision mentionnés à l'article 5 du décret n° 85-1305 du 9 décembre 1985 ;</li> <li>- les préparations pour nourrissons au sens de l'article L. 121-50 du code de la</li> </ul>

				<p>Le placement de produit est autorisé dans les oeuvres cinématographiques, les fictions audiovisuelles et les vidéomusiques, sauf lorsqu'elles sont destinées aux enfants.</p> <p>Il est interdit dans les autres programmes.</p>	<p>consommation.</p> <p>Les produits ou services du parrain d'une émission ne peuvent faire l'objet d'un placement dans cette émission.</p>
<b>EL</b>	<p>NO</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.</p>	Decree No. 109	Article 12 1.Product placement shall be prohibited.	<p>Article 12 2., 3., 4., 5.2. By way of derogation, product placement shall be admissible in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, exclusively and only where the following conditions are cumulatively met:(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;(c) they shall not give undue prominence to the product in question.3. Moreover, product placement shall be admissible where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme, provided that the conditions laid down in paragraph 2 are cumulatively met.4. Product placement in the programmes provided for by paragraph 2 shall be prohibited, if such programmes are aimed at minors.5. Media service providers must clearly notify the viewers of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer. Programmes that have neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider shall be excluded from such obligation, as long as the provider does not benefit from the placement.</p>	<p>Article 12 6.Placement of the following products shall be strictly prohibited:(a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;(b) specific medicinal products or medical treatments available only on prescription in Greece;(c) in any other case that television advertising is prohibited.</p>
<b>HU</b>	<p>YES</p> <p>PP not allowed in</p>	Act CLXXXV of 2010 on Media Services	30. § (1) With the exceptions provided under	<p>30. § (2) and (3) b)</p> <p>(2) Product placement in programmes shall be permitted</p> <p>(a) in cinematographic works intended for showing in cinemas;</p>	<p>30. § (4) a) c)</p> <p>Programmes shall not contain product placements of the</p>

	<p>news, political, religious programmes and reporting official events even as product props.</p> <p>"Children" - minors under the age of 14.</p>	and Mass Communication - Consolidated 1 July 2015	Paragraph (2), product placement in media services shall be prohibited.	<p>cinematographic works or film series intended for showing in media services; sports programmes and entertainment programmes;</p> <p>(b) in programmes other than those stipulated in Point (a), provided that the manufacturer or distributor of the product concerned, or the provider or intermediary of the service concerned does not provide the media service provider or the producer of the given programme with any financial reward, neither directly nor indirectly, beyond making available the product or service free of charge for product placement purposes.</p> <p>(3) No product display shall take place</p> <p>(a) in a news programme and political information programme;</p> <p>(b) with the exception of the instance stipulated in point (b) of paragraph (2) in a programme specifically for minors under the age of fourteen;</p> <p>(c) in a programme reporting on the official events of national holidays</p> <p>(d) in a programme of religious or ecclesiastic content.</p> <p>31. § (1) and (3)</p> <p>Programmes containing product placements shall comply with the following requirements:</p> <p>(a) their content - and in the case of linear media services, the programme schedule - may not be influenced so as to affect the responsibility and editorial independence of the media service provider;</p> <p>(b) they shall not call upon the purchase or rent of a product or the use of a service in a direct manner;</p> <p>(c) they shall not give unjustified emphasis to the product so displayed, which does not otherwise stem from the content of the programme flow.</p> <p>(3) The obligation stipulated under Paragraph (2) shall not apply to programmes which were not produced or ordered by the media service provider or another media service provider or production company operating under the qualifying holding of its owner.</p>	<p>following products:</p> <p>(a) tobacco products, cigarettes or other products originating from undertakings, the primary activity of which is the manufacture or sale of cigarettes or other tobacco products;</p> <p>(c) medicines, medicinal products, or therapeutic procedures, which may only be used upon medical prescription.</p>
<b>HR</b>	<p>NO</p> <p>Detail: MS chose to</p>	The Electronic Media Act - Official Gazette	Art. 18 (1) Product placement shall be prohibited.	<p>Art. 18 (2)-(5)</p> <p>(2) By way of derogation from paragraph 1 of this Article, product placement shall be admissible:</p>	<p>Art. 18 (6)</p> <p>In any event audiovisual programmes shall not contain</p>

	use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.	No. 153/09,84/11, 94713, 136/13		<ul style="list-style-type: none"> <li>- in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, with the exception of children's programmes, or</li> <li>- where there is no payment to the media services provider, but certain goods or services are provided free of charge, such as production props and prizes, with a view to their inclusion in an audiovisual programme.</li> </ul> <p>(3) It is assumed that the product and services placement in the sense of paragraph 2 subparagraph 2 of this Article exists if the goods or services involved in the audiovisual programme are of significant value. The Electronic Media Council shall determine by an ordinance the manner of determining the significant value of the goods and services placed taking into account that the significant value is assessed in relation to the budget of the production or the costs paid for the product placement of the product or service in this programme.</p> <p>(4) Audiovisual programmes that contain product placement shall meet all of the following requirements:</p> <ul style="list-style-type: none"> <li>- their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider,</li> <li>- they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services,</li> <li>- they shall not give undue prominence to the product in question,</li> <li>- viewers shall be clearly informed of the existence of product placement,</li> <li>- they shall be appropriately identified at the start and the end of the audiovisual programme and when a audiovisual programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.</li> </ul> <p>(5) By way of exception, the provisions of the paragraph 4 subparagraphs 4 and 5 of this Article are not applicable when the audiovisual programme containing product placement has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service</p>	<p>product placement of:</p> <ul style="list-style-type: none"> <li>- tobacco products or cigarettes or product placement of natural and legal persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or</li> <li>- specific medicinal products or medical treatments available only on prescription.</li> </ul>
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<b>IE</b>	NO	<p>Broadcasting Act - consolidated 1 December 2014</p> <p>BAI General Commercial Communications Code</p>	<p>Section 42. (2) (j) Broadcasting codes shall provide— (j) for the matters required to be provided for by Chapters IIA, IV and V of the Council Directive.</p> <p>43. (4) Broadcasting rules shall provide for the matters required to be provided for by Chapters IIA, IV and V of the Council Directive.</p> <p>Article 7. Television Product Placement</p> <p>1. Product Placement is prohibited unless permitted as specified in the Code.</p>	<p>Article 7</p> <p>2. Product placement is permitted where there is no payment but the provision only of certain products and services free of charge, such as production props and prizes, with a view to their inclusion in a programme.</p> <p>For the purpose of this Code, the provision of products and services free of charge only constitute product placement where the provision is of significant value, as defined from time-to-time by the Authority.</p> <p>3. Programmes that contain acceptable product placement shall meet all of the following requirements:</p> <p>(a) their content shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster and the placement therein shall be editorially justified;</p> <p>(b) their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster;</p> <p>© they shall not directly encourage the purchase or rental of products or services in particular by making special promotional references to those products or services and the placement therein shall not constitute advertising as defined in this Code;</p> <p>(d) they shall not give undue prominence to the products or services in question;</p> <p>(e) Programmes containing product placement shall be appropriately identified, in a manner stipulated from time-to-time by the Authority, at the start and the end of the programme, and when a programme resumes after an</p>	<p>Article 7</p> <p>4. Product placement shall not be permitted:</p> <ul style="list-style-type: none"> <li>- for products and services prohibited by this Code (include cigarettes and tobacco as well as products, treatments or services only available on medical prescription);</li> <li>- where the provider of placed products/services is also the sponsor of the programme in which the products/services feature. (as from 1.1.2011).</li> </ul>

		<p>S.I. No. 258/2010 - European Communities (Audiovisual Media Services) Regulations 2010. Regulations 8 to 9</p> <p>Code of Conduct On-Demand Audiovisual Media Services</p>	<p>8. (1) Subject to this Regulation, product placement in an on-demand audiovisual media service is prohibited.</p>	<p>advertising break or teleshopping segment. The requirements of (e) do not apply when broadcasting television programmes that have neither been produced nor commissioned by the broadcaster or a company affiliated to the broadcaster. 5. Product integration and thematic placement are not permitted.</p> <p>8. (2)-(4) (2) Product placement is admissible— (a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes but not in children's programmes, or (b) where there is no payment for the placement of the product but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme. (3) Programmes shown on an on-demand audiovisual media service that contain product placement shall meet at least all of the following requirements: (a) their content shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider, (b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services, (c) they shall not give undue prominence to the product in question, and (d) viewers shall be clearly informed of the existence of product placement. (4) Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and where practicable, except where the programme in question has neither been produced nor commissioned by the media service provider</p>	<p>9. Programmes shown on an on-demand audiovisual media service shall not contain product placement of— (a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or (b) specific medicinal products or medical treatments available only on prescription in the State.</p>
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<b>IT</b>	NO  Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.	Audiovisual Media Services Code - Consolidated 13 August 2015		Art. 40a 1.-3.1. Product placement is permitted in cinematographic works, films and series produced for audiovisual media services, sporting programmes and light entertainment programmes, with the exclusion of children's programmes. Placement may occur both in return for monetary compensation or certain goods and services may be provided free of charge, such as production props and prizes, with a view to their inclusion in a programme.2. Programmes that contain products shall meet the following requirements:a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media services provider;b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;c) they shall not give undue prominence to the product in question.3. If the programme in which products are included is produced or commissioned by the audiovisual media services provider or by its subsidiary company, viewers shall be clearly informed of the existence of product placement by means of warnings at the start and end of the transmission, as well as when the programme starts again after an advertising slot.	Art. 40a 4.The placement of tobacco products or cigarettes, or products from companies whose main activity is the manufacture or sales of cigarettes and other tobacco products, is prohibited. The placement of medicinal products or medical treatments only available on prescription is also prohibited.
<b>LT</b>	YES PP prohibited in the children's programmes and news programmes without derogation	Law on the Provision of Information to the Public - Consolidated 7 January 2016		Art. 40-1 1. 2. and 4. 1. Product placement shall be admissible in cinematographic works, films and series made for audiovisual media services, sports programmes and entertainment programmes. Product placement shall also be admissible where, without payment agreed upon between persons, certain goods or services, such as prizes or other goods or services necessary for the production of a programme, are included in the programme. 2. Programmes that include product placement must meet all of the following requirements: 1) the content and scheduling of programmes and the editorial responsibility and independence of the media service provider may in no circumstances be influenced; 2) they may not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services; 3) they may not give undue prominence to the product in	Art. 40-1 3. The following product placement shall be prohibited in programmes: 1) tobacco products or product placement from persons whose principal activity is the manufacture or sale of tobacco products; 2) specific medical treatments or medicinal products available only on prescription in the EU Member State within whose jurisdiction the audiovisual media service provider falls.



				<p>question;</p> <p>4) viewers must be clearly informed of the existence of product placement. Programmes containing product placement must be appropriately identified at the start and the end of the programme and when a programme resumes after an advertising break in order to avoid any confusion on the part of the viewer.</p> <p>4. Product placement in children's programmes and news programmes shall be prohibited.</p>	
<b>LU</b>	<p>NO</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.</p>	<p>Grand ducal regulation of 17 December 2010 amending the grand ducal regulation of 5 April 2001 setting the rules on advertising, sponsorship, teleshopping and self-promotion in television programmes</p>		<p>Art. 5bis (1) and (2)</p> <p>(1) Derogating from the prohibition provided in article 26ter (7) of the law as amended of 27 July 1991 on the electronic media, product placement is permitted in audiovisual media services:</p> <p>a) in cinema works, films and series made for audiovisual media services and in sports and entertainment programmes; or</p> <p>b) if no payment is involved but only the supply free of charge of particular goods or services, such as production accessories and samples, for inclusion in a programme.</p> <p>The derogation in a) above does not apply to children's programmes.</p> <p>(2) Programmes with product placement shall comply with at least all the following requirements:</p> <p>a) their content and, in the case of television services, their programming shall under no circumstances be subject to any influence that might prejudice the editorial responsibility and/or independence of the audiovisual media service provider;</p> <p>b) they shall not directly encourage the purchase or rental of goods or services by, especially, specifically promoting those products or services;</p> <p>c) they shall not unjustifiably highlight the product in question;</p> <p>d) viewers shall be clearly informed of any product placement. Programmes with product placement shall be suitably identified at the start and end of their broadcast and when the programme resumes after a publicity break, to avoid confusing the viewer in any way.</p> <p>Point d) shall not apply unless the programme concerned was produced or commissioned by the audiovisual media service provider itself or by an associate.</p>	<p>Art. 5bis (3)</p> <p>Under no circumstances may programmes include product placement: for tobacco products or cigarettes, for products produced by undertakings whose main business in the manufacture or sale of cigarettes and/or other tobacco products, or for medicinal products or medical treatments available only on prescription.</p>
<b>LV</b>	NO	Electronic Mass	Section 35. (10)	Section 35. (11)	Section 45. (3)

		Media Law	Product placement in the programmes of an electronic mass medium is prohibited except for the cases referred to in Section 45, Paragraph one of this Law.	<p>The restrictions of audio and audiovisual commercial communications referred to in this Law shall not apply to the transmission of sporting and similar events in which advertising materials are placed in the background of events (advertising posters in stadiums, names of merchants and emblems, trademarks and the like) and it is not possible to avoid them.</p> <p>Section 45. (1) and (2)(1) Product placement in programmes is allowed only in the following cases:</p> <p>1) in films and series made by an audiovisual electronic mass medium or which have been commissioned by an audiovisual electronic mass medium, sports and entertainment programmes, except children's programmes; or</p> <p>2) where there is no payment and certain goods or services such as production props and prizes are provided free of charge in order to be included in the broadcast.</p> <p>(2) Broadcasts containing product placement shall meet at least all of the following requirements:</p> <p>1) a broadcast's content and a programme shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the electronic mass medium;</p> <p>2) a broadcast shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</p> <p>3) undue prominence to the product in question shall not be given in a broadcast; and</p> <p>4) viewers shall be clearly informed of the presence of product placement. In order to avoid any confusion on the part of the viewer, broadcasts containing product placement shall be appropriately identified at the beginning and the end of the broadcast, and when the broadcast resumes after an advertising break.</p>	<p>Product placement of the following goods and services in the broadcasts of an audiovisual electronic media is prohibited:</p> <p>1) tobacco products, cigarettes or products of undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; and</p> <p>2) and medical treatment available in Latvia only on prescription or direction of a physician.</p>
<b>MT</b>	YES No derogation concerning product props in the programmes for children	Broadcasting Act 350 - consolidated as latest amended in 2015	16M (1) Subject to the provisions of this article, product placement shall be prohibited.	16M (2) and (3) (2) By way of derogation from sub-article (1), product placement shall be admissible only in the following instances: (a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes; or (b) where there is no payment but only the provision of certain	16M (4) (4) In any event programmes shall not contain product placement of: (a) tobacco products or cigarettes or product placement from undertakings

	<p>No product placement of alcohol and gambling services during certain times of the day (watershed)</p> <p>Waiving possibility left to the Authority</p>			<p>goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme: Provided that the derogation provided for in this sub-article shall not apply to children's programmes.</p> <p>(3) Programmes that contain product placement shall meet at least all of the following requirements:</p> <p>(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;</p> <p>(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</p> <p>(c) they shall not give undue prominence to the product in question;</p> <p>(d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer:</p> <p>Provided that by way of exception, the Authority may choose to waive the requirements set out in this paragraph provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.</p>	<p>whose principal activity is the manufacture or sale of cigarettes and other tobacco products; or</p> <p>(b) specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls;</p> <p>Sub article 16M(4)(c) of the Broadcasting Act was not included; this states</p> <p>(c) alcoholic drinks of more than 1.2% alcohol during programming which is broadcast between 6.00 a.m. and 9.00 p.m.; gambling products during programming which is broadcast between 6.00 a.m. and 7.00 p.m.; infant formula; and weapons and munitions.</p> <p>Time restraints are also included in Requirements as to Advertisements, Methods of Advertising and Directions applicable to Tattoo Advertising (S.L 350.23), advertisements or any other form of programming concerning tatoos can only be aired between 21.00 and 6.00am.</p>
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<b>NL</b>	<p>YES</p> <p>No product placement on PSB Commercial broadcasters: no product placement for alcoholic drinks between 06.00 and 21.00 and for medical treatments (Artikel 3.19b)</p> <p>"Children" - under 12 years old.</p>	Act no 552 amending the Media Act 2008 and the Tobacco Act for the implementation of the Audio-Visual Media Services Directive	<p>Art PSB: 2.88b 3.b The media output contains no product placement.</p> <p>Art. 3.19a 1. In programming of commercial broadcasting services product placement is prohibited.</p>	<p>Art. 3.19a 2. Unless the programming is specially intended for children under twelve, the first paragraph is not applicable to programming consisting of: a. films; b. series; c. sports programmes; d. light entertainment programmes.</p> <p>Art. 3.19b 1., 2., 4., 5.1. Product placement may only occur if guarantees are included in the editorial guidelines, defined in article 3.5, second paragraph, for the editorial independence of the employees responsible for producing the programming in relation to product placement.</p> <p>2. Product placement in the programming is created in such a way that: a. The audience is not directly encouraged to purchase or hire products or acquire services by means of specific recommendations; and b. The product in question does not receive excessive attention.</p> <p>4. With programming in which product placement has been included, it is clearly stated in order to notify the audience that the programming includes product placement. The notification occurs in a suitable manner and takes place at the start and the end of the programme, as well as at the start and the end of advertisement message or advertisement messages included in the programme.</p> <p>5. The Commission can place further rules concerning the application of product placement in programming, with these rules requiring the approval of Our Minister.</p>	Article 5.2 of the Tobacco Act prohibits product placement for tobacco products.
<b>PL</b>	<p>YES</p> <p>No derogation concerning product props in the programmes for children</p> <p>More detailed rule: neutral information on the producer or seller of the placed product or an entity providing the placed</p>	Broadcasting Act - Consolidated 12 October 2012	<p>Art. 16c. 2) 16c. The following shall be prohibited:</p> <p>2) product placement, subject to Article 17a,</p>	<p>Art. 17a. 1.-5.</p> <p>1. Product placement shall be admissible exclusively:</p> <p>1) in cinematographic works, films or series made for audiovisual media services, sports programmes and light entertainment programmes, or</p> <p>2) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme - with the exception of children's programmes.</p> <p>2. Programmes that contain product placement shall be identified with a graphic sign in television programme services, and with an acoustic symbol in radio programme services, informing about product placement, at the start and the end of the programme, and when a programme resumes after an advertising or teleshopping break.</p>	<p>Art. 17a. 6. Product placement of goods and services referred to in Article 16b paragraph 1 shall be prohibited.</p> <p>Art. 47k. The provisions of Article 16 paragraph 1, Article 16b paragraphs 1-3a, Article 16c, Article 17 paragraphs 1-2, 4, 5, 6a and 7, Article 17a paragraphs 1-3, 5 and 6 as well as regulations issued based on Article 16b paragraph 3b, Article 17</p>

	service as well as on the product or the service shall be inserted at the end of the programme			<p>3. Neutral information on the producer or seller of the placed product or an entity providing the placed service as well as on the product or the service shall be inserted at the end of the programme referred to in paragraph 2, produced with the contribution of a broadcaster or on its order.</p> <p>4. Product placement shall not prejudice the autonomy and editorial independence of the broadcaster through its impact on contents or scheduling and shall not release the broadcaster of the liability for contents of the programme.</p> <p>5. Programmes that contain product placement shall not:</p> <ol style="list-style-type: none"> <li>1) give undue prominence to the product in question,</li> <li>2) directly encourage the purchase or rental of goods or services, in particular by making promotional references to those goods or services.</li> </ol> <p>Art. 47d.</p> <p>Product placement in programmes and sponsorship of programmes made available as part of on-demand audiovisual media services may not affect the autonomy and editorial independence of the provider of the on-demand audiovisual media service, in particular by affecting the content or place of programmes in the catalogue, and shall not release the provider from liability for the content of programmes.</p>	paragraph 8, except for the provisions relating to registration of sponsored programmes or other broadcasts, as well as regulations issued pursuant to Article 17a paragraph 9 on the special conditions of marking of programmes with product placement with a special graphic mark by the broadcaster shall apply to on-demand audiovisual media services
<b>PT</b>	<p>YES</p> <p>Stricter rules for programmes for children - presentation of any type of commercial message liable to prejudice minors (i.e.unhealthy food) is prohibited.</p> <p>TV Act, Art. 41-A (8)</p> <p>- No derogation concerning PP in the children programmes even without payment.</p>	<p>Television Act 27/2007 (as amended by laws 8/2011, 40/2014 and 78/2015)</p> <p>Law 37/2007, of 14 August, (Tobacco Act)</p> <p>Advertising Code</p>		<p>Article 41-A 1.-7. and 9.-11, of the Television Act</p> <p>1 - Product placement is prohibited except in cinematographic works, films and series made for television programme services or on-demand audiovisual services, sports programmes and light entertainment programmes.</p> <p>2 - Product placement in children's programmes is prohibited.</p> <p>3 - The content of programmes which contain product placement and, in the case of television programme services, their scheduling shall not be influenced in any such way as impacts their responsibility and editorial independence.</p> <p>4 - Programmes which contain product placement shall not directly encourage the purchase or rental of products or services, in particular by making special promotional references to such products or services.</p> <p>5 - Product placement shall not give undue prominence to products, services or trademarks, specifically where the reference made is not justified on editorial grounds or where</p>	<p>Articles 16 and 18 of the Tobacco Act</p> <p>Article 19 of the Advertising Code</p>

