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AVMSD

ACT GUIDE



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BACKGROUND

1989

Television Without
Frontiers Directive

The TWF Directive established a single European market for broadcasting by laying down a number of common minimum rules

2010

TWFD turns into AVMSD

Over the past 15 years, rules evolved to address changes in the AV landscape such as the emergence of VOD and social media

2018

Revision of the AVMSD

2026

Review of the AVMSD

Upcoming review expected to focus on level playing field between AVMS and VSPs, influencers, prominence of services of general interest (GI)



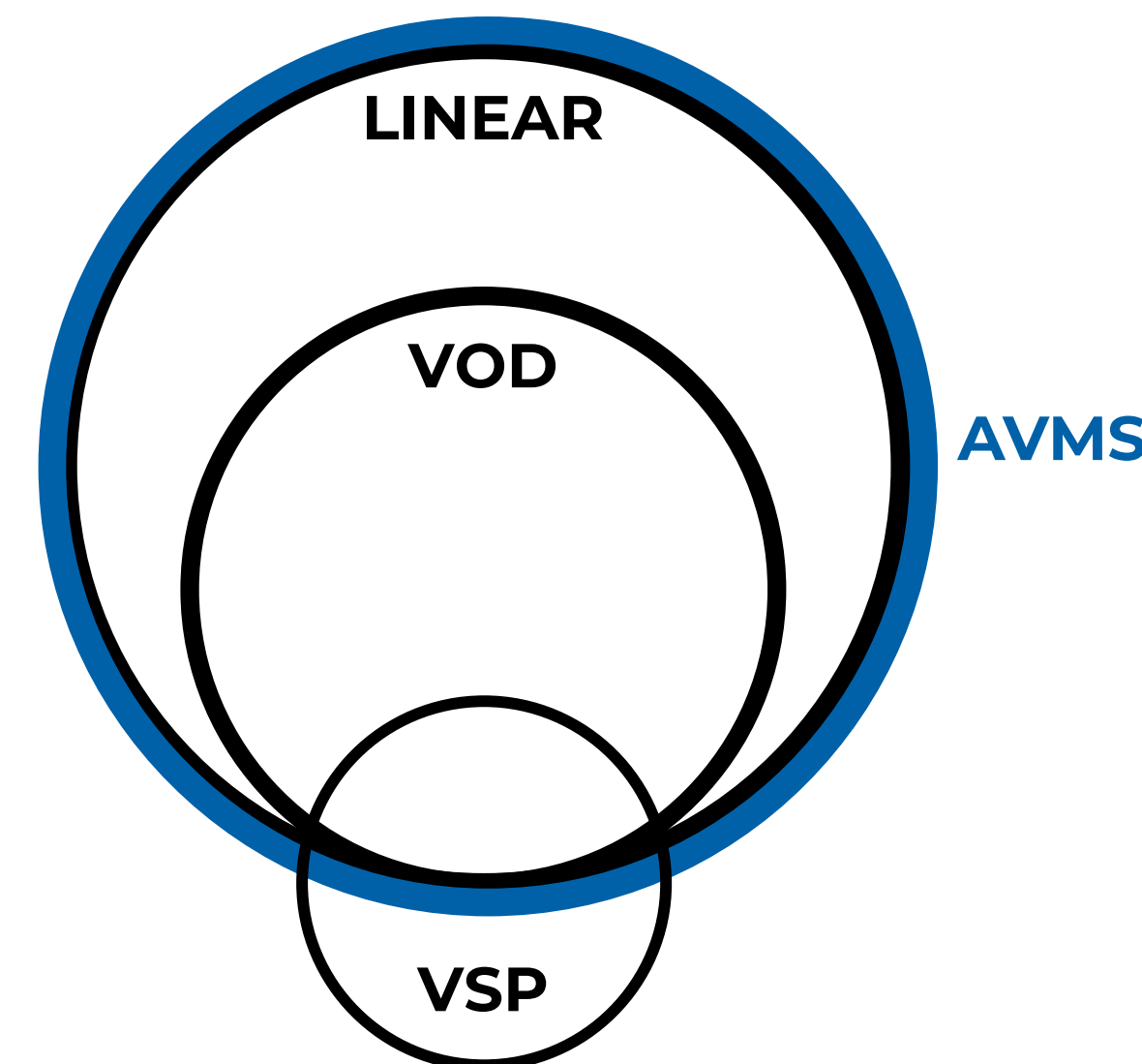
THE AVMSD IN A NUTSHELL

The AVMSD applies a tiered approach:

- **Linear** - strictest rules
- **VoD** - more flexibility for some rules
- **VSPs** - light touch obligations

The AVMSD focuses primarily on the following broad areas: content rules, advertising, cultural policy. But it also establishes rules related to major events, prominence of services of general interest, rights of reply...

