

CONSULTATION

on Directive 2010/13/EU on audiovisual media services (AVMSD)

A media framework for the 21st century

Questionnaire

General information on respondents

I'm responding as:

- An individual in my personal capacity
- The representative of an organisation/company/institution

What is your nationality?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania

- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

What is your name? Click here to enter text._____

Please your email: Click here to enter text._____

I'm responding as:

- An individual in my personal capacity.
- The representative of an organisation/company.

Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

- Yes
- No

Please indicate your organisation's registration number in the Transparency Register.

Click here to enter text._____ **18574111503-28**

Please register in the [Transparency Register](#) before answering this questionnaire. If your organisation/institution responds without being registered, the Commission will consider its input as that of an individual and as such, will publish it separately.

Please tick the box that applies to your organisation and sector.

- National administration
- National regulator
- Regional authority
- Public service broadcasters
- Non-governmental organisation
- Small or medium-sized business
- Micro-business
- Commercial broadcasters & thematic channels
- Pay TV aggregators
- Free and pay VOD operators
- IPTV, ISPs, cable operators including telcos

- European-level representative platform or association
- National representative association
- Research body/academia
- Press or other
- Other

My institution/organisation/business operates in:

- Austria
- Belgium
- Bulgaria
- Czech Republic
- Croatia
- Cyprus
- Denmark
- Estonia
- France
- Finland
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Spain
- Slovenia
- Slovakia
- Sweden
- United Kingdom
- Other

Please enter the name of your institution/organisation/business.

Click here to enter text. Association of Commercial Television in Europe

Please enter your address, telephone and email.

Rue Deux Eglises 26, 1000 Bruxelles, 02 736 0052/rb@acte.be

Click here to enter text. _____

What is your primary place of establishment or the primary place of establishment of the entity you represent?

The ACT is based in Belgium, our member companies operate in 37 European territories.

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Background and objectives

The Audiovisual Media Services Directive (AVMSD¹) 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 its adoption in 2007, the audiovisual media landscape has changed significantly due to media convergence². 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

¹ 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. Hereinafter, "the AVMSD" or "the Directive".

² <https://ec.europa.eu/digital-agenda/en/media-convergence>

Single Market Strategy for Europe³, the Commission announced that the AVMSD would be revised in 2016. Another REFIT exercise is being carried out, in parallel, in the field of telecoms with a view to come forward with proposals in 2016. Some of the issues treated in the current public consultation may have an impact on this parallel exercise and *vice versa*.

In 2013, the Commission adopted a Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values"⁴ inviting stakeholders to share their views on the changing media landscape and its implications for the AVMSD.

On the basis of the outcome of this public consultation, the Commission has 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.

You are asked to answer a number of questions revolving around these issues. Please reason your answers and possibly illustrate them with concrete examples and substantiate them with data. The policy options identified are not necessarily mutually exclusive, but may sometimes be combined. Please indicate your preferred policy options, if any, and feel free to provide any other comment that you deem useful.

QUESTIONS

1. Ensuring a level playing field

Services to which the AVMSD applies

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, a Digital Single Market Strategy for Europe, COM (2015) 192 final, 6 May 2015.

⁴ Hereinafter, "The Green Paper" (<https://ec.europa.eu/digital-agenda/node/51287#green-paper---preparing-for-a-fully-converged-audi>)

The AVMSD regulates television broadcasts and on-demand services. It applies to programmes that are TV-like⁵ and for which providers have editorial responsibility⁶. The AVMSD does not apply to content hosted by online video-sharing platforms and intermediaries.

These platforms and intermediaries are regulated primarily by the e-Commerce Directive⁷, which exempts them from liability for the content they transmit, store or host, under certain conditions.

As a separate exercise, given the increasingly central role that online platforms and intermediaries (e.g. search engines, social media, e-commerce platforms, app stores, price comparison websites) play in the economy and society, the Commission Communication "A Digital Single Market Strategy for Europe" announces a comprehensive assessment of the role of platforms and of online intermediaries to be launched at the end of 2015.

SET OF QUESTIONS 1.1

Are the provisions on the services to which the Directive applies (television broadcasting and on-demand services) still relevant⁸, effective⁹ and fair¹⁰?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

The two-tier (linear/non-linear) AVMS regime may have made sense when the directive was negotiated in 2006.