	<p>TV Act, Art. 41-A (2)</p> <p>More detailed rules concerning product props and "Significant commercial value" TV Act, Art. 41-A (7)(9)(10)(11)</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider. TV Act, Art. 41-A (6)</p>		<p>such reference is likely to mislead the public with respect to their nature, or by the recurrent form in which such items are presented or shown.</p> <p>6 - When produced or commissioned by the television operator, by the provider of on-demand audiovisual services or by an affiliated thereof, programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break.</p> <p>7 - Production props may be provided to any programme when the products or services used are of no significant commercial value, subject to the provisions of paragraphs 3 and 6.</p> <p>8 - During the broadcast of programmes for children, the presentation of any type of commercial messages liable to prejudice the physical and mental development of minors is not allowed, namely those relating to food and drinks which contain nutrients and substances that have a nutritional or physiological effect whose presence in excessive quantities as part of a dietary regime is not advisable.</p> <p>9 - The use of production props where the goods or services used have significant commercial value is subject to the rules governing product placement, including those rules referring to administrative offenses.</p> <p>10 - Significant commercial value is to be determined by agreement made between the television operators and the providers of on-demand audiovisual services, which agreement shall be subject to ratification by Entidade Reguladora para a Comunicação Social (Regulatory Authority for the Media).</p> <p>11 - In the event that there is no agreement, as referred to in the preceding paragraph, or where there is a lack of subscription to such an agreement, significant commercial value will be determined by Entidade Reguladora para a Comunicação Social (Regulatory Authority for the Media), following a prior hearing of the operators and providers of the sector, and shall, in any event, be based on the commercial value of products or services involved and the publicity value corresponding to the duration of broadcasting during which the product or service is commercially identifiable, particularly through the display of the brand, in addition to the time given to its identification</p>	
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				immediately preceding or subsequent to the programme, according to the highest television advertising price rate applying on the date on which the programme is first broadcast or is first made available on demand.	
<b>RO</b>	NO  Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.	<b>The Audiovisual Law 504/2002 - consolidated</b>	Art. 31 (1) Product placement shall be prohibited.	Art. 31 (2) - (6) (2) By way of derogation from par. 1, product placement shall be admissible: a) in cinematographic works, films and series made for audiovisual media services, sports programs and entertainment programs; b) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a program. (3) The derogation provided for par. 2, (a) shall not apply to children's programs. (4) Programs that contain product placement shall meet at least all of the following requirements: a) their content and, in case of television broadcasting their scheduling shall in no circumstance be influenced in such a way as to affect the responsibility and editorial independence of the media service provider; b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services; c) they shall not give undue prominence to the product in question; (5) Programs where product placement is inserted, shall contain clear information on it and shall be appropriately identified at the start and at the end of the program, and when a program resumes after an advertising break, in order to avoid any confusion on the part of the viewer. (6) Requirements in par. (5) shall not apply to the program that has neither been produced nor commissioned by the media service provider itself or by a company affiliated to the media service provider.	Art. 31 (7) Product placement of tobacco products or cigarettes or other products of undertakings whose principal activity is the manufacture or sale of such products, as well as product placement of medicinal products or medical treatments available only on prescription are forbidden.
<b>SE</b>	YES PP prohibited for alcohol products	The Radio and Television Act - consolidated 17 June 2010	Chapter 6 Section 11. Television or on-demand television programmes must not	Chapter 6. section 2. para. 1., Section 3 and 4.2§. Media service providers may broadcast films, television series, sports programmes and light entertainment programmes that include product placement on the conditions set out in Sections 3 and	Chapter 6. Section 2 para. 2[...]However, the first paragraph above shall not apply to programmes that are

		Complemented by law SFS 2015:662 on the influence of PP on the editorial independence.	include product placement unless Section 2 determines otherwise.	4.[...]3§. Programmes that include product placement may only be broadcast if the programme does not unduly promote commercial interests, in accordance with Chapter 5 Section 5.4§. Where product placement takes place in a programme, information about this must be provided at the beginning and end of the programme, as well as when the programme recommences after any commercial breaks. This information shall only consist of a neutral notification that product placement takes place in the programme and about the product or service that has been placed in the programme. Chapter 5 – Section 5: Programmes that are not advertisements must not unduly promote commercial interests. This means that such programmes must not: 1. encourage people to buy or hire goods or services or include other features that promote sales, or 2. give undue prominence to a product or a service.)	primarily aimed at children under 12 years of age nor to programmes that feature the placement of the following products: 1. alcoholic drinks and tobacco products, 2. other products provided by companies that are primarily involved in the production or sale of alcoholic drinks or tobacco products, or 3. prescription drugs or medical treatments that are only available on prescription.
SI	NO	Audiovisual Media Services Act (ZAvMS) entered into force on 17 November 2011  Act Amending Audiovisual Media Services Act (ZAvMS-A) entered into force on 21 November 2015	Art. 26 (1) Product placement shall be prohibited, except in the cases determined by this Act.	Art. 26 (3)-(6) (3) Product placement shall be permitted: - in cinematographic works, films, docudramas, series and serials made for audiovisual media services, and sports and light entertainment programmes, or - in cases where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme. (4) If the value of the goods or services referred to in the second indent of the preceding paragraph is negligible in proportion to the programme's production costs, this shall not be deemed to be product placement under this Act. (5) Programmes that contain product placement must meet the following requirements: - their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced by product placement in such a way as to affect the responsibility and editorial independence of the provider; - product placement must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services; - product placement may not give undue prominence to the product or service in question; - programmes containing product placement must be	Art. 26 (7) Without prejudice to the provision of the third paragraph of this Article, product placement shall be prohibited where a prohibition of advertising or audiovisual commercial communications applies under this Act or other acts.



				<p>appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to acquaint the viewer clearly with the fact that the programme contains product placement. The obligation to identify shall not apply to programmes that have neither been produced nor commissioned by the broadcaster itself or by a company affiliated to it.</p> <p>(6) Without prejudice to the provision of the first indent of the third paragraph of this Article, product placement shall be prohibited in programmes intended for children.</p>	
<b>SK</b>	<p>NO</p> <p>- "Children" - minors up to 12 years of age.</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.</p>	<p>Act 308/2000 on Broadcasting and Retransmission and on the amendment of Act No. 195/2000 on Telecommunications - consolidated 3 February 2015</p>	<p>§ 39a (2)</p> <p>(2) Product placement shall be permitted only under the conditions laid down by this act.</p>	<p>§ 39a (2) to (6)</p> <p>(2) Product placement shall be permitted only under the conditions laid down by this act.</p> <p>(3) Product placement shall be permitted if certain goods or services are provided free of charge, such as production props and prizes for a competition, without prejudice to the conditions laid down in sub§ (5).</p> <p>(4) Product placement under sub§ (3) that is not free of charge shall be permitted in cinematographic works, films, series, sports programmes and entertainment programmes.</p> <p>(5) Product placement under sub§s (3) and (4) shall be permitted in programmes that meet the following criteria: a) their content and scheduling in the programme service must not be influenced in a way that would affect the editorial responsibility or editorial independence of the broadcaster or the provider of on-demand audiovisual media service, b) it does not directly promote the purchase, sale or lease of goods or services, in particular by making specific references to those goods or services, c) undue prominence shall not be given to the goods or services in question, d) viewers are clearly informed of the existence of product placement by means of identification at the start and the end of the programme, and when a programme resumes after a media commercial communication break. This shall not apply to a programme which production has not been commissioned or that has not been produced by the broadcaster or by the provider of the on-demand audiovisual media service that broadcasts or provides the programme in question.</p>	<p>§ 39a (7)</p> <p>Product placement involving products associated with a natural person or legal entity whose main activity is the production or sale of cigarettes or other tobacco products shall be prohibited.</p> <p>§ 31a (10)</p> <p>Media commercial communication for medicinal products available only on prescription and medical treatments paid from public health insurance under specific legislation shall be prohibited.</p>

				(6) Product placement shall be prohibited in programmes intended for minors up to 12 years of age.	
<b>UK</b>	<p>YES</p> <p>No derogation concerning product props in programmes for children</p> <p>Stricter rules for programmes produced under UK jurisdiction (PP in more limited types of programmes, stricter list of products not allowed to be placed: alcohol, baby milk, fatty foods, gambling...)</p> <p>Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.</p>	<p>[GB] Electronic Communications Broadcasting - The Audiovisual Media Services Regulations 2009</p> <p>Ofcom Broadcasting Code – Section 9 (rules 9.6 to 9.11)</p> <p>Stricter rules applying to product placement included in all programmes produced under UK jurisdiction (rules 9.12 to 9.13)</p>		<p>368H (3), (6)-(10), (13)</p> <p>(3) Product placement is prohibited in children’s programmes included in on-demand programme services.</p> <p>(6) Product placement is otherwise permitted in programmes included in on-demand programme services provided that—</p> <p>(a) conditions A to F are met, and</p> <p>(b) if subsection (14) applies, condition G is also met.</p> <p>(7) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is—</p> <p>(a) a film made for cinema;</p> <p>(b) a film or series made for a television programme service or for an on-demand programme service;</p> <p>(c) a sports programme; or</p> <p>(d) a light entertainment programme.</p> <p>(8) Condition B is that the product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.</p> <p>(9) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.</p> <p>(10) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.</p> <p>(13) Condition G is that the on-demand programme service in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—</p> <p>(a) at the start and end of such a programme, and</p> <p>(b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.</p> <p>9.6 Product placement is prohibited except in the following programme genres:</p> <p>a) films;</p> <p>b) series made for television (or other audiovisual media services);</p> <p>c) sports programmes; and</p>	<p>368H (4)</p> <p>Product placement is prohibited in on-demand programme services if—</p> <p>(a) it is of cigarettes or other tobacco products,</p> <p>(b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, or</p> <p>(c) it is of prescription-only medicines.</p> <p>Ofcom Broadcasting Code</p> <p>For programmes produced under UK jurisdiction:</p> <p>9.12 Product placement is not permitted in the following:</p> <p>a) religious programmes;</p> <p>b) consumer advice programmes; or</p> <p>c) current affairs programmes.</p> <p>9.13 The product placement of the following is prohibited:</p> <p>a) alcoholic drinks;</p> <p>b) foods or drinks high in fat, salt or sugar (“HFSS”);</p> <p>c) gambling;</p> <p>d) infant formula (baby milk), including follow-on formula;</p> <p>e) all medicinal products</p> <p>f) electronic or smokeless cigarettes, cigarette lighters, cigarette papers, or pipes intended for smoking; or</p>

				<p>d) light entertainment programmes.</p> <p>9.7 Programmes that fall within the permitted genres must not contain product placement if they are:</p> <p>a) news programmes; or</p> <p>b) children's programmes.</p> <p>9.8 Product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster.</p> <p>9.9 References to placed products, services and trade marks must not be promotional.</p> <p>9.10 References to placed products, services and trade marks must not be unduly prominent.</p>	<p>g) any product, service or trade mark that is not allowed to be advertised on television.</p>
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Source: EAO AVMSDatabase <http://avmsd.obs.coe.int/cgi-bin/search.php> [accessed on 08/12/2015], complemented by Commission own information

#### Transposition of the 12-minute advertising limitation (Article 23 AVMSD)

MS	Stricter rule for 12-minute limitation	Legal basis	Article 23(1) AVMSD The proportion of television advertising spots and teleshopping spots within a	Article 23(2) AVMSD Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its
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			<b>given clock hour shall not exceed 20 %.</b>	<b>own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.</b>
Belgium (French Community)	NO but stricter for teleshopping and non-linear services	French community - Audiovisual media services decree - consolidated 29 January 2015 - Art. 20	The maximum time allotted to advertisement and teleshopping within 60 minutes cannot exceed <b>20%</b> of this period. For <b>non-linear services</b> , The maximum time allotted to advertisement and teleshopping cannot exceed <b>20%</b> of the length of the programme. PSB and local channels cannot broadcast teleshopping programmes. Limit of 3 hours per day for teleshopping.	Virtual advertising and product placement are not included
Belgium (Flemish Community)	NO	Flemish community - Act on Radio and Television Broadcasting - Consolidated 12 August 2014 - Art. 81 §§ 2. and 3.	The share of television ads and teleshopping ads may not exceed <b>twenty percent</b> per clock hour.	shall not apply to announcements of the linear television broadcasters pertaining to their own programming and ancillary products that are directly derived from this, as well as sponsorship announcements and product placement
Belgium (German Community)	NO	German community - Decree on Radio Broadcasting and Cinema Presentations - consolidated 2 March 2015 - Art. 15 § 1	The share of TV advertising and teleshopping spots may not exceed <b>20%</b> within a full hour of broadcasting time.	Not included: 1. References by the television broadcaster to own programmes and ancillary products, derived directly from these programmes, are; 2. Sponsorship references and the product placement.
Bulgaria	YES for PSB	Radio and Television Act - Consolidated version of 24 December 2014 - Art. 89 (1) (2)	The share of advertising spots and teleshopping spots within a given clock hour may not exceed <b>12 minutes</b> .  For <b>PSB channels</b> (BNT): <b>15 minutes over a period of 24 hours and 4 minutes per hour</b> and may use up to one third of the total advertising time between 19:00 and 22:00 over a period of 24 hours.  For <b>regional PSB channels</b> : may not exceed <b>6 minutes</b> per hour.	shall not apply to announcements made by the broadcaster in connection with its own programme services, programmes and ancillary products derived from those programmes, promotion of European films, as well as to charity appeals and public-benefit causes.
Czech	NO	Act 231/2001 on Radio and	During each hour of television	shall not apply to a broadcaster's notification

Republic		Television Broadcasting and on amendment to other acts - Consolidated 21 April 2010 - § 50(2) and 50(4)	broadcasting by any broadcaster the time allocated to advertising and teleshopping spots shall not exceed <b>12 minutes</b> .	concerning its own programmes and ancillary products or services directly derived from such programmes, to any notification of sponsorship or product placement, to any public service announcements or announcements in favour of generally beneficial objectives broadcast free of charge, or to charity appeals broadcast free of charge.
Denmark	YES for all types of channels	Order on advertising and sponsorship - consolidated 21 June 2013 - § 6 (1)  The Radio and Television Broadcasting Act - consolidated 6 May 2010 - § 75. (1)	Advertisements on radio and television may occupy a maximum of <b>12 minutes</b> per hour. <b>Section 75 of the Radio and Television Broadcasting Act:</b> "Advertisements on radio and <b>television</b> may occupy a maximum of <b>15% of the individual licensee's daily</b> broadcast time and a maximum of <b>12 minutes per hour</b> "  Time devoted to teleshopping spots is counted in the time limit for advertising and is submitted to a specific limit of 1 hour per day.	
Germany	YES for PSB	Interstate Treaty on Broadcasting and Telemedia - consolidated 1 January 2013 - Article 16 (3)-(4) and Article 45 (1)-(2)  Article 16 of the Interstate Broadcasting Treaty	The proportion of television advertising spots and teleshopping spots within one hour shall not exceed <b>20 per cent</b> .  <b>PSB:</b> Article 16(1) provides that on <b>working days</b> the total advertising time on ARD and ZDF must be a <b>maximum of 20 minutes</b> (calculated as an <b>annual average</b> ). Sponsoring and product placement are not counted.  <b>After 8 p.m.</b> as well as on <b>Sundays</b> and on <b>public holidays</b> celebrated in the whole of Germany, <b>advertising may not be broadcast</b> .	Shall not apply to product placements and sponsorship announcements. References by the state broadcasting corporations made to their own services and programmes and ancillary products which are directly derived from said programmes and programmes, public service announcements broadcast free of charge including charity appeals and mandatory references under law are not considered to be advertising. Article 45 (2) Announcements made by the broadcaster in connection with its own services and programmes and ancillary products directly derived from said services and programmes, public service announcements and charity appeals broadcast free of charge as well statutory references are not

				considered to be advertising.
Estonia	NO	Media Service Act - Consolidated 22 May 2013 - § 29. (1)	The hourly transmission time of television and radio advertising spots and teleshopping shall not exceed <b>12 minutes</b>	Shall not apply to: "the announcements that a television and radio service provider broadcasts in connection with its own programmes and ancillary products, sponsorship announcements and product placement directly deriving from those programmes."
Ireland	YES for all types of channels	Broadcasting Act - consolidated 1 December 2014 - 43.(1) (b)	<p>The Authority shall prepare the rules as to the maximum amount of advertising in any given hour for the transmission of advertisements and teleshopping.</p> <p>The total daily time for broadcasting advertising and teleshopping spots shall not exceed a maximum of <b>18 per cent of the total broadcast day</b>.</p> <p>The time to be given to advertising and teleshopping spots in any clock hour <b>shall not exceed a maximum of 12 minutes</b>.</p>	
Greece	NO but more details on exceptions to 12-minute rule	Decree No. 109 - Article 23 1 and 3.	The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed <b>20%</b> .	Announcements made by a broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, and for other activities of the broadcaster and those of affiliated enterprises (according to Article 42e of Law 2190/1920) operating in media (information or otherwise), information and entertainment services via the Internet, production and distribution of music and / or audiovisual works, technical training for service in the above disciplines, and announcements of social interest, sponsorship announcements and product placements shall not be taken into account in calculating the aforementioned advertising time. The announcements of this paragraph must not exceed four (4) minutes per hour. If the period of four (4) minutes is not exhausted, it is possible to transfer any unspent minutes within that month, provided that the total length should not exceed six (6)

				minutes.
Spain	NO but more details on telepromotions	General Law No 7/2010 of 31 March on Audiovisual Media - consolidated 1 May 2015 - Article 14 1., Article 14 4. para. 2- 4, and Article 15 1.	Television media service providers may exercise that right by broadcasting <b>12 minutes</b> of advertisements per clock hour.	Shall not apply to : "sponsorship and product placement. Telepromotion shall also be excluded from the calculation where an individual telepromotion announcement clearly lasts longer than an advertisement and where the telepromotion as a whole does not exceed 36 minutes per day, or 3 minutes per clock hour."
France	YES for channels covering areas of 10 million inhabitants and for PSB	Law n° 86-1067 of 30 September 1986 on the Freedom of communication - consolidated 16 October 2015 - Art. 15 V. of Décret n°92-280 du 27 mars 1992	Amount is fixed in individual agreements and in the following conditions: - for terrestrial broadcasters distributed in a geographical area with a registered population of more than 10 million inhabitants: a maximum of <b>9 minutes per hour on average</b> over all the schedule periods and <b>not more than 12 minutes</b> in any given hour. - for terrestrial broadcasters in areas with less than 10 million inhabitants and those which do not use scarce resources assigned by the CSA: <b>fixed individually and in any case, not more than 12 minutes</b> in any given hour. - for local channels that cannot be received in other Member States, this may rise to 12 minutes on average and not more than 15 minutes in any given hour  For PSB channels: no advertising between 8pm and 6am	
Croatia	NO	Electronic Media Act - Consolidated 8 July 2011 - Art. 32 (1)-(2)	The duration of advertising spots and teleshopping spots within a given clock hour (...) shall not exceed <b>12 minutes</b> .	Shall not apply to announcements made by the television broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.
Italy	YES for free-to-air, pay-tv and PSB	Audiovisual Media Services Code - Consolidated 13 August 2015 - Art. 38 4 and 38 6.	In any case the proportion of television adverts and teleshopping adverts within a given clock hour shall not exceed <b>20 percent</b> .	"Shall not apply to announcements by broadcasters, including of analogue, in relation to their programmes and ancillary products directly derived from those programmes, sponsorship