... and also the **Country-of-Origin Principle** (see next slide)



• **AVMS** = Audiovisual Media Service
• **linear** = Live broadcasting

• **VOD** = Video-on-Demand
• **VSP** = Video-Sharing Platform

• **MS** = Member State
• **CoO** = Country of Origin

COUNTRY OF ORIGIN PRINCIPLE

The AVMSD establishes a Country of Origin principle: as long as a media service provider respects the laws of its Member State of establishment, it can offer its services in other Member States.

- ➔ MS are not allowed to restrict access to their market on grounds harmonised by the AVMSD...
- ⚠ MS can still restrict access for reasons that are not harmonised in the AVMSD (eg. non-harmonised advertising rules)
- 🛡 There are safeguards: threat to public order, choice of jurisdiction to circumvent stricter rules...
- ⊘ ... and derogations! (e.g. cross-border levies)



How do you determine the Country of establishment? Where head office is located and editorial decisions taken
In case of conflict: additional criteria apply, e.g: the location of a significant part of the workforce, the order in which offices were established, links with the MS's economy, the location of satellite uplink...

COMMERCIAL COMMUNICATIONS

General

The AVMSD sets the framework for how commercial communications are regulated within AVMS.

These rules can be broadly divided into three categories:



QUANTITATIVE

How much advertising is allowed?



QUALITATIVE

What kind of advertising is allowed?



SEPARATION

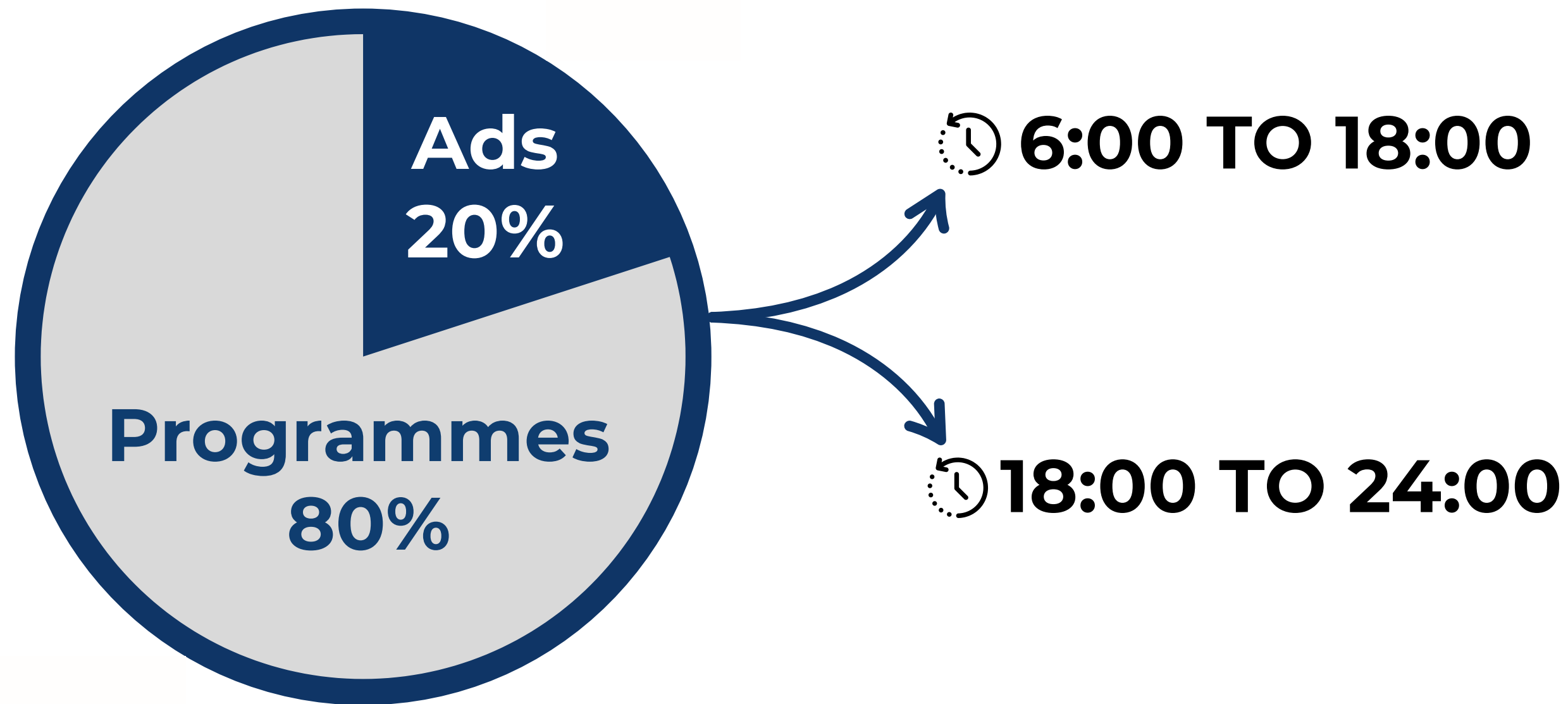
How advertising is kept separate from other content?