But with consumer habits changing quickly and unpredictably, the reliance on the concept of "TV-like" services will quickly become outdated and unsustainable in a future when consumers will be

⁵ Recital 24 of the AVMSD: "It is characteristic of on-demand audiovisual media services that they are '**television-like**', i.e. that they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive. In the light of this and in order to prevent disparities as regards free movement and competition, the concept of 'programme' should be interpreted in a dynamic way taking into account developments in television broadcasting."

⁶ Article 1(1)(a) of the AVMSD. The Audiovisual Media Services Directive applies only to services that qualify as audiovisual media services as defined in Article 1(1)(a). An audiovisual media service is "a service [...] which is under the **editorial responsibility** of a media service provider and the **principal purpose** of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC". This definition covers primarily television broadcasts and on-demand audiovisual media services.

⁷ 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')

⁸ Relevance looks at the relationship between the needs and problems in society and the objectives of the w

⁹ Effectiveness analysis considers how successful EU action has been in achieving or progressing towards its objectives.

¹⁰ How fairly are the different effects distributed across the different stakeholders?

enjoying linear and non-linear content interchangeably, sometimes on the same screen, as well as video content delivered from the open internet subject to no content regulation.

The era of TV-only regulation is over, and European regulation of our sector needs to adapt to this new environment.

The key challenge here for the European Commission is not to tweak AVMS so as to include or exclude certain services. The sort of operational issues raised throughout this questionnaire and elsewhere in the REFIT exercise are important but the current level of debate around AVMS runs the risk of limiting the forthcoming revision to a technocratic and modest exercise. What is lacking to date is the high-level political vision. What future does the European Commission – at the highest levels – see for the media business and how far, if at all, can EU-level regulation enable that vision?

We recognise that this is particularly challenging at EU level, given that the long lead times for EU regulatory processes oblige the Commission to frame a vision which remains relevant until, say, 2027. But it is essential that this vision be communicated. To date, as explained in detail in our response to the 2013 Audiovisual Green Paper, the broadcasting sector has coped well with the arrival of online competition. But we cannot rule out the possibility of widespread disruption of existing markets at some stage in the future, well within the lifetime of whatever reforms are agreed to the AVMS directive.

We would prefer to see a wide-ranging, strategic overhaul of EU regulation in our sector

We are already seeing evidence of the regulatory system struggling to fit market developments into the framework negotiated in 2006, with a proliferation of cases being decided either at national level (see OFCOM ruling on Vice Video appeal against ATVOD determination as an ‘on demand programme service’) or by the European Court, with the court due to rule shortly on the New Media Online case referred from Austria. Although regulators and courts are doing their best, there is an obvious concern that there will be an increased number of such cases in the years ahead if the AVMS directive continues to define all services with reference to how far they retain “TV-like” characteristics.

Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) due to the fact that certain audiovisual services are not regulated by the AVMSD?

YES – NO (If yes, please explain below)

COMMENTS: *These distortions of competition manifest themselves most obviously in the commercial communications field, which is covered in more detail below. There are additional distortions around subtitling and audio description, although these are largely a function of national regulation rather than AVMS per se.*

Preferred policy option:

a) *Maintaining the status quo*

- b) Issuing European Commission's guidance clarifying the scope of the AVMSD. No other changes to Union law would be foreseen.
- c) Amending law(s) other than the AVMSD, notably the e-Commerce Directive. This option could be complemented by self and co-regulatory initiatives.
- d) Amending the AVMSD, namely by extending all or some of its provisions for instance to providers offering audiovisual content which does not qualify as "TV-like" or to providers hosting user-generated content.
- e) Other option (please describe): Many of the obligations placed on linear media by the AVMS directive are now obsolete and should be repealed. Only once this has been done would it be appropriate to consider option (d), possibly in conjunction with option (b).

PLEASE EXPLAIN YOUR CHOICE: *It would be inappropriate to extend the current tier of linear regulation to non-linear services for a number of reasons. But in view of the need to construct a more future-proof framework rather than one relying on a notion of how "TV-like" a given service is deemed to be, the Commission should rather seek to reduce detailed harmonisation imposed on linear services, notably around commercial communications. There will then be a case for bringing into the scope of the revised AVMS many audiovisual media services, including those operated by print media groups.*

Geographical scope of AVMSD

The AVMSD applies to operators established in the EU. Operators established outside the EU but targeting EU audiences with their audiovisual media services (via, for instance, terrestrial broadcasting satellite broadcasting the Internet or other means) do not fall under the scope of the Directive¹¹.