			<p>For PSB: "shall not exceed <b>4 percent of the weekly</b> programming schedule and <b>12 percent of every hour</b>; any excess, in any case not exceeding 2 percent in one hour, must be recovered in the previous or following hour."</p> <p>For national free-to-air channels: "shall not exceed <b>15 percent of the daily</b> programming schedule and <b>18 percent of a determined and distinct clock hour</b>; any excess, in any case not exceeding 2 percent during the hour, must be recovered in the previous or following hour." + "shall be taken to 20 percent if it includes forms of advertising different from adverts such as telepromotions (...)the transmission time dedicated to such forms of advertising that differ from adverts shall not in any case exceed one hour and twelve minutes per day. "</p> <p>For pay-tv broadcasters: " shall not exceed 16 percent in the year 2010, 14 percent in the year 2011 and, starting from the year 2012, <b>12 percent of a determined and distinct clock hour</b>; any excess, in any case not exceeding 2 percent during the hour, must be recovered in the previous or following hour."</p>	announcements and product placements."
Cyprus	NO	Law on Radio and Television Stations - Art. 34. (1)-(2)	The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed <b>20%</b> .	Shall not include: (a) announcements made by the television organisation in connection with its own programmes and ancillary products directly derived from those programmes; or (b) communications in connection with a sponsorship or product placement.
Latvia	YES for PSB	Electronic Mass Media Law -	The time reserved for advertising and	Shall not include: "announcements of the



		Section 42. (1) and (2) 1).	teleshopping (...) may not exceed <b>20 per cent</b> of each natural clock hour. The time reserved for advertising and teleshopping (...) in television programmes or broadcasts produced within the framework of the public service remit may not exceed <b>10 per cent</b> of each natural clock hour.	audiovisual electronic mass media regarding their own broadcasts and other products which are directly derived from their broadcasts, sponsors' announcements and product placement"
Lithuania	NO	Law on the Provision of Information to the Public - Consolidated 21 May 2015 - Art. 39 11. 3)	The total time of television advertising spots and teleshopping spots within a given clock hour must not exceed <b>20%</b> .	"shall not apply to the programmes broadcast by the broadcaster of television programmes itself and announcements of the ancillary products directly related to those programmes, sponsorship announcements and product placements;"
Luxembourg	NO	Grand-ducal regulation dated 24 June 2008 that amends the grand ducal regulation dated 5 April 2001, which sets the rules for advertising, sponsoring, teleshopping and self-promotion in programs - Art. 6 ( 1) and (2)	The amount of broadcasting time devoted to advertising and to teleshopping programs within one hour must not exceed <b>20 %</b> .	"Does not apply to the messages broadcast by the broadcaster for its own programs and their by-products, the sponsor notifications and the product placements."
Hungary	NO but more details on advertisements included in the limit and daily limit on teleshopping	Act CLXXXV of 2010 on Media Services and Mass Communication - Consolidated 1 July 2015 - 35. § (1) and (3) and 35. § (2) 1)	The duration of advertisements broadcasted in linear media services may not exceed twelve minutes within any 60-minute period (...) including split screen advertisements, virtual advertisements and the promotion of the programmes of other media services. The transmission time used for broadcasting <b>teleshopping windows</b> may not exceed <b>three hours</b> per calendar day (...).	Shall not apply to: announcements intended solely for the purpose of advertising the media service itself or the products complementing the programmes broadcasted in the media service.
Malta	NO	Broadcasting Act 350 - consolidated as latest amended in 2015 - Article 19 (2) 15 and 16.	The proportion of advertising spots and teleshopping spots within a given clock hour shall not exceed <b>20%</b> .	"shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements."
Netherlands	YES for PSB	Act no 552 amending the Media Act 2008 and the Tobacco Act for the implementation of the Audio-	The programming on a programme channel consists of a maximum of twelve minutes per hour of advertisement and	[seems for the database and our assessment that there is no transposition, so stricter rule]

		Visual Media Services Directive - Art. 3.8 1.	teleshopping messages.  PSB : per channel no more than <b>15% of the total daily</b> duration of the programmes and no more than <b>12 min per hour</b>	
Austria	YES for PSB	Federal Act on Audio-visual Media Services (AMD-G) - consolidated 30 July 2015 - § 45. (1) (2)1  Federal Act on the Austrian Broadcasting Corporation (ORF-G) - consolidated 13 August 2015 - § 14. (5)(6)	The duration of advertising and teleshopping spots - shall not exceed a total of <b>20 per cent</b> of a one hour period, calculated starting from the last full hour.  Austrian Broadcasting Corporation Act: On a yearly average, television advertising broadcast all over Austria may not exceed the length of <b>42 minutes per day per channel</b> , deviations of not more than 20 per cent per day being permissible.	Not included: References by broadcasters to their own programs and supporting materials that are derived directly from these programs;  Austrian Broadcasting Corporation Act: 1. announcements by the Austrian Broadcasting Corporation of programmes on its channels and materials supporting such programmes, which are directly derived from such programmes, and 2. product placements.  Advertising for cinematographic works financed or co-financed by the Austrian Broadcasting Corporation shall not be included in the maximum permissible advertising time.
Poland	NO	Broadcasting Act - Consolidated 12 October 2012 - Art. 16. 3 and 4.	Advertising and teleshopping shall not exceed 12 minutes in any given clock hour.	" shall not apply to: 1) announcements made by the broadcaster containing solely information on its programmes or extracts of such programmes, 2) announcements made by the broadcaster containing solely information on ancillary products directly derived from the programme, 3) identification of commercial communications required by law, including identification of sponsors. "
Portugal	YES for conditional access TV services	Television Law no. 8/2011 - Article 40 1 and 2.	Broadcasting time allotted to television advertising and teleshopping between two-hour periods may not exceed <b>10% in the case of conditional access television programme services</b> and may not exceed <b>20% in the case of free-to-air television programme services</b> , whether unrestricted	"The limits established in the preceding paragraph do not apply to self-promotions, telepromotions and blocks of teleshopping, and do not apply to the promotion of associated products, including where not directly related to the programmes of the television operators."

			or subject to subscription.	
Romania	Yes for PSB	The Audiovisual Law - consolidated 22 November 2009 - Art. 35 (1)-(2)	The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed <b>20%</b> , 12 minutes respectively; in case of <b>public television</b> , their duration shall not exceed <b>8 minutes</b> from the given time of any hour.	"shall not apply to announcements made by the broadcaster in connection with its own programs and ancillary products directly derived from those programs, sponsorship announcements and product placement. "
Slovenia	NO	Audiovisual Media Services Act (ZAvMS) - Art. 32 (1) and (4)	The total amount of television advertising and teleshopping on a television channel may not exceed <b>12 minutes</b> per hour	"shall not apply to announcements broadcast by a television broadcaster in connection to its own television programmes on the same channel and ancillary products directly derived from those programmes (i.e. products specially designed to provide listeners or viewers with all the benefits of these programmes or interaction with them), sponsorship announcements and product placements."
Slovakia	YES for PSB	Act 308/2000 on Broadcasting and Retransmission and on the amendment of Act No. 195/2000 on Telecommunications - consolidated 3 February 2015 - § 36 (2) and § 37a (1) a)	Broadcasting time reserved for advertising spots and teleshopping spots must not exceed <b>20 %</b> of broadcasting within one hour (12 min.). Broadcasting time reserved for advertising <b>between 7.00 p.m. and 10.00 p.m. by a public service broadcaster</b> must not exceed <b>eight minutes</b> per a given whole hour.	Shall not apply to : " self-promotion including information about the broadcaster's own programmes, "
Finland	NO	Information Society Code - consolidated 18 September 2015 - 222 §	The proportion of broadcasting time devoted to teleshopping spots and television advertising shall not exceed <b>12 minutes</b> per hour of daily broadcasting time (...).	Shall not apply to: "1) a broadcaster's announcements of its own audiovisual programmes; 2) ancillary products directly derived from those programmes; 3) announcements related to sponsorship; 4) product placement; 5) ideological and social advertising referred to in (...); 6) teleshopping windows referred to in (...)."
Sweden	NO	Radio and Television Act - consolidated 17 June 2010 - Chapter 8 1§ para. 1 and 16§.	Promotional messages may be broadcast on television for no more than <b>12 minutes</b> per full clock hour.  +additional rule on minimum time: "The	"shall not apply to advertising that a media service provider makes for its programme activities. "

			total time devoted to promotional messages in a television broadcast <b>may not be less than one minute</b> in any given case(...)"	
United Kingdom	YES for PSB and other channels	Ofcom Code on the Scheduling of Television Advertising – 4 and 7	<p>Time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed <b>12 minutes</b>. In addition:</p> <ul style="list-style-type: none"> <li>- for <b>PSB</b>, must not exceed: i) <b>an average of 7 minutes</b> per hour for every hour of transmission time across the broadcasting day ; and</li> <li>ii) subject to (i) above, <b>an average of 8 minutes</b> an hour <b>between 6pm and 11pm</b>;</li> <li>-on <b>other channels</b>, time devoted to television advertising and teleshopping spots must not exceed <b>an average of 12 minutes</b> of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, <b>of which no more than 9 minutes may be television advertising.</b></li> </ul>	

Various rules including alcohol advertising, advertising in children's programmes and showing of a sponsorship logo in children's programmes

	<i>Prohibition of advertising in children's programmes</i>	<i>Additional prohibition /regulation of alcohol/spirits advertising</i>	<i>Prohibition of sponsorship logo in children's programmes</i>  <i>(Article 10(4)) AVMSD</i>
Austria	NO  PSB must not broadcast advertising targeting minors immediately before and after children's programmes	YES  No spirits advertising	NO
Belgium  (French Community)	YES	YES  No spirits advertising on PSB  Broadcasters advertising alcohol should provide equivalent free space for prevention campaigns	YES on PSB and local televisions
BE  (Flemish Community)	YES	YES  No alcohol advertising before and after children's programmes	YES for PSB  No sponsoring of children's programmes by alcohol producers
Bulgaria	NO	YES  No direct spirits advertising  No indirect spirits advertising before 22.00	YES

Cyprus	NO	NO	NO
Czech Republic	NO	NO	NO
Denmark	NO	NO	NO
Germany	YES	YES  No advertising on PSB after 20.00, on Sundays and official holidays	YES
Greece	NO	NO	YES
Estonia	NO	YES  No alcohol advertising on PSB  No alcohol advertising between 7.00 and 21.00	YES
Finland	NO	YES  No spirits advertising  No alcohol advertising between 07.00 and 21.00	NO
France	NO	YES	NO

		No alcohol advertising	
Hungary	NO	YES  No alcohol advertising on PSB  No spirits advertising between 18.30 and 21.30	NO
Ireland	NO	YES  No spirits advertising  No alcohol advertising in or around children's programmes	NO
Italy	NO  but protected time slot between 16.00 and 19.00 and during children programmes (no alcohol, call and contraceptive advertising)	YES  No spirits advertising between 16.00 and 9.00  No spirits advertising during breaks immediately before or after children programmes	YES
Lithuania	YES  for PSB	YES  No alcohol advertising 18.00 and 23.00  As of 2012, no alcohol advertising	NO
Latvia	NO	YES	NO

		No spirits advertising	
Luxemburg	NO	NO	NO
Malta	NO	YES No alcohol advertising between 06.00 and 21.00	YES
Netherlands	YES	YES No alcohol advertising between 06.00 and 21.00	NO
Poland	YES	YES No alcohol advertising except beer No beer advertising 06.00 and 20.00 (except during sporting games)	NO
Portugal	NO  but no split screen advertising in children's programmes and no interactive advertising in and around children's programmes  No advertising for HFFS during children's programmes and no teleshopping	YES  No alcohol advertising between 7.00 and 22.30.	NO



Romania	NO  but prohibition of split screen advertising in programmes destined to minors	YES  No spirits advertising between 06.00 and 22.00	NO
Slovakia	NO	YES  No alcohol advertising except beer and wine between 06.00 and 22.00  No wine advertising between 06.00 and 20.00	NO
Slovenia	NO	YES  No alcohol advertising	NO
Spain	NO	YES  No spirits advertising  No alcohol advertising between 6.00 and 20.30.	NO

Sweden	YES	YES  No alcohol advertising	NO
United Kingdom	NO  but may not be advertised in or adjacent to : <b>*programmes for minors audiences :</b>  -Gambling (with some exceptions) / betting  -Slimming products / treatments / establishments  -Certain religious matters  -Live premium rate services  <b>*programmes for young audiences :</b>  -Lotteries/gaming/betting  -Medicines, vitamins or dietary	YES  No low/ no alcohol drinks advertising adjacent to programmes for young audiences	YES  Product placement is prohibited in children's programmes. Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme.

	supplements  -Computer games with 18+, 16+ or 15+ rating  -HFSS products  -Matches  -Trailers for videos carrying an 18 or 15 certificate  <b>*programmes for children</b>  -Sanitary protections  -Condoms		
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Transposition of article 9(2) AVMSD on fatty food

Country	Statutory instrument/ Co-regulation	Self-regulation	General provisions in the law (encouragement)
Austria	BGB1 I No 50/2010 requires from public service broadcasters and private media providers to issue guidelines for commercial communications of HFSS foods in and between children's programmes.	Since February 2010 Code of Conduct by Austrian broadcasters, enforced by the Austrian Advertising Council.  In the event of adverse decision by the Council the broadcasters commit not to broadcast the audiovisual commercial communication concerned.	§ 36 (3) AMS-Act; § 13 (8) ORF-Act
Belgium  French community		FEVIA code – ICC food framework enforced by JEP (Belgian Advertising Ethics Board)	<u>Federal</u> competence. No specific measures in this area.  Art. 7 of the " <u>health law</u> " states that the King may, in the interest of public health, regulate and prohibit the advertising of food and on their composition or dietary properties or their effect on health."  In addition - annual plans for the promotion of healthy diet.
Belgium	Art.77 of the Decree of 27 March 2009 stipulates that commercial communications	FEVIA code – ICC food framework enforced by JEP (Belgian Advertising Ethics Board)	<u>Federal</u> competence.  Art. 7 of the " <u>health law</u> " states that

Flemish community	for children and young people may not encourage or condone excessive consumption of HFSS foods		<p>the King may, in the interest of public health, regulate and prohibit the advertising of food and on their composition or dietary properties or their effect on health."</p> <p>In addition - annual plans for the promotion of healthy diet.</p>
Bulgaria		<p>Bulgaria's National Council for Self-regulation (Advertising industry + TV and radio broadcasters) : since 2010 Framework for responsible communication on food and beverages, including special rules on HFSS foods and children</p> <p>+ The ethical Code of the Bulgarian Media – voluntary rules on HFSS foods and children</p>	
Croatia		<p>The codes of conduct have not yet been produced and published.</p> <p>In 2012, the Agency for Electronic Media organized the first meeting of the Working Group for <u>drafting</u> a <b>co-regulation</b> Act relating to the advertising of unhealthy food to children in audiovisual commercial communications. The meeting, was attended by representatives of public service broadcaster, Nova TV, RTL Television, Croatian Institute of Public Health (HZJZ), the Economic Interest Grouping companies for market</p>	

		<p>communication (HURA) and the specialized agency for audience measurement (AGB Nielsen Media Research). Since then there were several attempts made towards reaching a consensus on the codes of conduct but without significant improvements in terms of finalization and adoption.</p> <p>The activities intensified recently as the NRA decided to revise the Ordinance of protection of minors. The Agency for Electronic Media and UNICEF have signed (Zagreb, September 2014) a Memorandum of Understanding in order to support the development of media literacy of parents and children, as well as to encourage the electronic media to take advantage of their potential as much as possible in order to improve the quality of life of children and their families. The cooperation will include a research on the television viewing habits, as well as consultations with the stakeholders for the purpose of improving the regulatory framework concerning the protection of children. <u>Along these lines, the need for adoption of code of conduct regarding audiovisual commercial communication of foods high in fat, sugar and salt (HFSS) targeting children will be addressed again.</u></p>	
Cyprus		<p>FED, a non-profit, self-regulation organization created by the Cyprus Association of Advertisers, the Association of Advertisements and Communications and the majority of Cyprus Media has drafted a code of conduct for foods high in fat, sugar and salt. (available online: <a href="http://www.fed.org.cy/fed/page.php?pageID=180&amp;mpath=/138/265">http://www.fed.org.cy/fed/page.php?pageID=180&amp;mpath=/138/265</a>)</p>	<p>Obligation in the law transposing the AVMS Directive (harmonisation amendment of 10.12. 2010) placed on the media service providers in cooperation with the Cyprus Broadcasting Corporation to develop relevant code of conduct.</p>

			<p>Such a code should be submitted for approval by the Authority within a year from the entry into force of the Act.</p> <p>*it is noted that according to the suggested amendment of the Radio and Television Organizations Laws (1998-2015), that has been submitted to the House of Parliament awaiting examination , the Authority will prepare a Code of Conduct <u>in consultation</u> with FED.</p>
Czech Rep.		Self-regulatory body RPR, the Council for Advertising (including broadcasters and advertisers) uses its code of conduct which applies the <b>ICC principles</b> , including the „Framework for Responsible Food and Beverage Marketing Communications 2012“.	
Denmark		<p>Code of conduct by Forum for Responsible Food Marketing Communication – aimed at children under 13</p> <p>Forum: representatives of food industry, consumer goods retailers , media and advertising sectors</p> <p>The Code discourages the advertising of food with a high content of sugar, fat, and salt in media aimed at children. It has been effective from 1 January 2008 and it is accompanied by a</p>	

		<p>guide explaining which foods and media the code includes. It covers commercials on TV, internet (social media) and other media.</p> <p>Since the Code was signed in 2008, the marketing of food with a high content of sugar, fats or salt has disappeared.</p>	
Estonia	<p>Original text available: Relevant Code of conduct  <a href="http://www.tja.ee/public/documents/Elektroonline_side/Sideteenused/Meediateenused/Lastele_suunatud_reklaami_eneseregulatsioon.pdf">http://www.tja.ee/public/documents/Elektroonline_side/Sideteenused/Meediateenused/Lastele_suunatud_reklaami_eneseregulatsioon.pdf</a></p>	<p>According to Media Services Act audiovisual media service providers in Estonia have encouraged by the regulator (at that time the Ministry of Culture, now by the Technical Regulatory Authority) to set up the code of conduct in this area. Relevant code of conduct has been adopted by the Estonian Association of Broadcasters in 2011 and is functioning well.</p>	<p>Article 27 of the Media Services Act – media may establish codes of conduct</p> <p>- if media operators fail to establish the codes- possibility of regulation by the Minister responsible for the area.</p>
Finland		<p>General guidelines by the Consumer Agency on marketing of foods aimed at children</p> <p>The Finnish Food and Drink Industries' Federation is in the process of renewing their code on commercial communication of foods, so as to address better marketing of HFSS foods targeting children.</p>	
France	<p>Co-regulation:</p> <p>In May 2012 a Nutrition Charter agreement was signed under the care of public bodies (Health and Sport Ministries, Ministry of Culture and Communication and CSA) by broadcasters, advertising industry, TV</p>		



	<p>producers and Author's Union.</p> <p>In November 2013 a new charter to promote a favorable diet and physical activity to health in programs and advertisements broadcast on television was signed. It entered into force on 1 January 2014. The new charter was approved by a higher number of signatories (36 against 19 previously). It has more commitments (14 against 8), an increase of hours of programs to promote nutrition and physical activity.</p>		
Germany	<p>There are numerous rules on food advertising (e.g. Sections 11 and 12 of the German Food, Consumer Goods and Feed Code, EU Regulation on nutrition and health claims made on foods, Section 4(1) and Section 6 of the Regulation on nutrition claims on food and nutrition labelling for foodstuffs) which are also applicable for audiovisual commercial communication and are to be observed in the commercial communication of HFSS foods, provided this is aimed at children. Section 6 of the Interstate Treaty on the Protection of Minors, which entered into force in 2011, specifically governs the protection of minors with regard to electronic information and communication</p>	<p>The Federal Government has held talks with the advertising industry on a corresponding code of conduct since 2008 within the framework of the action plan 'IN SHAPE – Germany's Initiative for Healthy Eating and More Exercise.'</p> <p>The Federal States have also been in discussion with the advertising industry and have also encouraged the idea of codes of conduct as part of the implementation of the AVMSD.</p> <p>Under the auspices of the ZAW, the German advertising industry – including audiovisual media service providers – and advertising agencies adopted codes of conduct on commercial communication for foods on 1 July 2009 and entrusted the enforcement of these to the German Advertising Council, the central institution for self-regulation in advertising in Germany. The food, trade, media, communication agency and</p>	

