

Statement by ABBRO, ACT, AER, VÖP and VAUNET on the Audiovisual and Media Action Plan (MAAP)

The undersigned broadcasting associations have warmly welcomed the Action Plan for Media and Audio-visual announced by Commissioner Breton during his parliamentary hearing in 2019. He later recognised “the need for a holistic approach for the sector, that encompasses the regulatory framework and financial instruments, including the MEDIA programme”¹. The Digital Strategy of the European Commission² also confirmed that a Media and Audio-visual Action Plan would support digital transformation and competitiveness of the audio-visual and media sector and stimulate access to quality content and media pluralism. Today, in the context of the coronavirus crisis and its recovery, such an action plan taking into consideration the needs of the sector is more than ever needed. It should have been mentioned in the adjusted Work Programme for 2020. The entire value chain of the radio and TV sector constitute a strategic industrial sector, essential for the recovery of the European Union³.

Unlike other major strategic economic sectors such as Energy, or Aviation, there is no coherent long-term industrial vision for our industry. This has resulted in a disconnected policy and legislative approach with strict and (over)specific sector regulation, often unintentionally impacted by legislation aimed primarily at related sectors. A new coordinated vision needs to build on existing EU programmes and strengthen access to financing for the promotion and development of AV content.

Thus, we strongly support the idea of a holistic, more horizontal approach for the Audiovisual and radio sector already underlined by Commissioner Breton (see above). This includes taking into account a wider scope of the measures in all media-related sectors like competition, copyright, data etc. on the media and audiovisual sector as such. The Media and Audio-visual Action Plan should set the framework for this holistic approach by securing that its impacts on the sector are always assessed and respected.

In any case, the opportunity of Member States to safeguard media pluralism should not be jeopardized. In due compliance with the principle of subsidiarity, the Action Plan announced by the Commission should be coherent, broad and bold enough to effectively protect the pluralism of Media. Coherence would require

- (1) Recognise that Media should not be regulated like any other sector**
- (2) Enable Media to continue to finance their content**
- (3) Enable Media to make their content competitive in a fair digital environment**

¹Answer given by Mr Breton on 14 February 2020 (question reference: P-004472/2019)

https://www.europarl.europa.eu/doceo/document/P-9-2019-004472-ASW_EN.html

² https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf

³ Cultural and Creative Industries are listed as one of the 14 key ecosystems determining the future industry policy of the Union in the EC’s Recovery Plan.

1. Media strengthens democracy: it should not be regulated like any other sector

The crisis has shown how important broadcasters and media are to counterbalance disinformation spreading exponentially online. Throughout these challenging times, commercial media actors have produced quality content and continued to comply with strict ethical and regulatory rules. Their content is not a content like any other and cannot be treated as a mere commodity. It should rely on a specific protective framework.

- The framework of the action plan for democracy announced by the EU Commission should reflect the central role played by private broadcasters as independent media. Against the background of fragmented information landscapes, they are paramount in the production, dissemination and verification of information and make an essential contribution to political discourse through the broadcast of trustworthy news.
- At least temporarily financial support e. g. for infrastructure costs or tax reliefs should be considered to help private media to overcome the crisis without questioning their independence. Radio and TV are particularly affected at local and regional level.
- Securing journalistic freedom is vital for democracy. Laws on criminal prosecution, counterterrorism or other areas must always take this into account and provide for specific exemptions for editorial content. Radio and TV content is subject to well-functioning self-regulation and strongly controlled by national media regulators. They ensure media diversity and should not be subject to community standards of private market dominant platforms.
- Sector-specific regulation should remain *lex specialis*: In the various pieces of legislation being discussed, such as the Digital Services Act, the European Commission should point out that the sector-specific legislation (e. g. AVMS-Directive) will remain “*lex specialis*”.

2. Enable Media to continue to finance their content

The particularity of commercial media lies within the fact that due to their impact on society they cannot be regulated like any other commodity. Their content is precisely regulated by their national media authority. However, as any other industrial sector, they still have to finance the quality content they are creating. Contrary to public broadcasters they do not benefit from the public license fee.

- There should be no additional burden. The refinancing of the media through advertising and/or subscriptions must not be thwarted by small-scale regulations such as advertising bans, mandatory notices and terms and conditions, excessive consumer protection regulations or restrictions on freedom of contract.
- To overcome the crisis, commercial broadcasters asked their governments *inter alia* for tax reliefs at national level for broadcasting costs (transmission costs), adjustment of the tax calculation to take into consideration the losses resulting from the crisis, a reduced VAT for media services, tax credits for advertising investments and compensation for COVID-19-related damage to film productions. The Commission should support such measures for commercial broadcasters, especially by ensuring the flexibility of the state aid rules. The “smart use of EU financial programmes and instruments to support the media and audiovisual

sectors”, as announced by Commissioner Breton will also be essential for the recovery of the sector⁴.