SET OF QUESTIONS 1.2

Are the provisions on the geographical scope of the Directive still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

Are you aware of issues (e.g. related to consumer protection problems or competitive disadvantage) caused by the current geographical scope of application of the AVMSD?

YES – NO (If yes, please explain below)

COMMENTS:

To date, our member companies do not report any examples of services located outside the EU having any significant impact on the markets in which we operate. However, the Commission is entirely right to anticipate this as a theoretical possibility and we would encourage further thinking as to how this possible scenario might be dealt with. We would be happy to explore this with the Commission and all other affected stakeholders.

Preferred policy option:

a) *Maintaining the status quo*

b) *Extending the scope of application of the Directive to providers of audiovisual media services established outside the EU that are targeting EU audiences.*

This could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.

c) *Extending the scope of application of the Directive to audiovisual media services established outside the EU that are targeting EU audiences and whose presence in the EU is significant in terms of market share/turnover.*

¹¹ Article 2(1) AVMSD – "Each Member State shall ensure that all audiovisual media services transmitted by media service providers **under its jurisdiction** comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State." (emphasis added)

As for option b), this could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.

d) Other option (please describe) If the Commission has evidence that this is an issue, then either option (b) or (c) could be pursued. However the notion of a "main target country" would potentially be problematic to reconcile with the existing notion of free movement of services within the EU unless the Commission was clear that registration or designating a representative in one Member State was enough to qualify for mutual recognition from the remaining Member States, and equally that the notion of "main target country" should not be used in a manner that would enable/promote such AV media service providers to 'forum shop.

PLEASE EXPLAIN YOUR CHOICE:

2. Providing for an optimal level of consumer protection

The AVMSD is based on a so-called "graduated regulatory approach". The AVMSD acknowledges that a core set of societal values should apply to all audiovisual media services, but sets out lighter regulatory requirements for on-demand services as compared to linear services. The reason is that for on-demand services the users have a more active, "lean-forward" approach and can decide on the content and the time of viewing.

In the area of commercial communications¹², the AVMSD sets out certain rules, which apply to all audiovisual media services and regulate, for example, the use of sponsorship and product placement. They also set limits to commercial communications for alcohol and tobacco.

It also lays down other rules that apply only to television broadcasting services and regulate advertising from a quantitative point of view. For example, they set a maximum of 12 minutes of advertising per hour on television, define how often TV films, cinematographic works and news programmes can be interrupted by advertisements and set the minimum duration of teleshopping windows.

SET OF QUESTIONS 2.1

Are the current rules on commercial communications still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

¹² "Audiovisual commercial communication" is a broader concept than advertising and it refers to images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement. See Article 1(1)(h) AVMSD.

COMMENTS:

Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) caused by the AVMSD's rules governing commercial communications?

YES – NO (If yes, please explain below)

COMMENTS

Preferred policy option:

a) *Maintaining the status quo*

b) *Rendering the rules on commercial communications more flexible, notably those setting quantitative limits on advertising and on the number of interruptions.*

c) *Tightening certain rules on advertising that aim to protect vulnerable viewers, notably the rules on alcohol advertising or advertising of products high in fat, salt and sugars.*

d) *Other options (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

Commercial Communication

Debates around AVMS tend to centre on scope (who should be regulated) and jurisdiction (which regulator, if any, should do the job?);

Commercial communications, which is not only the most densely regulated chapter of the directive but also one of the few with a direct impact on the ability of EU players to compete, and to invest in content, needs to be given equal priority in the Commission's thinking. The challenge of course is to think long-term, to focus on the regulation which will be needed in 2025, not in 2015, by which stage the era of TV-only regulation will be long forgotten. As European operators, we need to enable commercial communication to continue to be a major source of funding of European content, allowing European commercial broadcasters to compete with global tech companies which invest little or nothing in EU content. There is a case for continuing to guarantee consumer protection but in a context in which consumer habits and expectations will have changed radically. Finally, inappropriate EU level detail, which merely encourages national gold-plating and over-complex regulatory schemes, should be avoided.

There are some rules on commercial communication which (along with the rules on jurisdiction, editorial responsibility, protection of minors etc which we cover elsewhere) we believe will continue to make sense in the future and which do offer a genuine contribution

towards greater consumer protection. For example, Article 9 (i) to (c) on qualitative rules, no surreptitious advertising; Article 9 (d) and (f) (bans on advertising of tobacco and of prescription drugs); Article 9 (g) general high level of protection for children;

Other provisions require radical simplification, even if their objectives continue to make sense.