	<p>media.</p> <p>The the thirteenth amending Interstate Treaty on Broadcasting, which transposed the AVMS Directive, makes reference to these code of conduct by the German Advertising Standards Council, in force since July 2009.</p>	<p>professional advertising organisations in the ZAW thus held themselves to these codes of conduct.</p> <p>They committed not to include in their commercial advertising of foods anything that could be understood as encouraging excessive and unbalanced dietary choices. The particular focus here is on children. Food advertising aimed at children should therefore not contain any direct incitements to purchase or consume foodstuffs and should not run counter to a healthy, active lifestyle. Commercial communication measures for food should also not suggest to children that the consumption of a specific type of food is indispensable for a meal to be complete and balanced. The codes can be found at <a href="http://www.werberat.de/lebensmittel">http://www.werberat.de/lebensmittel</a>.</p> <p>In the guidelines of the public broadcasters ARD and ZDF for 'Advertising, Sponsoring, Competitions and Production Aid,' dated 12 March 2010, the public broadcasters also hold themselves to these principles of conduct.</p> <p>The public broadcasters comprising ARD and ZDF are also members of the ZAW through their advertising companies and are therefore subject to the same codes of conduct of the German Advertising Council. The general terms and conditions of ARD's advertising companies and its central marketing unit, ARD Werbung Sales &amp; Services GmbH, stipulate that advertisements that are not in line with the codes of conduct of the German Advertising Council should be rejected (Clause 2 in conjunction with Clause 6 of the General Terms and</p>	
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		<p>Conditions of ARD Werbung Sales &amp; Services GmbH).</p> <p>In addition to the existing codes of conduct, the German Advertising Association (ZAW) published a catalogue of criteria containing codes of conduct at the end of 2011, which must be observed for online advertising on websites for children.</p>	
Greece		<p>No specific code of conduct but general rules of the Greek Code for Advertising and Communication set out by Union of Advertising and Communication Companies, Association of Hellenic Advertisers and licensed radio and TV stations applies.</p> <p>Additionally, there exist <b>specific voluntary commitments</b> by media service providers:</p> <p><u>The pay -TV and -radio service provider Multichoice Hellas S.A.,</u> has elaborated, since its entry into operation, <b>a code of conduct for audiovisual commercial communications of foods high in fat, sugar and salt targeting children</b> and, in general, any commercial communication targeting children, underlining that the said code is constantly being updated in accordance with the requirements of legislation, case-law and directives, recommendations and opinions issued by both the EU and the NCRTV. The code of conduct is updated by a team/committee of experienced specialised scientists-partners of the company,</p>	<p>Article 10(5) of Presidential decree 109/2010 obliges audiovisual media providers to draw up codes of conducts related to inappropriate av cc of HFSS foods accompanying or included in children's programmes, within one year of commencing their programme</p> <p>National Broadcasting Council should review the codes every two years.</p> <p>The code has not yet been established.</p>

		<p>having knowledge in the areas of pedagogy, law and marketing.</p> <p>The broadcaster <u>APT CITY NEWS S.A.</u> states that it has prepared a code of conduct and does not accept to broadcast audiovisual commercial communications of HFSS foods to children.</p>	
Hungary	<b>NO RULES</b>		
Italy		<p>In 2004, the self-regulation code on advertising has been amended with the insertion of provisions on specific parameters for the protection of minors as regards to food advertisement, in order to encourage a balanced and healthy behavior.</p> <p>On 28 October 2015 the Ministry of Health has adopted guidelines for food and drink advertisement, to ensure an adequate protection of minors' diet. This document was signed by the Ministry of Health, the Institute for Advertising Self-Regulation and some associations active in the food industry.</p>	<p>Article 36-bis, paragraph 2, legislative decree n. 177/2005:</p> <p>“The Ministry [of the communication], in consultation with the Authority and after consulting the Ministry of the health, encourages media service providers to develop codes of conduct regarding audiovisual communications business not appropriate accompanying children's programs or included in, related to food or beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, fatty acids trans, sugars, sodium or salt, excessive consumption of which</p>

			in the general diet is not recommended”.
Ireland	<p><b>Statutory rules:</b></p> <p><b>Linear services:</b></p> <p>The BAI has updated (in June 2013) broadcasting codes and rules to include requirements in terms of the promotion of HFSS foods to children. The revised rules are contained in the BAI’s General and Children’s Commercial Communications Codes (Children under 18) which can be viewed here: <a href="http://www.bai.ie/?page_id=3364">http://www.bai.ie/?page_id=3364</a></p> <p>In summary, these rules state that commercial communications for HFSS food (including drinks) shall not be permitted in children’s programmes. In addition, content rules will apply to commercial communications for HFSS food broadcast outside of children’s programmes but which are directed at children. Such commercial communications shall not:</p> <ul style="list-style-type: none"> <li>• Include celebrities or sports stars;</li> <li>• Include programme characters;</li> </ul>	<p>The Code of Conduct for On-demand Audiovisual Media Service Providers commits on-demand providers to develop a code of conduct on audiovisual communications of HFSS that target children.</p> <p>Furthermore, service providers are advised to take on board provisions of the BAI Commercial Communications Code with regard to children’s advertising for foods and beverages in the development of their codes.</p>	

	<ul style="list-style-type: none"> <li>• Include licensed characters e.g. characters and personalities from cinema releases;</li> <li>• Contain health or nutrition claims;</li> <li>• Include promotional offers;</li> </ul> <p>In addition, no more than 25% of sold advertising time and only one in four advertisements for HFSS food are permissible across the broadcast day on radio and television services. This will be assessed based on a yearly average.</p> <p>HFSS foods are defined with reference to <b>the Nutrient Profiling Model developed by the UK Food Standards Agency.</b></p> <p><b>On-demand services:</b></p> <p>BAI has approved (further to statutory instrument 258/2010) self-regulatory Code of Conduct for On-demand Audiovisual Media Service Providers</p>		
Latvia		Discussions on the establishment of code of conduct are taking place (Ministry of Health, advertising, food and media industry).	Article 24(5) of the Electronic Mass Media Law requires electronic media providers to draw up publicly available codes of conduct on AVCC

		The regulatory authority is currently checking the public availability of these codes of conduct.	of HFSS foods aimed at children.
Lithuania		Ministry of Culture, the Radio and television Commission of Lithuania are currently working in cooperation with Lithuanian Radio and Television Association on drafting such a code.	Article 39 of Media Law requires electronic media providers to draw up codes of conduct on AVCC of HFSS foods aimed at children (code in preparation).
Luxembourg	<b>NO RULES</b>  but intention to contact The Advertising Ethics Commission		Alia is also entrusted with the task of encouragement of codes of conduct in this area.
Malta	<p>The Code for the Protection of Minors (<b>S.L 350.05</b>) provides legal basis in line with Article 9 (2) of the AVMSD particularly with Articles 4, 8 and 19 .</p> <p>Article 4 states “The measures provided for in paragraph 3 of this Code shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission shall not normally hear or see such broadcasts”.</p>		<p>The Broadcasting Code provides that the Media Authority should encourage media service providers to develop codes of conduct regarding the audiovisual commercial communications of HFSS foods targeted at children.</p> <p>As per Article 31 of Broadcasting Code for the Protection of Minors (<b>S.L 350.05</b>) it hints on self regulation but to date media service providers have not drafted any self regulate policies stating that “The Authority shall encourage media service providers to develop codes of</p>

	<p>Article 8 states that “Advertisements shall not include any material that may result in harm to minors either physically, mentally or morally”.</p> <p>Article 19 states that “Advertisements for confectionery and snack foods shall not suggest that such products may be substituted for balanced meals.”</p> <p>Paragraph 35 of the Third Schedule also protects minors in a way that prohibits teleshopping windows prior or back to back to children’s programmes, “Teleshopping windows may not be broadcast immediately before or after a teleshopping aimed at children”.</p> <p>The <u>proposed</u> legislation prohibits audiovisual commercial communication of a number of HFSS products thirty minutes before during and thirty minutes after the children’s programme.</p>		<p>conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children’s programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended”.</p> <p>Also Article 16 K (g) of the Broadcasting Act hints on the inclusion of particular advertisements which would cause physical or moral detriment to minors. One can consider that the inclusion of HFSS adverts in children’s programmes might cause physical detriment to minors. Article 16 K (g)” audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to</p>
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	<p>Those prohibited products include: soft drinks, cordials, fruit juices, whether natural or concentrated, water with added vitamins, mineral water with different flavours, energy and sports drinks and drinks with caffeine content. Also other audiovisual commercial communication for food and drink containing a high content of trans fats, salt or sugar, sweet syrups, chemicals or artificial preservatives will be prohibited. This proposal is included in a recommendation by the RA to be taken into account in the new legislation amending the Code for the Protection of Minors.</p> <p>Such proposal would be in line with the Broadcasting Act namely with Article 20. (1) The Authority shall, in conjunction with the Minister draw up, and from time to time review, a code giving guidance -</p> <p>(b) as to such other matters concerning standards and practice for programmes broadcast by the Authority or by any person providing broadcasting services in Malta, as the Authority may consider suitable for</p>		<p>persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.”</p>
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	<p>inclusion in the code;</p> <p>and, in considering what other matters ought to be included in the code, the Authority shall have special regard to programmes broadcast when children and young persons may be expected to be watching or listening.</p> <p>As things stand, should anyone be willing to take action on such content, there are a number of provisions in the BROADCASTING CODE FOR THE</p> <p>PROTECTION OF MINORS (S.L 350.05) which might be used as legal basis; Par 3/4 and 8 which address the impairment of physical development and Par 19 (which addresses food advertising but in a more generic way)</p>		
Netherlands		<p>Dutch Advertising Code for Food Products(part of the Dutch advertising Code) prohibits unhealthy food advertising to children under 7 years old.</p>	

		<p>Enforced by the Advertising Code Authority (composed of advertising and media industry).</p> <p>+ other initiatives by broadcasters (Kids Vitaal) and food industry (FNLI – Dutch Food Industry Website) targeting children up to age of 12 years</p>	
Poland		<p>On 29 October 2014 7 major broadcasters signed an agreement (self-regulation) according to which advertisers who want to advertise during an around programmes aimed at children under 12 will be are required to submit declaration of compliance with the nutritional criteria.</p> <p>Nutritional criteria for self-regulation on food advertising to children under the age of 12 of December 2013 were developed by the Polish Federation of Food Industry (PFPŻ) and verified by the Food and Nutrition Institute. They are applied to all ads from 1 January 2015. It also laid down the categories of products which cannot be advertised to children under the age of 12, including: sugar, sugar-based products, soft drinks and others.</p> <p>Polish Advertising Council – Commission of Ethic in advertising enforces ICC framework for responsible food and beverage marketing communication.</p>	<p>Polish Broadcasting Act establishes that programmes for children should not be accompanied by commercial communications for HFSS foods.</p> <p>The Broadcasting Council may issue a regulation specifying the products concerned and the way those products may be included in the programmes so as they do not target children.</p>

Portugal		<p>ICAP (Civil Institute for Self-Discipline in Commercial Communication, the Portuguese self-regulation body for advertising) has a Code of Conduct which promotes guidelines on ethics of business communication and advertising. It's <u>Code of Self-Regulation in respect of commercial Communications in food and beverages to children</u> , set up 1 may 2010 was revised and the new version entered into force on 22 July 2014.</p> <p>Also the General Direction for Consumers issued recommendations regarding nutrition and health claims made about foods.</p> <p>Agreement on diet, physical activity and health and publicity targeted at children of 5 November 2009 made within the framework of the Portuguese Association of advertisers by 26 agri-food companies.</p>	
Romania	<p>Decision by NAC (Regulator) on the code regulating audiovisual communications provides for the obligation placed on radio and TV broadcasters to promote healthy lifestyles (healthy diet) in the form of warnings broadcast during the day (6-22)</p> <p>Co-regulation</p> <p>The Romanian Advertising Council adopted</p>	<p>The Romanian Advertising Council signed EU Pledge and adopted it as the Code of Ethics for food advertising aimed at children.</p>	<p>According to Article 29(8) of the Audiovisual Act av media service providers are encouraged to set up relevant codes of conduct</p>

	the Code of Advertising Practice that includes framework for responsible food and beverage marketing communications on advertising aimed at children. Where a commercial communication violates the code RAC notifies the NAC and other relevant ministries with a view to applying penalties in accordance with the audiovisual law – public summons and administrative fines.		
Slovakia		<p>Rules regulating the audiovisual commercial communication of HFSS are established by the Slovak Advertising Standards Council which is a body of ethical self-regulation of advertising and which adopted the Code of Ethics that regulates principles applicable to the advertisement of foods, <u>however not exclusively targeting children.</u></p> <p>According to Article 26 of the Code of Ethics the advertisement focused on food should present truthfully the characteristics of food, including the size, shape, look, used cover material, composition, durability, content, origin, production process and the benefit for consumer's nourishment and health as well as the food layout and surroundings, in which the food is shown. Advertisement focused on food and soft drinks shall promote healthy and balanced diet, or healthy and active life style. The advertiser shall pay particular attention in order not to present junk food in an advertisement in a way that recommends the consumer over-consumption of junk food or downplays or denies the nutritional or physiological effect of</p>	

		<p>excessive consumption of junk food. For the purposes of the Code, junk food means the food or soft drink containing excessive amount of nutrients and substances with a nutritional or physiological effect, particularly fats, trans fatty acids, sugars, salt or sodium, whose excessive intake in the overall diet is not recommended.</p> <p>The Code of Ethics also contains a provision according to which an advertisement shall not exploit the natural credulity of minors and their lack of life experience. (Article 47 of the Code of Ethics).</p>	
Slovenia		<p>Ministry of health of Republic of Slovenia is drafting guidelines on HFSS. Service providers will be able to draft codes of conduct in accordance with the guidelines.</p> <p>Ministry of Health set up an interdepartmental group whose role is to prepare measures for limiting the advertising of unhealthy foods and evaluate the possibility of restricting advertising of those foods.</p>	<p>Article 23 of the Audiovisual Media Services Act, adopted in November 2011 and amended in 2015 states:</p> <p>(1) Providers must develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fats, trans fatty acids, salt/sodium and</p>

			<p>sugars, excessive intakes of which in the overall diet are not recommended, and publish these codes of conduct.</p> <p>(2) The codes of conduct must be formulated in such a way that allows children to develop healthy eating habits in line with the nutritional guidelines published by the minister responsible for health.</p> <p>(3) Providers must send the ministry responsible for the media a copy of the codes of conduct within 15 days of their adoption, and inform the ministry of any amendment to the codes by the same deadline.</p>
Spain	<p>In 2012 a new Code was signed, a <b>co-regulation</b>, in order to comply with the Food Safety and Nutrition Law 2011. The new code extended the scope of application of the PAOS code <u>to Internet</u> directed at children less <u>than 15 year old</u>. So far 44 companies, representing 95% of the sector's advertising investment adhered to the Code. It does not contain an advertising ban of HFSS products to children but focuses on the control of content (rather than scheduling). Its main</p>	<p>PAOS code for food advertising to minors (since September 2005 , since 2009 agreement between the Spanish Ministry of Health and Consumer Affairs, the television channels, the Federation of Food and Beverages Industries and Autocontrol, committing not to broadcast advertisements non compliant with PAOS Code</p> <p>Enforcement entrusted to the Spanish Advertising Self-regulatory body- Autocontrol –possibility to impose financial sanctions</p>	<p>The Law on Audiovisual Communication (LGCA) provides that the media regulator will encourage audiovisual media service providers to establish codes of conduct on commercial communications of HFSS foods to children.</p>

	<p>rules concern the restrictions on sales pressure, education and nutritional information, presentation and information about products etc</p> <p>In 2015 a new Code to protect children has been published</p>	<p>The Law 3/2013 of 4 June creates the National Markets and Competition Authority (CNMC), and it allocates the supervision of the audiovisual content co-regulation at this NRA.</p>	
Sweden	Sweden bans TV advertising aimed at children		
UK	<p>Linear services:</p> <p><b>A total ban on HFSS foods advertising in and around children's programmes , on dedicated children's channels and in programmes of particular appeal to children under the age of 16</b></p> <p>(Statutory rules by stages since 2007, final phase January 2009 )</p>		



	<p>Administered by ASA on behalf of Ofcom.</p> <p>The rules also require that advertising for HFSS products aimed at children outside these times should not use techniques calculated to be of particular appeal to children. New advertising content rules which apply to HFSS adverts targeted at children up to primary school (12 years) age were also introduced. The effectiveness of these rules, which remain in force, was last reviewed by Ofcom in 2010.</p> <p>Total ban on product placement of HFSS foods</p> <p><b>On demand :</b></p> <p>In relation to non-linear audiovisual media services, the UK government introduced legislation requiring Ofcom or its designated co-regulator (ASA) to ensure that providers comply with the rules of Article 9.2 AVMSD.</p>		
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	<p>In case of non-compliance with ASA adjudication case is referred to Ofcom, empowered to impose sanctions, including financial penalty.</p>		
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## ANNEX 7 - SECOND REPORT ON THE APPLICATION OF THE AVMSD



Brussels, XXX  
[...] (2016) XXX draft

### REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

**Second report from the Commission to the European Parliament, the Council and the  
European Economic and Social Committee on the application of Directive 2010/13/EU  
"Audiovisual Media Services Directive"**

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**(1) REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

**Second report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2010/13/EU "Audiovisual Media Services Directive"**

**1. INTRODUCTION – BACKGROUND TO THIS REPORT**

Article 33 of the Audiovisual Media Services Directive, 'the AVMSD', invites the Commission to submit regularly a report on the application of the Directive to the European Parliament, the Council and the European Economic and Social Committee. This is the second application report on the AVMSD and covers the period 2011-2013. Developments in 2014 and 2015 are covered where appropriate.

2014 marked the 25<sup>th</sup> anniversary of the Television Without Frontiers Directive and of the AVMSD. In 25 years, the number of channels and cross-border services has risen enormously. As of end 2013, 5141 TV channels were established in the EU (without counting local channels and specific advertising windows). Almost 1900 of them (about 37% of the total established channels) targeted foreign markets (either EU or extra EU)<sup>402</sup>. Concerning on-demand audiovisual services<sup>403</sup> at large<sup>404</sup>, data as of December 2014 indicate that 2563 of such services were established in the EU. Video-on-demand (VoD) services and catch-up television services taken together represented 73% of the total number of services. On average, 22% of all VoD services available in a given country were established in another EU country<sup>405</sup>.

Convergence of media is materialising and has an impact on the way in which audiovisual services are consumed and delivered. This has prompted debates in the EU. This is why the Commission published in 2013 the Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values"<sup>406</sup> followed by a public consultation. The objective was to open a broad public discussion on the implications of the on-going transformations of the audiovisual media landscape, characterised by a steady increase in the convergence of media services. This led in 2015 to the AVMSD being subject to an evaluation under REFIT, the European Commission's Regulatory Fitness and Performance programme. In this exercise, considerations relating to simplification and administrative burdens are assessed jointly with the overall functioning of the Directive.

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402 Source: EAO Refit exercise: contribution of Data and Information by the European Audiovisual Observatory - Note A1: Linear Audiovisual Media Services

403 Source: European Audiovisual Observatory, Report on VOD EU market, p.21 <http://ec.europa.eu/digital-agenda/en/news/demand-audiovisual-markets-european-union-smart-20120028>

404 It includes: branded channels of open platforms, catch-up TV services, news portals, generalists, music, films and TV fiction, documentary, for children/animation, archives, film trailers, sport, lifestyle, general interest, adult content and other .

405 Source: EAO Refit exercise: contribution of Data and Information by the European Audiovisual Observatory - Note A2: On-Demand Audiovisual Media Services

406 COM(2013) 231 final

The main objective of this report is to present the most distinctive elements of how Member States have applied the AVMSD during the reporting period. It takes into account recent developments such as the replies to Green Paper consultation<sup>407</sup>, Court cases and trends witnessed by the Commission services. It is also based on the replies from Member States to a questionnaire sent by the Commission services in 2014. The amount of information provided by Member States and its level of detail vary deeply across Member States.

The present report constitutes an input to the REFIT process and does not prejudice its outcome.

## **APPLICATION OF THE DIRECTIVE**

### **Services falling under the scope of application of the AVMSD**

Article 1(1)(a)(i) AVMSD defines an audiovisual media service. The following seven cumulative<sup>408</sup> criteria need to be met: 1) a service, 2) under the editorial responsibility of a media service provider, 3) the principal purpose of which is, 4) the provision of programmes, 5) to inform, entertain or educate 6) the general public, 7) by electronic communications networks. Services meeting these criteria will be subject to the AVMSD.

Most Member States have simply transposed this definition into their national legislation. A number of Member States have adopted guidelines, in particular to clarify which service providers should notify their services to the regulatory bodies when such a system is in place.

Some national regulators and courts have adopted decisions or judgments in application of Article 1(1)(a)(i) AVMSD.

Two Member States have examined the case of audiovisual information offered in retail and public places (i.e. screens showing audiovisual content in places such as supermarkets, local authorities etc.) and have found that they did not constitute audiovisual media services. One Member State assessed several cases of user-generated content services but deemed that they were out of the AVMSD scope due to the providers' lack of editorial responsibility over the content. Another Member State faced a number of cases. For example, the relevant regulatory body ruled that two YouTube channels of broadcasters were not audiovisual media services. The regulatory body also found that an online service providing music video clips was an audiovisual media service. Several services offering online adult audiovisual content were also deemed to be within the AVMSD scope. In this same Member State, the regulator considered that audiovisual content provided by online versions of newspapers did not constitute an audiovisual media service<sup>409</sup>. This approach diverges from the one adopted in two other Member States where the regulators considered such services to be audiovisual media services<sup>410</sup>. In

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407 A feedback paper and an executive summary have been published to report on the results of the public consultation: <https://ec.europa.eu/digital-agenda/en/news/publication-summaries-green-paper-replies>

408 As underlined in Recital 29 of the Directive: "[a]ll the characteristics of an audiovisual media service set out in its definition and explained in recitals 21 to 28 should be present at the same time."

