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IMPACT ASSESSMENT

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

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1. CONTEXT

The objective of the Audiovisual Media Services Directive (AVMSD)[1] is to create and ensure the proper functioning of a single European market for audiovisual media services, while contributing to the promotion of cultural diversity, providing an adequate level of consumer protection and safeguarding media pluralism.

The AVMSD is based on the 'country of origin principle' ("COO"). Under COO audiovisual media service providers are subject only to the rules of the Member State where they are established. By abiding by these rules they can freely provide services across the EU. As such, the AVMSD has facilitated the cross-border transmission of TV channels and 'Video On-Demand' (VoD) services. The AVMSD sets some minimum harmonization standards, which implies that Member States are free to enact stricter rules at national level. The AVMSD contains some limited exceptions to the operation of of COO.

The AVMSD applies to television broadcasts and on-demand services if all the following conditions are met (i) providers have editorial responsibility, (ii) providers have as their principal business purpose the provision of programmes to inform, entertain or educate the general public; and (iii) these programmes are comparable, in form and content, to television ("TV-like").

The AVMSD does not cover activities that are primarily non-economic.

The overall size of the European audiovisual sector in 2014 was around EUR 105.8 million[2]. It is mainly formed by large companies (for more details on the overall impact of AVMSD on SMEs, see ANNEX 3).

The audiovisual media landscape is changing at a rapid pace due to ever increasing convergence between television and services distributed via the Internet. Consumers increasingly access on-demand content via smart/connected TVs and portable devices. Consumers, in particular the young ones, watch videos, including audiovisual content generated by private users ("UGC"), on the Internet. Traditional broadcasting in the EU remains strong in terms of viewership, advertising revenues, and investment in content (around 30% of revenues). However, new business models are emerging. Broadcasters are extending their activities online and new players offering audiovisual content via the Internet (e.g. on-demand service providers and video-sharing platforms) are getting stronger and competing for the same audiences (for more details see ANNEX 6). However, TV broadcasting, on-demand services and video-sharing platforms are subject to different rules and varying levels of consumer protection.

The Digital Single Market (DSM) strategy[3] calls for a modernisation of the AVMSD to reflect market and technological developments. It requires the Commission to consider whether the scope of the AVMSD should be broadened to encompass new services and players currently excluded. In carrying out this review the Commission should bear in mind the objectives of the Directive, namely the protection of minors, consumers and promotion of European works. The overall vision of the DSM strategy is to create an internal market for digital content and services and ensure that Europe is a leader in the global digital economy.

[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 (Audiovisual Media Services Directive)
[2] Yearbook 2015 of the European Audiovisual Observatory (http://www.obs.coe.int/)
[3] Communication from the Commission "A digital single market strategy for Europe", 6 May 2015, COM(2015) 192 final, http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf

2. WHAT IS THE PROBLEM AND WHY IS IT A PROBLEM?

2.1 Conclusions of the ex-post evaluation of the AVMSD under REFIT[4]

The Impact Assessment has been carried out in parallel to the AVMSD ex post evaluation under the Regulatory Fitness and Performance Programme (REFIT) (see ANNEX 4).

The overall conclusion is that the AVMSD objectives are still relevant. If the Directive were repealed the audiovisual internal market would collapse since providers would no longer benefit from the COO, but would be subject to 28 different regimes and jurisdictions. This would increase their costs and undermine their propensity to provide cross border services, particularly into smaller Member States. Consumers would lose out because they would have less choice.

The REFIT evaluation concluded that there is scope for simplification, specifically of the procedures that support the application of the COO principle (i.e. the criteria determining jurisdiction over providers and the derogation and cooperation procedures limiting freedom of reception and retransmission in specific cases). Some other rules are no longer fit to attain these objectives, primarily due to market developments and changes in viewing patterns. In particular, the REFIT evaluation has shown that there is room for improving and updating the rules on commercial communications.

The REFIT evaluation has identified three main sets of problems:

- Insufficient protection of minors and consumers when consuming videos on video-sharing platforms.

- Lack of a level playing field between traditional broadcasting and on-demand services, and internal market weaknesses stemming from the fact that some of the AVMSD rules are not sufficiently precise.

- Rules on commercial communications no longer fit for purpose

It has also emerged from REFIT that there are different accessibility requirements of audiovisual media services for people with disabilities. In December 2015, the Commission adopted a proposal for a European Accessibility Act[5], which sets accessibility requirements for a wide range of products and services including audiovisual media services. As such, this Impact Assessment will not address the issue of accessibility.

2.2 Description of the problems and their drivers[6]

[4] 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.

[5] COM(2015) 615 (http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2400&furtherNews=yes)

[6] ***Limitations – robustness of findings***

The Commission has carried a thorough data collection and analysis actively involving all relevant stakeholders in different fora such as ERGA, online consultation (details provided in ANNEX 1 and ANNEX 2). The Commission has tried to mitigate to a maximum possible extent the following limitations:

- *Despite being prompted on a number of occasions by the Commission, the regulators and the contractors hired by the Commission, carrying out the public tender studies for this purpose, the industry has been reluctant or unable to deliver precise quantitative data on the compliance costs stemming from the AVMSD. It is hard for business to assess what costs stem from the Directive since 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.*
- *Data provided by industry was often confidential, 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);*
- *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;*
- *Based on the elements above, this evaluation is based on the best available data. Whenever reliable quantitative data is lacking, this is mentioned in the relevant sections*

2.2.1 Insufficient protection of minors and consumers in video-sharing platforms

Video-sharing platforms (like Youtube) host professionally produced videos and UGC. UGC can be violent, gory and pornographic and harmful to children. Children identify video-sharing platforms as mostly linked with violent, pornographic and other harmful content risks[7]. 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%)[8].

In the UK, ATVOD[9] found that at least 44 000 primary school children accessed an adult website in one month alone[10]. 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.

Hate speech is also increasingly accessible via video-sharing platforms. Based on data provided by some national law enforcement or other public bodies, the Fundamental Rights Agency reported an increase in anti-Semitic incidents online in numerous Member States[11]. In the same vein, 73% of respondents to an anti-Semitism survey thought that anti-Semitism online had increased over the past five years[12].

Video-sharing platforms employ tools like Autoplay (switched on by default for all videos in Youtube) which enable direct exposure to potentially harmful content and incitement to hatred[13]. Exposure to harmful content or content inciting to hatred may also be fostered via new technical features such as streaming audiovisual content live on the Internet[14].

The AVMSD, and its rules on protection of minors and hate speech, do not apply to UGC offered on video-sharing platforms since these platforms often do not control the selection of the content. These platforms are subject to the e-Commerce Directive (ECD)[15] which does not require them as intermediaries to monitor content hosted by them nor to take any other pro-active measure. The ECD, however, requires platforms to remove illegal content if they are notified of such content, for example through a court order. The rationale of this ex-post system called "notice and takedown" lies in the fact that intermediaries cannot in principle technically control the content before it is posted. The e-Commerce Directive is therefore focused on illegal content and does not deal with harmful content.

The main video-sharing platforms do take some pro-active steps to protect minors from such harmful content and consumers from hate speech, but assess content against their own standards, which may differ from those set in the AVMSD.

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[7] The risks associated with social networking sites are more predominantly related to issues such as cyberbulling and face-to-face contacts , EU kids On line: http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/Intheirownwords020213.pdf

[8] Ibid

[9] 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.

[10] 2014 report "For adults only? Underage access to online porn".

[11] Anti-Semitism: Overview of data available in the European Union 2004–2014. This study does not make the distinction between audiovisual and other types of online content. In AT, anti-Semitic verbal expressions (including on the Internet) or damage to property increased from 9 in 2009 to 57 in 2014 and that in 2014, the most common complaints the AT Inter Federal Centre received in relation to anti-Semitic incidents concerned complaints related to the internet (41). In CZ, media/web anti-Semitic incidents grew from 13 to 209 from 2004 to 2014. In IT, the Observatory of Contemporary Anti-Jewish Prejudice recorded incidents of anti-Semitism with a particular focus on the internet. In the UK, The Community Security Trust recorded 233 anti-Semitic incidents that involved the use of internet-based social media in 2014 (20 % of the 1,168 incidents), compared with 88 in 2013 and 81 in 2012. Of these 233 anti-Semitic incidents, 215 were in the category of 'abusive behaviour' and 18 were in the category of 'threats'http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-antisemitism-update_en.pdf

[12] Promoting respect and diversity Combating intolerance and hate Contribution to the Annual Colloquium on Fundamental Rights (http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-paper-colloquium_en-0.pdf). This study does not make the distinction between audiovisual and other types of online content.

[13] In 2015, the video of two US journalists being murdered during a live broadcast spread quickly. 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/).

[14] For example,Periscope. Since January 2016, Periscope's broadcasts are embedded into Tweets. (https://blog.twitter.com/2016/periscope-broadcasts-live-on-twitter).

[15] 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')

As a result of this different regulatory treatment consumers and minors are less protected when watching videos on these platforms. 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 on TV in France under the application of the AVMSD[16]. In another case, while YouTube removed a video of a woman being forced by her husband to walk naked in the street[17] for violation of YouTube's Community guidelines, the same video still appears on the website Liveleak.com[18]. By contrast, access to this type of videos is restricted under the AVMSD.

While a number of harmful activities are carried on the Internet, the specificity of video comes from its power to best capture the attention of initially passive users. Thus, seeing violent sexual images, violence or hate speech are online risks that are most likely to be driven by audiovisual images. It must be borne in mind that in 2014, Internet video stood for 64% of total consumer internet traffic. This share is expected to increase up to 80% by 2019[19]. The consumption of videos offered by video-sharing platforms is on the rise[20]. Among minors, video viewing is one of the earliest Internet activities carried out by young children[21].

In the 2015 public consultation most consumer organisations said that the current rules do not deliver sufficient consumer protection as they do not take into account the increasing importance of video-sharing platforms. Most of the Member States and regulators who called for an extension of the AVMSD rules to video-sharing platforms expressed a similar opinion. This view is also confirmed by ERGA (the European Regulators Group for Audiovisual Media Services)[22].

The impact of some self-regulatory initiatives in this field has so far been limited in particular in addressing certain types of harmful content, such as gory and violent videos, and hate speech[23]. For example, the initiative You Rate It[24], the only one providing a rating tool for UGC, has not been taken up by YouTube. When it comes to protection of minors, ERGA[25] acknowledged that self and co-regulation initiatives have an important role to play but said that existing initiatives have to be

[16] 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

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

[18] http://www.liveleak.com/

[19] 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)

[20] 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). 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).

[21] For example in the UK in 2014 children aged 12-15 spend more time online than watching television (17.2 vs. 15.7 hours per week (http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes-14/Childrens_2014_Report.pdf). Services such as YouTube are widely popular among children ("EU Kids Online 2014, Final recommendations for policy" http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/D64Policy.pdf). For example, in the UK YouTube has also become increasingly important as a source of content. In 2015 69% of 8-11s and 86% of 12-15s who watch television say they watch YouTube. And 12-15s who watch both TV and YouTube content in 2015 are more likely to say that they prefer to watch YouTube videos than TV channels (29% vs. 25%) (OFCOM, Children and parents: Media use and attitudes report 2015. http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/children-parents-nov-15/childrens_parents_nov2015.pdf). Connected devices such as mobile phones, tablets and games consoles are increasingly used by minors, often without adult supervision (Net Children Go Mobile Project).

[22] ERGA brings together the heads of the national independent regulatory bodies in the field of audiovisual services, to advise the Commission on the implementation of the AVMSD.

[23] 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 in the audiovisual field lack specified targets and objectives which makes their proper evaluation difficult or even impossible. 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. See ANNEX 5.

[24] http://www.yourateit.eu/

[25] In the (upcoming) ERGA recommendations on protection of minors in the AVMSD (https://ec.europa.eu/digital-agenda/en/news/erga-report-protection-minors-converged-environment)

reinforced. There is no EU-wide code covering these issues. For more information on these initiatives and their limitations see ANNEXES 8 and 18.

Based on available evidence, no consumer protection issues were identified in relation to commercial communications online. In the Public consultation, a consumer organisation and two other stakeholders[26] pointed to a possible lack of transparency as to the advertising nature of certain content on YouTube. This is a matter covered by the Unfair Commercial Practices Directive (UCPD)[27], which applies to misleading commercial practices. As regards the advertising of tobacco products, the existing prohibition[28] ensures the required consumer protection. In general, self-regulatory advertising codes apply to advertising on all media (including TV, on-demand, print media, radio, and online)[29]. On this basis, Member States' self-regulatory and regulatory bodies are taking ation in this field, whether by issuing guidelines or by decisional practice[30]. As such, there is no need to address this issue in this impact assessment.

2.2.2 Lack of a level playing field and internal market weaknesses

2.2.2.1 Lack of a level playing field

The AVMSD foresees stricter requirements for TV broadcasting than for on-demand audiovisual media services notably in the fields of promotion of European works and protection of minors.

Such a different treatment is no longer justified in view of changing consumer habits. An increasing number of consumers watch video on-demand. In the 28 Member States 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 CAGR in the 5 year period of 28%[31]. In 2014 there were more than 2 563 VoD services in Europe, including catch-up TV services of broadcasters (932 services), branded channels on open platforms[32] (408 services), VoD services providing access to a catalogue of programmes (1 126 services), and news portals (97 services):

Figure 1: Total on-demand Consumer Revenues – EUR (M) by year and country – 2010-2014

[26] A broadcaster and a telecom provider.

[27] 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.

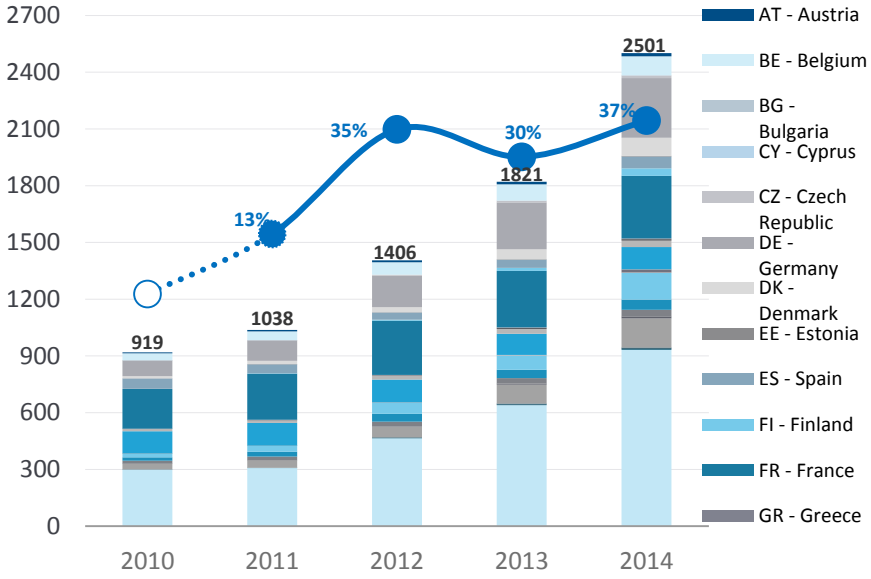
[28] Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products prohibits advertising and sponsorship for cigarettes and other tobacco products in printed media, information society services and radio broadcasting. Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 concerning the manufacture, presentation and sale of tobacco provides that audiovisual commercial communications are prohibited for electronic cigarettes and refill containers.

[29] Study on the Effectiveness of self and co-regulation in the context of implementing the AVMS Directive (SMART 2014/0054). An executive summary of the study can be found in ANNEX 5.

[30] For example, in the UK, the Committees of Advertising Practice (CAP) have responded to concerns about advertising material in user-generated content (vlogs) by developping guidance for advertisers and vloggers (https://www.asa.org.uk/News-resources/Media-Centre/2015/New-vlogging-advertising-guidance.aspx), based on the advertising rules which apply across media (including online and to social media channels), and which state that ads must be obviously identifiable as such. In France, it has been reported that the authorities plan to examine the commercial practices of YouTube influencers and potentially misleading commercial communications in their videos. http://www.lemonde.fr/economie/article/2016/03/07/publicite-dissimulee-premieres-sanctions-contre-les-youtubeurs-avant-l-ete_4878086_3234.html. For example, rulings on Mondelez UK Ltd : https://www.asa.org.uk/Rulings/Adjudications/2014/11/Mondelez-UK-Ltd/SHP_ADJ_275018.aspx and on Procter & Gamble Ltd : https://www.asa.org.uk/Rulings/Adjudications/2015/5/Procter-and-Gamble-(Health-and-Beauty-Care)-Ltd/SHP_ADJ_288449.aspx

[31] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in video-on-demand revenues : https://ec.europa.eu/digital-single-market/en/news/study-data-and-information-costs-and-benefits-audiovisual-media-service-directive-avmsd

[32] The AVMSD does apply to channels on video-sharing platforms (e.g. the YouTube Newswire channel) where an editing team verifies user generated content or YouTube channels managed by broadcasters



Source: IHS

The lighter rules applying to on-demand services undermine protection of minors and cultural diversity and distort competition.

A. Unequal level of contribution to promotion of European works and lack of effectiveness of the rules applying to on-demand services

The AVMSD foresees measures to encourage support to European audiovisual production and distribution. TV broadcasters must reserve a majority of their transmission time for European and/or independent works.

TV broadcasters must, where practicable, reserve a majority proportion of their transmission time to European works and at least 10 % of their transmission time or of their programming budget for European works created by independent producers.

The provisions applying to on-demand services are lighter and more flexible. This results in diverse implementation by Member States (see ANNEX 13) and in video on-demand service providers not contributing significantly to the objective of promoting European works.

The investment of the main TV groups in original programmes in 15 countries amounted to EUR 15.6 billion in 2013[33], i.e. 24 % of TV broadcasters revenues (EUR 65 billion)[34]. In comparison, on-demand providers made a minimal or even no 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)[35].

As a result, some Member States intend to make on-demand service providers that are not under their jurisdiction contribute financially to European works if they target consumers in their territories. For example, Germany and France intend to apply levies to on-demand services coming from other Member States and targeting German or French audiences[36]. This uncoordinated approach calls into question the operation of the Directive.

[33] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Investments in original content by audiovisual services
[34] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in linear television revenues
[35] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Investments in original content by audiovisual services
[36] Both Member States have notified their schemes as state aid to the Commission: Germany: SA.38418 - 2014/C (ex 2014/N) - Filmförderungsgesetz [OJ 2014 C 437/57]; France: SA.39586 (2014/N) - Loi de finances rectificative pour 2013). The Germand case in pending and the French notification is suspended.

Cultural diversity is also undermined by the limited contribution of on-demand services to the promotion of European works objectives.

B. Differing level of protection of minors

The AVMSD foresees that TV broadcasts shall not include seriously harmful programmes (pornography and strong violence) but may include potentially harmful programmes (erotic content and mild violence) provided measures are put in place to prevent children from hearing or seeing them. On-demand service providers are required to take appropriate measures so that minors would not normally hear or see seriously harmful content. No restriction applies to potentially harmful programmes provided in on-demand services.

This difference in treatment is no longer justified since younger consumers watch about half less television than the average consumer[37]. Their average TV viewing in 2014 was 2:03 minutes per day. A key factor is the rapidly growing availability of portable screens like smartphones and tablets used to access on-demand services. In the UK[38], in 2015, more than four in ten 5-15s (44%) watch on-demand television content, rising to half (51%) of 12-15s. One in five 5-15s (20%) who watch on-demand TV content, watch it daily, with around three in four (73%) watching at least weekly. Much of this is via portable devices.

The above-mentioned different regulatory treatment has led to a competitive disadvantage for TV broadcasting and to a lower level of consumer protection in on-demand services.

2.2.2.2 Threats to the integrity of the audiovisual internal market

A. Complex rules on COO and derogations

The COO principle is the cornerstone of the Directive. It has facilitated the growth and proliferation of audiovisual media providers offering services across borders. At the end of 2013, 5 141 TV channels (no local and windows) were established in the EU. Almost 1 989 of them targeted foreign markets (either EU or extra EU). This share has increased from 28 % in 2009 - year of implementation - to 38 % in 2013[39]. As far as VoD services are concerned, in 2015, on average in Member States, 31 % of the VoD services available are established in another EU country (see Section 2.3)[40].