Examples include product placement, where inappropriate detail (e.g., “undue prominence”, “significant value”, “light entertainment”) should be deleted, retaining provisions on transparency and labelling only) and sponsorship where the important principles of independence, transparency and no sponsorship from banned products should be retained, but no further detail needed. On advertising minutage we would recommend a deletion of the hourly limit. If EU-level regulation of advertising minutage is thought necessary, a more flexible alternative could be introduced .

The EU should also encourage rather than restrict and regulate cross-promotion. Many global tech companies now competing aggressively for advertising revenue have built their businesses around cross-promotion, which is much more complex for a linear TV channel to do under the AVMS regime. Even if there is a case for a daily cap on minutage, TV content-related cross-promotion must be carved out from the definition of advertising, rendering EU media service providers free to promote content related offers and services (including of partners) regardless of whether there is “consideration”

Finally, some provisions make little sense in today’s environment and will be absurdly outdated by 2025. Article 20(2) on insertion of advertising (30minutes) obliges broadcasters to construct schedules to comply with regulation rather than viewer comfort and advertiser demand. Article 19(2) on single spots “remaining the exception” is very unclear and is commercially damaging, and it is hard to understand the policy objective behind Article 24 stating that teleshopping spots must be 15 minutes’ duration. These should be deleted.

3. *User protection and prohibition of hate speech and discrimination*

General viewers' protection under the AVMSD

The AVMSD lays down a number of rules aimed at protecting viewers/users, minors, people with disabilities, prohibiting hate speech and discrimination.

SET OF QUESTIONS 3.1

Is the overall level of protection afforded by the AVMSD still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) stemming from the AVMSD's rules?

YES – NO (If yes, please explain below)

COMMENTS:

This question raises a number of discrete issues: protection of minors, prohibition on hate speech, and qualitative advertising rules.

These provisions, if sensibly implemented at national level, are not opposed by the commercial broadcasting sector. Indeed, we are proud of our own efforts in developing best practices here. The logic of our rationale on scope (no more TV-specific regulation) leads us to conclude that these principles could be applied to all services, although the methods of delivering them may differ with a greater emphasis on self-regulation for pure online players.

Protection of minors

The system of graduated regulation applies also to the protection of minors: the less control a viewer has and the more harmful specific content is, the more restrictions apply. For television broadcasting services, programmes that “might seriously impair” the development of minors are prohibited (i.e., pornography or gratuitous violence), while those programmes which might simply be "harmful" to minors can only be transmitted when it is ensured that minors will not normally hear or see them. For on-demand services, programmes that "might seriously impair" the development of minors are allowed in on-demand services, but they may only be made available in such a way that minors will not normally hear or see them. There are no restrictions for programmes which might simply be "harmful".

SET OF QUESTIONS 3.2

In relation to the protection of minors, is the distinction between broadcasting and on-demand content provision still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS: *The European Commission's policy goals are shared by the industry. It is in the interests of responsible media businesses to ensure that children do not access content which is unsuitable for them. But with young people's media usage tending to include a higher degree of non-linear consumption than that of adult audiences ¹³it would appear questionable whether the policy goals here are best delivered by this two-tier approach. As we mention above, it may be appropriate for internet-native services to seek to achieve the policy objectives via different means, but there should now be harmonisation as to the objectives.*

Has the AVMSD been effective in protecting children from seeing/hearing content that may harm them?

YES – NO – NO OPINION

COMMENTS:

What are the costs related to implementing such requirements?

Please note that for all the operational issues of cost/benefit, we refer the Commission to the responses being prepared by individual member companies.

Costs:

COMMENTS:

What are the benefits related to implementing such requirements?

Benefits:

COMMENTS:

Are you aware of problems regarding the AVMSD's rules related to protection of minors?