409 Ofcom's Sunvideo decision (<http://stakeholders.ofcom.org.uk/enforcement/video-on-demand-services/sun-video-decision-appendices/>)

410 See for example the Swedish Broadcasting Commission's decisions n<sup>o</sup> 12/00777, 778, 779 and 780 (<http://www.radioochtv.se/CaseDecisions/206404.pdf>, <http://www.radioochtv.se/CaseDecisions/206405.pdf>, <http://www.radioochtv.se/CaseDecisions/206406.pdf>, <http://www.radioochtv.se/CaseDecisions/206407.pdf>).

case C-347/14 (*New Media Online GmbH v Bundeskommunikationssenat*), the ECJ clarified that videos that are short in length can qualify as audiovisual media service under the AVMSD, when the content offered competes for the same audience as television broadcasting. The ECJ also clarified that the AVMSD applies when audiovisual media content is in content and form independent of the main service offered by a provider (whether this main service is press articles, personal messaging or User Generated Content - UGC). This is the case even when the main service is of a different nature, e.g. text, and the audiovisual content is not merely an indissociable complement to that activity, in particular as a result of the links between the audiovisual offer and the offer in text form.

In addition, there are services that could fall within the scope of other regulatory frameworks (for example, the e-Commerce Directive). This was in particular mentioned by one Member State who encountered difficulties in assessing these services. This same Member State considered that the online video catalogues of several radio stations constituted audiovisual media services.

In the replies to the Green Paper consultation, some stakeholders considered that new types of services should be covered by the AVMSD. Others think that regulating new services will have a negative impact on innovation. Some respondents claim that it is too early to assess.

### **Free circulation of services across Member States**

If an audiovisual media service provider falls under the jurisdiction of a third country, the AVMSD and its procedures will not be applicable. Most Member States do not report any issues with broadcasters located outside the EU. As to on-demand audiovisual media services provided from outside the EU, the few cases mentioned concern services that offer adult programmes and do not have the necessary safeguards in terms of protection of minors.

Article 2 AVMSD comprises a number of criteria to determine whether a service falls under a Member State's jurisdiction (where the provider has its head office, where editorial decisions are taken, where a significant part of the workforce operates etc.). In case these criteria do not apply, Article 2(4) mentions the place where the satellite up-link is situated or where the satellite capacity is used. Given that an important satellite operator is established on its territory, one Member State reported several issues about incitement to hatred and respect of human dignity with channels originating from third countries (but using this Member State's satellite capacity) since 2012.

The main objective of the AVMSD is to ensure the free circulation in the EU of audiovisual media services under the jurisdiction of EU Member States. This is enshrined in Article 3(1) AVMSD. Member States can restrict the reception and retransmission of such services on their territory only in limited cases and following the procedures laid down in Articles 3 and 4 AVMSD.

For television broadcasting, such restrictions are limited to cases of incitement to hatred and protection of minors. The procedure includes a first cooperation phase where the Member State concerned contacts the transmitting Member State to try to produce an amicable settlement. A few Member States have encountered issues regarding protection of minors and have cooperated fruitfully with their

counterparts. One of these Member States highlighted that cooperation proved to be difficult with the concerned regulatory bodies that did not have recordings of the programmes in question.

In relation to incitement to hatred, in the course of spring 2014, the Latvian and Lithuanian national audiovisual regulators decided to suspend the rebroadcasting of certain Russian-language television channels in Latvia and Lithuania. This case, discussed at a Contact Committee meeting, has raised the issue of how to draw a line between hate speech and propaganda, in the perspective of national security and public order. It has also highlighted the importance of exchanging information between regulators and the Commission to determine jurisdiction. The discussion has also allowed to underline the importance of procedures in Articles 3 and 4, and their appropriateness to deal with emergency situations was questioned. On 10 July 2015, the Commission adopted a decision on the compatibility with EU law of the Lithuanian measures as regards RTR Planeta, pursuant to Article 3(2) AVMSD<sup>411</sup>.

In case a Member State has adopted stricter rules in an area coordinated by the AVMSD and encounters issues with a television broadcast mostly or wholly directed towards its territory, it can use the procedure provided for in Article 4(2) AVMSD. One Member State reported a case on alcohol advertising and was considering applying the procedure to its full extent. Another Member State mentioned two separate issues linked to protection of minors and public health for which compromises have been found.

In the Green Paper public consultation, many respondents found the country of origin principle valuable and fundamental to the single market. Some believed that its effectiveness should be improved. A minority supported moving to a country of destination principle, in all or limited cases.

### **Protection of minors**

To protect minors from content which might impair their development, the majority of Member States have chosen – for linear services – to use techniques based on the time at which the content is transmitted, i.e. watershed-based restrictions. Such measures are accompanied by on-screen icons, content rating/classification measures and in some cases special warnings for viewers. Some countries have also put in place technical means or parental control measures to restrict access to harmful contents.

As regards non-linear services, the majority of Member States require, from service providers, the use of technical measures to ensure that minors will not see or hear harmful material. The use of a PIN access code is one of the most common measures. Some Member States also use age verification mechanisms and separate catalogues with parental control systems. These mechanisms are often complemented by content rating and content classification schemes. The watershed technique is also used for specific services (e.g. the on-demand offer of the public service broadcaster) or situations (e.g. the parental control mechanism is linked to the time of transmission and/or labelling).

In most Member States, the audiovisual regulatory bodies monitor and enforce compliance with these requirements in linear services. In some cases, monitoring is carried out on the basis of complaints or on a case by case basis. Monitoring can be based on a systematic recording of all television programmes or

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411 Commission Decision of 10.7.2015, C(2015) 4609 final [http://ec.europa.eu/newsroom/dae/itemdetail.cfm?item\\_id=24517](http://ec.europa.eu/newsroom/dae/itemdetail.cfm?item_id=24517)



on selected annual/yearly checks, conducted either by the regulatory authority itself or by an independent professional service. In one Member State, the authority evaluates the functioning of the self-regulatory system.

In non-linear services, the majority of the Member States who replied to this question do not monitor regularly compliance with the rules for on-demand audiovisual services. Only some Member States monitor it through selected checks or on the basis of complaints.

As regards the number of cases reported, most Member States claim to have dealt with a limited number of them concerning on-demand services<sup>412</sup>. Only one Member State registered a higher number of complaints. For linear services, most Member States report issues which range from a few cases a year to more frequent occurrences, while two Member States report a high number of cases (more than 100). However, most Member States do not monitor on-demand services, while they do actively monitor linear services.

Most respondents to the Green Paper consultation have raised concerns in the area of protection of minors, in particular as regards on-demand services and services not covered by the AVMSD. However, there were different views on whether and how these concerns should be addressed by a change of the AVMSD rules on protection of minors.

### **Accessibility for visually and hearing impaired persons**

Since the first application report, the proportion of audiovisual media services accessible to people with visual or hearing disabilities has increased.

Almost all Member States have introduced statutory rules requiring services providers to adopt measures to facilitate the accessibility of audiovisual services to visually and hearing impaired persons. In a number of countries, the measures are set in the public service contracts and licence agreements. Some Member States set quotas of accessible programming to be reached by broadcasters and, in a few cases, also by on-demand audiovisual media service providers. Others provided for state aid. The most used technique is subtitling, followed by audio-description and sign language. Some Member States have introduced the obligation to inform about the accessibility services. Nine countries report voluntary agreements between the broadcasters and/or on-demand service providers.

Statutory rules on accessibility services include reporting obligations and/or monitoring activities. In case of non-compliance, regulators may impose financial sanctions.

As regards voluntary agreements among providers of audiovisual media services, compliance is monitored by themselves.

In the public consultation on the Green Paper, respondents' views diverged as to whether additional standardisation efforts are needed in the field of accessibility services. Different incentives were

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412 Differences in the regulatory approach to different types of content on screen might moreover make it difficult for users to determine which regulatory bodies to complain to. For example, the portal Parentport is a common media regulatory bodies' website in the UK to make a complaint.

suggested to encourage investment in innovative services, such as national subsidies, tax incentives or industry-led initiatives.

### **Freedom of expression: right to information**

On 21 December 2011, the Commission adopted a positive decision<sup>413</sup> on the list of events of major importance for society proposed by Italy. The public has therefore the possibility to view these listed events on free television.

On 17 February 2011, the Court of Justice adopted three judgements concerning the list of events of major importance of Belgium and the United Kingdom. FIFA and UEFA had challenged the Commission's decisions, arguing that not all listed World Cup and EURO matches constitute events of major importance for the general public. The General Court dismissed their actions and FIFA and UEFA had appealed these judgments.

In the appeal judgments<sup>414</sup>, the Court of Justice pointed out that the Commission has to limit its review to the effects of a Member State's designation of events as being of major importance on the freedoms and rights recognised under EU law which exceed those which are intrinsically linked to such a designation.

The Court considered that, for the purpose of determining events of major importance, the World Cup and the EURO tournaments must be considered divisible into different matches or stages. Contrary to the findings in the judgments under appeal, Member States need to communicate to the Commission the reasons justifying why they consider the final stage of the World Cup or the EURO, in its entirety, to be a single event. As those errors did not have any impact in the present cases, the Court dismissed the appeals brought by FIFA and UEFA in their entirety.

In order to ensure the public's access to information on events of high interest, Member States must ensure that any broadcaster established in the Union has access to short extracts of events of high interest to the public which are transmitted on an exclusive basis. According to the relevant AVMSD provision, Member States shall define the modalities and conditions for the provisions of such short news reports. In doing so, Member States can also provide for compensation arrangements. In a request for a preliminary ruling,<sup>415</sup> the Court of Justice held that the compensation can be limited to the additional costs directly incurred in providing access to the signal.

In addition, on 25 February 2014, the Commission adopted a decision<sup>416</sup> concerning the modification of an existing list in Belgium. Finally, on 21 November 2014, the Commission adopted a decision<sup>417</sup> on the

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413 OJ L 187 of 17.07 2012, pages 57-61

414 C-205/11 P - FIFA v Commission <http://curia.europa.eu/juris/documents.jsf?num=C-205/11>, C-204/11 P - FIFA v Commission <http://curia.europa.eu/juris/documents.jsf?num=C-204/11>, C-201/11 P - UEFA v Commission <http://curia.europa.eu/juris/documents.jsf?num=C-201/11>

415 C-283/11 - Sky Österreich <http://curia.europa.eu/juris/liste.jsf?num=C-283/11>

416 Commission Decision (EU) 2014/110 of 25 February 2014, OJ L 59 of 28.2.2014, p. 59-42

417 Commission Decision (EU) 2015/163 of 21 November 2014, OJ L 27, 3.2.2015, p. 37-41

list of events of major importance for society proposed by Poland and on 8 April 2015, the Commission adopted a decision<sup>418</sup> on the list proposed by Denmark.

### **Cultural diversity: promotion of European works in on-demand services**

The first report on the application of Articles 13, 16 and 17 AVMSD covered the period 2009-2010<sup>419</sup>. The report, which was published on 24 September 2012, also covered, for the first time, the promotion of European works in on-demand services (Article 13 AVSMD). In this area, Member States have flexibility as to the means to implement Article 13. The Directive only gives three examples: financial contributions made by such services to the production and rights acquisition of European works or the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service. The report revealed a lack of uniformity in implementing this obligation. However, at the time of the report, only 14 Member States had provided information.

Given that on-demand services become particularly relevant in the context of convergence and connected devices, the Commission carried a further fact-finding exercise. A detailed questionnaire was sent to national regulatory bodies asking for their views and experiences regarding the implementation of Article 13 AVMSD. This was followed by a stakeholder event on 18 November 2013, with the title "Hearing on the promotion of European films and TV series on-line". Stakeholders discussed the three methods mentioned by the AVMSD. Panels consisted of VoD players, regulators and other stakeholders from the sector (a representative of a film fund, a broadcaster, a film marketing expert and a producer).

On the basis of this input, the services of DG CONNECT published the document "Promotion of European works in practice"<sup>420</sup> in July 2014. The document gives an overview of the national legislative frameworks and approaches to promote European works on VoD services. The document shows that Member States have taken very diverse approaches. They range from very extensive and detailed measures to a general obligation to promote European works. Some of the tools adopted by Member States seem to be particularly effective in practice: for example, prominence tools giving more visibility and publicity to European films seem to be efficient and put a less heavy burden on VoD operators. Input received shows that tools of this nature are the least intrusive instrument, while if well implemented, can deliver good results. The close co-operation with the industry regarding the use of such tools seemed to be of crucial importance for the success of such measures. Several Member States have imposed on VoD providers the obligation to reserve a share of European works in their catalogue. The required shares vary considerably (10-60%). While some regulators saw such a share as an efficient tool, others, and several stakeholders from the industry claimed that this measure is not appropriate for the promotion of European works in on-demand services and may be even contra productive. Views regarding financial contributions were also split. While several regulatory authorities see this method as most efficient, others stressed that they put the heaviest burden on operators. It was also argued that at the current early stage of the development it may halt the growth of the VoD market.

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418 Commission Decision (EU) 2015/1097 of 8 April 2015, OJ L 177, 8.7.2015, p. 54–59

419 First Report on the Application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2009-2010 Promotion of European works in EU scheduled and on-demand audiovisual media services COM/2012/0522 final <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52012DC0522>

420 <http://ec.europa.eu/digital-agenda/news/promotion-european-works-practice>

In the responses to the Green Paper consultation, many questioned whether the AVMSD "toolbox" for the creation and distribution of European works is indeed adequate in an online world. However, views diverged among respondents: some considered the current rules sufficient while others saw them as no longer fit for purpose. Views regarding the methods set down in Article 13 showed a diverse picture. Some (notably some public bodies) favoured financial contributions; others felt that such rules should not extend to new players. Many expressed doubts about the effectiveness of obligatory shares in VoD catalogues. Many saw prominence well suited for the on-line environment, and there were almost no views expressed against prominence requirements. Some consumer organisations and network operators feel that rules on promoting EU works in non-linear services (Article 13 AVMSD) are implemented unevenly. Others favour flexibility for Member States. Some respondents (particularly from France) supported moving to a country of destination principle regarding the promotion of European works.

On 4 March 2014, Germany notified to the Commission, in the context of the state aid procedure SA.38418, an amendment to the Film Promotion Act (Filmförderungsgesetz). The amended Act - adopted on 12 June 2013 - imposes a levy obligation on cinema operators, broadcasters and the video industry at large within Germany. The levy obligation applies also to revenues of providers of video-on-demand services not established in Germany, if these revenues have been realized through an internet presence in the German language with customers in Germany. This raises questions as to whether the levy is subject to the AVMSD, in particular Article 13. The Commission's investigation is ongoing.

### **Commercial communications**

In a request for a preliminary ruling<sup>421</sup>, the Court found that the Italian rule on television advertising, which lays down lower hourly limits for advertising for pay-TV broadcasters than for free-to-air TV broadcasters, is, in principle, compatible with European Union law. The principle of proportionality must however be observed.

Since the last application report, the Commission monitored advertising practices in ten Member States. In all monitored Member States, the 12-minute limitation of advertising spots has been overpassed. However, this varies widely between very marginal numbers of occurrences to important numbers of occurrences if other kinds of commercial communications are taken into account. The qualification and inclusion of these types of commercial communications in the 12-minute limitation is disputed by most Member States. On the basis of these findings, administrative letters were sent to the Member States concerned to raise these issues with them.

Similarly to the eight previous Member States monitored, the monitoring of advertising practices also revealed a number of issues in the areas of sponsorship, self-promotion and product placement, concerning in particular the interpretation of some of the related concepts. Those divergences have led to fragmentation between Member States and have in some cases increased the number of occurrences in which the 12-minute limitation has been overpassed in case these commercial communications were qualified as advertising spots (rather than sponsorship announcements or self-promotion, for example). For sponsorship announcements, the main issue was thus their potential undue promotional character and the interpretation of this notion. In some Member States, these sponsorship announcements were

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421 C-234/12 - Sky Italia <http://curia.europa.eu/juris/liste.jsf?num=C-234/12>

closer to shorter forms of advertising spots. In punctual cases, there may also be a lack of identification of the sponsorship agreement. In a much more minor way, another issue related to the prohibition of sponsorship for news and current affairs programmes. Product placement raised the issue of undue prominence in two Member States and there may also be a lack of indication of product placement in some programmes in a few Member States. More marginally, it also seems that some spots did not always clearly fulfil the characteristics of self-promotion and would have to be counted in the 12-minute rule. In some Member States, a few cases where products appeared in some programmes without sponsorship or product placement indications raised the issue of the presence of surreptitious advertising and recognisability of advertising. In two Member States, there were issues with longer forms of advertising and with prize draws which could constitute teleshopping.

The qualitative provisions concerning alcohol advertising, gender discrimination and advertising targeting minors were also monitored during the reference period<sup>422</sup>.

In the monitored Member States, alcohol advertising represented between 0,7% and 2,4% of the overall advertising activity. The percentages are based on the total number of spots broadcast over the monitored period. In one of the monitored Member States, advertising for alcohol products is prohibited.

A significant proportion of the analysed advertising spots contained elements which might be linked to some of the characteristics banned by the AVMSD, although in view of the detailed requirements of the AVMSD they fell short of constituting a clear cut infringement. The main issue was the use of techniques that could attract the attention of a young audience (humour, music, young-looking protagonists etc.). The monitoring also showed a few cases where alcohol is symbolically associated with physical performance and social and sexual success. However, as in the previous monitoring exercise, no cases of clear infringements have been found.

The Commission has launched a study on minors' exposure to alcohol advertising<sup>423</sup>. The study showed that 7.3% of the total number of impacts to alcohol advertising<sup>424</sup> in the EU on linear audiovisual media services in 2013 were seen by minors (under age 18). This means that on average, a minor in the EU saw 200 alcohol impacts during one year (as compared to over 450 by an adult). The study revealed a great number of measures put in place by the industry to prevent exposure of minors to alcohol advertising. Yet at the same time, minors perceived to have been exposed to alcohol advertising online. There was a wide variety of themes used in the advertisements. The most typical ones were the association of alcohol with sociability and depicting drinking with humorous tone. As such, 25% of the advertisements (TV and online) contained at least one of the elements described in the AVMSD, though this does not imply that the Directive was necessarily breached. These results are taken into account in the REFIT exercise.

The AVMSD also regulates advertising targeting children. Content analysis of the 100 most frequently broadcast advertising spots showed that the Directive's provisions on the protection of minors in

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422 Content analysis was considered to be the most appropriate methodology. For a description, see SWD(2012) 125 final <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0125&from=EN>

423 Study on the exposure of minors to alcohol advertising on linear and non-linear audio-visual media services and other online services, including a content analysis

424 Impact is a measure of how often a spot is viewed: it yields the absolute number of times a spot was seen over a given timeframe.

advertising were seldom contravened. As with alcohol advertising, because of the detailed wording of the relevant provisions, there are few infringements of the AVMSD. Nevertheless, it does appear that advertising techniques geared towards minors are used in television advertising.

As reported in the previous report, 14 Member States have adopted stricter rules for advertising in children's programmes. During the reference period, three Member States have reported having adopted new rules in this area. In general, advertising is the main area in which Member States have adopted new stricter rules during the reference period. Protection of minors is the other area in which stricter rules have been adopted over this period.

In the replies to the Green Paper consultation, many considered that the qualitative AVMSD advertising rules should continue, though some public bodies felt that rules on product placement and sponsorship were difficult to apply. Some would rather tighten advertising rules for non-linear players. Some, however, claimed that additional rules on advertising for non-linear services might be too strict to allow for innovation. In contrast, many believed that quantitative rules should disappear or be more flexible.

In order to maximise the overall added value of monitoring the advertising rules of the AVMSD, the Commission has launched a study to help define the future framework for the monitoring of these provisions. This will allow building further synergies with Member States to ensure a better cost/benefit ratio. This study has been combined with the provision of some elements supporting the AVMSD impact assessment process. Results are expected in the first quarter of 2016.

### **Self-regulatory initiatives**

Since the last application report, four Member States have adopted new self-/co-regulation systems, mostly in the field of protection of minors (in particular in on-demand services) and accessibility.

In the specific area of codes of conduct on audiovisual commercial communications of food and beverages high in fat, salt and sugars (HFSS) to children (Article 9(2)), most Member States did neither update the current codes nor develop new codes of conduct. There are still a number of Member States where there are no relevant measures in place or where the existing legislation only encourages the developments of such codes. In many cases the existing codes do not specifically address audiovisual commercial communications of HFSS food products addressed to children. They refer in general to the advertising of food products or focus on the promotion of a healthy diet. In only eight cases have codes been updated or have new codes been set up since the last application report. In two Member States, new legislation or co-regulatory measures are at a drafting stage. In two other Member States, new self-regulation is being developed.