COMMERCIAL COMMUNICATIONS

Quantitative

The AVMSD imposes limits on advertising time for two time windows representing day-time and prime-time



Does not apply to: self-promotion, sponsorship announcements, product placement, neutral ad-break frames



COMMERCIAL COMMUNICATIONS

Qualitative

Qualitative rules are rules on the content of ads. They relate to:

- **practices:** ads must be readily recognisable, with no surreptitious and subliminal techniques
- **morality:** respect for human dignity, no discrimination
- **encouraging some behaviours:** prejudicial to health or safety, grossly prejudicial to the protection of the environment
- **the protection of minors:** shall not cause physical, mental or moral detriment to minors
- **category restrictions:** limits/bans on tobacco, alcohol, prescription medicine

Some of these apply to both AVMS and VSPs, but only when they are marketed, sold or arranged by them (i.e. not when these ads are part of user-generated content)

But AVMS are subject to an extra layer of category restrictions at both AVMSD and national level (sometimes going far beyond these). These further restrictions range from advertising bans for books, gambling, supermarket, energy intensive products, and HFSS.



COMMERCIAL COMMUNICATIONS

Separation of content and advertising

PROGRAMME INTEGRITY

- Ad breaks cannot compromise the structure, duration, or nature of the programmes. Interruptions can only occur during “natural breaks”
- Only one ad break allowed for every 30 minute period
- Isolated television advertising spots only allowed for sport events
- Advertising must be kept distinct from programme by optical, acoustic and/or spatial means



PRODUCT PLACEMENT


- Treated as advertising for the purpose of a number of rules (e.g. certain category restrictions)
- Forbidden in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes
- Viewers must be informed of its existence at start and end of programme, including before and after ad breaks
- Cannot influence editorial responsibility and independence or scheduling, directly encourage consumption and give undue prominence to the product in question



COMMERCIAL COMMUNICATIONS

Separation of content and advertising

SPONSORSHIP

- 
- Treated as advertising for the purpose of a number of rules (e.g. certain category restrictions)
 - Must always be clearly identified and not influence content or scheduling
 - Sponsorship cannot directly encourage consumption
 - Viewers must be clearly informed of the sponsorship agreement via logo or other means at the beginning and end of the programme
 - Forbidden for news and current affairs programmes

TELESHOPPING

- Treated as advertising for the purpose of a number of rules (e.g. category restrictions, programme integrity...)
- Teleshopping spots can only be of a minimum uninterrupted duration of 15 minutes



CONTENT RESTRICTIONS

CONTENT BAN

MS must ensure that AVMS do not distribute content that:

- Constitutes hate speech in line with EU Charter of Fundamental rights (eg. sexual orientation, race, disability, etc...)
- Incites to terrorism



PROTECTION OF MINORS



- AVMS should not distribute content that may impair the physical, mental or moral development of minors, in a way that ensures they would normally be able to see them
- This can include watersheds, age verification tools or other technical measures
- Role of co-regulation

Content restrictions generally work well but have been abused in some markets:

- *Hungary relied on protection of minor provisions to LGBTIQ+ content on TV (EC launched infringement proceedings in 2021)*
- *Captive regulators abuse hate speech provisions to stifle legitimate political criticism and independent reporting in some jurisdictions (mostly non-EU candidate countries)*