YES – NO (If yes, please explain below)

COMMENTS:

Preferred policy option:

a) *Maintaining the status quo*

b) *Complementing the current AVMSD provisions via self- and co-regulation*

¹³ See <http://www.thinkbox.tv/about-us/press-office/young-people-s-video-lives-revealed>

The status quo would be complemented with self-/co-regulatory measures and other actions (media literacy, awareness-raising).

c) *Introducing further harmonisation*

This could include, for example, more harmonisation of technical requirements, coordination and certification of technical protection measures. Other possibilities could be the coordination of labelling and classification systems or common definitions of key concepts such as minors, pornography, gratuitous violence, impairing and seriously impairing media content.

d) *Deleting the current distinction between the rules covering television broadcasting services and the rules covering on-demand audiovisual media services.*

This means either imposing on on-demand services the same level of protection as on television broadcasting services (levelling-up), or imposing on television broadcasting services the same level of protection as on on-demand services (levelling down).

e) *Extending the scope of the AVMSD to other online content (for instance audiovisual user-generated content or audiovisual content in social media), including non-audiovisual content (for instance still images)*

One option could be that these services would be subject to the same rules on protection of minors as on-demand audiovisual media services.

f) *Other option (please describe)*

PLEASE EXPLAIN YOUR CHOICE: *See above*

4. Promoting European audiovisual content

The AVMSD aims to promote European works and as such cultural diversity in the EU. For television broadcasting services, the EU Member States shall ensure, where applicable and by appropriate means,

a share of EU works¹⁴ and independent productions¹⁵. For on-demand services, the EU Member States can choose among various options to achieve the objective of promoting cultural diversity. These options include financial contributions to production and rights acquisition of European works or rules guaranteeing a share and/or prominence of European works. The EU Member States must also comply with reporting obligations on the actions pursued to promote European works, in the form of a detailed report to be provided every two years.

SET OF QUESTIONS 4

Are the AVMSD provisions still relevant, effective and fair for promoting cultural diversity and particularly European works?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS: Original, high-end European content is at the heart of our scheduled and on-demand services for one simple reason: viewer demand. The European media business has worked hard over two decades to create and sustain a virtuous circle in which the greater costs of original content can be refinanced by higher advertising and subscription revenues. These virtuous circles are now established across Europe, with additional benefits now becoming visible in terms of increased intra-Community circulation of content and the global success story of European television, which sells more programme formats to the US market than the US does to Europe, probably the only part of the audiovisual value chain in which the EU runs a transatlantic trade surplus.

Against this background of success, the forms of regulatory intervention thought appropriate in 1989 – which we continue to oppose in principle as an interference in the operational freedom of media businesses – are neither relevant nor helpful. We do recognise that there is a certain value attached to these measures in some member states, and that political realities may dictate that the existing measures must be retained, in which case we would stress the importance of continuing with the discretionary elements of pragmatism allowed to Member States in the current text (“where practicable and by appropriate means”).

In terms of European works, including non-national ones (i.e. those produced in another EU country), the catalogues offered by audiovisual media service providers contain:

¹⁴ For European works: a majority proportion of broadcasters' transmission time.

¹⁵ For European works created by producers who are independent of broadcasters: 10% of broadcasters' transmission time.

a) the right amount;

b) too much;

c) too little

d) no opinion

COMMENTS: *The only people who can answer this question are European consumers, via their actual daily behaviour: if our consumers feel we are offering the wrong mix of content, they will migrate to another platform or service with a different content offer. To date there is no evidence of this happening (consumers tend to switch to different means of consuming a similar mix of content rather than to different content per se). If there were such evidence, it would be for the market, not the regulator, to correct the market failure.*

Would you be interested in watching more films produced in another EU country?

YES – NO – NO OPINION

COMMENTS: *See above – this is not an appropriate question for an industry association to answer. In practice, broadcasters and platforms constantly seek to predict consumer demand for different genres of content, including customer feedback, focus groups, market testing etc. So in the event that actual European consumers wished to see “more films produced in another EU country”, this demand would be picked up by our research departments and acted upon.*

Have you come across or are you aware of issues caused by the AVMSD's rules related to the promotion of EU works?

YES – NO (If yes, please explain below)

COMMENTS *ref to companies' work on compliance costs*

What are the benefits of the AVMSD's requirements on the promotion of European works? You may wish to refer to qualitative and/or quantitative benefits (e.g. more visibility or monetary gains).

Benefits: *If the rules did not exist, our commercial practices would not change so we cannot identify any benefits.*

COMMENTS:

As an audiovisual media service provider, what costs have you incurred due to the AVMSD's requirements on the promotion of European works, including those costs stemming from reporting obligations? Can you estimate the changes in the costs you incurred before and after the entry into force of the AVMSD requirements on the promotion of European works?