- The legitimate interest of media companies to refinance their content notably through advertising should be recognised. In the framework of data protection, this should be clearly stated (notably in the E-Privacy Regulation). Innovation-friendly data protection is essential for editorial media.
- The preservation of the territorial, exclusive allocation and licensing of rights is key to refinancing audio-visual content (on the contrary to radio). The evaluation of geo-blocking regulations needs to clearly recognise this. Indeed, the European regulatory initiatives taken should acknowledge the value of content created by commercial media. Promoting consumer access to content should not mean promoting a free access to content across Europe.
- Legal prosecution in the event of infringements of intellectual property rights should be improved. Copyright and contractual freedom make up the DNA of our business and allow broadcasters to operate and reinvest in European content. Impactful European legislative initiatives have been approved in the past five years. Institutions need to take stock and continue to uphold the fundamental drivers of creative media.
- Platforms should effectively be held accountable, as is currently being discussed in the course of the Digital Services Act.

3. Enable Media to make their content competitive in a fair digital environment

The online environment offers many opportunities to broadcasters to offer existing and new services and contents, and to reach new audiences. However, only a fair and competitive ecosystem will ensure pluralism in the online environment also in the medium to long term.

- The vertical integration of online platforms combined with their gatekeeper function has a significant impact on effective access and the selection of services and content. In the very near future voice assistance services, for example, will have a critical impact on the access especially to radio. Their inherent preference for their own services (self-preferencing) constitutes a serious risk for pluralism and fair competition. Information asymmetries and data access must be regulated with ex-ante rules.
- Safeguarding media diversity must be an integral part of the assessment tests of the European and national institutions. Antitrust law must apply a market analysis that considers the dynamic developments in the media industry. In the case of new and innovative forms of cooperation that do not interfere with editorial independence, such as product- or industry-specific distribution platforms, the antitrust law assessment should not constitute a major obstacle to implementation.
- It is essential that a level playing field should be established between all audiovisual media service providers by applying the same rules to all players. This includes rules of the AVMS Directive; data sharing on audience; data sharing on the placement of advertising; competition law; tax. Small players (i.e. with a low market power) should be exempted from some of these rules in order to preserve content plurality and local production.

⁴ Answer given by Mr Breton on 14 February 2020 (question reference: P-004472/2019)
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- More attention should urgently be paid to the importance of access to competition-relevant data, which is increasingly being collected by cross-sectoral market-powerful platforms. The market power of platforms in the online advertising market should be further examined. Broadcasters need access to data to understand their customer base and manage relationships with viewers. This is however often denied by online intermediation services and online search engines. Broadcasters should have access to the data generated from the use of their services or content they finance. Algorithmic transparency and access to data should be a core by design feature for online platforms.

SIGNATORIES

About the Association of Bulgarian Broadcasters – ABBRO

ABBRO is the non-governmental organisation of commercial TV and Radio broadcasters in Bulgaria. The association is the most representative industry body for Bulgaria for the television, radio and on demand services. Its members operate various national free-to-air, cable and satellite TV channels with the highest rating of viewers' trust, on-demand services and radio networks. ABBRO contributes to the law-making process to ensure fair and transparent market rules, as well as favourable legal framework for the development of media services in Bulgaria. For more information see www.abbro-bg.org

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About the Association of Commercial Television in Europe – ACT

The Association of Commercial Television in Europe represents the interests of leading commercial broadcasters in 37 European countries. The ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms. A healthy and sustainable commercial broadcasting sector that plays an important role in Europe's economy, society and culture. For more information please consult www.acte.be

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About the Association of European Radios – AER

AER is the Europe-wide trade body for commercial radio, representing the interests of companies operating over 5000 commercial radio stations to the EU Institutions. AER promotes the development of commercially funded radio broadcasting in Europe, by ensuring a fair and sustainable economic framework for radio so it can continue to thrive. For more information, please visit www.aereurope.org and follow [@AEREurope](https://twitter.com/AEREurope).

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About the German Association of private Media - VAUNET

VAUNET is the leading organisation for audiovisual media in Germany. The fields of business in which its 150 member companies operate are highly varied, ranging from TV and radio to internet and streaming offerings. VAUNET represents the interests of the commercial audiovisual industry, which is one of the largest business sectors in Germany. Activities focus on development of in the markets for audiovisual media markets and play an active role in shaping the relevant parameters at both a national and European level. The aim of the trade association is to create acceptance for the economic concerns of audiovisual media and raise awareness of the major sociopolitical and cultural significance of this industry in the digital age. For more information see www.vau.net and follow [@VAUNET_Presse](https://twitter.com/VAUNET_Presse)

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About the Association of Austrian Commercial Broadcasters - VÖP

The Association of Austrian Commercial Broadcasters (VÖP) represents commercial Radio and TV broadcasters in Austria. Among the most important goals is the establishment of fair competition and equal opportunities – on a national level between private broadcasters and the Austrian public service broadcaster ORF, as well as on an international level, i.e. regarding competition with international media companies and platforms. Other objectives are to show the journalistic and economic importance of the private broadcasting sector in Austria, to strengthen the economic basis of commercial broadcasters and to actively support technological development of the industry. For more information see www.voep.at.

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