VSPs are subject to distinct but related light touch obligations:



On **advertising**:

- marketed, sold or arranged **by them**: they must follow a number of baseline qualitative advertising rules
- **not** marketed, sold or arranged **by them**: they must take “appropriate measures” to ensure these qualitative advertising rules are complied with (e.g. influencer content)



On **content**: MS must ensure that VSPs take “appropriate measures” to protect:

- minors
- from incitement to violence or hatred
- illegal content (criminal offenses)

Appropriate measures? To respect these obligations, VSPs need only take “appropriate measures” determined in light of a number of criteria, including their legitimate interests. The AVMSD proposes a list of possible measures **for VSPs to choose from**, that fall into two broad categories:

- Content moderation: including and applying specific types of terms and conditions
- Service features: declaration and notification mechanism, parental control system, age-verification systems, etc.

... AND INFLUENCERS?

“

Channels or any other audiovisual services under the editorial responsibility of a provider can constitute audiovisual media services in themselves, even if they are offered on a video-sharing platform

- Recital 3 of the AVMSD

”

Influencers may qualify as AVMS providers if:

- They offer a service (i.e. they are remunerated in some form)
- devoted to providing programmes
- under their editorial responsibility
- to the general public (i.e. if they have a certain reach)

To date, around half of MS qualify certain influencers as AVMS. A key element has been the reach criteria (i.e. thresholds).



Influencers can also be considered “traders” under consumer protection framework. As such, they may have to follow horizontal consumer protection rules.



The AVMSD includes a number of obligations to force AVMS to show and invest certain types of content.



EUROPEAN WORKS

Obligation to have a minimum share of European works in linear programming and VOD catalogues



INDEPENDENT PRODUCTION

Obligation to reserve a share linear programming or production budget to independent production