Costs:

COMMENTS:

ref to companies' work on compliance costs

Preferred policy option:

- a) *Maintaining the status quo*
- b) *Repealing AVMSD obligations for broadcast and/or for on-demand services regarding the promotion of European works. This would entail the removal of EU-level harmonisation on the promotion of European works, which would then be subject to national rules only.*
- c) *Introducing more flexibility for the providers' in their choice or implementation of the measures on the promotion of European works.*

This could imply, for example, leaving more choice both to TV broadcasters and video-on-demand providers as to the method of promoting European works.

- d) *Reinforcing the existing rules.*

For television broadcasting services this could be done, for example, by introducing additional quotas for non-national European works and/or for European quality programming (e.g. for fiction films, documentaries and TV series) or for co-productions; or by setting a clear percentage to be reserved to Recent Independent Productions¹⁶ (instead of "an adequate proportion"). For on-demand services, further harmonisation could be envisaged: by introducing one compulsory method (among e.g. the use of prominence tools, an obligatory share of European works in the catalogue or a financial contribution – as an investment obligation or as a levy) or a combination of these methods.

- e) *Other options (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

Our choice of policy option should be self-explanatory from our comments above. However we should add that the options floated at (d) such as sub-quotas for non-national content or for so-called "quality" programming are entirely inadmissible as the European Union has neither the legal

¹⁶ Works transmitted within 5 years of their production.

competence nor the administrative capacity to seek to harmonise the daily operational practices of broadcasters to this extent.

5. *Strengthening the single market*

Under the AVMSD, audiovisual media companies can provide their services in the EU by complying only with the rules within the Member States under whose jurisdiction they fall. The AVMSD lays down criteria to identify which Member State has jurisdiction over a provider. These criteria include where the central administration is located and where management decisions are taken on programming or selection of content. Further criteria include the location of the workforce and any satellite uplink, and the use of a country's satellite capacity. The AVMSD foresees the possibility to derogate from this approach in cases of incitement to hatred, protection of minors or where broadcasters try to circumvent stricter rules in specific Member States. In these cases the Member States have to follow specific cooperation procedures.

SET OF QUESTIONS 5

Is the current approach still relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS: *We believe the current approach to be the only one which is reconcilable with the goals of achieving a single market in audiovisual media services.*

Are you aware of problems regarding the application of the current approach?

YES – NO (If yes describe and explain their magnitude)

COMMENTS *We are aware, from the conference organised by the Latvian Presidency in March 2015, that there are issues with a handful of channels distributed into the Baltic states from elsewhere in the EU. We understand the seriousness with which this issue is perceived in those markets, but would set this against the fact that over 1500 channels currently make use of the opportunities offered by the AVMS regime.*

If you are a broadcaster or an on-demand service provider, can you give an estimate of the costs or benefits related to the implementation of the corresponding rules?

YES – NO

Estimate of costs:

Estimate of benefits:

COMMENTS:

Preferred policy option:

a) *Maintaining the status quo*

b) *Strengthening existing cooperation practices*

c) *Revising the rules on cooperation and derogation mechanisms, for example by means of provisions aimed at enhancing their effective functioning*

d) *Simplifying the criteria to determine the jurisdiction to which a provider is subject, for example by focusing on where the editorial decisions on an audiovisual media service are taken.*

e) *Moving to a different approach whereby providers would have to comply with some of the rules (for example on promotion of European works) of the countries where they deliver their services.*

f) *Other options (please describe)*

PLEASE EXPLAIN YOUR CHOICE: There are concerns in some Member States, which could be examined and specific solutions found without changing the country of origin basis of the Directive. We have no objection to enhanced co-operation among regulators, provided that the European Commission as guardian of the treaties and hence of the right of free movement of services retains a key role in the process, and that media companies retain the rights to be fully informed of discussions affecting them and to make appropriate representations. The European Commission should also make clear that any such enhanced co-operation must be permissible only in exceptional cases such as those discussed at the Latvian conference. It is inadmissible for Member States to seek to protect their domestic advertising markets from competition from elsewhere in the European Union – attempts to “ringfence” advertising markets in this way have no place in the modern media industry.

6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities

Independence of regulators

Free and pluralistic media are among the EU's most essential democratic values. It is important to consider the role that independent audiovisual regulatory bodies can play in safeguarding those values within the scope of the AVMSD. Article 30 AVMSD states that independent audiovisual regulatory authorities should cooperate with each other and the Commission. The AVMSD does not directly lay down an obligation to ensure the independence of regulatory bodies, nor to create an independent regulatory body, if such a body does not already exist.