For the advertising and marketing of food to children, self-regulatory practices have also been promoted at EU level through the EU Platform for Action on Diet, Physical Activity and Health. The Platform has so far promoted a total of more than 300 stakeholder commitments, some of which cover the area of food and drink marketing (namely targeting children). Responsible commercial communication for alcoholic beverages also accounts for 28% of 300 commitments undertaken in 2007-2014 by members of the European Alcohol and Health Forum. Self-regulation of marketing and advertising of alcoholic beverages has thus substantially improved from 2007 to 2010 and stayed stable from 2010 to 2014 in terms of media services and Member States covered.

The majority of regulatory bodies do not monitor the implementation of the codes of conduct, except where co-regulatory systems are in place. They rely on the monitoring carried out by the self-regulatory bodies, only few of which report to the regulator in cases of non-compliance. In those Member States where statutory rules were adopted, the monitoring and enforcement activities are carried out regularly by the regulatory bodies.

In 2013 the Commission launched a Community of Practice<sup>425</sup> (CoP). The initiative's objectives are to promote "the Principles for Better self- and co-regulation"<sup>426</sup>. They reflect current good practice and offer a benchmark for effective self-/co-regulation actions. The Community also aims at supporting capacity-building in the use of "the Principles" and at developing a culture of self- and co-regulation. The Community works both through plenary meetings (so far five meetings were held: one in 2013, two in 2014 and two in 2015) and an online platform. All stakeholders are invited to join the CoP in order to improve and promote "the Principles".

Many respondents to the public consultation launched by the Green Paper expressed the view that in particular in the area of advertising regulation, protection of minors and accessibility of audiovisual content, more room should be given to self- and co-regulation.

While the Commission is aware that there is a range of self-regulatory approaches in EU Member States in various areas related to the AVMSD, it would benefit from additional information on the effectiveness of self-regulatory approaches. In this context, the Commission has launched a study to provide up-to-date knowledge on the state of play of self- and co-regulatory systems in the field of audiovisual media services in the 28 Member States. This study will also assist the Commission in assessing the effectiveness of the identified rules, as well as their acceptance by various stakeholders, using "the Principles" as a benchmark. Results are expected in the first quarter of 2016.

### **Cooperation between regulators: European Regulators Group for Audiovisual Media Services (ERGA)**

Article 30 AVMSD acknowledges the role of the independent regulatory bodies in enforcing the national measures transposing the provisions of the AVMSD. At the same time, the Commission has been faced with the limitations of Article 30 that does not guarantee the independence of audiovisual regulatory bodies. The limitations of this provision were also visible in the pre-accession negotiation process where the Commission lacked a binding instrument to require the independence of newly created audiovisual regulatory bodies.

In order to provide for clear guidelines on how to assess the independence of the regulatory bodies in the audiovisual sector, the Commission requested a study<sup>427</sup> which provided a set of criteria for the independence of audiovisual regulatory bodies such as status and powers, financial autonomy, autonomy of decision makers, knowledge, transparency and accountability. In order to update the information as regards the independence of the audiovisual regulatory bodies in Member States and candidate countries, the Commission has launched an update of this study. The final report of the study

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425 <https://ec.europa.eu/digital-agenda/en/community-practice-better-self-and-co-regulation-0>

426 [http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/CoP - Principles for better self- and co-regulation.pdf](http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/CoP_-_Principles_for_better_self-_and_co-regulation.pdf)

427 "Indicators for independence and functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive",

[http://ec.europa.eu/archives/information\\_society/avpolicy/docs/library/studies/regulators/final\\_report.pdf](http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/regulators/final_report.pdf)

was published on 8 December 2015. The study provides an updated analysis of the institutional, legal and regulatory framework governing the regulatory bodies competent for audiovisual media services in EU Member States and candidate countries. It also comprises the analysis of the implementation of the said framework in practice and its effectiveness.

In 2013, the Commission launched a public consultation on the independence of audiovisual regulatory bodies. All the respondents considered that the independence of audiovisual regulatory bodies is very relevant for the preservation of free and pluralistic media when applying the AVMSD and for the effective transposition and application of the AVMSD. They also agreed that cooperation between regulatory bodies is crucial in the convergent environment and supported the legally mandated gathering of these bodies at European level. Similar conclusions were reached by the High Level Group on Media Freedom and Pluralism<sup>428</sup>. The report by the Group recommended that all regulators should be independent, with appointments being made in transparent manner, with all appropriate checks and balances. They also recommended that cooperation between regulatory bodies should be reinforced.

The importance of strengthening the independence of audiovisual regulatory bodies was also recognised for the first time by the Culture Council conclusions of November 2013 on media freedom and pluralism. They invited Member States to ensure the independence of audiovisual regulatory bodies. They also invited the Commission to strengthen cooperation between Member States' audiovisual regulatory bodies.

As a follow-up to the abovementioned calls for action, on 3 February 2014 the Commission adopted a Decision<sup>429</sup> establishing the European Regulator's Group for Audiovisual Media Services (ERGA).

ERGA is a Commission's expert group composed of independent national regulatory bodies of EU Member States in the field of audiovisual media services. They are represented by the heads or by nominated high level representatives of the national regulatory body with primary responsibility for overseeing audiovisual media services. ERGA's tasks consist in advising and assisting the Commission in its work to ensure consistent implementation of the AVMSD and other related fields in which the Commission can act. It facilitates cooperation between regulatory bodies in the EU, and allows for an exchange of experience and good practice. The inaugural meeting of ERGA took place on 4 March 2014.

The Group's work is based on the input produced by the sub-groups and approved by all the members. The first outcome of ERGA's work is the statement on independence<sup>430</sup> adopted during the second plenary meeting of ERGA on 21 October 2014. This statement underlines certain characteristics of independence. It also requests the Commission, as the initiator of European legislation, to take these considerations and the following work into account in the context of the upcoming REFIT exercise of the AVMSD.

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428 <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf>

429 <http://ec.europa.eu/digital-agenda/en/news/commission-decision-establishing-european-regulators-group-audiovisual-media-services>

430 [http://ec.europa.eu/information\\_society/newsroom/cf/dae/document.cfm?action=display&doc\\_id=7310](http://ec.europa.eu/information_society/newsroom/cf/dae/document.cfm?action=display&doc_id=7310)



On 15 December 2015, ERGA adopted three reports<sup>431</sup> feeding into the AVMSD review process: report on the independence of national regulatory authorities, report on the protection of minors and report on material jurisdiction.

## RECENT TECHNOLOGICAL AND MARKET DEVELOPMENTS FOR AUDIOVISUAL MEDIA SERVICES IN EUROPE

Viewing time for linear TV channels in 2014 in the EU was about 224 minutes, a stable figure compared to 2012<sup>432</sup>. The traditional provision of audiovisual content via broadcasting remains the most popular model. However, its importance is reduced for younger generations. For example, in the UK, children aged 12-15 spend more time online than watching television (17.2 vs. 15.7 hours per week)<sup>433</sup>. Watching video clips is the second prevalent online activity amongst minors aged 4-17, after listening music and watching films and cartoons<sup>434</sup>. Services such as YouTube are widely popular among children<sup>435</sup>.

In a dynamic perspective, it must be noted that the growth rate for TV broadcasting has decreased from an average annual rate of 2.8% from 2009 to 2013, to only 0.3% in 2013<sup>436</sup>. In the meantime the total on-demand consumer revenues in the 28 Member States soared from EUR 919 million in 2010 to EUR 2.5 billion in 2014, an increase of 272 % and a compound annual growth rate (CAGR) in the 5 year period of 28 %<sup>437</sup>.

In 2013, advertising on TV broadcasting represented 33% of TV broadcasters' revenues<sup>438</sup>. While those revenues increased by a 1.3% CAGR for the period 2009-2013, TV broadcasters experienced instead a decrease of 0.5 % in 2013.

In the meantime, the total size of the online advertising market in the EU in 2013 has increased by 11.6% compared to 2012. Online is the second medium in Europe for ad spend, just behind TV advertising, though it surpassed TV advertising in 2014 in a number of Member States<sup>439</sup>.

In addition, the use of mobile devices to connect to the Internet and watch videos is increasing. In 2014, smartphones and tablets penetration<sup>440</sup> reached respectively 84% (52% in 2010, an increase by 32%) and 38% (6% in 2010, also an increase by 32%) for the generation of 16-24s in the UK. The traditional TV screen has lost its role as unique possibility to consume audiovisual content at home. In addition to

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431 <https://ec.europa.eu/digital-agenda/en/news/erga-published-two-reports-protection-minors-and-scope-audiovisual-media-services-directive>

432 Source Eurodata TV, this data is an arithmetical average of national viewing times not weighted for the population

433 Source: Ofcom's Report on children and parents: media use and attitudes report: seven in ten children aged 5-15 have access to a tablet computer at home, one-third watch on-demand TV services and 20% watch television programmes on a tablet computer . [http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes-14/Childrens\\_2014\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes-14/Childrens_2014_Report.pdf)

434 Study on the exposure of minors to alcohol advertising on linear and non-linear audio-visual media services and other online services, including a content analysis

435 Close to 40% of boys aged 9–12 regularly watch video on video-sharing platforms; nearly a third – 29% – of 11- to 12-year-olds has a profile on a media-sharing platforms such as YouTube, Instagram or Flickr (As reported in Page 30 of "EU Kids Online 2014, Final recommendations for policy" <http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/D64Policy.pdf>)

436 Refit exercise: contribution of data and information by the European Audiovisual Observatory - Note B.1: market revenues and investments - linear revenues

437 Source to be confirmed by COBA

438 Source: Refit exercise: contribution of Data and Information by the European Audiovisual Observatory, Note B1: Market revenues and investment – linear revenues

439 Source: EAO, Online Advertising in the EU, 2015 Update, September 2015. This varies widely across Member States: online ad spend per capita ranges from €138 in the UK to €2 in Romania, while the top three countries for online ad spend in the EU in 2014 (UK, Germany and France) accounted for 66.7% of online advertising in Europe.

440 Source: Ofcom's Adults' media use and attitudes Report 2015, <http://stakeholders.ofcom.org.uk/market-data-research/other/research-publications/adults/media-lit-10years/>

watching audiovisual content on smartphones or tablets - on the go as well as at home - these "second" screens can be also linked with the content on the "main" TV screen.

All these developments have the potential to bring new opportunities for consumers and companies alike. They offer a broader range of content and an enriched content quality. This includes access to audiovisual and non-audiovisual online content, catch-up services, programme-related information (e.g. electronic programme guides) and general information such as weather or traffic. Social information, e.g. governmental information or sign language is also possible. Over-the-top players offer their content directly to the living room TV screen. Broadcasters enrich their linear offer with non-linear services. New players, in particular those offering subscription VoD services (such as Netflix), have also started to invest in the creation of new content. This often happens in the form of financing original content released on the platform on an exclusive basis to create a stable subscription base. Examples include the successful original series developed by some players, already followed by other services in the US. It is likely that this trend will also increasingly appear on the European market.

With new feedback channels between consumers, providers and producers, users become more proactive and interactive. Second screens and other devices also make it easy for consumers to produce content. There might be a future shift from lean-back consumption to active participation and creation.

Media literacy - as the ability to access, understand, critically evaluate, and communicate via different types of media<sup>441</sup> - constitutes an important set of skills that users should possess. Most Member States organise or support media literacy initiatives such as web portals, multi-stakeholder working groups, education campaigns and information activities in schools, studies and research. However, only few Member States carry out a formal assessment of media literacy levels and only two provide data. In the UK, Ofcom's latest Children and Parents: Media Use and Attitudes report<sup>442</sup> shows that a majority of TV viewers and internet users aged 12-15 feel that these media help them understand what is going on in the world, make them aware of different types of people and opinions and help them form their own opinions. Increasingly, over half of 12-15s agree that some sites listed by a search engine will be truthful while others may not be (52% vs. 45% in 2013), and although one in five 12-15s still believe that if a search engine lists a result it must be truthful, this is less likely than in 2013 (20% vs. 32% in 2013). The changes in these findings suggest an increase in critical awareness of the truthfulness of online information. In Germany<sup>443</sup>, almost half of young people have already made videos, while one third has been involved in a newspaper and 29 % have created a homepage. Some Member States have created ad hoc institutions to promote media literacy (for instance, the "Conseil Supérieur de l'éducation aux médias"<sup>444</sup> in the Fédération Wallonie-Bruxelles or the French Observatory on Media and Education<sup>445</sup> in 2014).

As a follow up to the study on testing and refining criteria to assess media literacy levels in Europe carried out in 2011, the Commission launched a pilot exercise for the assessment of media literacy levels in the frame of which a number of Member States carried out relevant projects<sup>446</sup>.

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441 Media literacy is defined in the Commission Communication on media literacy in a digital environment, COM(2007)833

442 Ofcom's 2014 Children and Parents: Media Use and Attitudes Report [http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes-14/Childrens\\_2014\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes-14/Childrens_2014_Report.pdf)

443 <http://www.mpfs.de/fileadmin/JIM-pdf13/JIMStudie2013.pdf>

444 <http://www.educationauxmedias.eu/>

445 <http://www.csa.fr/Espace-Presse/Communiqués-de-presse/Groupe-de-travail-Audiovisuel-et-éducation-creation-d-un-observatoire>

446 An update of this study was published by the European Association for Viewers Interests (EAVI) in March 2015. It assesses media literacy levels in eight volunteer Member States. [http://www.eavi.eu/joomla/images/stories/About\\_EAVI/assessing.pdf](http://www.eavi.eu/joomla/images/stories/About_EAVI/assessing.pdf)

In the contributions to the Green Paper public consultation, respondents broadly agreed on the need to increase media literacy actions throughout the EU. But views differed on how to do it, and on the EU's role.

## CONCLUSION

This report shows that the AVMSD has functioned as an effective regulatory framework enabling the development and free circulation of audiovisual media services in the EU.

However, some issues call for attention in order for the AVMSD rules to remain fit to attain their objectives.

Jurisdiction has proved difficult to determine in some cases and the procedures to derogate the freedom of reception and retransmission in restricted situations proved difficult to apply. Such practical difficulties will certainly be further discussed in the meetings of the Contact Committee and ERGA.

As regards European works, Member States have taken diverse approaches to promote them on VoD services.

In addition, monitoring reports have shown that advertising rules could be difficult to apply across Member States, in particular regarding the interpretation of certain related concepts, raises concerns.

Changing viewing habits among children may also raise concerns as to the protection of minors.

However, on most of these topics discussed in the Green Paper consultation, there were no clear tendencies among respondents and views are indeed quite split on most of the areas. This was also the case on other important questions such as the scope of application or the regulatory distinction between linear and non-linear services. These questions have been further addressed in the Public Consultation on "A media framework for the 21st century"<sup>447</sup>.

The Commission is examining these issues thoroughly in parallel, in the context of the REFIT exercise. This wide-ranging evaluation of the functioning of the Directive comprises several studies and a comprehensive stakeholder dialogue as a follow up to the Green Paper. The Commission will also take into account all recent technological and market developments to shed light on the current state of play of the audiovisual regulatory framework. The Commission will in particular assess the changes in viewing patterns, with audiovisual services being increasingly consumed on-demand and online, and the resulting consequences.

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447 <https://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st>

**ANNEX 8 - SECOND REPORT ON THE APPLICATION OF ARTICLES 16 AND 17 OF  
DIRECTIVE 2010/13/EU FOR THE PERIOD 2011-2012**



Brussels **XXX**  
[...] (2015) **XXX** draft

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**Second Report on the Application of Articles 16 and 17 of Directive 2010/13/EU for  
period 2011 -2012**

**Promotion of European works in EU                      audiovisual media  
services**

## 1. INTRODUCTION

This Report is drawn up pursuant to Article 16 (3) of Directive 2010/13/EU (hereafter referred to as 'AVMS Directive')<sup>448</sup>. The present Report reflects on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. Through this document the Commission reports on the application of Articles 16 and 17<sup>449</sup> of the AVMS Directive for the period 2011-2012. The Report is based on the Member States' statistical statements on the achievement of the proportions referred to in these Articles for each of the television programmes falling within their jurisdiction. The Report also presents the Commission's opinion on the application of these provisions, including the main conclusions to be drawn from the Member States' reports.

The purpose of this biennial Report is twofold. First, pursuant to Article 16 (3) it informs the Member States, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Secondly, it aims to verify whether the measures adopted by the Member States in order to promote European works and independent productions in EU television services have been properly applied.

Like the first Report on the application of Articles 16 and 17 of the AVMS Directive, this Report does not cover the EEA countries<sup>450</sup> because of the delay in transposing the AVMS Directive into the EEA 'acquis'. Therefore these countries were not invited to submit their data for this Report.

It is for the first time that Croatia provided data for this Report. Given the fact that Croatia has joined the EU on 1 January 2013, the EU average has been still calculated on the basis of the 27 Member States that have been Member States of the EU during the reporting period. Nevertheless, the Staff Working Paper accompanying this Report reproduces the Croatian data.

While previous reports have also looked into differences in trends between "new Member States"<sup>451</sup> and Member States who joined the EU at an earlier stage<sup>452</sup> at this point it seemed opportune to abandon that differentiation. Instead, this report focuses on other trends present on the level of the entire EU-average.

## 2. COMMISSION'S OPINION ON THE APPLICATION OF ARTICLES 16 AND 17

### 2.1. General remarks

#### 2.1.1. Articles 16 and 17 in the context of the European audiovisual landscape

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448 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). This codified version replaces Directive 89/552/EEC as amended by Directive 97/36/EC and Directive 2007/65/EC.

449 Former Articles 4 and 5 of Directive 89/552/EEC

450 Norway, Iceland, Liechtenstein

451 Member States which joined the EU in 2004 and 2007 (EU-12)

452 Member States which joined the EU up to 1995 (EU-15)

The European audiovisual market continued to grow over the period 2011-2012. Figures from the European Audiovisual Observatory show an increasing trend of available channels. According to the European Audiovisual Observatory, in December 2012 there were 8 272 television channels in EU-27 — of which 2 961 were local channels — compared to 7 622 in 2010. This represents an 8.5 % increase over two years, which is lower than the one registered between 2008 and 2010 (25.6%).

At the same time a decrease was registered in the total number of channels covered<sup>453</sup> by the reports of the Member States compared to the previous period. The number of channels covered went from 1,313 in 2009 and 1,390 in 2010 to 1036 in 2011 and 1091 for 2012 for European works.<sup>454</sup> This represents a 13% drop between 2009 and 2012, with a slight growth of 5% between 2011 and 2012. This trend can be explained by a change in the methodology, which provides the possibility to exempt channels with a very low audience share from the reporting obligation (see explanation under 2.1.2.1.below).

## *2.1.2. Methods of implementation and monitoring by Member States*

### *2.1.2.1. Possible exemption from the reporting obligation of channels with a very low audience share*

In 2011 the Commission decided to give channels with a very low audience share (below 0.3%) the possibility to request an individual exemption from their reporting obligation under Articles 16 and 17. The underlying reason behind this exemption was the flexible wording of Articles 16 and 17 ('where practicable') and the emergence of new and small channels. This exemption only concerns the reporting obligation, and not the obligation to comply with the obligatory shares set out in the Directive, and can be granted by the competent national authorities. The 'Revised Guidelines for Monitoring the Application of Articles 16 and 17 of the AVMS' of July 2011<sup>455</sup> sets out the detailed conditions for granting such exemptions

The previous reporting period already reflected the effects of this change in methodology. This mainly manifested in a decrease in the number of covered channels. However, Member States had only limited time to change their methodology as regards the previous report. Therefore this report should be considered as the first to show the effects of the broad implementation of the revised guidelines.

Several national authorities reported that they have granted such exemptions during the reference period. 12 Member States have reported that such individual exemptions have been granted on the basis of a very low audience share (below 0.3%): Croatia, Denmark, Estonia, Germany, Finland, The Netherlands, Spain, France, Italy, Latvia, Poland, United Kingdom. The number of exempted channels varies considerably among Member States: while some Member States<sup>456</sup> only reported about 4 such exemptions, this number was 270 in Denmark, 266 in the Netherlands and 338 in the United

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453 'Covered' channels: total number of channels identified minus the number of non-operational channels and the number of channels exempted from their reporting obligation (see paragraph 2.1.2.1.) and of exempt (due to the nature of their programmes) or excluded channels (due to legal exceptions) - see Indicator 1 in Staff Working Document - Part III – Annex 1

454 For independent productions, the number of covered channels went from 1,311 in 2009 and 1,387 in 2010 to 1,036 in 2011 and 1,093 for 2012. For recent independent productions this was 1,310 in 2009, 1,386 in 2010, 1,035 in 2011 and 1,092 in 2012.