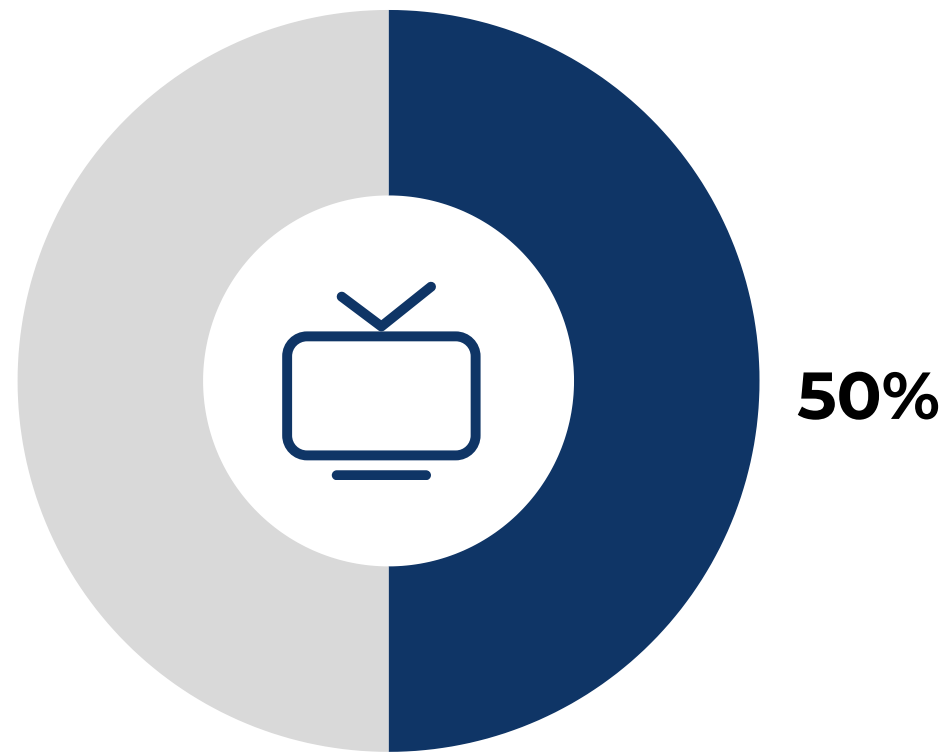
FINANCIAL OBLIGATIONS

Obligation to invest in national content or contribute to national film funds



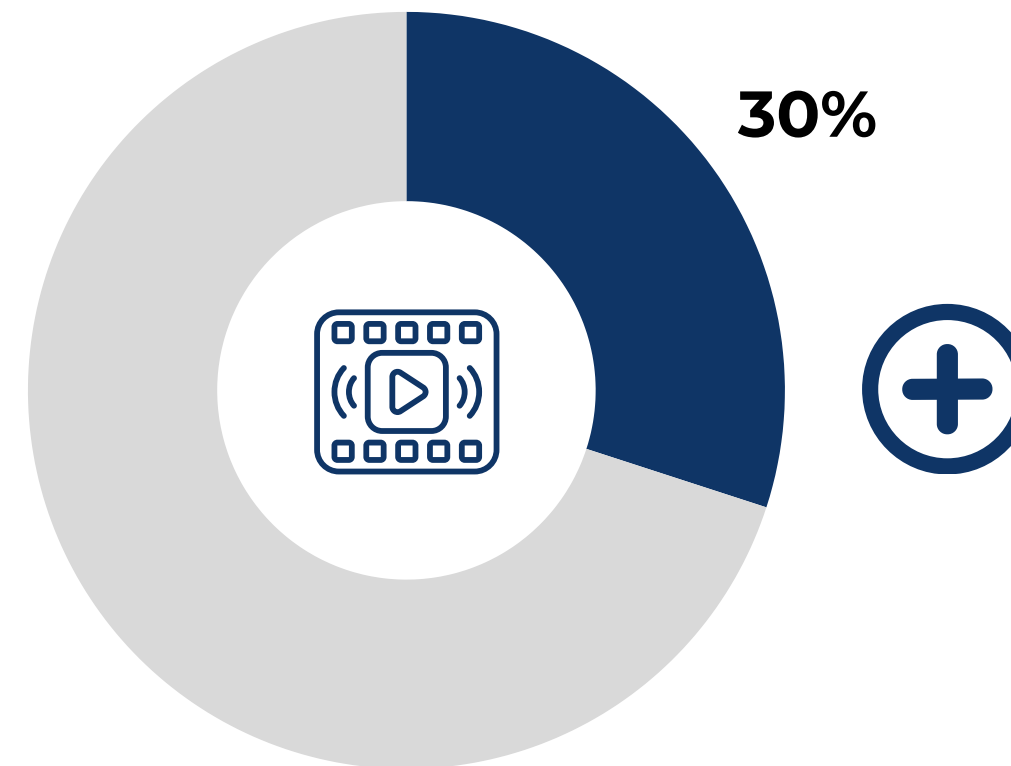
European works quotas:

LINEAR



At least **of 50%** of specified **transmission time**

VOD



At least **30%** of the **total catalogue**

VOD services must ensure European works' **prominence**

AVMSD is flexible here, and merely showcases options, incl:

- homepage dedicated section
- search functionality
- promotional campaigns
- banners or similar tools



What is a European work?

European Works = works from EU and non-EU countries that signed the Council of Europe's ECTT Convention



Calculations differ!

- Linear: 50% calculated based total broadcast time minus news, sports, games, advertising, and teleshopping = less than 50% of total airtime
- VOD: 30% based on the entire catalogue!



Minimum harmonisation and significant gold-plating (e.g. national or regional sub-quotas)

CULTURAL POLICY

Independent Production

In addition to the European works quota, linear services are subject to a content quotas for independent production



What is an independent production?

'independent production/producer' is not defined in the AVMSD, but the quota refers to production that is independent of the the broadcaster (ie. external to the broadcaster). Different criteria used to qualify the producer/production as independent. They typically refer to different combinations of financial, operational and, in very limited cases, restrictions on Intellectual Property ownership.