A majority of Member States, regulators and industry participating in the 2015 consultation stressed that the COO approach has been effective. It also emerges from the comments made by Member States that there is a continued broad support for the COO principle[41].

However, the rules underpinning its operation are too complex and difficult to apply. Most Member States and regulators responding to the 2015 Public consultation have experienced problems in determining which Member State has jurisdiction. For example, it can be difficult and time consuming to find in which Member States a satellite up-link is used or to determine the country having jurisdiction when operators have broadcast licenses in more than one Member State. In practice, there have been issues of unclear jurisdiction regarding Greece/UK and Spain/UK. Moreover, in a recent

[37] 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

[38] OFCOM, Children and parents: Media use and attitudes report 2015. http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/children-parents-nov-15/childrens_parents_nov2015.pdf

[39] 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

[40] Yearbook 2015 of the European Audiovisual Observatory (http://www.obs.coe.int/)

[41] DE, UK, ES, IE, FI, EL, LV, SK, BE-VLG, EE, PT, AT, SE, LU, NL. A minority of Member States, however, plead for limited departures to a country of destination principle, for instance as regards the promotion of European Works. In spite of their principled support for the COO, FR and PL also support a move to country of destination, on an exceptional basis, where services are targeted at a market different from the place of establishment of their provider.

case concerning the restriction of the retransmission of a Russian language channel in Lithuania[42], the issue as to whether Sweden had jurisdiction over this channel was contentious.

The procedures allowing Member States to exceptionally derogating from the COO are imprecise and uncertain (e.g. they do not specify how the providers' right of defence should be exercised). Different procedures apply to TV broadcasting and on-demand services without there being a justification for such a difference.

In the last years, there has been an increasing number of situations where Member States were reluctant to allow the retransmission of certain broadcasts coming from abroad into their territories and resorted to these procedures. These cases concern several Russian language channels broadcast into Lithuania and Latvia and allegedly containing incitement to hatred. In addition, Sweden considered that certain channels broadcasting from the UK infringed its stricter national rules on alcohol advertising[43]. In other instances, concerns were raised regarding protection of minors[44].

These ineffective and overly complex procedures pose a threat to the integrity of the internal market and create legal uncertainty and a lack of predictability (see ANNEX 9).

B. No EU requirement on regulatory independence

The independence of audiovisual regulatory bodies is considered to be very relevant for the effective enactment and application of the AVMSD, in particular in the areas of audiovisual commercial communications, jurisdiction and protection of minors and for the preservation of free and pluralistic media. Many respondents to the 2015 public consultation, in particular regulatory authorities, commercial broadcasters as well as NGOs and citizens, mentioned the current problems in relation to the lack of independence of regulatory authorities[45] with a majority of respondents supporting the strengthening of the current rules[46].

However, the AVMSD does not 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 (See Section 5.2.4). Yet, regulatory independence both from political bodies and commercial interests is essential to ensure effective market supervision, proper application of the rules of the Directive and to guarantee media freedom and pluralism.

A captive regulator may treat differently the various players competing on the same market clearly distorting competition. This is why many EU regulatory frameworks in other domains (i.e. telecom, gas, electricity, postal services and personal data protection) mandate regulatory independence (see ANNEX 12). As examples in the audiovisual field, in the context of the Klubrádió case, the company sued the national regulator in Hungary for an economic loss resulting from an alleged unfair treatment which led to a delay in the granting of a license[47]. Liberty Global also lodged a complaint against the Hungarian Media regulator that led to the preliminary ruling by ECJ concluding that the Hungarian Regulator had illegally requested Liberty Global to obtain a license in order to operate in Hungary[48].

[42] This case gave rise to the COMMISSION DECISION C(2015) 4609 final of 10.7.2015 on the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of 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.
[43] Sweden submitted a notification to the Commission in this regard which was subsequently withdrawn.
[44] For more details see Second application report (ANNEX to the REFIT document).
[45] The following regulators: AGCOM, BE CSA, ES CNMC, FR CSA, PL KRRiT, SK RVR and also ADR GVK, VS and WDR, Media Commission Iceland and 13 commercial broadcasters.
[46] In particular Memeber States ((BE, EE, EL, LU, PL, PT, IE, LV ,NL, SE, SK, UK), regulatory authorities (IT-R, NL-R, PL-R,ES-R, RO-R, SK-R, UK-R DE ARD GVK, DE –VS, DE WDR (all PSB regulators), Cataluña-R, Andalucia-R) and majority of commercial broadcasters.
[47] 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. 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 case is pending (http://www.financialobserver.eu/ce/nervous-moves-on-the-hungarian-media-market/).
[48] Case C-475/12
http://curia.europa.eu/juris/document/document.jsf?text=&docid=151525&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1257558

The association of commercial broadcasters (ACT) commented on the recent developments in Greece, pointing to the negative impact on the market of a transfer of powers from the Regulator to the Government[49].

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[50].

Moreover, in the audiovisual sector, regulatory authorities lacking independence are not in a position 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[51]. 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[52]. The same happened in Hungary in 2010, where a number of provisions of a draft law raised concerns related to media pluralism. The Commission[53], the European Parliament[54], the OSCE Representative on Freedom of the Media[55], the Council of Europe[56] 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[57].

2.2.3. Rules on commercial communications no longer fit for purpose

The REFIT evaluation confirmed that some of the rules on commercial communications are too rigid in the light of the evolution of the market.

The AVMSD contains rules that apply to all audiovisual media services (e.g. on product placement, sponsorship and alcohol advertising). However, it lays down more rules that apply only to TV broadcasting. They set a maximum of 12 minutes of advertising per hour on television (i.e. 20% per hour), define how often TV films, cinematographic works and news programmes can be interrupted by advertisement, and set the minimum duration of teleshopping windows.

Nowadays, the TV broadcasting specific rules are too rigid in a world where viewers are 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[58]. In the EU, most broadcasters consider that the lack of flexibility of the 12 minute and insertion rules and the restrictive character of its exceptions prevent them from maximising their revenues around peak periods. The monitoring of advertising in Member States has indeed shown that this rule is regularly breached in a number of Member States.

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[49] http://www.acte.be/mediaroom/95/31/ACT-statement-on-new-Greek-legislation?type=press_release

[50] 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.

[51] Culture Council Conclusions of 26 November 2013.

[52] Progress Reports http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf

[53] 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

[54] 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

[55] Press release: http://www.osce.org/fom/90823 and http://www.osce.org/fom/74687

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

[57] http://www.osce.org/fom/167586

[58] http://television.telerama.fr/television/etats-unis-et-maintenant-moins-de-coupures-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/

The rigidity of the rules on product placement and sponsorship has prevented these advertising formats from delivering their full potential in terms of revenues. Some regulators and Member States confirmed that the rules create legal uncertainty for stakeholders, discouraging them to invest in product placement. As a benchmark, in the US, 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%[59].

In their replies to the public consultation, most broadcasters, advertisers and stakeholders from the alcohol sector consider that the AVMSD rules on alcohol advertising work well. They point to the efficiency of most self- and co-regulation developed in this area. However, the public health sector underlines that the rules should be reinforced[60].

The study to measure minors' exposure to alcohol advertising[61] shows that "on average, a minor in the EU saw 200 alcohol impacts and an adult over 450 during one year (2013)". This means that 1.8% of all advertising seen by minors (under age 18) in 2013 was for alcoholic beverages (as compared to 2.2%. for ads seen by adults). In other words, children are exposed to one impact every two days, and at nearly half the rate of adults.

Member States have been active in this domain in order to protect viewers, and in particular minors, from exposure to alcohol advertising: 24 of them have adopted stricter rules in this area and a number of them have defined the time before which alcohol advertising cannot be broadcast [62] (i.e. watersheds). However, one major pitfall of such watersheds 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[63]. Moreover, given the divergences among Member States in peak viewing times for minors[64], when coupled with the COO principle, watersheds appear less efficient. The applicable watershed would be the one at the country of origin, while minors might be still watching TV in the country of destination.

At the same time, the majority of countries have self- or co-regulatory schemes in place. Some of them are very efficient, while for others, there is scope for improvement[65].

As regards commercial communications for HFSS foods[66], an evaluation of the Platform for Action on Diet, Physical Activity and Health concluded that stakeholders' initiatives in the field of marketing and advertising have made good progress. However, their reach could be further strengthened[67].

[59] 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

[60] E.g. Alcohol Health Alliance, Cancer Research UK, Royal College of Physicians, SHAAP, Alcohol Focus Scotland, European Alcohol Policy Alliance, EPHA, UK Institute of Alcohol Studies etc.

[61] 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/en/news/study-exposure-minors-alcohol-advertising-tv-and-online-services

[62] Two Member States prohibit alcohol advertising on TV channels, while 22 others limit the content of the advertising (e.g. no advertising for spirits), the channels (e.g. no alcohol advertising on PSBs) or the timeslots (watersheds during which no alcohol advertising can be broadcast).

[63] 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.

[64] For example, the peak viewing time for minors aged 4-14 is between 19:00-20:00 in AT, FI and UK but between 22:00-23:00 in ES. Source: Study on the exposure of minors to alcohol advertising

[65] In particular, the existence of a legislative backstop has been identified as 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, Study on the Effectiveness of self and co-regulation in the context of implementing the AVMS Directive (SMART 2014/0054). An executive summary of the study can be found in ANNEX 5.

[66] Foods High in Fat, Salt and Sugar, defined in the AVMSD as "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"

[67] 1st Application Report of May 2012 (http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0203&from=EN)

Marketing of foods and beverages is often a topic of intense discussion during the Platform meetings, and also those of the High Level Group on Nutrition and Physical Activity[68], with many stakeholders advocating for stricter frameworks (for instance, the High Level Group requested on 28 October 2015 that the WHO Nutrient Profile be used as a basis for dialogue with industry on the issue of food marketing to children).

2.3 What is the EU dimension of the problem?

The AVMSD is the regulatory framework underpinning the audiovisual single market.

Since the last revision of the Directive in 2007 this market has kept growing. As mentionned in Section 2.2.2.2, at the end of 2013, 38 % of TV channels established in the EU targeted foreign markets and 31 % of the VoD services available in the Member States are established in another Member State. The entry of video-sharing platforms and the corresponding changing viewing patterns and associated risks is a phenomenon, which affect all the Member States.

The upcoming revision of the AVMSD is deemed to comply with both subsidiarity and proportionality by preserving the harmonization approach and cooperation mechanisms allowing Member States to take national specificities into account. The Directive minimum harmonisation approach has contributed to the completion of the internal market, while respecting the subsidiarity principle.

Usually, Member States only adopt stricter or more detailed rules in those areas that are of particular importance to them[69]. This has been the case for protection of minors (see ANNEX 14) and promotion of European works (see ANNEX 13) in on-demand services.

It is proposed to reduce the disparities between the Member States by increasing the level of harmonisation and create more regulatory convergence. In the field of video-sharing platforms full harmonisation is proposed.

2.4 How would the problem evolve, all things being equal?

The market for on-demand and online services will continue to increase and so the potential competitive disadvantage of TV broadcasting and the lower level of consumer protection.

From a static point of view, the TV broadcasting market is still the strongest audiovisual market. In 2013, the linear television revenues in the EU 28 were EUR 83.6 billion[70]. In comparison, the total consumer revenues of VoD and SVoD services amounted to EUR 2.5 billion 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[71]. In the meantime, as mentioned in Section 2.2.2.1, the total on demand consumer revenues in the 28 Member States increased by 272 % increase at a compound annual growth rate of 28 %. According to the industry, by 2020, projections suggest that more than 20% of European households will have a

[68] http://ec.europa.eu/health/nutrition_physical_activity/high_level_group/index_en.htm
[69] 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 allowed in all Member States within the limitations of the current Directive and with only limited stricter rules. Only Denmark kept the prohibition of product placement for programmes produced in Denmark.
[70] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in linear television revenues
[71] Ibid

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[72].

Mobile consumption is deemed to increase in the near future. It is expected that, by the end of 2020, the number of smartphones in Europe will have doubled, reaching 800 million, meaning that more than 70% of mobile subscriptions will be for smartphones[73]. As said above, by 2019 80% of all mobile data traffic worldwide will be from video (compared to 64 % today).

If the status quo were maintained, the problems identified would evolve as follows:

- Consumers, in particular minors, would be increasingly exposed to harmful content and hate speech on video-sharing platforms.
- TV broadcasting would continue to be at an unfair competitive disadvantage to video on-demand services. The differences in regulation would hurt competition and promotion of European works.
- The integrity of the audiovisual internal market would suffer from the unclarity of some of the rules and procedures of the Directive. This would undermine the COO, which is the cornerstone of the AVMSD.
- Regulators in certain countries would continue lacking independence, which would undermine the internal market and media freedom and pluralism.
- Rules on commercial communications would remain inadapted to the market evolution.

3. WHY SHOULD THE EU ACT?

As indicated above, the DSM Strategy announces the review of the AVMSD with a view to creating an audiovisual media framework fit for purpose for the 21st century.

In the Council Conclusion of 25 November 2014 on European Audiovisual Policy in the Digital Era, the Council invited the Commission to "*urgently complete the exercise of the review of the Audiovisual Media Service (AVMS) Directive 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*"[74].

The EP resolution towards a DSM urges the Commission to revise the AVMSD[75].

4. WHAT SHOULD BE ACHIEVED?

The goal of the revision is to address the problems identified in Section 2.2:

General objectives	Specific objectives
Enhance consumer and minors protection	▪ Enhance consumer and minors protection, in video sharing platforms
Ensure a level playing field, preserve the integrity of the internal market and enhance legal certainty	▪ Establish more effective and fair rules on promotion of European works ▪ Ensure more effective and fair rules on the protection of minors in on-demand services ▪ Simplify and clarify the procedures to apply the COO rules

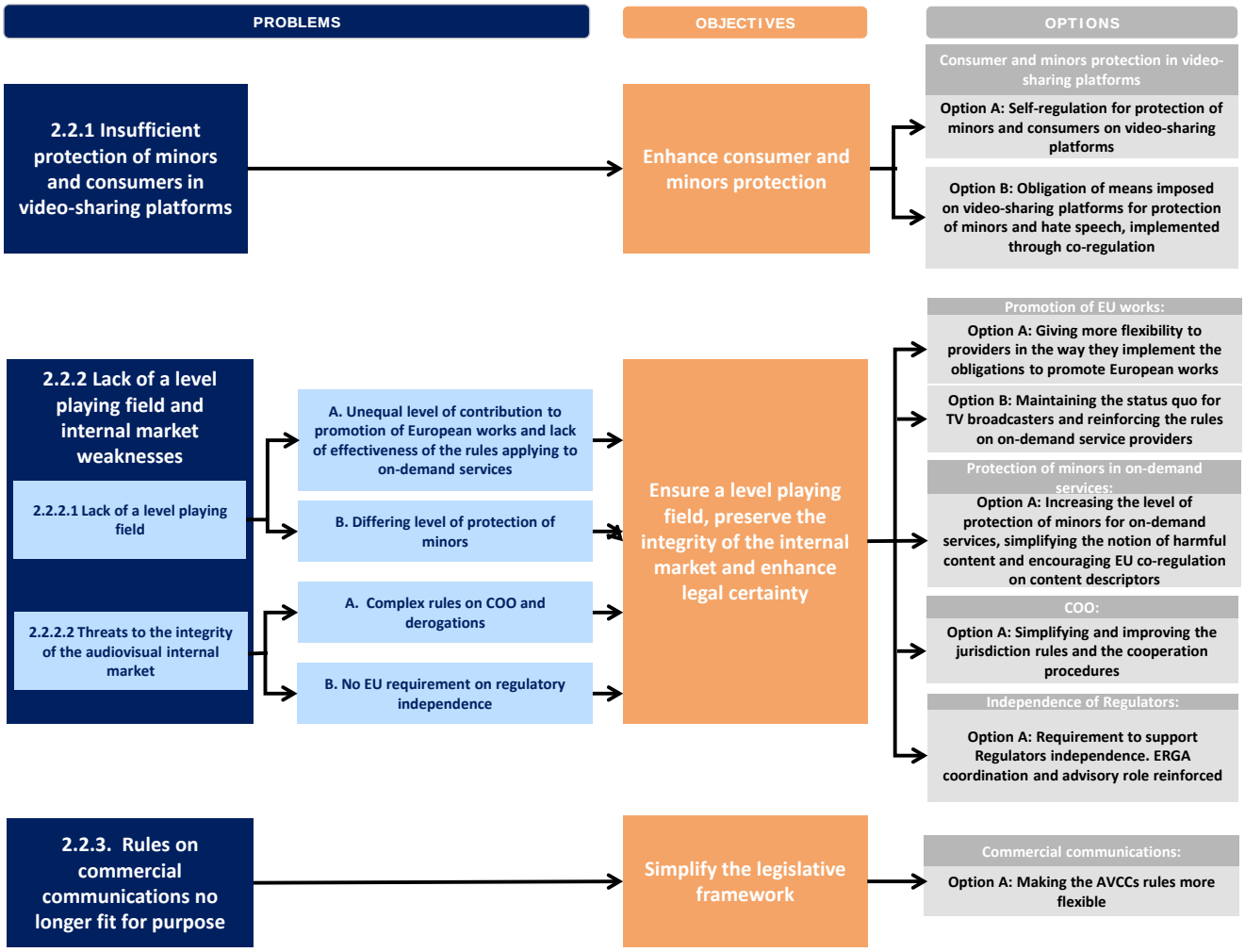
[72] Promoting growth, pluralism and choice: The Country of Origin principle and Europe's audiovisual sector (http://coba.org.uk/about-coba/coba-latest/2016/coba-launches-country-of-origin-report)
[73] Ericsson mobility report; http://www.ericsson.com/res/docs/2014/emr-november2014-regional-appendices-europe.pdf
[74] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/145950.pdf
[75] European Parliament resolution of 19 January 2016 on Towards a Digital Single Market Act (2015/2147(INI))

	▪ Ensure regulatory impartiality across the EU
Simplify the legislative framework	▪ Making more flexible and clear the rules on commercial communications

5. WHAT ARE THE VARIOUS OPTIONS TO ACHIEVE THE OBJECTIVES AND WHAT ARE THEIR IMPACTS?

The present Impact Assessment includes the description of the options and their impacts in the same Section. For a detailed description of all the options presented below, see ANNEX 20.

The options are grouped according to the problem they intend to address:



- In the first group (Section 5.1), the options intend to **address the insufficient protection of minors and consumers in video-sharing platforms** (Section 2.2.1):

In order to partly address the deficit in consumer protection, both Options, A and B, seek to ensure that the AVMSD rules apply to certain new types of audiovisual content, such as short video-clips and stand-alone video sections embedded in other services.

Option A, in addition, requires Member States to encourage video-sharing platforms without editorial responsibility to adopt self-regulatory measures regarding content harmful to minors and inciting to hatred (See Section 5.1.2).

Options B goes beyond this by imposing on Member States an obligation to ensure that video-sharing platforms put in place appropriate measures with a view to protecting minors from harmful content and all viewers from hate speech. Member States would be encouraged to implement this provision via co-regulation (See Section 5.1.3).

- In the second group (Section 5.2), the options intend to address the **lack of a level playing field and internal market weaknesses** (See Section 2.2.2):

When it comes to the uneven level of contribution to the **promotion of European works** between TV broadcasting and on-demand services, both Options, A and B, seek to achieve a level playing field. Option A does so by giving more flexibility to both TV broadcasting and on-demand services. Option B seeks a better balance between achieving a level playing field and ensuring cultural diversity. It does so by maintaining the status quo for TV broadcasting but reinforcing the rules for on-demand services (See Section 5.2.1.3).

As regards the **differing level of protection of minors,** Option A strengthens the requirements related to the protection of minors on on-demand services. It also seeks to improve the level of information made available to consumers as regards the harmful nature of content and to simplify the notion of harmful content (See Section 5.2.2.2).

In order to address the complexities of the rules on **COO and derogations**, Option A seeks to facilitate the identification of the country having jurisdiction over AVMS providers. This is done, on the one hand, by simplifying the rules that determine jurisdiction and, on the other hand, by ensuring transparency among Member States as to which of them has jurisdiction over each provider. Option A also improves the cooperation mechanisms foreseen in cases of exceptions to the COO. The objective is to render the procedures more effective and therefore preserve the COO principle (See Section 5.2.3.2).

