

ACT RESPONSE TO THE CALL FOR EVIDENCE ON THE EVALUATION AND REVIEW OF THE AVMSD

The European audiovisual landscape requires a stable and predictable legal and regulatory framework. We urge policy makers to refrain from intervening without demonstrable need for change, and to consider a revision of the AVMSD only after a thorough and transparent review of potential impacts on the AV sector. Until such a review is conducted, the ACT does not support changes.

Despite its roots tracing back to 1989, it remains mostly suitable to addressing current challenges. Before any change a comprehensive review of market developments, AVMSD interactions with the DSA, DMA and EMFA and objective evidence demonstrating the need for legislative changes to support the aims of the Directive are necessary. The overarching goal should be to ensure that the AV media framework meets clear public policy objectives and remains relevant through 2040 and beyond.

The AVMSD should bring tangible value and focus only on areas where there is a demonstrable need for regulation, considering both the media landscape of today and tomorrow, and considering the justification for each individual regulatory restriction already in place. It should contribute to a thriving and sustainable AV market, rather than lead to box-ticking exercises, protectionism and regulatory asymmetries. Adding yet another layer of rules to an already prescriptive framework will not make it fit for the digital age, or ensure the sustainability of the media sector and corresponding media pluralism. As a starting point, policymakers should consider where the AVMSD truly adds value and how it can create a pro-competitive environment for audiovisual media services.

KEY TAKE-AWAYS:

1. There is a consensus that a reopening of the AVMSD should not be the priority route of policy makers to adapt the current framework to market evolutions as it generally works.
2. The EC should first explore non-legislative means such as studies and guidelines (e.g. for content rules, influencers, expanding quantitative rules to VSPs and search).
3. Should the AVMSD be nonetheless re-opened, any intervention should be targeted, based on a demonstrated need, and prioritise consistency and stability. The focus should be on a level playing field and minimising unnecessary or discriminatory burdens on AVMS providers. Key principles, such as the country of origin for ACT members, should be maintained. Further regulation should be avoided, as it would likely have an adverse economic impact on an already overregulated media sector, and deregulation should be considered where appropriate.
4. Audiovisual Media Services (AVMS) invest massively in European content to meet viewers' demand. Regulatory predictability and stability should be prioritised. This means cultural obligations (e.g., new rules related to European works) should not be re-opened.
5. Instead, the focus should be on the modernization of advertising rules. This could be done by allowing additional flexibility and/or extending the scope of remaining rules to address influencers/VSPs and search services.
6. Other issues that require further thinking include prominence of services of general interest and events of major importance.

CULTURAL POLICY. Given the current market structure, ACT does not believe that the quota system is the best option to support pluralism objectives. AVMS already invest massively in European content to meet viewers' demand. Prescriptive and intricate quota systems can result in excessively demanding reporting and monitoring obligations. Market-driven approaches would be preferable to rebalance actual demand and supply. Additional economic analysis of the quota system could help policymakers assess its effectiveness and prevent unintended outcomes, including potential extension to other services. If quotas were to be re-examined, however, the goal should be to increase flexibility and minimise unnecessary burdens, rather than introduce new disproportionate and complex rules.¹

Policymakers should prioritise regulatory predictability, stability, and the sustainability of media as essential to media freedom and pluralism. The definition of European works should continue to include content from countries beyond the EU that are signatories to the ECTT. More broadly, policies should not, as a principle,

¹ Groupe TF1 and CANAL+ Group do not endorse this paragraph

advantage specific business models or content types unless there is a demonstrable public need.

ADVERTISING. There is consensus amongst AVMS on the need to modernise advertising rules and for equivalent rules to apply to all actors concerned.

Qualitative restrictions are largely straightforward and common sense, but several countries introduced problematic additional sectoral bans (e.g., forbidden sectors or gold-plated restrictions). These strongly contribute to regulatory asymmetry and tend not to be based on sound economic or social analysis, but politically driven concerns. This could be addressed in various ways, for instance by limiting Member States' ability to introduce further advertising restrictions applying only to AV services in areas not foreseen in the AVMSD or maximum harmonisation of various restrictions.

Rules on the separation of content and advertising are outdated and unfair. They lead to a significantly asymmetric regime benefitting influencers and VSPs. More flexibility for ad insertion rules (i.e., 30 min rule) would be welcome and rules on advertising/content integrity (e.g., product placement) should apply equally in all environments, including influencers on VSPs. Alternatively, policymakers could consider replacing these rules with transparency obligations applying equally to all AV content.

Quantitative restrictions also continue to create imbalances between linear and other services. While the two windows adopted in the last revision brought welcome flexibility, asymmetries persist and should be tackled. In the context of a potential review, policymakers should assess and explore methods to apply quantitative restrictions to VSPs and search.

INFLUENCERS. There is strong consensus among AVMS for a more level playing field regarding influencers and advertising. A common approach ensuring that AVMS advertising rules apply equally to all AVMS, including influencers, would be welcome. Several Member States have already categorised influencers as AVMS under the current framework. Rather than amending the AVMSD, the EC should explore influencers' status via official interpretative guidelines, considering the various approaches so far. The upcoming Digital Fairness Act could be an opportunity to fill gaps if necessary.

CONTENT RULES. While a number of abuses related to articles 6 and 6a were reported, only few ACT members believe re-opening the AVMSD would help. However, official EC guidelines could:

- Clarify that rules on the protection of minors cannot be used to prevent LGBTQ+ representation
- Address the balance between content restrictions and freedom of expression
- Provide guidance on fair and consistent application across Member States

PROMINENCE OF SERVICES OF GENERAL INTEREST (GI). Any intervention should ensure:

- Equal prominence treatment for public and commercial broadcasters
- Prominence to be granted at channels, services and/or app level, not at content level
- A balanced approach clearly defining legal prescriptions for hardware manufacturers and operating systems, to ensure access for services of GI to remote controls and Smart TV screens
- While GI service status should be granted at national level, rules should apply to hardware manufacturer and operating systems regardless of their country of establishment

EVENTS OF MAJOR IMPORTANCE. Issues with the scope of events, selection process, pricing and lack of level playing field with some actors were reported to us. In particular, the behavior of Amazon and YouTube was flagged as problematic. They are not subject to these rules, which is problematic for both pay-TV (which must share rights) and free-to-air operators (which benefit from rights). A more technologically neutral and principle-based approach that fairly accounts for online distribution and the legitimate interests of stakeholders across all types of AVMS would be welcome.

LEGAL INSTRUMENT. The AVMSD does not lend itself to an immediate "transformation" from Directive to Regulation. For example, so long as quantitative advertising restrictions and/or content quotas are retained, Member States will wish to retain flexibility in how these are applied. Considering an AVMS Regulation would require abolishing such rules at EU level – which seems politically unlikely – or a more fundamental review of the AVMSD's evolved objectives and content.