CULTURAL POLICY

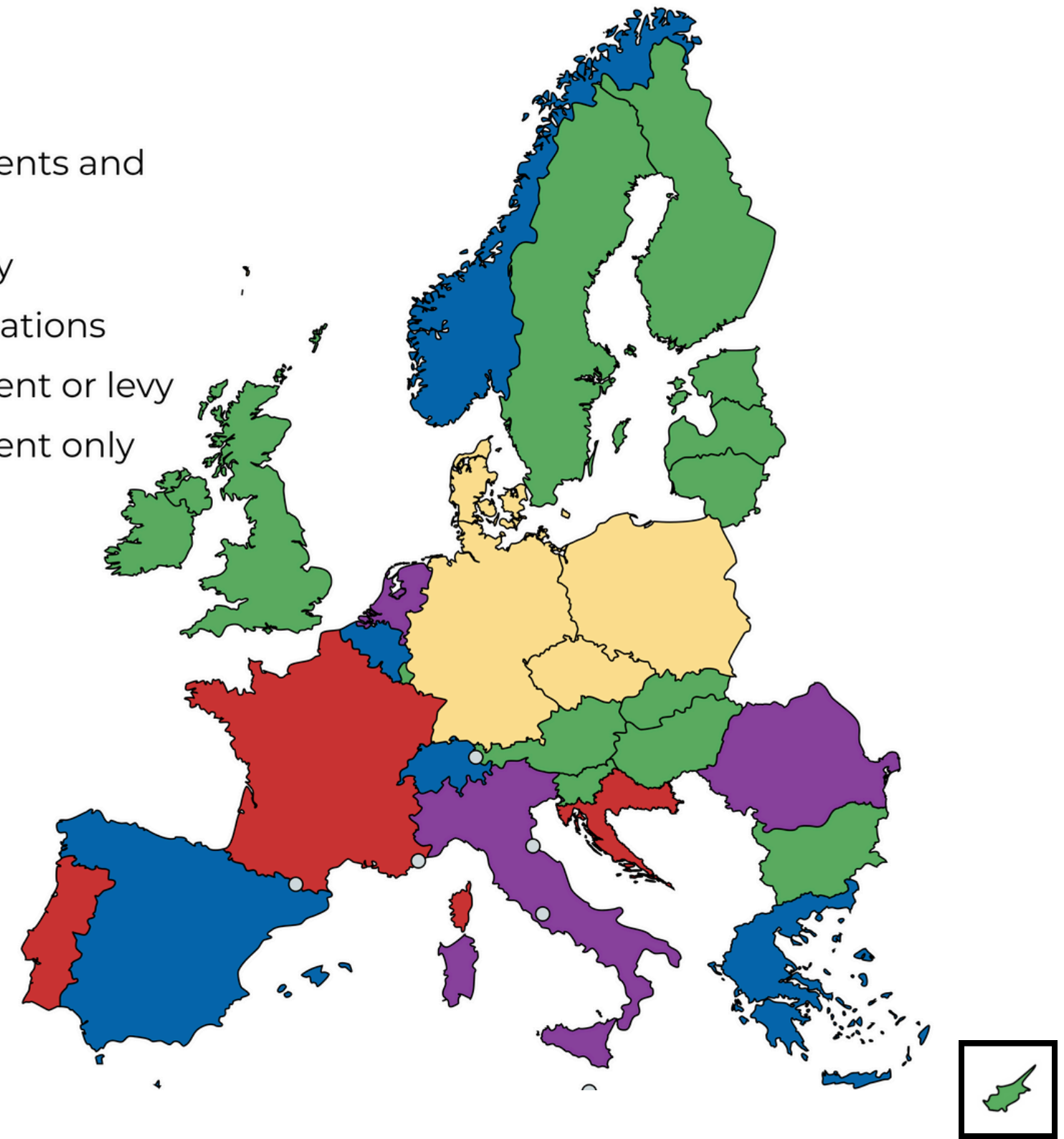
Financial Obligations

The AVMSD allows MS to require AVMS to financially contribute to local production via:

- direct investment in content (e.g. production, co-production, pre-purchase, commissioning...)
- contribute via a levy to a national film fund
- or a combination of these measures

The latest AVMSD revision introduced a derogation to the CoO allowing MS to subject AVMS providers such financial contributions even if they are established in another territory as long as they are targeting audiences in their market.

- Investments and levy
- Levy only
- No obligations
- Investment or levy
- Investment only



Great level of variation across MS, ranging from over a few percents to over 20% of turnover and various levels of earmarking of investments