As regards the absence of EU requirement on **regulatory independence**, Option A seeks to increase the level playing field among providers across the EU by ensuring that all EU regulators are independent. It does so by introducing a legal requirement of independence and a minimum set of features that regulators need to meet (See Section 5.2.4.2).

- In the third section (Section 5.3), the option intends to address the **problem of the rules on commercial communications no longer fit for purpose** (See Section 2.2.3):

Option A (See Section 5.3.2) seeks to address the lack of level playing field caused by the regulatory burden on providers when it comes to audiovisual commercial communication (AVCCs) rules while encouraging the development and improvement of codes of conduct to protect minors from alcohol advertising and from inappropriate AVCCs for HFSS foods.

5.1 Options addressing the problem of insufficient minors and consumers protection in video-sharing platforms

5.1.1 Status quo option

The AVMSD does not apply to UGC in video-sharing platforms (e.g. YouTube). Video-sharing platforms are covered by the ECD, which warrants them limited liability for illegal content under certain conditions.

The AVMSD applies to television broadcasts and 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").
Most recently, the ECJ has clarified the "TV likeness" and "principal purpose" requirements in the "New Media Online GmbH" case[76].

Economic outcome

Existing costs: Maintaining the status quo would not entail additional compliance costs[77] or administrative[78] costs.

Outcome on the Internal market: As a result of the ECJ judgment in the "New Media Online GmbH" case, short videos can qualify as "TV like". In addition, according to the Court, 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, 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. As a consequence, more on-demand audiovisual media services (e.g. videos of short duration or self-standing video sections in a newspaper website) will be covered by the Directive. This will enhance legal certainty, the level playing field and consumer protection in the Internal Market. For these reasons, any revision of the AVMSD should include the codification of this judgment[79].

Outcome on competitiveness: Players being covered by the Directive are at a competitive disadvantage compared to video-sharing platforms because the latter are subject to a lighter regulatory regime (the ECD). This was confirmed in the 2015 public consultation where most respondents from the Member States, regulators, and consumer organisations, as well as around half of public service and commercial broadcasters, flagged that the current framework can lead to the lack of a level playing field.

Social outcome

Consumers and minors are not sufficiently protected in video-sharing platforms.

5.1.2 Option A: Self-regulation for protection of minors and consumers on video-sharing platforms

1) The AVMSD scope would be adapted to cover all audiovisual content under the editorial responsibility of a provider including short video clips placed by providers. This would be achieved by removing the "TV like" requirement. In addition, it would be clarified that the AVMSD would also cover other type of content such as stand-alone video sections in newspapers' websites. This would be achieved by codifying the interpretation of the "principal purpose" criterion in the light of the ECJ recent case-law in the case of "New Media Online GmbH".

[76] 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).
[77] Substantive compliance costs are the costs incurred by providers in changing the nature of their products and/or production or business processes
[78] 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.
[79] Prior to the judgement, there were diverging interpretations as to what is an on-demand service, specifically as regards the following criteria:
- "Principal purpose", with similar services being considered subject to the AVMSD in some countries but not in others.
- "TV-likeness", also being subject to diverging interpretations

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".

2) Member States and the Commission would encourage video-sharing platforms to adopt self-regulatory measures to restrict access to content harmful to minors or inciting to hatred.
Video-sharing platforms would be defined as those that exercise a degree of control, short of editorial responsibility, over the presentation of audiovisual content (including UGC), and whose principal business purpose is the provision of audiovisual services[80]*. This degree of control would include automatic means (such as tagging and sequencing a large amount of audiovisual content), including algorithms. This would exclude services such as mere hosting, caching, cloud computing, mere conduit, search engines and business services, which are subject to the ECD.*

The notions of content harmful to minors and incitement to hatred would be the same as the ones applying to audiovisual media services under the AVMSD.

The Commission would play a facilitating role in encouraging the development of European codes of conduct by providing examples of measures that could be adopted by video-sharing platforms (these could include some of the examples of on-going initiatives mentioned in ANNEX 8 and 18).

The general provisions on self- and co-regulation (Article 4(7)) would be reinforced by indicating new benchmarks for the effectiveness of existing and new codes.

Economic impacts:

Substantive compliance costs: When it comes to encouraging video-sharing platforms to adopt self-regulatory measures, the impact of this Option should not be significant for the large platforms which have already in place community standards/guidelines (see ANNEX 8) along with some voluntary monitoring and reporting systems[81] not only for illegal but also for harmful content (e.g. self-harm). All large video-sharing platforms apply techniques which employ both software and human element to handle "content moderation". This means that normally users flag content deemed inappropriate. User complaints are then processed by an algorithm prior to sending it to a moderation team for verification.
However, if they decide to respond to the Directive call they would have to adapt their terms and conditions to the AVMSD notions of content harmful to minors and incitement to hatred and put in place more effective tools for restricting access to harmful content (particularly violent videos) and curb hate speech.

Administrative costs: Given the purely self-regulatory nature of this option the costs for the public authorities would be limited. To counter incitement to hatred, some Member States are already encouraging self-regulation[82].

Impacts on the Internal market: The impact on the Internal market would depend on the effectiveness of the self-regulatory measures and the number of players that would decide to adhere to the codes, including eventually EU codes. The risk is that this option may result in a patchy approach with varying levels of protection across the internal market.

Impacts on competitiveness: The codification of the ECJ recent case-law will ensure that stand-alone video sections of a wider service are covered by the AVMSD. The related impact would be limited as it derives from the application of the recent case law of the ECJ. Similarly, while the removal of the "TV-like" criterion implies a formal change in the AVMSD, the wide interpretation provided by the

[80] As defined by Articles 56 and 57 TFEU.
[81] For example, the minimum age to join is 18 (13 with parental consent) for YouTube and 17 for Vine, while "community standards" detail how the platforms handle "abusive" content. See https://www.facebook.com/communitystandards#; http://www.youtube.com/yt/policyandsafety/en-GB/communityguidelines.html;https://support.twitter.com/articles/18311#; http://www.dailymotion.com/legal/prohibited
[82] Used in AT, DE, EL, HU, IT, PL, FI, DK, BE and NL.

ECJ already has a similar effect in practice. However, this Option would not provide an effective solution to the concerns regarding the level playing field as purely self-regulatory measures, without a regulatory backstop, have proven insufficient in the past (see Section 2.2.1). In addition, despite the ECD requirement to Member States and the Commission to encourage codes of conduct, despite an initial follow-up – which related primarily to codes of conduct related to trust mark schemes and labels – activities related to the promotion of codes of conduct have since then slowed down.

Impact on SMEs: Self-regulation for video-sharing platforms may entail compliance costs for SMEs but only if they decide to adhere to the codes. The Commission has estimated these costs as ranging between 100 000 (incurred for a pilot tool developed to inform parents and children on the content of user generated video) and EUR 320 000 (incurred by a major Danish ISP to conduct parental control, website, education and information). However, much more developed systems of content moderation may imply significantly higher costs. For example, one third of a large platform total employees deal with content moderation[83].

Social impacts:

When it comes to encouraging self-regulation for video-sharing platforms, the level of consumer protection would improve on large platforms if they decide to adapt and tighten their self-regulatory tools. In smaller platforms, the level of protection may improve considerably but only if they decide to participate. If the Commission manages to carry out its coordination role effectively, this may improve the present situation whereby there are no codes of conduct at EU level. **Impact on fundamental rights:** As it would rely on voluntary measures, Option A would not guarantee a contribution to the protection of fundamental rights enshrined in the EU Charter, including children's right to protection and care as is necessary for their well-being (Art. 24).

5.1.3 Option B: An obligation of means imposed on video-sharing platforms for protection of minors and hate speech, implemented through co-regulation

1) The "TV like" requirement would be removed and the ECJ recent case-law in the case of "New Media Online GmbH" would be codified as under Option A.

2) Member States would have to ensure that video-sharing platforms put in place appropriate measures to:

- *Protect minors from harmful content; access to which would have to be restricted;*
- *Protect all citizens from content containing incitement to hatred.*

Video-sharing platforms would be defined as those that exercise a degree of control, short of editorial responsibility, over the presentation of audiovisual content (including UGC), and whose principal business purpose is the provision of audiovisual services[84]. This degree of control would include automatic means (such as tagging and sequencing a large amount of audiovisual content), including algorithms. This would exclude services such as mere hosting, caching, cloud computing, mere conduit, search engines and business services, which are subject to the ECD.

The notions of content harmful to minors and incitement to hatred would be the same as the ones applying to audiovisual media services under the AVMSD. The terms and conditions of the platforms would have to be brought in line if necessary with these notions and other relevant rules of the Directive.

Member States should not impose on providers any general obligation to monitor content ex ante.

[83] http://www.whoishostingthis.com/blog/2015/04/15/moderating-facebook/
[84] As defined by Articles 56 and 57 TFEU.

Member States would require video-sharing platforms to develop co-regulation providing mechanisms (e.g. age-verification systems, content description, age rating systems) to achieve these objectives. These mechanisms would have to be chosen by the industry which would be subject to an obligation of means (i.e. to use all reasonable means to achieve the desired results). The AVMSD would not mandate adoption of specific technologies or tools. The terms and conditions of the platforms should contain an appropriate reference to these mechanisms.

This would be a maximum harmonization provision under which Member States shall not be able to impose more detailed or stricter rules on video-sharing platforms.

The Commission and ERGA would facilitate exchanges of best practices on co-regulatory systems across the EU. If considered appropriate, the Commission would facilitate the development of EU codes on which ERGA might be requested to give an opinion.

A complaint mechanism for consumers and minors should also be foreseen at national level in case of non-compliance. Any sanction should be proportionate and take into account as mitigating factor the fact that video sharing platforms lack proper editorial responsibility.

For the specific purpose of this provision, a video-sharing platform would be under the jurisdiction of the Member State in which it, its parent company, one of its subsidiaries or an entity within the same group is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.

Economic impacts

Substantive compliance costs: Large video-sharing platforms, pursuant to their corporate policies, already take steps (see ANNEX 8) to protect minors and all users[85] not only from illegal but also from harmful content (e.g. pornography and self-harm). Filtering and fingerprinting[86] mechanisms are widely used by major video-sharing platforms and they could be used also to comply with the new requirements under Option B without having to incur substantial additional costs. For example, there are several age verification systems on the market, which are widely used online by VoD service providers.

Assessing whether content is harmful is generally more complex than assessing whether it is illegal because the notion of harmful content is broader than that of illegal content. It can however be expected that by putting in place mechanisms to protect minors, platforms would gain in brand power.

No precise indications of the costs to implement this provision can be provided. They would depend on the size of the company and on the specific mechanisms that the company will decide to put in place. These mechanisms are also likely to evolve over time due to technology advancements. The costs incurred at present by the industry to enact measures to protect citizens either according to corporate policies or to other arrangements can be used as a benchmark for possible substantive compliance costs. As indicated above, the costs for putting in place rating mechanisms may range between EUR 100 000 and EUR 320 000. More developed systems of content moderation may entail higher costs.

[85] For example, the minimum age to join services is 18 (13 with parental consent) for YouTube and 17 for Vine, while "community standards" detail how the platforms handle "abusive" content. See https://www.facebook.com/communitystandards#; http://www.youtube.com/yt/policyandsafety/en-GB/communityguidelines.html;
https://support.twitter.com/articles/18311#; http://www.dailymotion.com/legal/prohibited

[86] Fingerprint is software that generates a unique signature (a fingerprint) for digital videos by calculating the essential features of the video (known as "hash"). The evaluation and identification of potentially harmful video content is then performed by comparing the extracted video fingerprints.

Administrative costs: If the monitoring of video-sharing platforms is done via a complaint based mechanism, the related administrative costs for all EU regulators have been estimated at EUR 600 000[87].

If the Member States decide to put in place co-regulatory mechanisms, figures regarding existing self-regulatory mechanism can be taken as a reference to estimate the associated costs for the industry. For example, the self-regulatory systems in place in the majority of Member States on commercial communications are either funded by membership fees or a levy system from the industry and their cost ranges from EUR 250 000 to EUR 1 million[88].

Impacts on the Internal market: Option B would prevent fragmentation by introducing a maximum harmonization preventing Member States to impose more detailed or stricter rules on video-sharing platforms.

Impacts on competitiveness: The impacts of the codification of the ECJ recent case-law would be limited as explained in Option A. Option B would improve the conditions of competition between TV broadcasting, video on-demand providers and video-sharing platforms. This option lays down flexible and future-proof rules allowing companies scope for innovation and ensuring the continued relevance of the rules over time. **Impacts on SMEs*:*** SMEs platforms that do not have already mechanisms in place to moderate harmful content either proactively or upon notification would incur important compliance costs. The others will have to adapt their standard terms and conditions and become more effective. In particular, SMEs may need to make new investments in filtering and fingerprinting technologies which, on the other hand, major companies have already available. Yet, by putting in place mechanisms to protect minors, SMEs could gain in branding power.

Social impacts:

Option B would help overcome some of the limitations of existing industry-led and self-regulatory initiatives (See Section 2.2.1) and meet the AVMSD objective of protecting consumers, including minors. Option B is likely to address the concerns on the level of protection voiced in the 2015 Public consultation by most of those who called for an extension of the rules, i.e. a majority of Member States and regulators who replied to this question, most consumer organisations and approximately half of all broadcasters who replied. These stakeholders want to apply to additional services (including platforms) at least the rules on protection of minors and hate speech which are seen as a basic level of protection online. 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 on material scope ensure sufficient consumer protection also in light of the broader EU regulatory framework. Option B will level up the standard of protection from harmful content in video-sharing platforms with the one applicable to on-demand services[89] (See Section 5.2.2). Moreover, it is likely that any improvement of the level of protection for audiovisual content pursuant to Option B will have a positive spillover effect on other types of content (such as text/comments functionalities accompanying video content). **Impacts on fundamental rights*:*** Option B would have a direct positive impact on the protection of fundamental rights enshirned in the EU Charter, such as: human dignity (Article 1); right to the physical and mental integrity of persons

[87] 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. The methodology is based on extracting from the MAVISE database the number of platforms that would be covered by the AVMSD following the extension of the material scope i.e. 15. For those where the number of unique viewers per month was available the methodology extrapolates the 184 requests from EU regulators to Youtube in one year, i.e in total for all the platforms in the EU 312 complaints. Multiplying this number by an average number of days to process a complaint results in a cost of EUR 0.6 million.

[88] Sources EASA (European Advertising Standards Alliance).

[89] On traditional TV content potentially harmful to minors is only shown after 10pm and seriously harmful content such as pornography and gratuitous violence is banned. In on-demand services, 4 MS forbid seriously impairing content; and 16 MS mandate forms of protection such as PIN codes or content filtering for content for which the AVMSD does not require restrictions i.e. content which is likely to impair the development of minors.

(Article 3); non-discrimination (Article 21); children's right to protection and care as is necessary for their well-being (Article 24); general consumer protection (Article 38). Given that Option B provides for a regulatory backstop, it would ultimately be up to the Member States (and not to private operators) to assess the legitimacy of possible decisions to restrict access to content in specific cases. Given that the Member States are bound by the EU Charter of Fundamental rights [90] when implementing EU law, there would be a guarantee that: any limitation to the exercise of freedom of expression and information as enshrined in Article 11 of the Charter is provided by law; respects the essence of this freedom; is proportionate; and only takes place when it is necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. As a consequence, the fundamental right to conduct a business (Article 16 of the Charter) would be respected.

5.1.4 Comparison of options

	Status quo	Option A	Option B
Costs and savings	No administrative costs or compliance costs	Compliance costs: Depending on the nature of the mechanisms, the costs can vary from EUR 100 000 for the EU (cost of a user generated rating system) to EUR 3.1 million per year for the EU[91] (cost of a moderation system in a large platform).	Administrative costs : EUR 600 000 per year for all EU Regulators (complaint based mechanism). Compliance costs: - Depending on the nature of the mechanisms, the costs can vary from EUR 100 000 for the EU (cost of a user generated rating system) to EUR 3.1 million per year for the EU (cost of a moderation system in a large platform). - Cost of co-regulatory structure can vary from EUR 250 000 to EUR 1 million per year and per Member States.
Effectiveness and subsidiarity test	Option B most effectively delivers on the objective of protecting consumers including minors by setting out co-regulation. This would be done at a limited additional cost given the fact that most platforms have already in place similar mechanisms. In a co-regulatory system, the costs are shared between the industry and regulators. The added value of Option B in terms of consumer protection lies in the obligation of means to protect minors from harmful content on video-sharing platforms. For hate speech, while this is already covered as illegal content by the ECD system of notice and action, Option B would introduce an obligation to adopt proactive measures. From a political viewpoint, Option B is the one that most effectively strikes a balance between the call from a number of Member States and the European Parliament for enhancing the protection of minors and viewers online and the need to preserve and promote freedom of speech, freedom to conduct a business and the ability for companies to innovate. EU intervention under this option remains proportionate and is mainly based on co-regulation, allowing for national specificities to be taken into account. Option B it also proportionate as it		

[90] Article 51 of the Charter provides that the Charter is binding for the Member States only when they implement Union law.
[91] Facebook has 300 people moderating.
Average FTE cost in EU is 51 630 EUR (cost of a working hour on average in the EU is EUR 30 and the average number of hours worked in the EU is 1712: http://www.coe-rexecode.fr/public/Indicateurs-et-Graphiques/Indicateurs-du-cout-de-l-heure-de-travail-en-Europe and http://www.jobat.be/fr/articles/ou-travaille-t-on-le-plus-en-europe/)
The share of the EU audience in Facebook worldwide audience is 20 %: http://www.internetworldstats.com/stats4.htm. Calculation: 51 630*300*0.2=EUR 3.1 million

	would leave to the industry leeway to implement a regulatory obligation on a best effort basis. Option B is the preferred option.

Option	General objective and related impacts Safeguard the protection of minors and consumer protection (social impacts)	Costs (administrative and compliance)	Effectiveness	Coherence	Feasibility (technical and political)	Preferred option
Status quo	0	Low	Low	High	Low	
Option A	+	Low	Low	High	Medium	
Option B	+ +	Medium	Medium	Medium	Medium	X

5.2 Options addressing the problem of the lack of a level playing field and internal market weaknesses

5.2.1 Promotion of European works

5.2.1.1 Status quo option

Under the AVMSD, TV broadcasters must, where practicable, reserve a majority proportion of their transmission time to European works and at least 10 % of their transmission time or of their programming budget to European works created by independent producers. An adequate proportion of this quota has to be reserved to "recent" independent works.

On-demand service providers, where practicable, must promote the production of and access to European works. The Directive gives the following examples of how this can be done but leaves the choice of the measures to Member States: i) financial contribution to the production and rights acquisition of European works; ii) a share of European works in the catalogues; and/or iii) prominence of European works in the catalogues.

Economic outcome

Existing costs: Maintaining the status quo would result in no additional compliance or administrative costs for regulatory authorities or media service providers.

As regards existing compliance costs, most commercial broadcasters estimate that compliance with the requirement on the majority proportion of transmission time generates medium/high costs for their business. Some thematic and small channels bear higher costs to comply with quotas[92]. For on-demand services, the costs vary depending on how Member States have implemented Article 13 AVMSD (see ANNEX 13).

[92] The Second Report on the application of Articles 16 and 17 of Directive 2010/13/EU for the period 2011-2012 (ANNEX 17) details the main difficulties with compliance identified by broadcasters. The difficulties faced by thematic and small channels in complying with quotas could be addressed through some closer cooperation between national regulators by means of, for example, applying exemptions in a flexible and harmonized manner.

The existing administrative costs for regulators to monitor TV broadcasting services have been estimated at 220 000 for all EU Regulators[93]. In the case of monitoring compliance of on-demand services, only some Member States have put in place a legal obligation for on-demand service providers to communicate data on compliance to national regulators. The cost of monitoring has been estimated at 10 000 for all EU Regulators[94].

TV Broadcasters and on-demand service providers have reported medium to high existing administrative costs in relation to reporting obligations on the promotion of European works. In practice, estimations show that annual administrative costs for all TV broadcasters in the EU are likely to vary among Member States and would approximately amount to EUR 200 000 annually[95]. For all EU on-demand services, administrative costs has been estimated at EUR 110 000 annually[96].