455 <https://ec.europa.eu/digital-agenda/en/news/revised-guidelines-monitoring-application-articles-16-and-17-audiovisual-media-services-avms>

456 Germany and Poland

Kingdom. Future reports would benefit from more consistency in the reporting on the exemptions, including a clear indication of the underlying grounds.

Overall, the number of national reports providing data for all covered channels increased slightly in comparison with the previous period. 17 out of 28 national reports provided statistical data on European works for all channels in 2011 and 16 in 2012 (15 in 2009 and 2010). For independent productions, 15 and 14 national reports provided data for all channels respectively in 2011 and 2012 (14 and 15 in 2009 and 2010). The report has identified some difficulties in collecting data on recent independent productions: most national reports (17 out of 27) failed to provide data on recent independent productions for all channels.

#### *2.1.2.2. Monitoring*

As already stated in previous Reports, there is no uniform monitoring methodology in the EU. This varies substantially from one Member State to another. In most Member States the competent authorities obtain the data directly from the broadcasters. In the majority of cases the data provided to the Commission are based on full monitoring data of all broadcasted programmes for the entire reporting period. However, four Member States supplied data based on samples (French Community of Belgium, Cyprus, Ireland and the Netherlands). Other Member States combine different methods (Luxembourg, Flemish Community of Belgium), such as collecting full data for some channels and using estimation and/or sampling for others. Some national reports indicate the use of specific software for the collection and transmission of data.

Providing full data about the reporting period is preferable in view of guaranteeing that the report provides an exact picture of the situation on EU-level. Nevertheless, sampling monitoring methods can be used when in accordance with the revised guidelines. When the monitoring method is based on samples, it needs to be ensured that the data used is representative for the entire period.

Most Member States do not have verification systems in place for data collected from broadcasters. Noting the lack of such systematic verification, the Commission's previous report asked national authorities to put in place systems ensuring the verification of data provided by the broadcasters.

Several Member States have indicated that they carry out a certain verification of the data e.g. if they detect inconsistent information, but only few Member States ensure a systematic verification. One of the most common verification methods is the double-checking of a sample of the data transmitted by broadcasters (e.g. one week per year) against monitoring data of the authority or against published program schedules. Some Member States mention using the services of independent research companies for verification.

A truthful picture on the application of Articles 16 and 17 requires that national monitoring mechanisms include appropriate, systematic and specific verification systems of the data provided by broadcasters.

### 2.1.2.3 Divergent methods of implementation by Member States

The Commission has identified other elements of divergence in the application of Article 17 by Member States. The minimum proportion of independent works to be achieved under Article 17 can either relate to the channel's transmission time or to their programming budget. Only France and Italy have implemented this Article by laying down an investment obligation instead of compliance based on transmission time. This obligation varies in France also depending on the type of channel.<sup>457</sup> Due to the lack of comparability of data and to ensure consistency, the data from France and Italy has not been taken into account for the calculation of the EU average of transmission time regarding independent productions and recent independent productions.

Divergences in implementation exist also in other areas, as a result of the margin of flexibility permitted by the Directive. National reports show for example that several Member States grant exemptions for certain types of channels (e.g. for new channels or for channels with a specific thematic profile). These exemptions vary among Member States, from providing a full exemption from the obligation to lowering the obligatory percentages for these channels permanently or for a certain period.

These differences in implementation make it difficult to measure national data in a comparable way. Nonetheless, the data included in this report is a good basis to draw certain conclusions from the national reports on the application of Articles 16 and 17 at EU level.

## 2.2. Application of Article 16

This section provides an analysis of compliance with the obligation to broadcast, where practicable, a majority of **European works** as set out in Article 16 of the Directive<sup>458</sup>.

The EU average transmission time dedicated to European works by all reported channels in the EU-27 was 64.1% both in 2011 and 2012. This indicates in general a stable level of European works with a very minor increase compared to 2009 (63.8%).

2009-2012: 0.3 percentage point increase (63.8% in 2009 64.1% in 2012)

2011-2012: no change (64.1% both in 2011 and 2012)

Trends in the transmission time reserved for European works over the period 2009-2012 in each Member State have been reproduced in charts in the accompanying Staff Working Paper.<sup>459</sup>

<sup>457</sup> According to the French national report the French regulation contains stricter and more complex rules than the ones set out in Article 17. French legislation imposes an obligation on television channels to finance independent productions. Obligations to invest in audiovisual and cinematographic production are expressed as percentages of turnover or resources and not on the basis of the programming budget. The French regulation also distinguishes between audiovisual works and cinematographic works and imposes specific obligations on both of these categories. The French definition of an "audiovisual work" is more restrictive than the definition used by the Directive. It excludes, in particular, programmes which are primarily filmed on set as well as variety programmes (and cinematographic works, for which special obligations exist). In addition, the French regulations on financing obligations distinguish further between "heritage" and other audiovisual works. Heritage works include the following genres: fiction, animation, creative documentaries, including those which are incorporated into a programme other than TV news or entertainment programmes, music videos and broadcasting or re-creation of live performances. Additionally, certain broadcasters have to comply with stricter obligations since they may only declare investments in certain types of productions.

<sup>458</sup> According to Article 16 broadcasters shall reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping.

<sup>459</sup> See Staff Working Paper – Part II – Section 2



**EU-average compliance rates<sup>460</sup> regarding European works** were fairly stable over the reporting period with 69.1% in 2011 and 68.6% in 2012. These rates are also stable, with a slight decrease of 0.3 percentage point, compared to the previous reporting period (68.8% in 2009 and 69.6% in 2010). Compliance rates do not merely reflect the channels' achievement of the European works proportions set out in Article 16, but also the level of communicated/non communicated data.

Two Member States encountered difficulties in reaching the required proportion of European works over the whole reference period. One additional Member State was slightly above the 50% average in 2011 but fell slightly below that mark in 2012. Two Member States which registered averages below 50% during the previous period were able to reach the required proportion of European works in this reporting period. At the same time one Member State that already failed to reach the 50% average in the previous reporting period did not reach the required level of European works in the current reporting period either. Member States concerned are invited to examine the reasons behind difficulties to reach the required percentages and look at methods to address the situation in efficient ways.

### 2.3. Application of Article 17

This section presents the results achieved at European level as regards **European works made by independent producers** (hereinafter "independent productions") set out in Article 17<sup>461</sup>. This section also reports on the broadcast of **recent European works by independent producers** (hereinafter "recent independent productions")<sup>462</sup>.

The EU-average proportion reserved for **independent productions** by all reported channels in all Member States was 33.1% in 2011 and 34.1% in 2012. When compared to the previous reporting period, the overall level stayed stable (34.1% both in 2009 and 2012). At the same time there is a slight fluctuation within the years (34,1% in 2009, 33,8% in 2010, 33,1% in 2011 and 34,1% in 2012).

2009-2012: no change (34.1% in 2009, 34.1% in 2012)

2011-2012: 1 percentage point increase (33.1% in 2011, 34.1% in 2012)

<sup>460</sup> The compliance rate is obtained by determining the number of channels achieving the required proportions under Articles 16 and 17 and comparing these figures with the number of channels covered by Articles 16 and 17. The channels for which no data were communicated are considered non-compliant for the purpose of this indicator.

<sup>461</sup> Article 17 establishes the obligation for broadcasters to reserve at least 10% of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters.

<sup>462</sup> i.e. works broadcast within five years of their production. The proportion of recent independent productions is obtained by determining the average transmission time reserved for independent productions on each channel covered by Article 17 for which data were communicated ('reported channels') when comparing that figure with the transmission time reserved for all independent productions.

At Member State level, the average share of transmission time devoted to independent productions varied significantly, from 20.7% to 55.6% in 2011 and 20.5% to 60.8% in 2012. As in the previous period, during the current reporting period all Member States achieved the 10% proportion of independent productions. 20 Member States posted results above 25% of the total qualifying transmission time.

**EU-average compliance rates<sup>463</sup> regarding independent productions** were 80% for 2011 and 82% for 2012. This indicates a relatively stable trend when compared to the previous reporting period, with some minor fluctuations within the years (the compliance rate was 80,4% in 2009 and 81,9% in 2010).

The EU average transmission time dedicated to **recent independent productions** was 62% in 2011 and 62.2% in 2012. Overall results regarding recent independent productions show a stable level maintained during the reference period and a slight downward trend as compared to the previous reporting period (64.3% in 2009).

2009-2012: 2.1 percentage points decrease (64.3% in 2009, 62.2% in 2012)

2011-2012: 0.2 percentage point increase (62% in 2011, 62.2% in 2012)

## 2.4 Reasons for non-compliance

National reports from Member States gave similar reasons for non-compliance with the proportions required under Articles 16 and 17 of the Directive as in previous reference periods. Like in the previous report, a substantial number of national reports referred to financial difficulties related to the economic crisis and the declining advertising market. It appears that such difficulties may have been among the reasons behind the slight decrease of some of the indicators in the current reporting period, when compared to previous reports.

Another often repeated argument was the difficulty for specialized channels to comply with the obligatory shares. This would be due to the lack of availability of European works in specific programmes. The higher cost of European productions compared to US productions was also often mentioned. This was often combined with the argument that such productions are often less attractive to the audience than US productions.

The current chapter summarizes the main reasons most frequently mentioned in the national reports.

- **Recently launched channels**

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463 See footnote 11

Some national reports indicated that recently launched channels found it difficult to meet the obligations set out in Articles 16 and 17 from the start of their operations.

The Directive leaves open the possibility of progressively building up to the required proportions of European works<sup>464</sup>. Also Article 16(3) allows the Commission to take into consideration the particular circumstances of new broadcasters. At the same time efforts should be made to achieve the required proportions as soon as possible. For instance, a clear obligation for a progressive increase could be considered for new channels which have been granted exceptions. This could be done for example by imposing a timeline to achieve the required proportion.

- **Small channels**

Certain Member States mentioned that the required shares are difficult to reach for small channels with a low audience share and for small local channels. One Member State also mentioned that this would be particularly difficult in the present market situation given the negative impacts of the economic crisis.

As set out in Article 18, the obligations on Articles 16 and 17 do not apply to television broadcasts that are intended for local audiences and do not form part of a national network. As regards channels with a low audience share (below 0.3%), as set out in point 2.1.2.1, national authorities can grant these channels individual exemptions from the reporting obligation. However, as already pointed out, such individual exemptions only concern the reporting obligation and not the obligation to comply with the mandatory shares set down by the Directive.

- **Problems with the acquisition of European programmes**

Furthermore, a number of national reports indicated the current economic environment has made it difficult and expensive to produce national programmes and to acquire European and independent productions. This was pointed out in particular in comparison to US productions that have more competitive prices and are often more attractive for the audience. Several broadcasters state that to broadcast a majority of European works puts them at a competitive disadvantage.

Some broadcasters explained that they were interested in EU content but could not afford to match the prices of companies with larger market shares. Others pointed to the difficulties to purchase such content because of exclusivities or unfavourable contractual terms.

- **Thematic channels**

Many national reports pointed out that channels specialising in one genre, or targeting a very specific audience, find it difficult to reach the required proportions of European and independent works. Like in the previous report, Member States mentioned this issue in particular as regards channels broadcasting a large proportion of news and sports events. Not surprisingly, channels specializing in non-European content e.g. Hollywood movies, South-American TV-series or Japanese anime were also encountering such difficulties. Member States often granted individual exemptions for such channels. Member States also granted exemptions regarding recent independent productions for channels specializing in archive content or cinematographic works from the past.

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<sup>464</sup> See in particular Recital 67 of the Directive

It appears that there is an increasing number of very specialized channels in various genres e.g. cooking, lifestyle, human interest, crime, interior design, health, entertainment news, or specific audiences e.g. children, young public. Several Member States reported that such specialized channels have difficulties to find appropriate European content because of the lack of availability of such specialized content.

- **Difficult economic conditions during the reference period**

As mentioned, a number of national reports point at the general economic and financial problems in Europe, arising from the economic crisis, and at the difficult market conditions (recession, declining advertising market, unstable economic situation, deteriorating business environment). They point to the unstable financial situation of some channels that make it difficult for them to comply with the obligatory shares. Some national reports also pointed to the specific difficulties of small Member States.

## **2.5. Measures adopted or planned to remedy cases of non-compliance**

Here again the situation differs from one Member State to another. Many Member States do not apply specific sanctions to penalise broadcasters who fail to report and/or comply with Articles 16 and 17. In most cases authorities are in contact with non-compliant broadcasters drawing their attention to the need to achieve the required proportions of European/independent works. Broadcasters are usually required to explain the reasons for the failure to reach. Some Member States issue warnings or infringement notices pointing to future possible steps in case of continued non-compliance. One Member State mentioned setting intermediate targets for non-compliant broadcasters.

Most Member States do not apply specific sanctions to penalise broadcasters who fail to report and/or comply with Articles 16 and 17. Only few Member States indicated the possibility to apply penalties or similar sanctions in the case of non-compliance. One Member State mentioned to have applied a penalty during the reporting period but pointed to a gradual sanctioning practice. Some national authorities pointed to a lack of applicable sanctions or did not refer to any measures undertaken in the case of non-compliance.

National reports mentioned other measures to improve the situation, such as: communicating the results of the last report to all TV channels for self-regulation purposes, adopting recommendations for the monitoring and with more detailed methods of classification of European works, cooperating with the state, public and private enterprises in co-financing projects and organising a workshop for broadcasters and producers to discuss the collected data.

## **3. CONCLUSION**

Regarding Article 16, the data provided by the Member States showed relative stability during the reference period as well as compared to the previous reporting period. The 64.1% average of European works achieved in 2011 and 2012, well above the obligatory majority proportion set out in Article 16, reflects a generally sound application of this provision throughout the EU.

Member States also met comfortably the requirement regarding the share of independent productions set down in Article 17. With 33,1% in 2011 and 34.1% in 2012 the average of independent productions was significantly above the required 10% laid down by Article 17. At the same time the share of independent productions differs significantly among Member States.<sup>465</sup>

The EU average share of recent independent productions was 60.6% in 2011 and 61.1% in 2012. Despite a slight decrease when compared to the previous reference period, with 62.1% in 2009 and 61.8% in 2010, this proportion is generally satisfactory.

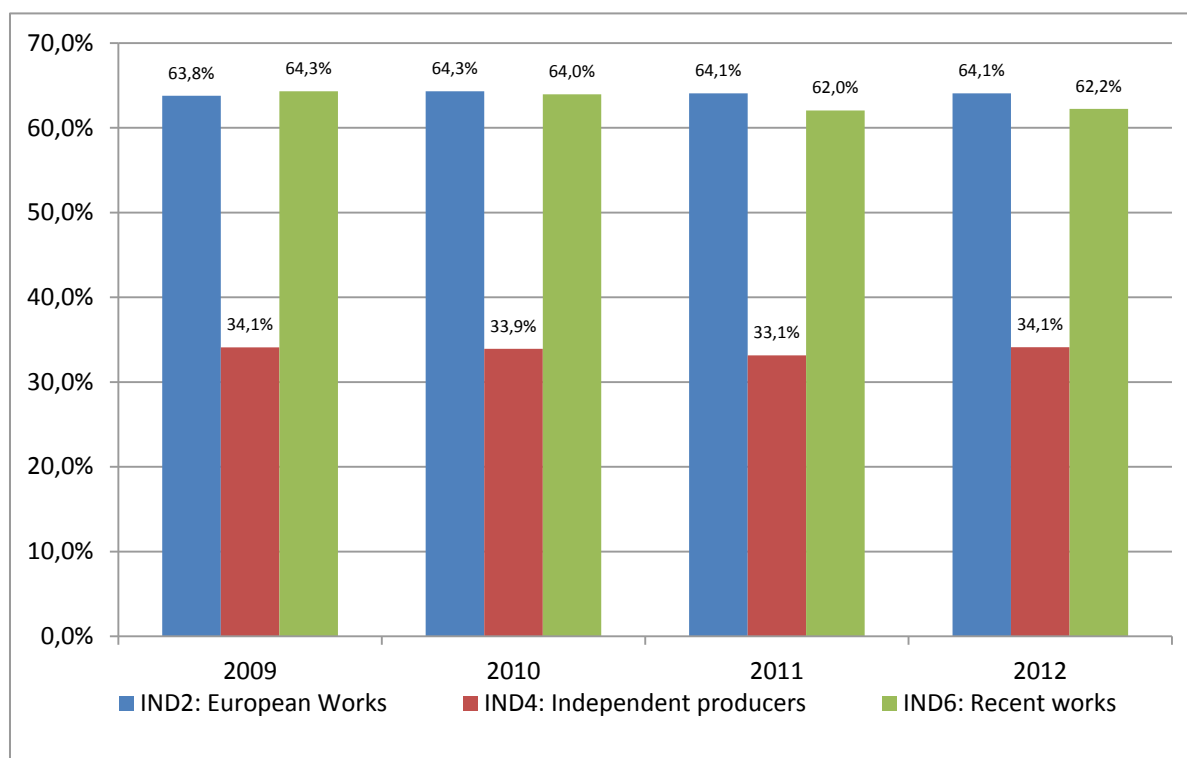
This report shows that the provisions of Articles 16 and 17 are overall correctly implemented by Member States. Current rules on promotion of European works have led to strong shares of transmission of European works, independent productions and recent independent productions.

However, some issues call for attention.

Monitoring methods of compliance vary greatly among Member States. Also, not all Member States have put in place verification systems of the data provided by broadcasters. As regards exemptions granted to certain channels, the overall consistency of future reports would benefit from further indication on the underlying grounds of the exemptions.

The Commission has examined these issues thoroughly in the context of the REFIT exercise.

## Development of Main Indicators from 2009-2012



## ANNEX 9 - EUROPEAN COMMISSION'S NON-REGULATORY INITIATIVES ON A SAFER INTERNET FOR MINORS

The Commission is providing coordination and leadership at the EU level through a regulatory framework as well as financial support to online safety activities in the Member States. The Commission is also seen by stakeholders as forerunner internationally in providing a safer online environment for minors<sup>466</sup>.

### 2.1 Coordination

The **European Strategy for a Better Internet for Children**<sup>467</sup> from 2012 set up an overarching coordination and cooperation agenda combining protection and encouraging creativity and positive use of the internet to help children and young people to grow and shape their world in a safe, creative way and to become resilient from risks.

While acknowledging that children are a particularly vulnerable group online that needs special empowerment and protection measures, the strategy provides a coherent framework, based around legislation, self-regulation and financial support, involving the Commission, Member States, industry, civil society, researchers and youth themselves.

So far the Commission has made progress in promoting **positive content, awareness raising, self-regulation** and **fighting against child sexual abuse material (child pornography)**.

The Commission has stimulated the production and a wider availability of positive content for children through national and European competitions<sup>468</sup>. In addition, the Commission has set up and funded POSCON, the first European network of experts in this field, which has provided checklists and best practices on how to produce positive content, a repository of over 1.300 existing online relevant services in 28 countries (eg games, blogs, social networks for children, apps, children's browsers, search engines), an overview of existing financing models for positive content. Nevertheless, in some EU languages only few positive resources for children are available.

Positive online experience by teenagers has been stimulated through the Youth Manifesto<sup>469</sup>, a crowd-sourced initiative to select the top ten principles which reflect the digital rights that Europe's young people view as most essential for building a better internet. The Youth Manifesto, already downloaded more than 30,000 times, is being consulted also by countries beyond Europe, namely Brazil, United States, India and Uganda.

The Commission has set up the pan-European network **INSAFE** to carry out in the Member States campaigns to empower children, young people, parents, carers and teachers with the skills, knowledge and strategies to stay safe online and take advantage of the opportunities that internet and mobile technology provides. In 2014, INSAFE developed 1380 new resources, reaching more

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466 Final evaluation of the multi-annual Community programme Safer Internet

467 COM(2012) 196 final

468 <http://www.bestcontentaward.eu/>

469 <http://www.youthmanifesto.eu/>

than 22.5 million people and worked with approximately 12,000 youth in 30 countries (all MSs, plus Norway and Iceland)<sup>470</sup>.

The INSAFE network includes helplines to provide information, advice and assistance to children, youth and parents on how to deal with harmful content, harmful contact (such as grooming) and harmful conduct such as (cyberbullying or sexting).

The Commission has also been influential in relation to international activities. European Safer Internet activities are often considered good practice internationally, and have been taken up in Latin America, the US and Asia-Pacific. As an illustration, the **Safer Internet Day**, coordinated by INSAFE, is an international yearly event to raise awareness of child online safety. It is now celebrated in over 100 countries in 6 continents. In 2015, more than 28 million people were reached in EU. The campaign is also a huge success on social media. On Twitter, over 60 million people were reached worldwide with the #SID2015 hashtag throughout the SID campaign period. Over 10,000 fans supported the SID campaign on Facebook.