SET OF QUESTIONS 6.1

Are the provisions of the AVMSD on the independence of audiovisual regulators relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS: *The provisions are important but too weak to be effective.*

Are you aware of problems regarding the independence of audiovisual regulators?

YES – NO (If yes, please explain below)

COMMENTS: *As the Commission is aware, the independence of media regulatory authorities is far from guaranteed in a number of European markets. In recent months we have been made aware of issues in Greece, Hungary, Latvia and Romania , sometimes affecting publicly-funded broadcasters, sometimes commercial broadcasters, sometimes all players.*

Preferred policy option:

a) *Maintaining the status quo*

b) *Laying down in the AVMSD a mandate for the independence of regulatory authorities, for example by introducing an explicit requirement for the Member States to guarantee the independence of national regulatory bodies and ensure that they exercise their powers impartially and transparently.*

c) *Laying down minimum mandatory requirements for regulatory authorities, for example detailed features that national regulatory bodies would need to have in order to ensure their independence.*

Such features could relate to transparent decision-making processes; accountability to relevant stakeholders; open and transparent procedures for the nomination, appointment and removal of Board Members; knowledge and expertise of human resources; financial, operational and decision making autonomy; effective enforcement powers, etc.

d) *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE: NRAs should assume a greater responsibility for monitoring the proper functioning of media markets particularly if there is to be a reduction in the detailed harmonisation at European level of daily operational practices. This responsibility can only be discharged by regulators which meet the criteria of independence outlined above. [If there are additional safeguards we would like to see embedded – maybe a right for stakeholders to be consulted? – then we can add them here]

Must Carry/Findability

In the context of the regulatory framework applicable to the telecoms operators, under the Universal Service Directive¹⁷, Member States can in certain circumstances oblige providers of electronic communications networks to transmit specific TV and radio channels ("must-carry" rules). Under the Access Directive¹⁸, Member States can also set rules on the inclusion of radio and TV services in electronic programme guides (EPGs)¹⁹ and on presentational aspects of EPGs such as the channel listing. Most recent market and technological developments (new distribution channels, the proliferation of audiovisual content, etc.) have highlighted the need to reflect on the validity of the must-carry rules and on whether updated rules would be required to facilitate or ensure access to public interest content (to

¹⁷ Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, as amended by Directive 2009/136/EC

¹⁸ Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), as amended by Directive 2009/140/EC

¹⁹ Electronic programme guides (EPGs) are menu-based systems that provide users of television, radio and other media applications with continuously updated menus displaying broadcast programming or scheduling information for current and upcoming programming.

be defined at Member State level), for instance by giving this content a certain prominence (i.e. ensuring findability/discoverability).

SET OF QUESTIONS 6.2

Is the current regulatory framework effective in providing access to certain 'public interest' content?

Effective? YES – NO – NO OPINION

COMMENTS:

If you are a consumer, have you faced any problems in accessing, finding and enjoying TV and radio channels?

YES – NO (If yes, please explain below)

COMMENTS:

Have you ever experienced problems regarding access to certain 'public interest' content?

YES – NO (If yes, please explain below)

COMMENTS:

Preferred policy option:

a) *Maintaining the status quo, i.e. keeping in place the current EU rules on must carry/ EPG related provisions (i.e. no extension of the right of EU Member States to cover services other than broadcast).*

b) *Removing 'must carry' /EPG related obligations at national level/at EU level.*

c) *Extending existing "must-carry" rules to on-demand services/and or further services currently not covered by the AVMSD.*

d) *Amending the AVMSD to include rules related to the "discoverability" of public interest content (for instance rules relating to the prominence of "public interest" content on distribution platforms for on-demand audiovisual media services).*

e) Addressing potential issues only in the context of the comprehensive assessment related to the role of online platforms and intermediaries to be launched at the end of 2015 as announced in the Digital Single Market Strategy for Europe.

f) Other options (please describe).

PLEASE EXPLAIN YOUR CHOICE:

We agree that this is, potentially at least, an issue.

Issues of findability and prominence may assume greater relevance in the future.