Outcome Internal market:

TV broadcasters devote widely the majority of qualifying time to European content. In 2012, European works enjoyed an average of 64.1% of the total qualifying transmission hours[97].

For on-demand services, as the Directive simply gives examples of how on demand services may promote European works, only 19 Member States have imposed obligations and they have done so in varied ways, i.e. through financial contribution, share and/or prominence in their catalogues, contributing to a high level of fragmentation (see ANNEX 13).

Outcome on competitiveness: The different treatment between TV broadcasting and on-demand services has resulted in TV broadcasting services operating under more constraints than on-demand services. Looking at the fast-development of on-demand services[98] in Europe as well as the worldwide medium term growth prospect (see section 2.4), this different treatment can be expected to increase. Ultimately, the existence of larger constrains for TV broadcasting could reduce their flexibility to adapt to the viewers demands therefore undermining their attractiveness and thus their competiveness.

On-demand services also have a greater flexibility and incentives to benefit from the internal market by establishing themselves in a particular country and distribute across Europe[99]. The existence of lower constraints on their editorial policy may have an impact in their choice of establishment, which may reinforce their competitive advantage compared to TV broadcasting services[100].

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[93] According to the 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 cultural diversity, these costs vary substantially depending on the methods used to monitor compliance. To monitor compliance of TV broadcasters, most regulators obtain data directly from operators but often do not carry out a thorough verification of the data. In these cases, administrative costs for regulators are limited, and amount to around EUR 500 per year depending on the number of TV broadcasters and the hourly wages and time devoted. For those regulators that carry out a thorough verification, annual costs range from EUR 3 000 (e.g. in IE) and EUR 15 000 (e.g. in ES). For those carrying out internal monitoring, annual costs are between EUR 2 000 (in some Member States such as EE) and EUR 91 000 (in others such as FR). Finally, some Member States use specific software for the collection and transmission of data and/or the services of independent research companies for verification, which can lead to higher costs. (see ANNEX 16)

[94] In the 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 cultural diversity, it is assumed that all Member States impose a legal obligation on on-demand service providers to communicate data on compliance to national regulators and that the latter had no monitoring or verification system in place. Since this is not currently the case the figures presented are rather an overestimation. See ANNEX 16.

[95] According According to the 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 cultural diversity, estimations administrative costs for TV broadcasters range from less that EUR 1 000 (such as in LV and LT) to more than EUR 20 000 (such as in DE and UK). See ANNEX 16.

[96] According to the 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 cultural diversity, estimations of administrative costs for on-demand service providers would range from less that EUR 1 000 (such as in LV and EE) to more than EUR 20 000 (such as in DE and FR). See ANNEX 16.

[97] Second Report on the application of Articles 16 and 17 of Directive 2010/13/EU for the period 2011-2012 (ANNEX 17).

[98] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in video-on-demand 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 %.

[99] 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: "hubs" for VoD services established in one Member State but mainly targeting a different Member State are emerging across the EU. The main ones being the UK (69 VoD services targeting other Member States), LT (29), CZ (24) and FR (20).

[100] Ibid. The UK (69), LU (29), CZ (24), FR (20), SE (18) and NL (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)

The results of the 2015 Public consultation confirm a perceived lack of fair treatment between TV broadcasting and on-demand services: 61% of the contributors who expressed an opinion believe that the current rules are not fair. 4 Member States[101] and 4 national regulators [102] pointed out that the asymmetry in TV broadcasters and on-demand services regulation is unjustified.

In their contributions to the 2015 Public consultation 3 Member States[103] and 5 national regulators[104] supported maintaining the status quo. On the industry side, most on-demand service providers and members of the digital/Internet industry (9 out of 17 contributions) would also prefer to maintain the status quo.

On the contrary, some commercial broadcasters (7 out of 30) called for repealing all current rules on promotion of European works, which would be then only subject to national rules. As for public service broadcasters, the majority (10 out of 16) would favour other options and mainly to reinforce rules on on-demand services.

Social outcome:

The current rules aim to ensure that consumers have access to European content. As mentioned above, the current rule for TV broadcasters resulted in European citizens being exposed to a significant amount of European works. This was particularly important in a context where viewer hours for European works have declined (down from 74 % in 2007 to 69 % in 2010)[105].

As regards on-demand services, the low level of requirements imposed by some Member States has created gaps in the supply and promotion of European content on those services. Even if, given the size of the on-demand market, this impact is not yet very high, the growth prospect on this market may imply that the negative impact on cultural diversity will be higher in the future.

5.2.1.2 Option A: giving more flexibility to providers in the way they implement the obligations to promote European works

Member States would allow TV broadcasters either to reserve the majority of their broadcasting time to European works or to invest at least 50%[106] of their programming budget in European works. Providers would be obliged to choose at least one option.

In addition, Member States would allow on-demand services to promote European works either through a share of European works, their prominence in the catalogues or through a financial contribution. On-demand service providers would be obliged to choose at least one option. It will be up to Member States to decide on the level of requirement for each measure.

Substantive compliance costs: Option A would generate no additional costs for TV broadcasters who would be able to decide to move from a share of their broadcasting time to direct investment only if they are able to recoup the costs.

For on-demand services, the costs of complying with the new rules are difficult to assess as it will depend on the level of requirements set at national level. In those Member States where a share of European works in catalogues is currently in place, the minimum share of European works in the

[101] EL, EE, PT and LV
[102] BE-Fr R, ES-R, FI-R and PL-R
[103] SK, SL and UK
[104] BE-VLG, DE-R, UK-R, SK-R and RO-R. FR and the French regulator favoured maintaining status quo only for TV broadcasting.
[105] Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services (https://ec.europa.eu/digital-single-market/en/news/study-promotion-european-works)
[106] Public service media organizations in Europe invest around EUR 16.6 billion in content (Source EBU-MIS based on Member States' data.) and EUR 15 billion are invested, per year, in content by Europe's largest commercial broadcasters (http://www.acte.be/) i.e. 31 million in total. As mentioned in Section 2.2.2.1 A the investment of the main TV groups in 15 countries in original content, deemed to be European, amounted to EUR 15.7 billion in 2013. By setting a share at 50 % at least, we align the situation across the EU on the average.

catalogues varies from 10% to 60% (see ANNEX 13). On average in the EU, the share of EU films in 75 big EU VoD catalogues was 27% in 2015 and 30% in 16 big SVoD catalogues[107]. 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[108]. According to this study, "*European films were allocated between 21% (in the UK) and 33% (in France) of promotional spots*[109]*"*. As for financial contributions, 9 Member States have included such obligations for on-demand services and they vary from 1% to 12%[110] (see ANNEX 13).

Consequently, this option would create zero or low additional costs for on-demand services established in those Member States where there are obligations in place. On the contrary, on-demand services established in the 10 Member States where there is no obligation would have to face the cost of complying with at least one of the promotion measures (shares, prominence or financial contributions). However, the costs are expected to be limited since on-demand services would opt for the less costly measure.

Administrative costs: The additional administrative costs for regulators when implementing option A as regards TV broadcasting services would be zero. The costs of supervising on-demand services would depend on the choice made by on-demand service providers and on the monitoring system applied by the regulators. In this context it is not possible to estimate precisely the related costs but they are likely to be close to the costs incurred under the status quo.

The additional administrative costs for TV broadcasters, if any, would be marginal as they would have to report on their programming budget instead of reporting on broadcasting time if they decide to invest a share of their programming budget in European works. In countries where such systems are already in place, there would not be any additional costs.

For on-demand services, due to the existing significant differences in national legislation and the variety of implementation measures in force, the monitoring costs for regulators would vary. In the 10 Members States where there are no requirements for on-demand service providers (see ANNEX 13), administrative costs would increase.

Impacts on the Internal market: Option A is unlikely to result in a wider circulation of European works across Europe. It is questionable whether a flexible requirement for on-demand services (in particular, to opt either for a share or prominence of European works in their catalogues) would be effective. A share in the catalogue alone would not necessarily lead to more consumption of European works. Prominence would only make sense if a diverse catalogue would be available in the first place.

Impacts on competitiveness: Option A is not expected to significantly impact TV broadcasting. As mentioned in the status quo option in 2012, European works enjoyed an average of 64.1% of the total qualifying transmission hours. Broadcasters are expected to stick to this requirement they already comply with. Under Option A the impact on competitiveness of on-demand services would be limited since they would choose the less costly measure to fulfil their promotion obligations.

Option A would, based on the way providers choose to implement these measures, address the competitive disadvantages of TV broadcasters compared to on-demand services. In their contributions to the 2015 Public consultation 4 Member States[111] and 4 national regulators[112] pointed out that the

[107] On-demand Audiovisual Markets in the European Union (2014 and 2015 developments).
[108] Ibid.
[109] 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.
[110] The only exception is France where direct contributions to production can go up to 26% of the turnover
[111] EL, EE, PT and LV

asymmetry in TV broadcasting and on-demand services regulation is unjustified and rends the current rules unfair. This view was also supported by 4 of the 9 public broadcasters that commented on the issue of fairness. **Impacts on SMEs:** More flexibility would have a positive impact on small channels, including eventually SMEs and micro enterprises that would be able to implement the promotion measures most appropriate for their business strategies. In any event, TV broadcasts that are intended for local audiences and do not form part of a national network (which generally are not very large companies) are often exempted (see ANNEX 3).

Social impacts:

Under Option A consumers are not likely to be more exposed to European works than they are today. If TV broadcasters were to choose to invest a proportion of their programming budget in European content, there would be no assurance that it would be shown in peak hours. This would be particularly the case if this proportion is low. For on-demand services, as explained above a choice between a share and prominence of European works in their catalogues is not expected to lead to greater diversity. **Impacts on cultural diversity:** Given the amount of flexibility given to providers, the impact on access to information and culture (Article 22 of the Charter) would be negligible.

5.2.1.3 Option B: Maintaining the status quo for TV broadcasters and reinforce the rules for on-demand service providers

For TV broadcasters the status quo would be maintained.

For on-demand service providers, Member States should require them to secure at least a 20% share[113] *of European works in their catalogue and give prominence to those works. In addition, on-demand service providers would be required to report to the Commission on their compliance with these obligations.*

A Member State would be allowed to require a contribution (e.g. levies and/or direct investment in content [114] *) to the production of European content from video on-demand service providers established in other Member States if:*

- *they target consumers in its territory,*
- *the contribution applies only to the revenues generated in that Member State and*
- *these revenues are not already subject to an equivalent contribution in the Member States of establishment.*

Member States would be required to introduce exceptions for low audience and thematic on-demand service providers or for small and micro enterprises[115].

Economic impacts:

Substantive compliance costs: Compliance costs for on-demand services would vary across the Member States. In the 10 Member States where there is no obligation, they would have to face the cost of complying with the obligations to reserve at least 20% share in the catalogue and to ensure prominence.

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[112] BE-Fr R, ES-R, FI-R and PL-R

[113] According the EAO study on on-demand Audiovisual Markets in the European Union (2014 and 2015 developments), the average share of EU films in 75 big EU VoD catalogues was 27 % in 2015 and 30% in 16 big SVoD catalogues. In order to take into account SMEs which may have less European works in their catalogues, the share is set to 20% (see also ANNEX 19).

[114] Levies are contributions that companies exploiting audiovisual content must pay to audiovisual Funds. The Funds use the contributions to finance funding measures. Direct investment is a investment from companies exploiting audiovisual content into audiovisual content production.

[115] This could be done on the basis of the current Contact Committee Guidelines.

As indicated above, the average share of EU films in 75 big EU VoD catalogues was 27 % in 2015 and 30% in 16 big SVoD catalogues. However, there are great disparities among catalogues of pan-European on-demand service providers (from almost 0% to to 70%) and among Member States (from an average of less than 10% to an average of almost 60%). Taking into account these disparities, a share of 20% would ensure some level of cultural diversity while avoiding excessive compliance costs for on-demand providers (ANNEX 19). In addition any potential compliance cost would be limited by the fact that usually on-demand services business model is based on revenue sharing. It means that they do not incur any costs related to the acquisition of content upfront. They pay a share of the revenue generated to right holders.

For on-demand service providers targeting other Member States which impose a financial contribution extra-territorially, the cost would vary across the EU. Currently, 9 Member States have financial contributions (i.e. direct contribution to production) in place and only 4 Member States apply levies nationally (i.e. contributions made to a film fund) [116]. All things being equal, we estimate that the costs for Netflix and i-Tunes to roll out their services in the five biggest EU markets would be respectively EUR 5.8 and 8.2 million per year and per provider (see ANNEX 10). This would stand for respectively 2 % and 0.4% of their turnover[117]. However, this compliance costs would translate into investment in content that service providers may be able to recoup. Another estimation where Member States would impose levies extraterritorially would result in costs between EUR 4.7 million (in the lower bound) and EUR 11.7 million (in the upper bound) for all providers of on demand services in the EU[118].

Administrative costs: Regulators may incur additional costs depending on how Member States have implemented the current AVMSD provisions so far. In France, where on-demand services must comply with requirements in terms of share and prominence of EU works, the cost of monitoring these two obligations has been estimated at EUR 2 000 (see ANNEX 16).

The new requirements on on-demand services will be accompanied with reporting obligations. For providers of on-demand services established in Member States where they are not subject to such obligations, the new requirement would increase their administrative burden. It should be noted, however, that reporting obligations would to some extent foster transparency in the on-demand services' business which would be a pre-requisite for assessing what role those players can play in the financing of content.

In Member States imposing financial contributions extraterritorially, there might be limited additional costs for businesses to declare, pay and audit financial contributions if turnover is used as a fiscal base[119].

In their contributions to the 2015 Public consultation, the majority of the Cinema, Film and TV industry contributions (17 out of 30); all consumers organizations that expressed an opinion (8); all employees organizations and trade unions that expressed an opinion (5); and the majority of right holders (10 out of 16) favor reinforcing current rules for on-demand services. 5 Member States[120] and 3 national regulators[121] call for reinforcing current rules on promotion of European works.

[116] See ANNEX 13.
[117] Netflix turnover in Europe in 2014 amounted to EUR 295 million (http://www.usine-digitale.fr/article/ce-que-pese-deja-netflix-en-europe.N282676) and i-Tunes turnover to EUR 2 billion (http://lexpansion.lexpress.fr/high-tech/itunes-europe-2-milliards-d-euros-21-salaries_1576228.html). However, in the case of i-Tunes a substantial share of the turnover is deemed to derive from the music activity.
[118] 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 cultural diversity (see ANNEX 16).
[119] If turnover is used as a taxation base, the application of the country of destination principle to telecommunications and broadcasting services for VAT as from January 1st 2015 might simplify to some extent the process. As mentioned below, financing obligations for VoD providers generated € 17.4 million in Germany (2013) and € 16 million in France (2011).
[120] BE-Fr, IT, LV, PL and FR only for on-demand services.
[121] BE-R, HU-R and PT-R.

Impacts on the Internal market: The combined obligation for on-demand services to reserve a share for European works in on-demand services catalogues and to give prominence to those works would reduce the current fragmentation resulting from the very diverse approaches adopted by Member States (see ANNEX 13).

As regards the possibility for Member States to impose financial contributions services providers may have to comply with different legislations. The level of fragmentation would depend on the number of Member States implementing financial contributions as well as on the number of service providers potentially concerned[122]. Allowing flexibility for Member States to impose financial contributions is considered as a justified and balanced way to limit forum shopping practices without undermining the COO principle and the objectives of the DSM.

Impacts on competitiveness: For on-demand services established in the 15 Members States where there is already either an obligatory share of European works or prominence requirements in place, option B would lead to more level playing field. The flexibility for Members States to impose financial contributions on on-demand service providers located outside their territory would result in a more level playing field between on-demand services competing on the same market. According to many of the contributions to the 2015 Public consultation the strict application of the COO principle and the fragmentation on the transposition of Article 13 may have led to "forum shopping" practices (i.e. on-demand services establishing themselves in Member States with light regulation on promotion of European works). This has in turn created competition distortions and has undermined the effectiveness of the current rules[123]. This is the position of 5 Member States[124] and 1 national regulator[125]; a few public broadcasters (4); some members of the Cinema, Film and TV industry (5); and the majority of telecom operators and right holders who expressed and opinion (5 out of 9 and 5 out of 7, respectively). **Impacts on SMEs:** Option B would have a limited impact on small on demand players, including SMEs. As detailed in ANNEX 3, the audiovisual sector is highly concentrated and small on demand service providers would benefit from exemptions.

Social impacts:

The combination of share and prominence obligations on on-demand services would lead to consumers of on-demand services being more exposed to European works than they are today[126]. 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[127]. The imposition of financial contributions would have a positive impact on the creation of European audiovisual content as on-demand services providers may be required to increase their current contribution to content creation.

The imposition of financial contributions extraterritorially may have a negative impact on the provision of cross-border on-demand services in some territories where some providers - most probably smaller ones - may not be able to recoup the financial contributions and the related

[122] 195 VoD players are currently established in a Member States and targets audience in another Member States. As mentioned above, currently 4 Member States have imposed levies for on-demand services established in their territory and 5 Member States have imposed direct investment obligations.

[123] In some countries, the current approach has had a detrimental effect on the financing of European audiovisual content. For example, in the 1990s certain operator established in Poland co-financed substantially Polish films under an agreement with the Polish government. This continued until a different operator established in Hungary started to broadcast targeting Polish audiences but without any contribution to Polish cinema. This resulted in a competitive disadvantage as a consequence of which investment in Polish films was considerably reduced. Source: EFAD's reply to the Public Consultation.

[124] BE-Fr, FR, IE, IT, PL

[125] DE-R

[126] European films accounted to about one-third of films promoted in catalogues of the main VoD providers in Germany, France and UK in October 2015 while the share of US films among films promoted was in the range of 55%. Also, European films were allocated around 28% of all promotional sports available and 60% were allocated to US films (On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)

[127] Promotion of EUR works on line - Why prominence matters and what is at stake: http://www.csa.be/system/documents_files/2159/original/JFF_20131118_presentation_Hearing_Brussels.pdf?1384786651

administrative costs. Option B would have a positive impact on small independent producers. **Impacts on cultural diversity*:*** The imposition of mandatory obligations on on-demand services providers would have a positive impact on cultural diversity (Article 22 of the EU Charter of Fundamental Rights) as on-demand services providers may be required to increase their current contribution to content creation.

5.2.1.4 Discarded option: introduction of sub-quotas for non-national European works

82% of the respondents (that is, 104 out of 126 of the contributions across different categories of stakeholders) to the public consultation who expressed an opinion on this issue are interested in watching more content produced in another Member State.

However, there was very limited support to increase diversity by introducing sub-quotas for non-national European works. Indeed out of the 25.8% of respondents from various categories of stakeholders which chose the option to reinforce the rules on the promotion of EU works, only a very marginal part – one Member State, one regulator and two content distributors – supported the introduction of these sub-quotas.

In addition, there is no evidence that the industry would be able to recoup the cost of adapting their offer to the new sub-quotas in the absence of audience[128]. Some Member States have flagged their opposition to this approach[129]. This could even reinforce the existing deficit of competitiveness of TV broadcasters vis-à-vis on demand services.

This option has therefore not been impact assessed.

5.2.1.5 Comparison of options

	Status quo	Option A	Option B
Costs and savings	Compliance costs: nc Administrative costs: - Regulators: for monitoring TV broadcasting services: EUR 220 000 per year for all EU Regulators and for monitoring on-demand services: EUR 10 000 per year for all EU Regulators. - Service providers: cost of reporting is EUR 200 000 for all EU TV broadcasting services per year and EUR 110 000 for all EU on-demand services per year.	Compliance costs: nc Administrative costs: - Regulators: for monitoring TV broadcasting services: around EUR 220 000 per year for all EU Regulators. The cost of supervising on-demand services is not possible to estimate precisely but is likely to be close to status quo. - Service providers: cost of reporting would be EUR 200 000 for all EU TV broadcasting services and EUR 110 000 for all EU on-demand services.	Compliance costs: - Costs related to the application of contributions extra territorially: between EUR 5.8 and 8.2 million per year for one major EU provider. For levies only costs can vary between EUR 4.7 and 11.7 million per year for all EU providers. The cost of complying with the 20% share is deemed to be limited as on-demnad services business models are based on revenue sharing. The cost of complying with prominence requirements is not quantifiable. Administrative costs: - Regulators: for monitoring TV broadcasting services: EUR 220 000 per year for all EU Regulators. The cost of monitoring on demand services in the Member States with the highest

[128] As a benchmark, according to the EAO Yearbook 2015, cinema admissions for non-national European films amounted to less than 10% of total admissions in the EU in 2014.