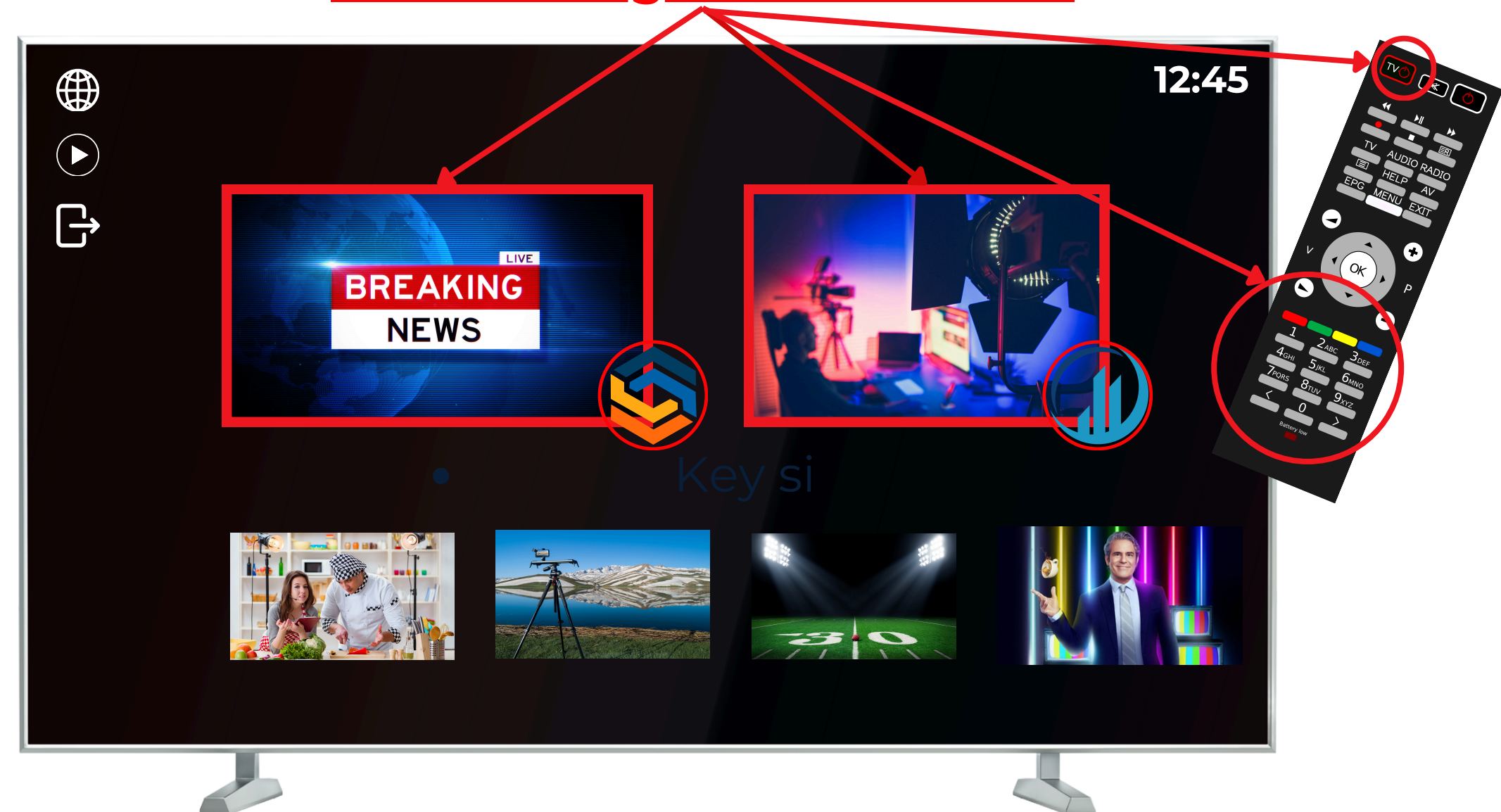
The AVMSD allows MS to take measures to ensure the prominence of services of general interest (GI) to meet defined general interest objectives such as media pluralism, freedom of speech and cultural diversity.

Some MS (France, Italy, Germany) have adopted such measures but implementation has been challenging due to conflicts with the e-Commerce Directive's CoO.

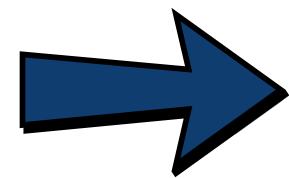
Key questions:

- What are services of general interest?
- To what do rules apply (which hardware, which interfaces?)?
- What is appropriate prominence?