If so, and notwithstanding the need to discuss whether the issue is better dealt with at national or EU level and, if the latter whether the AVMS-D, designed to encourage cross-border circulation of audiovisual content, is the most appropriate European instrument, there is a significant issue around how to avoid new distortions of competition. Much of the debate here assumes that publicly-funded broadcasters should benefit from a privileged access to, and prominence on, platforms. This raises issues of definition and of equal treatment. A more equitable, transparent and future-proof approach would be to leave this to the discretion of Member States, who may well decide that a commercially-funded news service is worthy of greater 'findability' than a publicly-financed entertainment channel. Smaller Member States may also take the view that services with a high proportion of content in their language is deserving of greater prominence ... but, again, this will not be an issue in all EU markets and as such should be left to Member State/NRA discretion rather than harmonised in EU legislation.

Accessibility for people with disabilities

The AVMSD sets out that the Member States need to show that they encourage audiovisual media service providers under their jurisdiction to gradually provide for accessibility services for hearing and visually-impaired viewers.

SET OF QUESTIONS 6.3

Is the AVMSD effective in providing fair access of audiovisual content to people with a visual or hearing disability?

Effective? YES – NO – NO OPINION

COMMENTS:

Have you ever experienced problems regarding the accessibility of audiovisual media services for people with a visual or hearing disability?

YES – NO (If yes, please explain below)

COMMENTS

While the policy objective here is uncontroversial there are examples of over-zealous national implementation which impose unrealistic, or sometimes impossible obligations on operators particularly those broadcasting in smaller markets.

If you are a broadcaster, can you provide an estimate of the costs linked to these provisions?

YES – NO

Cost:

COMMENTS:

Preferred policy option:

a) *Maintaining the status quo*

b) *Strengthening EU-level harmonisation of these rules.*

Instead of encouraging it, the EU Member States would be obliged to ensure gradual accessibility of audiovisual works for people with visual and hearing impairments. This obligation could be implemented by the EU Member States through legislation or co-regulation.

c) *Introducing self and co-regulatory measures*

This could include measures related to subtitling or sign language and audio-description.

d) *Other option (please describe).*

Rather than seeking to further regulate, the Commission might wish to convene discussions among stakeholders to see how far the technologies developed in larger markets – whether at the platform or the content level – can be exported also to smaller markets. Certainly for subtitling, sign language and audio description, there will be a need to develop the talent base in smaller languages, something which could perhaps be explored with the assistance of EU funding programmes.

PLEASE EXPLAIN YOUR CHOICE

Events of major importance for society

The AVMSD authorises the Member States 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 of following those events on free-to-air television. The AVMSD mentions the football World Cup and the European football championship as examples of such

events. When a Member State notifies a list of events of major importance, the Commission needs to assess the list's compatibility with EU law. If considered compatible, a list will benefit from 'mutual recognition'.

SET OF QUESTIONS 6.4

Are the provisions of the AVMSD on events of major importance for society relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

ACT member companies will respond in their own right to this set of questions.

Have you ever experienced problems regarding events of major importance for society in television broadcasting services?

YES – NO (If yes, please explain below)

COMMENTS

Preferred policy option:

a) *Maintaining the status quo*

b) *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE

Short news reports

The AVMSD requires Member States to ensure that broadcasters established in the Union have access, on a fair, reasonable and non-discriminatory basis, to events of high interest to the public for the purposes of short news reports.

SET OF QUESTIONS 6.5

Are the provisions of the AVMSD on short news reports relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS: *Broadcasters already had access to short news reports under self-regulatory and contractual arrangements which predated AVMS. The inclusion of this provision in AVMS serves no additional purpose and, if the Commission intends to embrace a better regulation agenda, it should be deleted.*

Have you ever experienced problems regarding short news reports in television broadcasting services?

YES – NO (If yes, please explain below)

COMMENTS

Preferred policy option:

a) *Maintaining the status quo*

b) *Other options (please describe).*

This provision has no purpose and should be deleted.

PLEASE EXPLAIN YOUR CHOICE

Right of reply

The AVMSD lays down that 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.

SET OF QUESTIONS 6.6

Are the provisions of the AVMSD on the right of reply relevant, effective and fair?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

Have you ever experienced problems regarding the right of reply in television broadcasting services?

YES – NO (If yes, please explain below)

COMMENTS

Preferred policy option:

a) *Maintaining the status quo*

b) *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE *The policy goal underpinning this provision could be extended also to services currently in the non-linear tier, with appropriate attention given to the specificities of how this should be delivered.*

Conclusions and next steps

This public consultation will be closed on 30 September 2015