[129] In the context of the 43rd Meeting of the Contact Committee (Brussels, 18th January 2016), DE, EE, FR and LV expressly manifested their opposition to a sub-quota of non-national European works, with DE pointing out that it would constitute discrimination on the grounds of nationality.

			requirements is EUR 2 000 per year. - Service providers: cost of reporting is EUR 200 000 for all EU TV broadcasting services. Cost of reporting for on-demand services would be higher than status quo but not quantifiable.
Effectiveness and subsidiarity test	The status quo for TV broadcasters proposed under option B has proven to be efficient to promote cultural diversity while preserving their capacity to innovate. By reinforcing the mandatory character related to the share and prominence of European works in catalogue, option B will ensure that Member States take measures. In turn this would increase the level of harmonisation while still leaving flexibility to Member States. This would entail limited administrative and compliance costs. The most significant costs result from option B and the possibility to apply financial contribution extra-territorially. However, financial contributions to audiovisual content creation are very close to cultural policy, which is a subsidiarity field. Option B seeks to bring this prerogative back to Member States, as intervention at EU level had not resulted in increased harmonization. This option is therefore in full compliance with the subsidiarity principle. In addition, allowing Member States imposing financial contributions on on-demand service providers where their turnover is generated is the most efficient way to secure the contribution of those services to cultural diversity while increasing the level playing field in each national market. Option B is the preferred option.		

Options	General objectives and related impacts		Costs (administrative and compliance)	Effectiveness	Coherence	Feasability (technical and political)	Preferred option
	Establish the conditions to ensure competitiveness (impacts on the competitiveness)	Support European cultural diversity (social impacts)					
Status quo	**0**	**0**	**Medium**	**Low**	**High**	**Medium**	
Option A	**+**	**- -**	**Low**	**Medium**	**High**	**Medium**	
Option B	**+**	**+ +**	**Medium**	**High**	**Medium**	**High**	**X**

5.2.2 Protection of minors in on-demand services

5.2.2.1 Status quo option

TV broadcasts must not include seriously harmful programmes (pornography and strong violence). They may include potentially harmful programmes (erotic content and mild violence), but should do it in a way which prevents minors from hearing or seeing them. On-demand service providers are also 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 for on-demand services.

Economic outcome:

Existing costs: Maintaining the status quo would result in no additional administrative or compliance costs for regulatory authorities or media service providers. Existing administrative costs incurred by the regulators in most Member States relate to monitoring and enforcing compliance with these requirements. For TV broadcasting, this is done on the basis of complaints or on a systematic

recording of all television programmes[130]. For on-demand services, the majority of regulators do not regularly monitor compliance with the rules. Most of them act on the basis of complaints. Some regulators monitor these rules through spot checks. The cost for reviewing and enforcing the provisions on the protection of minors amounts to approximately up to EUR 800 000 per year per regulator[131].

Compliance costs for providers (this includes telecom, cable, satellite, broadcasters and on-demand services) can be divided into two categories: i) direct costs, such as the costs of classifying audiovisual content as harmful to minors (i.e. the costs of applying for a rating as well as the time spent managing the process) or of implementing technical control measures and ii) indirect costs e.g. lost revenues which would otherwise be obtained in the absence of classification.

For TV 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[132]. As regards on-demand services, the majority of Member States require 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[133].

Direct costs are difficult to estimate as they are usually absorbed by the provider. Both Pay TV and on-demand service providers reported significant costs for the provision of technical solutions to control the access and to provide information on harmful content. Costs related to control measures increase in relation to the number of new devices on the market such as tablets, smartphones or HDMI keys, which usually require ad hoc developments and investments. A German service provider reported a cost for age verification mechanisms for 16 + on TV platforms of EUR 1.25 million yearly. It also reports a cost for a strict post-ID system for adult content of EUR 1.1 million in total for the period 2010-2015. In the public consultation, some TV broadcasters reported a range of direct and/or indirect costs from EUR 100 000 to EUR 2 million per year at EU level for a pan-European audiovisual group. However, these costs cover measures that are not necessarily required by the AVMSD.

Some indirect costs can emerge when classifying content as potentially harmful to minors, as it can narrow the targeted audience and have an impact on the number of transactions and subscriptions (VoD and SVoD) or on the attractiveness of the programmes for advertisers (catch-up TV). In principle, indirect costs for on-demand services could be expected to be lower, because the access to potentially harmful content is not restricted by the AVMSD. However, a majority of Member States have adopted stricter measures and require some form of protection[134] (e.g. PIN codes, content filtering) for potentially harmful content[135].

[130] 2nd report from the EC on the application of Directive 2010/13/EU AVMSD.

[131] Information from audiovisual regulators of 3 Member States (FR, DE, IT). 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 the protection of minors. Although for the German regulator this figure covers both protection of minors and commercial communications. For AGCOM it covers reviewing and enforcing rules related to protection of minors.

[132] 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 content (see ANNEX 14)

[133] 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 (see ANNEX 14)

[134] Even if almost all member states use rating systems and apply watershed rules in the framework of the implementation of the Directive, fewer of them mention which kind of technical measures should be applied by service providers: 7 Member States specify technical measures which should be applied by linear service providers: Austria, Belgium – French-speaking Community, Spain, Finland, France, United Kingdom and Slovenia. 15 member states specify technical measures which should be applied by non-linear services: Austria, Belgium – French-speaking Community, Cyprus, Germany, Estonia, France, United Kingdom, Greece, Croatia, Hungary, Italy, Luxembourg, Latvia and Slovenia. The technical measures mentioned are mostly about various types of conditional access, which can usually be activated via a parental code, which either blocks the reception of certain types of programmes, or filters them (i.e. the programme is not visible on the electronic programme guide). EAO-Analysis of the implementation of the provisions contained in the AVMSD concerning the protection of minors (see ANNEX 14)

[135] EAO Iris bonus – The protection of minors in audiovisual media services (see ANNEX 14)

Outcome on the Internal market: The lack of full harmonisation of the concept of harmful content and the lack of a harmonised age rating system has not been a reason not to provide cross border access given its limited cost.

Outcome on competitiveness: Because of the different levels of requirements of the AVMSD, TV broadcasting is under more constraints than on-demand services. This situation creates an undue competitive advantage for on-demand services, in particular with respect to Pay TV operators, with which they share similarities.

The results of the public consultation indicate that, with the exception of some telecom operators and on-demand service providers, the majority of the respondents believe that this distinction is no longer relevant, effective or fair. Conversely, a high number of TV commercial broadcasters consider this distinction still relevant. However, some Pay TV operators consider the distinction as no longer relevant.

Social outcome:

The changes in viewing patterns, especially of younger generations, highlighted in Section 2.2.2.1 B and the growing convergence between TV broadcasting and on-demand services has led to a situation where minors are less protected online than watching the same content on TV.

5.2.2.2 Option A: increasing the level of protection of minors for on-demand audiovisual media services, simplify the notion of harmful content and encouraging of EU co-regulation on content descriptors.

The rules on protection of minors applicable to on-demand audiovisual media services would be strengthened by requiring them to restrict access to any kind of "harmful content" (gratuitous violence, pornography erotic and mildly violent content) [136]*. The same rule would apply to TV broadacsters.*

The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures providing a high degree of control, such as age verification pin codes or even by a "by default" mechanism that would not make this type of content available except when activated by an adult.

In addition Member States would have to ensure that all audiovisual media service providers provide sufficient information to consumers about the possible harmful nature of the content in programmes by means of co-regulatory systems [137]*.*

The Commission and ERGA would facilitate exchanges of best practices on co-regulatory systems across the EU. If considered appropriate, the Commission would facilitate the development of EU codes on which ERGA might be requested to give an opinion.

The general provisions on self- and co-regulation (Article 4(7)) would be reinforced by indicating new benchmarks for the effectiveness of the existing and new codes.

Economic impacts

[136] Article 12 AVMSD: "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".

[137] The actual age rating systems will continue to be defined at Member State level, according to the different national sensitivities but it will be complemented by content descriptors (words or symbol) which provide guidance to consumers on the harmful nature of the content (for example bad language, sex, violence, drugs, discrimination, etc.). Age rating systems as such would not be harmonised.

Substantive compliance costs: On-demand service providers would need to assess and classify all offered programmes to see whether they fall within the scope of "potentially harmful" programmes. There are on average 5 764 titles available in VoD catalogues[138]. A broadcaster reported a EUR 550 000 cost per year to implement classification and ratings for TV broadcasting and on-demand services, and a on-demand operator a one shot cost of EUR 1.1 million cost for launching from scratch in a new country based on a catalogue of 5 000 titles[139]. There could be also additional compliance costs as regards technical control mechanisms. However, these compliance costs would be mitigated as at national level, Member States already require some form of protection (e.g. PIN codes, content filtering) for seriously harmful content[140] and most of them also for "potentially harmful" content. Programming the most harmful content would be a business decision that TV broadcasters will take if they are able to recoup the underlying investment.

Audiovisual media service providers would have to comply with the new information requirements. The associated costs would be mitigated in those Member States where similar mechanisms, such as age rating, are in place (see ANNEX 14). The studies available provide information on the costs of rating content according to different age groups, but no specific information on the cost of describing the harmful nature of the content. However, age rating costs detailed in the above paragraph can be used as benchmark as, once the content is classified and labelled (as in the majority of the Member States), the additional cost of providing a description of the content is minimal.

Most Member States use rating systems (all except Denmark, Estonia, Italy and Sweden) and in most countries five age groups are defined. Although the age groups may vary, the different classifications are all generally based on similar criteria: presence of discrimination, drugs, imitative behavior, coarse language, nudity, sex, threatening content and violence.

Only in two countries, Finland and the Netherlands, the system is a combination of legally binding age rating and content descriptors indicating different categories of content (violence, sex, anxiety, drug in Finland; violence, fear, sex, discrimination, drug and alcohol abuse, coarse language in Netherlands).

Despite the costs incurred, some media service providers reported, in the 2015 Public consultation and the data gathering on costs and benefits[141], that a reliable system for the protection of minors can create a competitive advantage. Being identified as a family-friendly provider can be a strong marketing argument and contributes to the positive branding of the operator. Indeed according to BBFC, 86% of parents in the UK would encourage/ensure their children to watch online channels with clear age ratings.

Administrative costs: There would be additional administrative costs for regulators for monitoring compliance with the new rules by providers of on-demand services, in particular in the 9 countries where there are no stricter rules in place (see ANNEX 14). Regulators already supervise the implementation of appropriate measures by on-demand services to protect minors from seriously harmful content. They would need to go beyond and verify that those measures are applied to potentially harmful programmes.

[138] According to the 2014 EAO report on the development of the European market for on-demand audiovisual services.
[139] Cost for a EU board submission process, for 5000 titles, including costs per viewable, staffer/contractor overhead and yearly licence fee.
[140] EAO Iris bonus – The protection of minors in audiovisual media services
[141] 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

Depending on the compliance procedures in place at national level, a single category of harmful content may imply an increase in the number of checks and/or of complaints to deal with. For example, a voluntary self-monitoring body in a Member State reported a cost of EUR 126 000 for handling complaints (2 612) in 2014[142]. For on-demand service providers, there would be some administrative costs in relation to a potential increase of complaints due to the wider scope of application of the provision on the protection of minors.

Regulators and media service providers would face administrative costs related to the implementation of the information requirements, via co-regulation, in those Member States where similar mechanisms are not in place. The administrative costs related to the implementation of co-regulation will depend on the approach adopted. In an ambitious scenario, this could imply setting up a system based on the creation of a specific organisation, rules and processes. The PEGI[143] system can give an idea of the administrative costs linked to such an approach at EU level[144].

Impacts on the Internal market: simplifying the definition of harmful content could result in the most harmful content (for example, but not limited to, hardcore pornography) being consistently subject to effective access controls, across the EU[145].

Requiring information on content would also have a positive impact on the internal market by providing more harmonization across Member States and TV broadcasting and on-demand services.

This would be facilitated by the Commission and ERGA intervention.

Impacts on competitiveness: Harmonising the level of requirements between TV broadcasting, in particular pay TV services[146], and on demand services will increase the level playing field. In the frame of the data gathering on costs and benefits, pay TV reported high costs for the provision of technical solutions to control the access and provide information on harmful content. Two of them complained about the lower set of restrictions applied to on demand services while both type of services provide similar technical measures to restrict the access to harmful content.

For on-demand services, the extension of the existing requirements to potentially harmful content is likely to have an impact in terms of their revenues in particular in the countries where there are no stricter rules in place. Less content would be accessible to their widest possible audience. On-demand service providers may therefore incur a loss of revenues be it in terms of number of transactions and subscription (VoD and SVoD) or of advertising (catch up TV). **Impacts on SMEs:** Option A may generate additional costs for SMEs providers.

Social impacts:

In a context where children consume significant quantities of on-demand content (see Section 2.2.2.1 B), Option A would ensure a higher level of protection. Several surveys have found that consumers

[142] Study on 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 the protection of minors

[143] Pan European Game Information (PEGI) is a European video game content rating system established to help European consumers make informed decisions on buying computer games with logos on games' boxes. PEGI self-regulation is composed by 5 age categories and 8 content descriptors that advise the suitability and content of a game for a certain age range based on the games content.

[144] The governance and management consist of a Management Board (made up of 16 representatives of games publishers, the game console manufacture and national trade associations), a Council (made up of 19 members recruited from the authorities countries, working as civil servants, psychologists, media specialists and legal advisers versed in the protection of minors in Europe. They meet at least once a year) an Experts Group (involving 8 specialists and academics in the fields of media, psychology, classification, legal matters, technology, digital environment) and a Complaints Board (it comprises a pool of independent experts from different countries recruited for their skill, experience and field of activity. These are parent/consumer bodies, child psychologists, media specialists, academics and legal advisers versed in the protection of minors in Europe). PEGI generates own resources via the rating fee paid by games publishers and possible fines.

[145] This view was confimed by OFCOM the 2015 Public Consultation.

[146] For free to air broadcasting this possibility could not be used since encryption and PIN codes are difficult to put in place

expect seamless protection in online video services[147]. This is why in the majority of Member States, industry has already adopted self-regulatory measures to protect minors also from potentially harmful content even in the cases where no regulatory measures are in place regarding this type of content. The possibility for TV brodacsters services to broadcast the most harmful content wil be mitigated by the fact that this content shall be subject to the strictest measures, such as encryption and PIN codes. In some Member States erotic content which would most probably be considered as pornographic in other Member States is subject to encryption and PIN codes without posing a threat to the protection of minors. In addition new generation of devices such as Smart TV will add a second possible layer of protection[148]. Against this backdrop, the majority of ERGA-members supported the idea that the most harmful content could be allowed on TV broadcasting services, provided an adequate access control mechanism is in place[149].

Requirements on the provision of information would have a positive impact on consumer protection by ensuring transparency on the potential harm of content. **Impacts on fundamental rights:** Option A may be perceived as an undue limitation to the right of freedom of expression and access to information on on-demand services. Yet it still remains more limited than for TV broadcasters. Moreover, by way of analogy, in the context of Article 3 of the AVMSD, the legislator made an express choice in Directive 2010/13/EU to limit the freedom of expression of audiovisual media services in two specific circumstances, namely for the protection of minors and the incitement to hatred based on race, sex, religion or nationality[150]. Setting requirements on content information would have a limited impact on freedom of expression as it does not imply age rating but only transparency measures.

5.2.2.3 Comparison of options

	Status quo	Option A
Costs and savings	Administrative costs: EUR 800 000 per year and per regulator (FR, DE, IT). Compliance costs: costs can range from EUR 100 000 to a maximum of EUR 2 million at EU level per year and per TV broadcasting service. The costs provided by TV broadcasters cover measures that are not implemented as a direct result of the AVMSD. The costs directly resulting from the AVMSD would be lower.	Administrative costs: not substantial Maximum compliance costs: Cost of self-regulatory schemes for content information up to EUR 2 million per year for the EU (proxy= budget of two entities in charge of the classification of media content is EUR 2 million). For most on-demand services the costs would be limited as some Member States require some form of protection (e.g. PIN codes, content filtering) for "potentially harmful" content[151].
Effectiveness and subsidiarity test	Option A would tackle the current deficit of fair treatment between TV broadcasters and on-demand services and would improve the level playing field. Option A would also have a positive impact on the internal market through an increased level of availability of information at a limited cost (co-regulatory mechanisms). This approach through co-regulation would also be more effective in terms of protection of minors and would be achieved without impinging on Member States subsidiarity and in line with the minimum level of harmonisation feature of the AVMSD.	

[147] In 2013, 74% of the French population considered regulation should apply on video content on the internet in order to protect young people against inappropriate content (source: CSA, Baromètre de perception de la qualité des programmes). In the UK, the majority of audiences expect comprehensive and broadly homogenous rules on protection of minors across all AV platforms (broadcast TV, catch-up, on-demand, and other internet services). (source: Protecting audiences in an online world, Deliberative research report. Prepared for OFCOM by Kantar Media. Fieldwork took place in July and August 2014.)

[148] For recollection Smart TVs in 21 EU markets 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.

[149] ERGA report on the protection of minors in a converged environement of 27th November 2015

[150] COMMISSION DECISION C(2015) 4609 final of 10.7.2015 on the compatibility of the measures adopted by Lithuania pursuant to Article 3(2) of 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

[151] EAO Iris bonus – The protection of minors in audiovisual media services

	Option A is the preferred option.

Options	General objectives and related impacts		Costs (administrative and compliance)	Effectiveness	Coherence	Feasability (technical and political)	Preferred option
	Establish the conditions to ensure competitiveness (impacts on the competitiveness)	Safeguard the protection of minors and consumer protection (social impacts)					
Status quo	0	0	Low	Low	High	Medium	
Option A	+ +	+ +	Medium	Medium	High	Medium	X

5.2.3 Country of origin principle

5.2.3.1 Status quo option

The AVMSD is based on the COO. In order to determine which Member State has jurisdiction over an audiovisual media service provider, the AVMSD focuses on a number of criteria (place where editorial decisions are taken, head office, etc.).

The AVMSD foresees limited derogations (derogation procedure) to the COO principle. For TV broadcasting, derogations should be based on grounds of incitement to hatred or protection of minors. For on-demand services, there are more grounds, including public policy, public security (including the safeguarding of national security and defence) the protection of public health and the protection of consumers. An emergency procedure is foreseen only for on demand services. For situations where there might be circumvention of the stricter rules of another Member State a procedure is in place (circumvention procedure).

The above-mentioned procedures will be hereafter collectively referred to as "cooperation procedures".

Economic outcome:

Existing costs: Maintaining the status quo would result in no additional costs. The COO avoids regulatory inefficiencies which would result from subjecting one service to multiple jurisdictions. Media service providers incur low compliance costs as a consequence of being subject to the legislation of the country of establishment only.

However, given the complexity of the current rules, some Regulators have recently been subject to a heavy administrative burden. For example, in a recent Lithuanian case (ANNEX 9), extensive consultations and written exchanges between the Swedish and the Lithuanian regulators took place. Those exchanges could be equaled to a workload of 50-100 hours shared by the two regulators.

The increased use of the complex cooperation procedures[152] has led to costs to regulators and to the Commission. As a benchmark, the Lithuanian case referred to above 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[153]. Based on recent experience, it would seem reasonable to reckon the number of cases with up to 5 per year.

[152] In addition to the cases mentioned in section 2.2.2.2 A there have been 3 cases in 2014 that have not led to a notification but which could have triggered jurisdictional issues.

[153] 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.

Outcome Internal market: In spite of the broad support for the COO principle[154], Member States acknowledge a need for addressing actual problems in the application of the principle. In particular, they refer to the complexity of the jurisdiction criteria and the ineffectiveness of the cooperation procedures (see ANNEX 9). Maintaining the status quo would mean leaving these application issues unaddressed which would fuel opposition to the COO principle as such. A minority of Member States plead for limited departures to a country of destination principle.