Through **INHOPE**, the international network of hotlines for combating illegal online content, especially child sexual abuse material the Commission is contributing to process more than one million reports every year. While in 2011 60% of the reported abuse content was removed within 1 to 3 days, 93% was removed in the same time limit in 2014.<sup>471</sup> The hotline network has become global and now stretches over all continents. The focus of the network has extended from mere reporting and forwarding to the police to a network which helps monitor performance in notice and takedown of the material.

INSAFE and INHOPE takes part as well in international fora such as the Internet Governance Forum (IGF). – At the last IGF, INSAFE organised a workshop *"Beyond the tipping point: SID in the global South"*<sup>472</sup> with the aim to promote SID in developing countries where a sizeable and rising portion of the projected growth in Internet users will include children. The aspects discussed were framed within the broader context of ongoing digital children's rights discussions. Typically, in the context of Internet governance children's rights give little consideration and when children are acknowledged it is related to child protection while their rights to provision and participation are overlooked.

The Commission has set up and supported the multinational research network **EU Kids Online** to enhance the knowledge of European children's online opportunities, risks and safety. The network has provided a unique pan-European study interviewing a sample of over 25.000 children aged 9-16, plus one of their parents, in 25 European countries.<sup>473</sup>

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470 Annual report INSAFE/INHOPE 2014:

[http://www.inhope.org/Libraries/Annual\\_reports/Joint\\_Insafe\\_INHOPE\\_Annual\\_Report\\_2014.sflb.ashx](http://www.inhope.org/Libraries/Annual_reports/Joint_Insafe_INHOPE_Annual_Report_2014.sflb.ashx)

471 [http://www.inhope.org/Libraries/Statistics\\_Infographics\\_2014/INHOPE\\_stats\\_infographics\\_for\\_2014.sflb.ashx](http://www.inhope.org/Libraries/Statistics_Infographics_2014/INHOPE_stats_infographics_for_2014.sflb.ashx)

472 <http://www.intgovforum.org/cms/workshops/list-of-published-workshop-proposals>

473 <http://eprints.lse.ac.uk/60512/1/EU%20Kids%20online%20III%20.pdf>



Last but not least, in 2015 the Commission has provided a **"Mapping of Safer Internet policies in Member States"** which includes an analysis of how Better Internet for Kids - related challenges are addressed in policies and initiatives across Europe as well as a sustainable benchmarking tool.<sup>474</sup>

## 2.2 Funding

The Telecom/Digital Service Infrastructure funded under CEF<sup>475</sup> allows the deployment of services that help make the Internet a trusted environment for children by providing a core platform for the delivery of services that are accessed and delivered either at EU level or via interoperable national Safer Internet Centres. Through the core platform Safer Internet Centres are sharing resources and good practices and providing services to their users, including citizens and industry.<sup>476</sup> Safer Internet Centres provide information, awareness campaigns and resources, support helplines for children who encounter problems online, and hotlines for reporting child sexual abuse material.

The Commission coordinates the core platform which provides a single entry point to online tools, resources and services for the Safer Internet community to collaborate on resource development and assess and exchange good practices, materials and services in support of awareness raising and teaching online safety. The platform also provides back office reporting facilities for helplines and hotlines including secure environments for gathering and sharing data of child sexual abuse content to enhance hotlines' capacity to identify and remove the illegal content as well as a point of access for finding information, guidance and resources on issues related to children's use of ICT.

The Safer Internet infrastructure will be co-funded under the CEF framework until 2020 but continued support will be needed for promoting online safety also beyond 2020.

Regulatory instruments need to be complemented by self-regulatory measures to provide a safer online environment for children tackling the wide range of emerging risks that young users face as consumers and creators of digital services and content.

Building on earlier sectoral agreements, brokered by the Commission, such as the Pan-European Games Information (PEGI) (2003), the European Framework for Safer Mobile Use (2007), the Safer Social Networking Principles (2009), in December 2011, the Commission set up the **CEO Coalition to make the internet a better place for children**.

This was a cooperative, voluntary endeavour among global and European leaders of the whole digital industry value chain (such as Microsoft, Apple, Google, Facebook, Deutsche Telecom, Samsung, RTL) to respond to emerging challenges arising from the diverse ways in which young Europeans go online. 31 companies coming from the software industry, social networks, media platforms, broadcasters, device manufacturers, games providers, and telecoms operators signed the Coalition Statement of Purpose.

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<sup>474</sup> <http://ec.europa.eu/digital-agenda/en/news/study-better-internet-kids-policies-member-states>

<sup>475</sup> Regulation of the European Parliament and of the Council on guidelines for trans-European telecommunications networks and repealing Decision No1336/97/EC

<sup>476</sup> <https://www.betterinternetforkids.eu/>

The signatories committed to take positive actions to make the internet a safer place for kids in five areas: Simple and robust reporting tools, age-appropriate privacy settings, wider use of content classification, wider use and availability of parental controls, effective takedown of child sexual abuse material.

The most significant achievements have been the acceleration of the roll-out of parental tools (particularly among the device manufacturers who were originally resistant to this) and the considerable efforts on content rating (for example, Google adopted PEGI ratings for all apps in Google play<sup>477</sup>). Other topics (notably the detection of child sexual abuse material and privacy settings) were much more controversial as regards the collective solutions that could be agreed and results did not match up fully to original expectations. However, individual companies did engage in further initiatives such as Google and Facebook's use of PhotoDNA to prevent re-uploading of known child abuse images.

The CEO coalition raised quite significant support and visibility, leveraged tangible effects in organisations and fostered collaboration across the whole-industrial value chain.

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477 <http://www.pegi.info/en/index/id/1068/nid/50>

## ANNEX 10 – MAIN FINDINGS OF THE “STUDY ON THE EFFECTIVENESS OF SELF- AND CO-REGULATION IN THE CONTEXT OF IMPLEMENTING THE AVMS DIRECTIVE” (SMART 2014/0054)

The study assessed the effectiveness of self and co-regulation in two areas covered by the Audiovisual Media Services Directive: audiovisual commercial communications and protection of minors against harmful content.

However, the big majority of the assessed codes have a wider scope than the AVMSD, extending to press and on-line media. Those that are based on the ICC Code on Advertising and Marketing Communications Practice <sup>478</sup> cover "digital interactive media", defined as "any media platform, service or application providing electronic communications, using the Internet, online services, and/or electronic and communication networks, including mobile phone, personal digital assistant and interactive game consoles which allows the receiving party to interact with the platform, service or application".

The assessment was carried out on the basis of the Principles of Better Self and co-regulation<sup>479</sup>:

### Conception

**Participants** - As many as possible potential useful actors should be represented

**Openness** - Envisaged actions should be prepared openly and involve all interested parties

**Good faith** - Different capabilities of participants should be taken into account, activities outside the action's scope should be coherent with the aim of the action and participants are expected to commit real effort to success

**Objectives** – Must be set out clearly and unambiguously and include targets as well as indicators for evaluation purposes

**Legal compliance** – Actions must be designed in compliance with applicable law and fundamental rights as enshrined in EU and national law

### Implementation

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<sup>478</sup> Consolidated ICC (International Chamber of Commerce) Code of Advertising and Marketing Communications Practice: [http://www.iccwbo.org/advocacy-codes-and-rules/document-centre/2011/advertising-and-marketing-communication-practice-\(consolidated-icc-code\)/](http://www.iccwbo.org/advocacy-codes-and-rules/document-centre/2011/advertising-and-marketing-communication-practice-(consolidated-icc-code)/)

<sup>479</sup> <https://ec.europa.eu/digital-single-market/en/best-practice-principles-better-self-and-co-regulation>

**Iterative improvements** - A prompt start, with accountability and a process of "learning by doing", with sustained interaction between all participants

**Monitoring** - Conducted in a way that is sufficiently open and autonomous to command respect from all interested parties

**Evaluation** - To allow participants to assess whether the action may be concluded, improved or replaced

**Resolving disputes** - By ensuring they receive timely attention. Non compliance should be subject to a graduated scale of sanctions.

**Financing** - Participants will provide the means necessary to fulfil the commitments, and participation of civil society organisations may be supported by public funders or others.

- The main conclusions of the study are as follows: There is much more statutory regulation in place and consequently less self- or co-regulation in the field of **the protection of minors from harmful audiovisual content**. Protecting children across sectors is an important policy objective. In the audio-visual media sector, this observation is supported by the higher levels of governmental regulation for this area. Self- and co-regulatory schemes focussing on this area tend to take the form of media classification systems for television broadcasts though more specific codes focussing on children are in place as well.

The vast majority of countries have self- or co-regulatory schemes in place for **audiovisual commercial communications**. The advertising codes of conduct differ in the level of detail in their rules and in their emphasis. Some schemes have a more ethical or deontological focus, whereas other schemes have more pragmatic, specific rules in place for commercial communications, such as rules on content. The schemes relating to commercial communications are often based on, or in line with the ICC code.

- As prescribed by the Principles for Better Self- and Co-regulation, **legal compliance** is upheld in the vast majority of the schemes. In most cases, the national regulatory approach is in compliance with European and national legal frameworks. In most cases, a country's regulatory approach to structuring audiovisual media consists of broad statutory regulation such as a law on broadcasting or on audio-visual media, which is then complemented with more specific rules in a self- or co-regulatory scheme. The majority of the schemes identified are based on or connected with a specific law.
- Another general observation is that in many schemes, issues such as the specification of formal **objectives** and specified **targets and indicators** are generally **not formalised and are kept implicit**. Where goals and objectives are formulated, these generally do not follow the EU's SMART criteria. Indeed, in EU policy making<sup>480</sup>, practices should have clearly identifiable aims and objectives which are SMART: specific, measurable, achievable, realistic, and time-dependant. Having such objectives helps to better monitor and assess the effectiveness and

<sup>480</sup> European Commission, *Better regulation*, Brussels, 16 December 2015, see [http://ec.europa.eu/smart-regulation/index\\_en.htm](http://ec.europa.eu/smart-regulation/index_en.htm).

impacts of practices, and allows policy makers to compare practices. Establishing baselines, targets, and indicators in an explicit manner are requirements from the Principles for Better Self- and Co-regulation which help to evaluate a scheme and improve it if needed.

- Often the processes of **monitoring** and **implementing improvements**, were present but were not formalised or made systematic in the way prescribed by the Principles for Better Self- and Co-regulation. Complaints are collected in most of the schemes, and monitoring of the complaints does take place. However, from the perspective of the Principles, these processes are not fully formalised. Therefore, according to the Principles, **many schemes do not fully adhere to the various requirements for the different criteria on monitoring and implementing improvements.**
- Informal discussions on future areas of improvement, monitoring of effectiveness and impacts do perhaps not generally follow the requirements set out in the Principles. Nonetheless, the observation was made that **many processes in place are simply not formalised and implemented systematically.**

Despite iterative processes not being universally implemented in self- and co-regulatory schemes, they are not lacking entirely. A common trend amongst those schemes with a system for making improvements was **the use of consumer complaints as an indicator for compliance, as well as for identifying key areas of non-compliance.** Those subjects or issues on which complaints were most often received can also serve as indicators for the main problem areas within a scheme. Other approaches include regular meetings with stakeholders to discuss performance of a scheme and which areas the scheme is not being regulating properly. Other schemes go beyond internal stakeholder discussions regarding the performance of a given self- or co-regulatory scheme and how best to remedy any issues encountered. Although in many cases there were processes for identifying improvements or new areas of focus, these were not always done systematically or made explicit.

Furthermore, there appears to be much sharing of information and experiences amongst Member States and the various self-regulatory organisations (SROs) and scheme owners. This is facilitated to a large extent through organisations such as the EASA Alliance, its best practice recommendations, and its system for cross-border complaints. Besides this, information collected shows that informally, there is also knowledge exchange and collaboration between countries.

- Good approaches to developing a self- or co-regulatory scheme are focused on a **balanced representation of stakeholders.** Ideally all relevant stakeholders should be involved in the conception of a self- or co-regulatory scheme. In practice this means that stakeholders from media and broadcasting companies and advertising industries should be involved in the development phase of the scheme, along with public authorities, regulators, civil society, and consumer protection groups. Where specific products or sectors receive extra focus within a regulatory scheme, representatives from these areas should naturally be

represented as well. In most cases, the relevant private business sector was well represented. Media and broadcasting companies and advertising companies alike were almost always involved, with regulators also being present in many cases. However, the findings show that **consumer groups and civil society organisations were often not represented in the development of the majority of the schemes identified and analysed.**

**In some cases, indications were found of an open approach to developing a self- or co-regulatory scheme,** evidence by for instance, having documents readily available for the different stakeholders involved. Besides open information sharing and provision amongst participants (through the internet), stakeholder access to the negotiations should not be restrictive for a development process to qualify as an open approach. In some cases the scheme owners undertook workshops, meetings and public events to further include a variety of stakeholders. Such measures seek to involve both the industry and the public, thus contributing to the openness regarding the conception of a self- or co-regulatory scheme.

**Various stakeholder types were also involved in the implementation phase.** Activities include regular meetings with stakeholders to discuss performance of a scheme and which areas of the scheme are not regulated properly. The relevant stakeholders are also often involved in the organisation in the board through membership of the general assembly and participation in committees. In some schemes various stakeholders are involved, for example, in the handling of complaints in the adjudicating bodies.

A majority of the schemes examined in this study indicate that in practice, **enforcement activities** are rarely needed as the recommendations or decisions of a self-regulatory organisation (SRO) are usually respected. The role of public opinion in promoting compliance with self- and co-regulatory schemes in both the protection of minors from harmful content, and in commercial communications should not be underestimated. Evidence from both industry stakeholders, regulators and other interest groups all point to the value which media, advertising and broadcasting companies attach to a good public image. Regulators and policy makers should not underestimate the fact that it is very much in industry stakeholders' own interests to comply with the rules they helped to set up in the first place. The development of these rules also centres to a large extent on what are deemed to be acceptable advertising and broadcasting practices in a given country or region. For the business sector consumer trust is one of the main assets to be secured.

**Public opinion and its role in bringing about compliance amongst industry regarding self- and co-regulatory codes** is also important in its contribution to generating political will and support for a scheme. Evidence collected indicated that as a general rule, **having political will and support for a self- or co-regulatory scheme is a success factor in promoting compliance.** The indirect backing of the political level adds importance to an issue, as well as further legitimacy and authority for a scheme.

A frequent observation which connects with the importance of political will and support is that **a legislative backstop of some variety is an important success factor in promoting compliance with a self- or co-regulatory code**. Even where the threat of governmental sanctions or interference is distant, the fact that the government condones compliance with a given scheme adds legitimacy and importance to that scheme. In a similar vein, non-compliance with a scheme implies a stronger sense of breaching the agreed upon principles and rules. Both regulators, **NGOs and industry stakeholders point to the importance of political will and a legislative backstop self- or co-regulatory schemes**.

The information collected on the self- and co-regulatory schemes show that **complaints were not always recorded with the same level of detail** by the regulatory body for the scheme in question. In some cases, complaints resolution mechanisms were simply not a priority for the regulatory body. This can be because compliance with the rules in place is generally high and no real need is felt for a complaints resolution system, or because few complaints have been received generally regarding the scheme.

**Having timely responses to submitted complaints** is also an important aspect of a complaints resolution system. There is an intuitive appeal in quick complaints resolutions as the exposure of the public to the inappropriate media content, be it general content or a commercial communication, is lower with a quick response to complaints. Research has shown that the damage can be done quickly with an inappropriate commercial communication or audiovisual media bearing harmful content. In the case of advertising campaigns, these tend to last for a few weeks. If complaints resolution takes too long, the time span of the advertising campaign can already have passed by the time a response is taken by the regulatory authority regarding the complaint.

While not every self- or co-regulatory scheme has a complaints resolution system, in those cases where such a system was present, rules on response times varied. Where time limits on rulings were specified, the advocated response time to complaints varied from a matter of days to a matter of weeks or months.

It became apparent from the schemes collected that **the satisfaction of consumers with the complaints procedure was not often measured specifically**. In those cases where the number of complaints received was recorded, compared to the number of complaints resolved, the rate of resolution was at times used as an indicator for the outcomes of the complaints resolution mechanism. Similarly, in some schemes the number of appeals made against an adjudicating body's decision was used as an indicator of the outcome of the complaints system and was thought to provide insight into the level of consumer satisfaction with the system.

An important observation regarding complaints and consumer satisfaction is that complaints made are first judged for their suitability. If the complaint does not have a good foundation, is missing information, or concerns something which does not breach the scheme in place,

then no action is taken against and advertiser or broadcaster. From the perception of a consumer this can feel unsatisfactory.

- For the schemes identified, the presence and nature of **sanctions** and their enforcement was examined. **Graduated sanctions which maintain an element of proportionality with the breach in compliance are usually considered to be an effective approach in enforcing a scheme.** However, the nature of sanctions which are deemed appropriate by the industry and civil communities are quite culturally determined. In most cases, especially in schemes with less collaboration between private and public organisations, naming, shaming and faming are common enforcement instruments. This is largely due to the importance of reputation and a good public image; undermining this can be very damaging to a company or broadcaster. However, it can also be a weak mechanism depending on the social pressure attached to such naming, shaming and blaming. There is much diversity in how well this works as an enforcement mechanism. Evidence collected throughout this study indicates that a combination of softer and harder sanctions is a good approach to enforcing sanctions. Having a legislative backstop or more concrete sanctions in place for continued breaches of compliance tends to give a self- or co-regulatory scheme more proverbial teeth. Although such heavier measures are by no means the first resort for a regulator, information collected indicates that having a final, stricter enforcement frontier works well.

In connection with the enforcement of rules implemented for both broadcasting and advertising, there is a cultural element which determines what sort of practices are considered socially acceptable and which ones are less accepted. This cultural element also extends to what sort of rules are therefore appropriate to ensure broadcasting and advertising which adhere to national norms and values. Consequently a national culture, specifically the regulatory culture, influences what sort of enforcement mechanisms are put in place. Public faming and shaming may be sufficient in some countries to promote compliance while in other countries, fines or removal of certain content from its dissemination channel or platform are considered more effective and acceptable by both the public and the industry. This is not always the case however, as **sanctions ought to maintain a degree of proportionality with the breach in compliance and what is considered as proportional can vary across national contexts.** This idea of proportionality and appropriateness of certain types of sanctions is a fairly culturally determined idea.

- Several common approaches to **financing** of schemes are identified. In several cases the scheme relies solely on membership fees as the source of financing. In other schemes the financing comes from membership fees as well as public funds. Offering services to participants of schemes for payment is also a source of financing for a number of self- and co-regulatory schemes. The provision of a copy advice for an advertisement for instance, can be an extra source of finance for a scheme owner, or the classification of a broadcast according to a classification system. A practice which is considered to be quite effective when financing self- and co-regulatory schemes on commercial communications is that of



industry wide fees for advertisers and participants of the schemes. The proportionality element introduces fair contributions from the participants of the scheme. The level and distribution of financing of self- and co-regulatory schemes was in the majority of schemes not publicly available.

- Using the definition of the criterion “**evaluation**” provided in the Principles for Better Self and Co Regulation, it becomes clear that **in many of the self- and co-regulatory schemes identified, a formal evaluation process was often not in place.** While annual reports are developed, more than half of the schemes collected had no evaluation system in place in line with the requirements for this criterion.

**Complaints are often used as an indicator for assessing the performance of a self- or co-regulatory scheme and used in monitoring the achievement of a scheme’s objective.** However, the exact connection between external complaints monitoring and the achievement of a scheme’s objective are usually not explicitly defined; **complaints are sometimes used as a catch-all indicator for a scheme instead of a concrete monitoring system of the achievement of specific objectives** (where specific objectives are also not defined often in the schemes encountered across the EU28). Using complaints to gauge the performance of a scheme however, does not constitute an evaluation in the sense prescribed by the Principles for Better Self- and Co-Regulation.

Few evaluation systems were in place which undertook regular assessments of the scheme, possible areas for improvement, and a scheme’s broader impact. In general these were mainly carried out for schemes that were developed more recently. A large number of schemes were developed decades ago and at that time including the requirement of conducting evaluations was not common. Other reasons for not carrying out evaluations are that a country does not have an established evaluation culture or that the budget of the code owner is not sufficient to carry out a proper evaluation.

The assessment of the effectiveness and impact of the schemes is based on the performance of schemes across certain criteria from the Principles for Better Self- and Co-Regulation. Besides stakeholder acceptance, the criteria of evaluation, reiterative improvements and the implementation approach are taken as building blocks for the assessment of a scheme’s effectiveness. **Since the objectives are often not SMART formulated, nor are targets or indicators determined, it is hard to assess the effectiveness of a scheme.** Furthermore, evaluations are hardly carried out. This means that the information collected for each of these aspects is mainly of a qualitative nature, relying on expert feedback and stakeholder input as to the effectiveness and overall impact of the scheme in working towards its objectives and policy goals.