Services of general interests



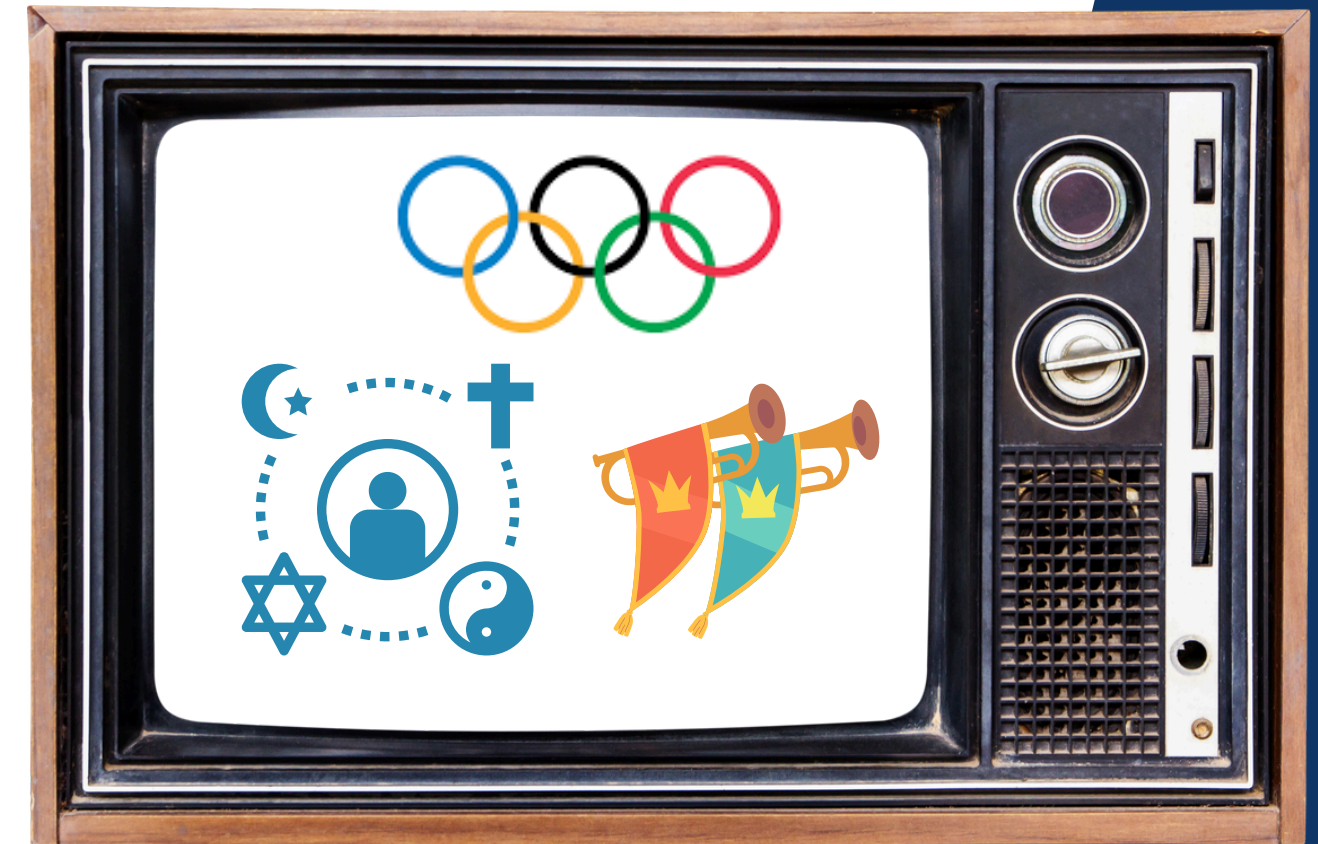
Member States can designate certain events as being of major importance to society to ensure they are freely accessible to the public.



Pay-TV broadcasters must share rights with free-to-air broadcasters or make them available freely (specifics depend on national law)



Only applies to television services, not pure players such as Amazon/Youtube



Member States are supposed to notify listed events to the EC

RIGHT TO REPLY

Individuals must be able to exercise a right of reply to factual inaccuracies in audiovisual content. MS determine applicable remedies and procedures & broadcasters must have clear internal processes to accept, evaluate, and process such requests



SHORT NEWS REPORTING

Broadcasters benefit from a guaranteed right of access to events of high interest, even if held under exclusive rights, for the purpose of short news reports. MS decide the modalities and conditions (e.g. compensation)

ACCESSIBILITY

MS are required to progressively improve accessibility for persons with disabilities, with national implementation varying and subject to regular reporting and review by the EC



ADDITIONAL RESOURCES

- [Consolidated AVMSD text](#)
- [EAO AVMSD Tracker](#)
- [ERGA reports](#)
- [Commission page](#)



Should you have any question, please do not hesitate to reach out



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