Outcome on competitiveness: The COO principle provides legal certainty by subjecting media service providers in the EU to the legislation of one Member State only. By keeping administrative and compliance costs for providers low and allowing for economies of scale, the COO principle in turn facilitates investment in the media sector[155]. The complexity of jurisdiction rules and derogation procedures can undermine the positive impact of the COO principle on the competitiveness of media service providers.

Social outcome:

The COO ensures diversity and has fostered the availability of content by facilitating the cross border provision of audiovisual programmes. This is particularly true in smaller markets where service providers would otherwise not be interested in rolling out their services and incurring the cost of compliance with a specific legislation. In some cases, the number of services provided from other Member States is higher than the number of domestic services[156].

While the COO might potentially lead to different degrees of consumer protection, consumers have only exceptionally complained about the application of the COO principle[157]. This can be explained by the fact that consumers are protected by the consumer protection rules of the Directive. The Directive moreover foresees cooperation procedures in case services from other Member States infringe common key values (derogation/circumvention procedure - see ANNEX 9). For instance the derogation procedure allows Member States to take measures against incitement to hatred and infringement of the protection of minors rules on TV broadcasting. However, to the extent that the cooperation procedures are ineffective, this could affect the level of protection of consumers, including minors.

5.2.3.2 Option A: Simplifying and improving the jurisdiction rules and the cooperation procedures

This option would entail (i) simplifying the criteria to determine jurisdiction; (ii) ensuring transparency and legal certainty via the implementation of a database of service providers under Member States jurisdiction; and (iii) revising the cooperation procedures to make them more effective.
In case of disagreement over which Member State has jurisdiction (in particular when applying the cooperation procedures foreseen by the Directive), the Commission would settle the matter after requesting an opinion from ERGA.

The same derogation procedure and grounds for derogating from the COO principle would apply to TV broadcasting and on-demand services (i.e. incitement to hatred, protection of minors and public

[154] See section 2.1 above.
[155] 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.
[156] 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.
[157] The notification by Sweden in the framework of the circumvention procedure (see ANNEX 9) was triggered by concerns raised with the Swedish authorities by a consumer association.

security). The urgency procedure currently available for on-demand services only would also apply to TV broadcasting services. The cooperation procedure would clarify the right to be heard of audiovisual media service providers in relation to measures restricting their freedom to broadcast.

Economic impacts:

Substantive compliance costs: Option A would generate no additional compliance costs.

Administrative costs: This option is likely to contribute to an easier application of the Directive and hence reduce the current administrative costs.

Operating a database of all existing providers and sharing relevant information (e.g. where the majority of the workforce is established) would entail administrative costs for regulators. The database could be built on the existing MAVISE database[158] and fed through contributions from the Member States, through their independent regulators. One full time equivalent could be necessary to maintain the database[159]. The costs of setting up the necessary infrastructure to receive relevant information from the Member States would be offset if the existing MAVISE database were to be used.

There would be administrative costs for ERGA which would have to be able to give opinions on conflicts of jurisdiction[160]. Part of those costs would be borne by the Commission, including the organisation of the meetings, travel and subsistence costs. National regulators would bear the cost of working time spent by national officials when working for ERGA. It is difficult to anticipate the number of jurisdictional disputes which would require settlement if the current lack of transparency regarding jurisdiction, in particular in relation to on-demand service providers, would be remedied by an up to date database.

At the same time, operating a database and empowering ERGA to provide opinions on jurisdiction, together with the simplification of jurisdiction rules, are expected to lead to cost savings. These cost savings would stem from the easier and more reliable identification of the COO which means that complex and time-consuming negotiations between regulators regarding jurisdiction (including on the factual circumstances on which jurisdiction is based) can be minimised. In the absence of relevant data, these cost savings are difficult to quantify.

Cost savings are also expected for audiovisual media service providers. As far as they are concerned, they would benefit from greater legal certainty resulting from a simplification of jurisdiction rules. They would equally benefit from greater transparency and thus a greater predictability of regulators' decisions on jurisdiction.

Compared to the status quo option, option A would add one ground of derogation for TV broadcasting and remove a number of grounds for on-demand services. Option A therefore would be a measured response to Member State concerns[161]. The alignment of the derogation procedure for TV broadcasting and on-demand services would lead to a simpler application which could result in cost savings for Member States and regulators. There is no available data allowing for a reliable

[158] Mavise is a database on television channels and companies in the European Union and candidate countries. The database consists of a complete survey of over 10 000 pan-European, national, regional or local television channels broadcast in Europe and of over 3 000 on-demand audiovisual services. The main aims of Mavise are to provide better knowledge of the audiovisual market and more transparency.
[159] Estimation based on confidential information.
[160] Note that in the given context the notion of "jurisdictional disputes" is not to be understood in the meaning of Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
[161] In the public consultation, most Member States (DE, IE, FI, EE, EL, LV, UK, SK, BE-VLG, PT) and 14 regulators (UK, DE, ES, FI, NL, SK, PL, HU, RO) supported strengthening existing cooperation practices and/or revising the rules on the cooperation procedures. Also public service broadcasters, the satellite industry and platform operators called for strengthening existing cooperation practices and revising the coordination procedures. Commercial broadcasters mainly called for maintaining the status quo.

quantification of those savings. The procedural safeguards, in particular the codification of the rights of defence of the providers concerned, would contribute to legal certainty and would ensure that providers can effectively present their views. They could therefore bring down providers' legal costs triggered by taking legal action against decisions of national regulators.

Impacts on the Internal market: Option A would increase legal certainty and transparency. The alignment of the grounds of derogation would create a more level playing field without restricting free circulation of services across borders. It should be noted that regarding incitement to hatred and protection of minors, the threshold is very high (manifest, serious and grave infringement). Moreover, the Court of Justice has consistently interpreted the notion of "public security" narrowly and strictly[162]. Option A would thus have a positive impact on the functioning of the internal market.

Impacts on competitiveness: Option A would have positive effect on competitiveness, given the increased legal certainty. **Impacts on SMEs**: Clarification of jurisdiction rules and increased transparency would have a negligible impact on SMEs given that the obligation is imposed on Member States. However, there could be an indirect negative impact on SMEs if Member States decided to increase the level of notification or identification requirements in order to establish jurisdiction.

Social impacts:

Simplifying and improving the jurisdiction rules and cooperation procedures would allow for a better application of the COO. The accrued legal certainty would avoid situations where Member States decline jurisdiction over audiovisual media service providers in spite of jurisdictional links with them. This option would result in a more effective application of the Directive, including the rules on the protection of minors. Aligning the grounds of derogation could lead to an increased level of consumer protection in TV broadcasting. Nothing would change for on-demand services since the derogation grounds which would be scrapped off have not been invoked or applied. **Impacts on fundamental rights:** Simplifying jurisdiction rules and ensuring transparency would have no impact on fundamental rights although an increase in transparency has an indirect impact on the fundamental right of information. Improving the cooperation procedures would have a positive impact on the rights of the defence and indirectly on the freedom to conduct a business.

5.2.3.3 Discarded option: extension of the AVMSD to audiovisual media services established in third countries

In the public consultation, a significant number of Member States and regulators refer to the absence of a level playing field and distortions of competition[163]. This would result from the fact that foreign providers targeting EU audiences are currently not covered by the scope of the AVMSD. It must be borne in mind that Member States are already allowed to apply the provisions of the Directive to foreign providers targeting consumers in their territory. This notwithstanding, the majority of contributors[164] to the public consultation also argued that an extension of the rules on the geographical scope to certain foreign providers is necessary.

Despite these results, no significant negative impacts of the current rules could be identified. Leading foreign providers of on-demand services (Netflix, iTunes, Amazon EU Sarl) have set up subsidiaries in the EU. Indeed, only 50 paying VoD services (including different linguistic versions of the same

[162] See, for instance, Case C-546/07 *Commission v Germany* [2010] ECR I-439, paragraph 48; Case 222/84 *Johnston* [1986] ECR 1651, paragraph 26 see ANNEX 9.

[163] 5 Member States (AT, BE-Fr, EL, PL, SK) and 1 regulator (UK-ATVOD) underlined the importance of creating a level playing field through a comprehensive legal framework.

[164] Including 9 Member States (AT, BE, EE, EL, IT, PL, PT, FR, SK) and 12 regulators (e.g. UK-ATVOD, BE-CSA, FR, IT, PL, ES, RO) and some public service and commercial broadcasters.

provider) established in the United States target one or more Member States[165]. Given the lack of transparency of the VoD market, the exact market share of these foreign providers is not known. However, at present there seems to be only one important player, i.e. Google Play, with no establishment in the EU[166]. It follows that there is a lack of evidence as to the existence of a real problem.

In addition, the extension of the geographical scope would be difficult to enforce. Member States can already apply the provisions of the Directive to foreign providers targeting consumers in their territory. However, there is no evidence that they have made use of this possibility. By contrast, 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 turns 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 complicated. 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 AVSMD 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 and audiovisual services remain excluded from the ongoing TTIP negotiations. 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.

Extending the geographical scope would thus be disproportionate and would not represent a clear added value.

5.2.3.4 Comparison of the options

	Status quo	Option A
Costs and savings	Administrative costs: staff costs related to case handling EUR 18 000 per case for the Commission and EUR 3 000 for the Regulators involved in the case. Compliance costs: 0	Administrative costs: - Costs of ERGA opinions: nc - Around EUR 51 630 to run the MAVISE database for the EU Cost savings: not quantifiable Compliance costs: 0
Effectiveness and subsidiarity test	Options A would facilitate the identification of the country of origin and therefore improve the functioning of the internal market with cost savings for the regulators, the Commission and audiovisual media service providers. Option A would increase the protection of consumers and allows quick intervention in case of public security threats. In addition, option A would reply to a strong political demand to allow Member States to do so. The approval by the Commission would nevertheless act as a safeguard against any possible misuse of this possibility mitigating potential impacts on the internal market. The cooperation procedures have the objective of allowing for subsidiarity considerations and national specificities in the application of the COO principle. Improving their functioning is therefore contributing to further abide by the subsidiarity principle.	

[165] 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

[166] Google Play movies and TV was rolled out in the UK, France, Germany, Italy and Spain at the end of 2012 only. By contrast, iTunes movies started in the UK in 2008, and in France and Germany in 2009. Google Play entered the on-demand market significantly later and has still a low or no presence in most Member States. The comparatively late roll-out of Google Play in the EU, evolving usage patterns of mobile devices in particular with the younger generation and the high penetration rate of Android could offer significant growth potential for Google Play. The impact of Google Play not being covered by the geographical scope of the Directive, even if currently not so important, could therefore become increasingly more in the future if they decide to remain outside the EU. It will thus remain important for the Commission to keep an eye on the evolution of the market in implementing a revised AVMSD.

	Option A is the preferred option.

Options	General objectives and related impacts		Costs (administrative and compliance)	Effectiveness	Coherence	Feasibility (technical and political)	Preferred option
	Internal market (impacts on the internal market)	Establish the conditions to ensure competitiveness (impacts on the competitiveness)					
Status quo	0	0	Low	Medium	High	Low	
Option A	+ +	+	Low	High	High	High	X

5.2.4 Independence of Regulators

5.2.4.1 Status quo option:

The AVMSD does not impose an obligation on Member States to create or maintain an independent regulatory body. Member States are only required to take appropriate measures to provide each other and the Commission with the information necessary for the purposes of establishing jurisdiction and applying the cooperation mechanisms.

Economic outcome:

Existing costs: Maintaining the status quo would not entail substantive compliance costs for audiovisual media service providers or additional administrative and enforcement costs for regulatory authorities.

The existing costs deriving from setting up an independent authority are not as such, a legal consequence of the AVMSD which does not impose such an obligation. In any case, the Member State's regulatory structures needed to implement the AVMSD at national level have resulted in moderate to high administrative costs. The average staff dedicated per channel monitored by regulators across the EU has been estimated at 0.56 person[167].

Outcome Internal market: When regulatory bodies are not efficient or lack independence, this has a direct impact on the effective transposition and application of EU legislation and consequently on the functioning of the internal market. The Council of Europe Recommendation (2000)23 [168] on the independence and functions of regulatory authorities for the broadcasting sector as well as a number of studies and reports[169], 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[170], operational and decision making autonomy;
vi) effective enforcement powers;
vii) the possibility only for judicial power to review the regulatory bodies' decisions.

[167] 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
[168] https://wcd.coe.int/ViewDoc.jsp?id=393649&
[169] 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.
[170] In line with the INDIREG study, financial autonomy means "*that the regulator is equipped with sufficient financial resources*".

The situation of national regulatory bodies in the light of these criteria is as follows:

- 5 national regulatory authorities[171] are not fully separated from ministerial bodies or government.
- 4 Member States do not have any transparency provisions[172] and 2 Member States[173] do not require regulators to motivate their decisions.
- A number of countries do not follow sufficiently open and transparent procedures for the nomination, appointment and removal of board members[174]. 6 countries lack rules on conflict of interest for appointments[175]. There are no rules against conflict of interest with government[176] in 6 countries, and 9 do not have rules on conflict of interest with Parliament and political parties[177]. 5 countries neither have rules on the possible conflict of interest with industry (5)[178]. In 5 countries, no specific rules exist to protect Board members against arbitrary dismissal (5)[179].
- 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.
- Large budgetary[180] 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[181]. The same can be said as regards staffing[182]. In this context, the RADAR study also concluded that the level of staff has been considered to be problematic for several regulators[183]. A more qualitative assessment by ERGA gave a close conclusion[184]. 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[185] to regulators.
- 5 regulators report that they do not have powers to enforce their decisions autonomously[186].

Failure to fully align to 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 and hence better ensure an efficient implementation of the AVMSD.

Some commercial broadcasters replying to the 2015 public consultation mentioned recent decisions by several regulators which, according to them, were problematic for their own independence. They

[171] CY, EE, FI, LV, LT. Source: ERGA Report on the independence of National Regulatory Authorities (https://ec.europa.eu/digital-single-market/en/news/erga-report-independence-national-regulatory-authorities)

[172] 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

[173] Estonia and Luxembourg. Source: Final Report of AVMS-RADAR

[174] Final Report of AVMS-RADAR and ERGA Report.

[175] AT, BG, DE (*some Länder*) , DK, RO, UK. Source: Final Report of AVMS-RADAR

[176] DE (*some Länder and ZDF*), ES, Pl, RO, SI, UK. Source: Final Report of AVMS-RADAR

[177] BE (all communities), EE, ES, FR, DE, NL, PT, RO ,SI.

[178] BE, DE (only RBB), EE, ES and FR.

[179] BE (VRM), DK, EE, LU, SE. Source: Final Report of AVMS-RADAR

[180] Final Report of AVMS-RADAR

[181] France (€ 35 million), several German regional regulators such as the BLM (€ 28 million in 2014) and the LFK (10 million in 2014),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).

[182] Final Report of AVMS-RADAR Staff ranges from 2 persons in Iceland to 306 persons in France or 790 in the UK

[183] German speaking community of BE, CY, CZ, EL, HR, IE and RO.

[184] 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).

[185] 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, and 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).

[186] Bulgaria, Luxembourg, Poland, Slovakia and Sweden report that they do not have powers to enforce its decisions autonomously; see ERGA report

affected negatively Public Service Broadcasters (PSB), commercial broadcasters and sometimes all players[187].

The absence of independence can undermine the predictability of regulation which, according to service providers, is a necessary condition for them to establish and serve audiences in other Member States[188].

Outcome on competitiveness: The independence of regulatory authorities both from political bodies and from commercial interests is essential to ensure an objective supervision of markets[189]. 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 (see Section 2.2.2.2 B).

Social outcome:

The current rules aim to ensure the effective implementation of the AVMSD in cross-border cases where cooperation between the regulatory authorities is required. In this sense, they provide the general public with the assurance that the audiovisual rules, protecting their interests, are observed. However, 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[190].

Moreover, regulatory authorities lacking independence are not in a position to guarantee media freedom and pluralism[191] (see Section 2.2.2.2 B).

5.2.4.2 Option A: The AVMSD would require Member States to have an independent regulatory authority and set a number of requirements to support their independence and effectiveness. ERGA coordination and advisory role would be reinforced and embedded in the AVMSD

The AVMSD would set minimum mandatory requirements for regulatory bodies. Such requirements could include: i) independence from third parties; ii) transparent decision-making processes and accountability to relevant stakeholders; iii) open and transparent procedures for the removal of Board Members; iv) knowledge and expertise of human resources; v) financial[192], operational and decision making autonomy; vi) effective enforcement powers; vii) the possibility only for judicial power to review the NRAs' decisions.

These are based on the Council of Europe Recommendation (2000)23 [193], a number of studies and reports (see Section 5.2.4.1) and the requirements set by EU law in other legislative frameworks (see ANNEX 12)

The AVMSD would also require that the regulators have competences in all the areas covered by the AVMSD. They should exercise these competences impartially and transparently and in accordance

[187] 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)

[188] 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.

[189] 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

[190] E.g. reply to the 2015 public consultation by UK Government or FOX International channels.

[191] 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."**

[192] In line with the INDIREG study, financial autonomy means "*that the regulator is equipped with sufficient financial resources*".

[193] https://wcd.coe.int/ViewDoc.jsp?id=393649&

with the AVMSD objectives (media pluralism, cultural diversity, consumer protection, internal market, distortion of competition).

This option shall not prevent supervision in accordance with national constitutional law.

The role of ERGA, currently set by a Commission Decision[194], would be embedded in the AVMSD and include new tasks deriving from the review of the Directive (see Sections 5.1.3, 5.2.2 and 5.2.3). This would not imply the creation of an Agency. Existing financing mechanisms would be maintained.

Economic impacts:

Substantive compliance costs would not increase.

Administrative costs: Option A would entail moderate to high administrative costs for Member States, depending on whether their regulatory authorities already fulfill the criteria of independence and effectiveness, especially the criteria on adequate financial and human resources. For some Member States, this would imply administrative costs related to adapting the legislation and, if necessary, the structure of the Regulator, its staff and budget. The maximum increase in staff costs has been estimated at 200 full time equivalents for the most understaffed regulators[195]. However, the reliability of this forecast is limited given that the independence and efficiency of a regulatory authority derives from a complex combination of the requirements mentioned in the status quo.

Impacts on the Internal market: Option A would contribute to raising the level of regulatory independence in the audiovisual sector. This in turn would enhance the effectiveness of the AVMSD transposition across the EU in particular in the areas of audiovisual commercial communications, jurisdiction and protection of minors[196]. Moreover, by indicating the minimum requirements for independence, option A would achieve a higher level of harmonisation as regards the structures of regulatory authorities. This view is shared by 74 out of 86 respondents to the 2013 consultation and by most of the commercial TV broadcasters who replied to the 2015 public consultation. By strengthening ERGA's role, there would be more exchanges among regulators on the implementation of the AVMSD. This would bring closer Member States' positions as regards the interpretation and application of the AVMSD. This would indirectly increase the level of harmonization in the application of the AVMSD.

Impacts on competitiveness: The introduction of proper independence requirements applicable across all the EU countries would contribute to guaranteeing legal certainty and a level playing field for all market players in the EU[197]. Representatives of service providers that serve more than one Member State argued that the willingness to establish in a Member State and serve audiences in several Member States is mostly determined by the high quality and consistency of regulation, and by the independence of regulators[198]. The formalisation of ERGA would enhance cooperation between the regulatory authorities in the EU and thus enhance legal certainty and level playing field between audiovisual media service providers[199]. The replies to the 2015 public consultation by some of the

[194] C(2014) 462 final
[195] 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.
[196] 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
[197] This has been underlined by some broadcasters replying to 2015 public consultation (e.g. COBA, FOX, VOEP).
[198] 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. The other criteria are taxation levels, availability of a skilled workforce, good infrastructure.
[199] Closer cooperation between regulatory authorities in the EU could be an effective tool to address some issues flagged by operators (such as difficulties faced by thematic channels to comply with quotas obligations regarding promotion of European works) by way of, for example, coordinating the application of exemptions.

broadcasters[200] indicate that the existence and opinions/statements of ERGA are highly valued. **Impacts on SMEs:** An increase of legal certainty and a level playing field for all market players in the EU and would have a positive impact on SMEs.

Social impacts:

Due to the improved effectiveness of the AVMSD transposition, option A is likely to increase viewers' protection in the audiovisual sector. It could also contribute to attracting more players to offer services in specific markets, contributing thereby to an increased content choice for consumers. The reinforcement of ERGA would enhance the existing cooperation between regulatory authorities. This would have a positive impact on the cross-border protection of consumers for example in case of cross-border infringement cases. **Impacts on fundamental rights:** Option A should contribute to ensuring freedom of expression and information. This view is shared by the majority of the Member States and regulators who believe that audiovisual regulatory bodies have a key role to play in safeguarding free and pluralistic media throughout Europe. In order for them to be able to undertake this role properly and without unwarranted interference, it is vital that they are independent[201].

5.2.4.3 Comparison of options

	Status quo	Option A
Costs and savings	Administrative costs: 0.56 person per channel monitored by regulators across the EU	Administrative costs: not available. A rough possibly overestimated extrapolation results in a maximum increase of 200-250 FTEs for the very understaffed Regulators. Although this figure cannot be taken in isolation from other independence requirements.
Effectiveness and subsidiarity test	Options A contributes to a thorough implementation of the AVMSD while ensuring media freedom and pluralism. The budget of the most understaffed Regulators would increase. Option A would give enforcement powers to the Commission. It would therefore be effective in achieving the objective of ensuring regulatory independence and hence improve the internal market. As shown in the last review of the AVMSD, option A is likely to be politically challenging. While it is widely supported by the industry and civil society, a number of Member States consider that option A would impinge on the subsidiarity principle. Option A foresees minimum requirements and remains proportional since it clarifies that Member States would maintain their prerogatives to ensure regulators' accountability in accordance with their national constitutional law. Option A is the preferred option.	

Options	General objectives and related impacts	Costs (administrative and compliance)	Effectiveness	Coherence	Feasability (technical and political)	Preferred option

[200] E.g. Fox,VPRT,

[201] 78 out of 86 respondents to the 2013 public consultation on independence considered that independence of audiovisual regulatory bodies is relevant for the preservation of free and pluralistic media). This view was also shared by the respondents to the 2015 public consultation (some Member States , e.g. Ireland and Latvia; regulators: Spanish CNMC and CAA, FR CSA, Dutch CdvM, Romanian NAC, GermanVS; Public service (EBU, RAI, Circom Regional) and commercial broadcasters (CMFE); as well as other respondents (NGOs, citizens or digital companies).

	Internal market (impacts on the internal market)	Establish the conditions to ensure competitiveness (impacts on the competitiveness)					
Status quo	**0**	**0**	**Low**	**Low**	**High**	**Medium**	
Option A	**+ + +**	**+ + +**	**Medium**	**High**	**High**	**Low**	**X**

5.3 Option addressing the problem of the rules on commercial communications no longer fit for purpose

5.3.1 Status quo option:

The AVMSD contains rules on commercial communications that apply to all audiovisual media services. These are the rules on the use of sponsorship and product placement and on certain qualitative aspects of commercial communications[202].

The AVMSD also lays down more detailed rules that apply only to television broadcasting. They set a maximum of 12 minutes of advertising per hour on television (i.e. 20% per hour), define how often TV films, cinematographic works and news programmes can be interrupted by advertisement, set the minimum duration of teleshopping windows and set some requirements on the content of alcohol advertising spots.

Economic outcome

Existing costs: Maintaining the status quo would result in no additional administrative or compliance costs.

According to regulators, the existing requirements have resulted in administrative costs up to EUR 1.2 million per year per regulatory authority[203].

In the majority of Member States, self- and co-regulation systems are in place in the field of advertising in general. These systems are either funded by membership fees or by a levy system from the industry and their cost ranges from EUR 250 000 to EUR 1 million[204].

Outcome Internal market: The minimum harmonisation provided by the AVMSD has resulted in fragmentation and has not brought legal certainty in the areas of sponsorship, self-promotion and product placement. For sponsorship announcements and product placement, the main issue concerns the interpretation of the concepts of "potential undue promotional character" [205] and "undue prominence"[206]. For self-promotion, the difficulty lies in applying this notion to assess whether it should be included in the 20% rule. This problem can be particularly acute for anouncements related to programmes of other entities belonging to same media group, which are not strictly speaking considered in the notion of self-promotion.

[202] See Article 9 AVMSD

[203] Depending on the size of the audiovisual market in the country, the staff costs, the use of external services for monitoring. Study on defining a new framework for the monitoring of advertising rules under the Audiovisual Media Services Directive.

[204] Sources EASA (European Advertising Standards Alliance)

[205] For example, in Austria, a specific case of a logo wall in a sports broadcast was deemed unduly prominent (BKS decision of 14 December 2011, GZ 611.009/0007-BKS/2011). In the Flemish Community of Belgium, different praises of a restaurant and a new shop were considered as undue prominence (VRM, 2010/026 and VRM, 2010/027). In Germany, a decision highlighted that there is undue prominence only if the product placement is the single dominating element to the extent that the actual programme content is no longer recognizable (case no.5 K 1128/11.NW).

[206] 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.

Outcome on competitiveness: At a moment where online advertising is overtaking TV advertising as the preferred media for advertisers, TV broadcasting is subject to rules that are no longer justified (see Section 2.2.3 and ANNEX 6).

In their replies to the 2015 public consultation, advertisers, some broadcasters and several Member States and regulators claim that there is no level playing field between TV broadcasting and other media services, and in particular between TV broadcasters and on-demand service providers. However, a few broadcasters, mainly from the UK, prefer the status quo option.

Social outcome:

Consumer organisations (including those from the health sector) recognise the relevance of the rules but think that they are neither fair nor effective. Consumer organisations underline that the level of consumer protection should not be lowered[207]. Even if new offers in the market have progressively given consumers the opportunity to switch to services without advertising (see Section 2.2.3), they still have some concerns about excessive advertising on TV[208]. They also consider that self- and co-regulation systems take too long to review complaints while advertising campaigns are fast-paced.

Advertising revenues directly contribute to (commercial) TV broadcasters' capacity to invest in audiovisual content. A decrease of TV advertising revenues linked to the limitations imposed by the current regulation will have a negative impact on creative industries and cultural diversity.

5.3.2 Option A: Making the AVCC rules more flexible

For both TV broadcasters and on-demand services, sponsorship rules would be made more flexible by focusing on the principles of editorial independence, transparency (clear indication that the programme has been sponsored) and no sponsorship for banned products such as tobacco. Similarly, product placement would be explicitly allowed and the rules would be relaxed by deleting the "undue prominence" criterion and focusing on the principles of editorial independence, transparency (clear indication that the programme contains product placement) and no product placement for banned products (such as tobacco or medicines on prescription). The prohibition of product placement in children's programmes would remain.

For TV broadcasters, films could be interrupted more often (once for each period of 20 minutes) except for children's programmes for which the current rule would remain. Isolated spots would be allowed.

As regards quantitative limitations for advertising, TV broadcasters would be allowed more flexibility by transforming the 20 % per hour limitation into a daily limitation.

More types of commercial messages would be excluded from the advertising limit (e.g. cross-promotion including announcements for programmes of other broadcasters or other media within the same media group).

As regards qualitative rules, the status quo would remain[209]. Regarding the provisions on AVCCs for alcohol (Article 9(1)e)) and HFSS foods accompanying or included in programmes with a significant

[207] BEUC's contribution to the public consultation. In addition EURALVA underlines that the quantitative rules are not satisfactory if not respected by stakeholders.

[208] 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". 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 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

[209] See Article 9 AVMSD.

children's audience (Article 9(2)), self- and co-regulation would be encouraged, also at EU level if necessary. Member States would be encouraged to ensure that self- and co-regulatory codes are effectively used to reduce the exposure of children to audiovisual commercial communications of alcoholic beverages and of HFSS foods. The Commission and ERGA would facilitate exchanges of best practices on co-regulatory systems across the EU. If considered appropriate, the Commission would facilitate the development of EU codes on which ERGA might be requested to give an opinion.

The general provisions on self- and co-regulation (Article 4(7)) would be reinforced with new benchmarks for the effectiveness of the existing and new codes.

Economic impacts:

Substantive compliance costs: The incremental costs for TV broadcasting and on-demand service providers of the new provisions would be zero[210].

Administrative costs: There would not be any incremental administrative cost for regulators. Currently, regulators' monitoring and enforcement activities with respect to the 20% limitation amount to up to EUR 1 million[211]. As regards product placement and sponsorship rules, these costs amount respectively up to EUR 2.2 million and EUR 2.1 million per year at EU level[212].

As an important share of these costs derive from the application of subjective criteria, such as the undue prominence of product placement, regulators will certainly lower their current costs. It is however not possible to quantify precisely these cost savings.

For HFSS foods advertising, codes of conduct are already in place in all Member States except two. Similarly, for alcohol advertising, codes exist in most Member States. Developing codes at Union level would imply limited additional costs as they would be mostly absorbed by the current existing structures[213].

Impacts on the Internal market: Option A would address the issue of fragmentation brought by the lack of certainty about the interpretation of some of the AVMSD concepts in the areas of sponsorship, product placement and self-promotion. This being said, the AVMSD is a minimum harmonisation Directive. Member States remain free to adopt stricter and more detailed rules for providers under their jurisdiction. Several Member States indeed have stricter rules already in place as regards quantitative rules, mostly on PSB channels[214]. It is therefore possible that some Member States would maintain stricter rules in this field.

11 of the Member States that replied to this question support more flexibility but to various degrees. Some refer in particular to sponsorship and product placement rules[215]. Other call also for a deletion of the 20% limitation[216].

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[210] Study on defining a new framework for the monitoring of advertising rules under the Audiovisual Media Services Directive. Advertising scheduling is a core component of broadcast programming and the quantitative rules imposed by the AVMSD are only a small part of a large number of parameters taken into account in TV scheduling strategies aiming at optimising audience and revenue. The costs associated with broadcast programming, including IT costs, are "business as usual", i.e. costs endured even in the absence of the AVMSD.

[211] Ibid, based on the current average value for the monitoring of 1 linear provider established in the EU (PPP adjusted) which is derived from a sample of the regulatory costs in 7 MS which can be considered as a representative sample of different approaches to fulfilling regulatory responsibilities with regard to the monitoring and enforcement of the quantitative rules. It is further assumed that regulators focus their regulatory activities on linear services which have more than 0,5 % of the audience share.

[212] Ibid

[213] For information, self-regulation organisations' secretariats budget currently range from small (with just one to five members of staff and a budget up to EUR 250 000) 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.

[214] 14 Member States have stricter rules than the 12-minute limitation, mostly on PSB channels (11 MS)

[215] NL, UK, PL, FI and ES.

[216] FI and its regulator, DE and its regulators and EE.

Impacts on competitiveness: Most broadcasters agree that product placement and sponsorship rules should be clarified and simplified. A simplified set of rules on product placement could result in an increase of approximately 10% to 15% of product placement revenues [217], or in a 4% increase of total advertising revenues in the EU (i.e. potentially additional revenue of EUR 1.2 million)[218]. Allowing more flexibility in sponsorship rules would allow broadcasters to generate from 15% to 50% of additional sponsorship revenues[219]. This could result in more than EUR 441 million increase of total TV advertising spend in the EU (i.e. around 1.5% of current total TV advertising market value)[220]. It must in any case be noted that it is difficult to foresee whether advertisers would increase their advertising budgets or spend their existing budget differently.

Most broadcasters consider that the insertion rules are no longer relevant or effective. Some argue that because of these rules, schedules are not built around viewers' comfort or advertisers' demand, which is counter-productive. According to the industry, by making the interruption rules more flexible, revenues could increase between 1 and 10 %[221]. The only other estimate available is based on the scenario of abolishing interruption rules. In this case, the overall potential revenue gains could amount to 1.35% of advertising revenues coming from cinematographic works and news programmes. This is however a conservative estimate since the parameters for calculation do not take into account different target groups, time slots etc.[222]

If isolated spots were allowed, this would allow for a better optimisation of broadcasters' advertising inventory.

As regards the 20% limitation, the impact of introducing more flexibility would differ depending on the characteristics of each advertising market[223] and on the extent to which Member States would apply the new rules or maintain the status quo in this area. In the most flexible option of transforming the 20% per hour limitation into a daily limitation, broadcasters would be allowed to broadcast as much advertising as they want during peak times i.e. when they can best maximise their revenues (live shows, major events etc.). They could thus optimise their advertising schedules and viewers flow.

A shift to a daily limit could generate between a 2% and 15% increase of revenues[224]. For example, over the last six months of 2015[225], the gross price of a 30-second advertising spot during prime time

[217] EGTA's report on the costs and benefits of compliance with the Audiovisual Media Services Directive.
[218] Based on the assumption that current revenues on product placement in Europe capture around 0.1% of total ad revenues and only in some cases might go above 1%, while in countries such as US where the regulations on product placement are very loose or virtually non-existing at all, the market share captured by product placement is around 5%. Such significant direct increase can however hardly be expected in reality (at least short to medium time perspective), mainly due to inherent differences between the EU and the US markets. Study on defining a new framework for the monitoring of advertising rules under the Audiovisual Media Services Directive.
[219] EGTA's report on the costs and benefits of compliance with the Audiovisual Media Services Directive.
[220] Based on an average assumption that of a given range (30%) of an expected increase in revenues from sponsorship activities, as compared to the current estimation that sponsorship captures around 5% (net value) of total TV revenues in their national markets. Study on defining a new framework for the monitoring of advertising rules under the Audiovisual Media Services Directive.
[221] EGTA's report on the costs and benefits of compliance with the Audiovisual Media Services Directive.
[222] Study on defining a new framework for the monitoring of advertising rules under the Audiovisual Media Services Directive.
[223] Advertising sell-out rates vary widely across Member States, meaning that in some countries, broadcasters do not sell their entire advertising inventory while in others; they do and could benefit from additional advertising space. Advertising pressure varies across Member States. Between 2010 and 2013, during selected monitoring periods on certain channels, it ranged between 4,9% and 14,1% on average. For commercial broadcasters, this varied between 15% and 6,4%. In DE, advertising spots represented on average 8,6% of the daily broadcasting time, varying between 14,2% on SAT1 and 1.1% on ARD. In the UK, advertising spots represented on average 11.9% of the daily broadcasting, varying between 15% on ITV2, 14,2% on Cartoon Networks and 10% on ITV1. In the NL, advertising spots represented on average 9% of the daily transmission time, varying between 12% for SBS6 and Net5 and 5% on Nederland3. In MT, advertising spots represented on average 4.9% of the daily transmission time, varying between 6,4% on ONE and 4,2% on NET. In FR, advertising spots represented on average 5.6% of the daily transmission time, varying between 10.4% on TF1 and 2.4% for Canal+. In IT, advertising spots represented on average 8.7% of the daily transmission time, varying between 15% on Canale5, 12.6% on La7 and 3% on RAI2. In AT, advertising spots represented on average 7.7% of the daily transmission time, varying between 12.1% on ATV and 2.4% on ORF2. In RO, advertising spots represented on average 9,4% of the daily transmission time, varying between 11% on ProTV and Antena1 and 5,1% on TVR1. In DK, advertising spots represented on average 14.1% of the daily transmission time, varying between 14.9% on TV3 and 12.9% on TV2.
[224] EGTA's report on the costs and benefits of compliance with the Audiovisual Media Services Directive. [non-confidential version], confirmed by a broadcaster from a small Member State who replied to the public consultation (MTV Oy), this could mean "an increase of advertising income of about 2 million euro annually".
[225] http://www.tf1pub.fr/offre/tf1/grille-tarifs/

on TF1 was EUR 67 330. It is estimated that during important events or programmes, European broadcasters could increase their advertising pressure by a few minutes, from 12 minutes to 14-15 minutes[226], taking into account European viewers' lesser propensity to stand long advertising breaks. This would mean an increase of around 2,5 minutes of advertising, i.e. 5 more advertising spots of 30 seconds, which, all things being equal, could translate for a channel such as TF1 in an increased revenue of 336 650 EUR i.e. theoretically EUR 122 million annually i.e. 10 % of the turnover of the channel in 2014[227]. However, the potential benefits of more flexibility need to be balanced with the fact that the scarcity of advertising spots, in particular at peak time, has a positive impact on their value. The exact effects on market players will largely depend on the elasticity of demand in each market. By introducing flexibility, broadcasters would be able to take business decisions adapted to the reality of each market in order to balance advertising demand, advertising spot prices and viewers' comfort. However, since an increase of the overall advertising volume might trigger a decrease of the advertising price[228], it is expected that broadcasters will not unduly increase the advertising pressure.

The impact of excluding cross-promotion from the 20% limitation would depend on each media service provider's business model. In general, the exclusion would mainly benefit broadcasters who are part of larger integrated media groups.

Most commercial broadcasters advocate more flexible advertising rules. However, a few broadcasters (mainly from the UK) deem that rules should remain in their current form in order to keep the advertising market stable. They are supported by some Member States[229].

The printed press industry claims that more opportunities to advertise on TV could imply changes in advertisers' media mix, which may be to their detriment[230]. However, it should be noted that despite the current limitation, newspaper print advertising in Europe has dropped by 23.1 % between 2010 and 2014 and by 5 % between 2013 and 2014[231]. This drop is due to a number of factors, in particular to advertising moving online and to other services. The impact woukd be limited as it mainly allows broadcasters to better distribute advertising spots during the day.

Possible codes of conduct at EU level on alcohol and HFSS food advertising would complement activities at national level and are not expected to decrease advertising revenues for EU TV broadcasters[232] significantly.

Impacts on SMEs: There will be no significant impact on SMEs (See ANNEX 3).

Social impacts:

Overall, viewers would be potentially exposed to more advertising during peak time. Due to a relaxation of the interruption rules, there could be more frequent and longer advertising breaks. This

[226] Based on the average minutes of commercials aired per hour in the USA, Nielsen's Advertising and audiences: State of the media Report, 12 May 2014, p.14 http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2014%20Reports/advertising-and-audiences-report-may%202014.pdf

[227] http://www.groupe-tf1.fr/sites/default/files/pdf-financiers/annexes_soc_2014_fr.pdf

[228] Study on defining a new framework for the monitoring of advertising rules under the Audiovisual Media Services Directive. See also "An econometric analysis of the TV advertising market: final report for Ofcom", http://stakeholders.ofcom.org.uk/binaries/research/tv-research/report.pdf

[229] UK and FR.

[230] See for example the contributions of EPC, EMMA, ENPA, BDZV VDZ, MLE, NMA, VOEZ and ANSO to the 2015 public consultation.

[231] http://www.wan-ifra.org/sites/default/files/field_message_file/250515%20WPT%202015%20Final.pdf)

[232] The Study on defining a new framework for the monitoring of advertising rules under the Audiovisual Media Services Directive indicates that the share of HFSS food advertising varies between 0,8% and 11,2% of total ad revenue for individual TV broadcasters, with an average of 4,56% (based on interviews with TV broadcasters). The same study indicates that the share of alcohol advertising for individual TV bradcasters varies between 1 and 2,9% of total ad revenue, with an average of 1,99% (based on interviews with TV broadcasters). As a benchmark, for a big Member State, all food and beverages advertising (i.e. broader than HFSS foods and drinks) represented 18% of all TV advertising expenditures. Source: Television International Key Facts 2015, IP Network

may thus affect the integrity of cinematographic works. Several right holders' associations have underlined this in their contributions to the public consultation[233].

However, market developments have led to an increased amount of offerings to which viewers can easily switch, in particular to advertising-free subscription video-on-demand services. This tendency has been clearly observed in the US market[234] where, despite the fact that there are no limitations as to the amount of advertising, broadcasters recently use self-restraint in fear of losing audiences.

The deletion of a criterion such as "undue prominence" for product placement would expose viewers to more commercial messages in programmes[235].

This being said, if broadcasters manage to retain the value of advertising spots by marginally increasing their number around value-generating programmes at peak-time, an increase in advertising revenues would increase the capacity of TV broadcasters to invest in audiovisual content. This would have a positive impact on the availability of content for consumers and would be beneficial to EU producers, especially when coupled with requirements on investment in European works, including the 8 000 EU independent producers with positive consequences for employment. **Impacts on fundamental rights:** Due to an increased capacity to invest in audiovisual content, more flexibility in advertising rules would contribute to reinforcing freedom of expression and information (Article 10 of the Charter). The possibility to broadcast TV advertising with fewer constraints would contribute as well as to the freedom to conduct a business (Article 16).

5.3.3 Comparison of options

	Status quo	Option A
Costs and savings	Maximum administrative costs: EUR 1.2 million per Regulators, per year Compliance costs: nc	Maximum savings on administrative costs: - 20% limitation: EUR 1 million per year for the EU - Product placement: EUR 2.2 million per year for the EU - Sponsorship: EUR 2.1 million per year for the EU Additional Compliance costs: 0 Maximum economic benefits: - Flexibility of 12 minute rule: EUR 122 million per year for one major TV broadcaster - Flexibility product placement: EUR 2.2 million for the EU - Flexibility sponsorship: EUR 2.1 million for the EU
Effectiveness and subsidiarity test	Option A would increase the competitiveness of TV broadcasters and increase their benefits. TV broadcasters will probably increase the amount of advertising at peak time only to a limited extent so as to avoid any major fall in the prices of advertising slots. By giving additional flexibility in this field and maintaining the possibility for Member States to adopt stricter measures, this option is proportionate and fully compliant with the subsidiarity principle.	

[233] See for example the contributions of SACD, VS, SAA, VdFS.
[234] http://television.telerama.fr/television/etats-unis-et-maintenant-moins-de-coupures-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/
[235] On the impact of product placement on children, see the study on the impact of marketing through social media, online games and mobile applications on children's behaviour (http://ec.europa.eu/consumers/consumer_evidence/behavioural_research/impact_media_marketing_study/index_en.htm

Options	General objective and related impacts	Costs (administrative and compliance)	Effectiveness	Coherence	Feasability (technical and political)	Preferred option
	Establish the conditions to ensure competitiveness (impacts on the competitiveness)					
Status quo	0	High	Medium	Medium	Medium	
Option A	+ + +	Low	Medium	Medium	Medium	X

5.4 Discarded option: Prominence of content of general interest

The prominence of content of general interest has been identified as an issue in the frame of the public consultation. However, the option of including any related provision in the AVMSD has been discarded at an early stage as no clear consensus on how this issue should be tackled has emerged[236].

Most recent market and technological developments (new distribution channels, the proliferation of audiovisual content, etc.) have generated calls to reflect on whether rules would be required to facilitate prominence of content of general interest, i.e. ensuring its findability/discoverability.

The provision of general interest content constitutes the core element of the mission of public service broadcasters in Member States[237]. It also has a potential impact on commercial broadcasters operating (partly or fully) under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity.

Beyond the specific aspect of promotion of access to European works[238], the AVMSD contains no general provision ensuring prominence of content considered by Member States as being of general interest. As far as linear broadcasting services provided via electronic communication networks or services are concerned, some Member States provide e.g. for requirements regarding the order of channel listings.

Article 6(4) of the Access Directive 2002/19/EC merely refers to but does not regulate ("without prejudice") the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides (EPGs)[239] and similar listing and navigation facilities. The Access Directive does not mention any particular requirement or limitation in this sense, and in any event applies only to the extent that electronic programme guides display linear broadcasting channels provided via electronic communication networks or services and information about such channels.

Even if not stated by any legal instruments, Member States have the possibility under national legislation to introduce prominence obligations on online service providers. Such interventions are subject to the Treaty, including competition rules, the freedom of establishment and the freedom to provide services.

[236] 4 out of 20 MS responding to the 2015 Public Consultation asked for introducing findability rules and the large majority of regulators; the industry in their large majority opposes introducing findability rules (see below). Introduction of findability rules is supported by the public service broadcasters with the objective to ensure their visibility on the new screens. It is also supported by the Associations representing persons with disabilities which are seeking for improvement of the accessibility/usage of devices for the disabled (deaf/blind).

[237] Protocol No 29 on the system of public broadcasting in the Member States attached to the TEU and TFEU provides that "*The provisions of the Treaties shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting and in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and in so far as such funding does not affect trading conditions and competition in the Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.*"

[238] See Art 13(1) of the Audiovisual Media Services Directive 2010/13/EC

[239] 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.

Currently, some platforms reach commercial agreements with content providers including public service broadcasters concerning the prominence of their content.

The added value of action at EU level would be to set up and harmonise the limits to what the Member States can do in regard of prominence of general interest content[240].

Such limitation could be conceived along the lines of current limitations for must-carry-obligations under Article 31 of the Universal Service Directive (USD)[241] where MS may only impose "*proportionate obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Union [Community] law and should be proportionate, transparent and subject to periodical review…*"[242]

However, in order to be effective, the inclusion of such provision in the AVMSD would require a major adjustment in terms of its scope[243]. The AVMSD would need to apply beyond television broadcasts and specific on-demand audiovisual media services to encompass players aggregating programmes of different media service providers on interfaces allowing users to search, find, organise and select individual elements of audiovisual content for viewing and/or recording. Such players could include transmission networks, content platforms[244], service providers, ISPs/software producers and manufacturers. For many of these providers, the only applicable rule of the Directive would be the one on access to general interest content (i.e. device manufacturers).

Moreover, introducing a provision in the AVMSD would entail that transmission networks, content platforms, service providers or manufacturers would apply the rules of the country where they are established.

In the case of a player established in one Member State rolling out its services in other Member States, the content available in the targeted country would have to abide by the provision on prominence of content of general interest from that country. In a context where OTT services are developing at a rapid pace and have a great flexibility for establishing themselves in a particular country while distributing services across Europe, the effectiveness of such a provision would be very low. Indeed the notion and the scope of general interest applied in one Member State would be defined according to the standards of another Member State.

Therefore, the AVMSD is not the right legal instrument to deal with this issue.

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[240] Regulations on findability/ EPG is in place in AT, BE (FR and NL), BG, CY, DE, FR, HR, HU, IE, IT, NL, PL, PT, UK, See study Visionary Analytics, table 5.2. EPG-regulation in Member States (forthcoming).

[241] As regards the provision of content of general interest ("must carry" obligations), Article 31 of the Universal Service Directive 2002/21/EC (USD) allows Member States to impose must carry obligations on undertakings, under their jurisdiction, providing electronic communications networks used for the distribution of television broadcasts. Member States are allowed to impose such obligations where a significant number of end-users use the networks as their principal means to receive television broadcasts. Moreover, the obligations should be necessary to meet clearly defined general interest objectives and shall be proportionate and transparent.

[242] See Recital 43 of the Universal Service Directive 2002/21/EC (USD).

[243] According to the 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, this option is likely - to entitle MS to secure appropriate prominence for public interest content for on-demand and further services currently not covered by the AVMSD. Regulation could focus either on due prominence of content (for e.g. requiring specific content to be shown on top of search or recommendations pages) or apps. – is likely to oblige MS to ensure that prominence obligations shall only be imposed on fair, reasonable and non-discriminatory terms. Such regulation would apply to broadcast and IPTV platforms as well as OTT content aggregators. In addition to prominence on "traditional" EPGs, discoverability clauses could also include: prominence on the default mode of "new generation" EPGs that can be customised by the consumer; favouring of public interest content in filtering, search and recommendations engines, etc. ; platforms run by connected TVs and other devices that deliver audiovisual content and services. Prominence legislation could also include obligations to pre-install designated apps on newly sold devices.

[244] Typical examples for platforms include general internet search engines (e.g. Google, Bing), specialised search tools (e.g. Google Shopping, Kelkoo, Twenga, Google Local, TripAdvisor, Yelp,), location-based business directories or some maps (e.g. Google or Bing Maps), news aggregators (e.g. Google News), online market places (e.g. Amazon, eBay, Allegro, Booking.com), audiovisual and music platforms (e.g. Deezer, Spotify, Netflix, Canal play, Apple TV), video-sharing platforms (e.g. YouTube, DailyMotion), payment systems (e.g. PayPal, Apple Pay), social networks (e.g. Facebook, LinkedIn, Twitter, Tuenti), app stores (e.g. Apple App Store, Google Play) or collaborative economy platforms (e.g. AirBnB, Uber, Taskrabbit, Bla-bla car). Internet access providers fall outside the scope of this definition. Not all of these are relevant with regard to the provision of audiovisual content.

5.5 Impact of the combination of the preferred options

There are multiple potential combinations of the different options. The combination of the preferred options is deemed to strike the best balance between the need to introduce flexibility with respect to the current level of regulation and ensuring adequate consumer protection:

Options	General objectives and related impacts					Costs (administrative and compliance)	Effectiveness	Coherence	Feasibility (technical and political)
	Internal market (impacts on the internal market)	Establish the conditions to ensure competitiveness (impacts on the competitiveness)	Safeguard the protection of minors and consumer protection (social impacts)	Support European cultural diversity (social impacts)	Strengthen access to information and media pluralism (social impacts)				
5.1 Insufficient minors and consumers protection in video-sharing platforms									
Option B	N/A	N/A	+ +	N/A	N/A	Medium	Medium	Medium	Medium
5.2.1 Promotion of European works									
Option B	N/A	+	N/A	+ +	N/A	Medium	High	Medium	High
5.2.2 Protection of minors in on-demand services									
Option A	N/A	+ +	+ +	N/A	N/A	Medium	Medium	High	Medium
5.2.3 Country of origin principle									
Option A	++	+	N/A	N/A	N/A	Low	High	High	High
5.2.4 Independence of Regulators									
Option A	+ + +	+ + +	N/A	N/A	N/A	Medium	High	High	Low
5.3 Rules on commercial communications no longer fit for purpose									
Option A	N/A	+ + +	N/A	N/A	N/A	Low	Medium	Medium	Medium

On the one hand, the industry will benefit from more flexible quantitative rules on commercial communications. The increased efficiency of the country of origin principle and the requirements for the independence of Regulators would improve the business environment in which audiovisual players operate.

On the other hand, consumers will be guaranteed a high level of protection through the limited extension of the AVMSD to video-sharing platforms and the reinforcement of the requirements applicable to on-demand services in terms of the protection of minors. Consumers will also benefit from a greater access to European works in on-demand services.

On the one hand, the set of preferred option comes with simplification and cost savings in the area of commercial communications and for the application of the COO. On the other hand the substantial societal benefits resulting from the increase in consumer protection leads to additional costs:

Prefered options	Additionnal costs	Costs savings
5.1 Insufficient minors and consumers protection in video-sharing platforms	• Regulators: EUR 600 000 per year for all EU Regulators (complaint based mechanism). • Video-sharing platforms: costs of mechnisms to protect minors from harmful content and citizens from incitement to hatred vary from EUR 100 000 for the EU (cost of a user generated rating system) to EUR 3.1 million per year for the EU (cost of a	

	moderation system in a large platform). These costs would be mitigated by the fact that major platforms have already put in place such mechanisms. • Video-sharing platforms: cost of co-regulatory structure varies from EUR 250 000 to EUR 1 million per year and per Member States	
5.2.1 Promotion of European works	• On-demand service providers: costs related to the application of contributions extra territorially: can vary between EUR 5.8 and 8.2 million per year for major EU providers. For levies only costs can vary between EUR 4.7 and 11.7 million per year for all EU providers. Regulators: The cost of monitoring on demand services in the Member States with the highest requirements is EUR 2 000 per year.	
5.2.2 Protection of minors in on-demand services	• TV broadacsters and on-demand services: cost of self-regulatory schemes for content information can be up to EUR 2 million per year for the EU (proxy= budget of two entities in charge of the classification of media content is EUR 2 million).	
5.2.3 Country of origin principle	• Regulators: costs of ERGA opinions is difficult of quantify and the cost of running the MAVISE database would be EUR 50 000 per year.	• Regulators: expected savings resulting from the facilitation of the identification of the country of origin.
5.2.4 Independence of Regulators	• Regulators: The cost is not available. A rough possibly overestimated extrapolation results in a maximum increase of 200-250 FTEs for the more understaffed Regulators.	
5.3 Rules on commercial communications no longer fit for purpose		• Regulators: savings can be up to 5.3 milion per year for the EU. • TV broadcatsers: economic benefit resulting from the flexibility of the 12 minutes rule can go up to EUR 122 million for one TV braodacsters. Economic benefits related to product placement and sponsorhip can go up to 4.3 million per year for the EU.

All options take into account, when appropriate, the need of flexibility for the industry by considering possible implementation via self and/or co-regulation (scope of application, information on harmful content).

Most of the options complement each other. For example, independence of regulators will be of the utmost importance if Members States decide to entrust them with the application of the new rules regarding video-sharing platforms. Also the potential increase in audiovisual media service providers' revenues deriving from the greater flexibility of quantitative rules on advertising will release a potential for an increased contribution to the production of European works.

The combination of options achieves a more level playing field between the different players in the audiovisual media market. This is for instance realized by leveling up certain requirements for on-demand services and video-sharing platforms in relation to the protection of consumer or promotion of European works while providing more flexibility to TV broadcasting services on certain rules on commercial communications.

6. HOW WOULD ACTUAL IMPACTS BE EVALUATED OR MONITORED?

6.1 Monitoring

Monitoring of the implementation will continue to be assured by the European Commission on the basis of:

- Application reports by the Commission, on the Directive as a whole no later than four years after the adoption of the Directive and every three years thereafter;
- Reports on the application of the provisions related to the promotion of European works every 2 years (for TV broadcasting and on-demand services);
- Monitoring of the implementation of the provisions on video-sharing platforms on the basis of an independent study carried out after the transposition;
- Monitoring of the implementation of the provision on content descriptors for protection of minors.

The following list of impact indicators could be used to monitor progress towards meeting the general objectives:

General objectives	Potential indicators	Baseline	Potential sources of information
Enhanced consumer and minors protection	Number of complaints related to harmful/hate speech on video sharing platforms handled by MS appointed authority	0 (2015)	Ad hoc studies
Internal market	Turnover in the audio-visual sector in the EU	EUR 105.8 billion (2014)	EAO report on the development of the European market for on-demand audiovisual services and EAO Yearbook IHS database ComScore database Nielsen ERGA Report from the MS Ad hoc studies
	Number of TV broadcasting services in the EU	5 141 (2013)	
	Number and on-demand services	2 563 (2014)	
	Share of cross border provision of TV broadcasting services	38% (2013)	
	Share of cross border provision of on-demand services	31% (2014)	
	Number of derogation/circumvention procedure opened/closed	0 (2015) and 2 (2015)	
	Number of on demand services established outside the EU and targeting the EU	50 in the US (2015)	
	Average TV viewing time in the EU	3h43	
	Video viewing time	N/A[245]	
	TV broadcasters advertising revenues	EUR 28 billion (2013)	
	Online advertising revenues	EUR 27 billion (2014)	
	Advertising revenues from online video	EUR 2.2 billion (2015)	
	Share of European works on TV broadcasting services	64.1% (2012)	
	Viewing time for European works on TV broadcasting	69% (2010)	
	Share of EU works in VoD catalogues	27%/30% (75 VoD catalogues and 16 SVoD catalogues – october 2015)	

[245] The main difficulty currently is to get unduplicated reporting i.e. that visitors to a website aren't counted more than once across multiple devices and thus overestimate viewing figures. For instance, a single user may visit a page while at work, on smartphone during commute, and then again on laptop when getting home. Analytic and measurement companies are about to address this issue.

	Share of EU films promoted on on-demand services	33% (2015 in DE, FR and UK)	
	Share of turnover invested by TV broadcasting services in EU original content	19% (2013)	
	Share of turnover invested by on-demand services in European/independent works	0.6%	
	Average staff of NRAs per channel	0.56	
	Number of ERGA opinions	3 (2015)	
	Number of EU codes conduct	0 (2015)	

6.2 Evaluation

No later than 10 years after adoption, the Commission shall submit to the European Parliament and the Council an ex post evaluation, accompanied where appropriate by proposals for its review, in order to measure the impact of the Directive and its added value.

The evaluation report will include an assessment of whether the operational objectives of the revised Directive have been reached. A particular focus will be cast on the application of the provision on video sharing platforms; "protection of minors" and MS implementation of the coreguationl and/or self regulation principles. The evaluation report will be made public.

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ANNEX 1 - PROCEDURAL INFORMATION

Lead DG: DG Communications Networks, Content and Technology
Agenda planning: 2015/CNECT/006

Organisation and timing: The IA was carried out between May 2015 and January 2016. The IA draws from evidence gathered prior to and during this period.

In October 2015, the Commission published an inception impact assessment[246].

The IA has been prepared by Unit G.1 "Converging Media and Content" of the European Commission, DG Communications Networks, Content and Technology. It 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 DGs 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. **Consultation of the Regulatory Scrutiny Board.**

The recommendations of the RSB	Changes in the IA report
1st opinion of the RSB	
(1) Clarify the context and the scope of the initiative. The report should better focus the review of the Audio-Visual Media Services Directive on the issues highlighted in the Digital Single Market initiative and strengthen the links with the outcome of the evaluation exercise (specifying which aspects will be covered by this initiative as opposed to others). As regards the scope of the intervention, the report should make it more explicit what type	The problem statement was revised and framed along the lines of the Digital Single Market initiative. The Section on the material scope of application has been clarified, including by better explaining what is referred to by "video-sharing platforms". The provision on accessibility has been removed and a clear reference to the European

[246] http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_cnect_006_cwp_review_avmsd_iia_en.pdf

of on-line platforms/services the Directive should cover and discuss to what extent such typology can avoid the problems linked with the insufficiently clear definition of the 'TV-like' character present in the Directive. The relation and coherence with existing or separately proposed legislation– for instance, with the e-Commerce Directive and the proposals on the accessibility of public sector bodies' websites or on the European Accessibility Act – should be discussed and clarified in order to avoid any risk of overlaps and legal uncertainty.	Accessibility Act has been added. The interaction with the E-commerce Directive has been clarified.
(2) Refine the problems and provide better-structured evidence. The problem description should be consolidated and supported with relevant evidence, currently spread throughout the whole document. The report should introduce a hierarchy of problems – with those related to the implementation of the Country of Origin principle being key – and better identify some of them, e.g. the problem related to the uneven playing field in advertising and the promotion of European works or the independence of regulators. For the latter, the problem should be more rooted in the internal market basis and supported with more explicit evidence (e.g. court rulings, ERGA opinions etc.). The issues related to accessibility of audio-visual content should be discarded at an early stage as they are being tackled by the Accessibility Act initiative. The problem drivers should include the fact that some of the current tools (e.g. rules on product placement) are outdated or not effective. The issue of independence of the national regulators should be introduced clearly in the problem definition to better justify its inclusion in the options.	The problem statement was backed up with more evidence, where available. This was to a great extent done by moving evidence from the status quo analysis to the problem statement. The problem definition has been re-structured along the three main issues: 1. Insufficient protection of minors and consumers in video-sharing platforms. 2. Lack of a level playing field and internal market weaknesses. 3. Rules on commercial communications no longer fit for purpose. The provision on accessibility has been removed and a clear reference to the European Accessibility Act has been added. The issue of independence of the national regulators has been clarified in the problem definition.
(3) Better define the options, strengthen the analysis of their impacts and improve their comparison. The presentation of options should be improved, following from the clarified problem definition. The differences between the options should be expressed more pronouncedly, allowing for a more conscious analysis of impacts which should be coherent with the existing evidence. For instance, the report should clarify how the proposed non-regulatory regime is expected to work in practice and how effective it is likely to be, given the alleged malfunctioning of the current soft-law solutions. The feasibility of the options should also be analysed, building on experience (e.g. the only partial	Redundant options have been eliminated in order to focus on the essential. Tables consolidating the various costs have been added at the end of each set of options.

implementation of current obligations on European content). The comparison of options should consolidate the various cost-estimates to enable a more explicit balancing of costs and benefits, thus sanctioning the choice of the preferred options. As the review of the AVSMSD is a REFIT initiative, the simplification and burden reduction elements should be brought out and cost-savings quantified as far as possible – and where this is not the case, explained why.	
2nd opinion of the RSB	
Further clarify the context and the scope of the initiative. The scope of the initiative has been clarified on the one hand by limiting the on-line extension of the Directive to video-sharing platforms only and excluding upfront problems dealt with by other legislative initiatives. On the other hand, the scope is less clear as regards the removal of the debateable 'TV-like' criterion and the previously planned extension of rules on commercial communications to video-sharing platforms. The removal of the "TV-like" requirement and the associated codification of the 21 Oct 2015 ECJ judgement should not be part of the baseline, but re-introduced in the options. The reasons for not considering anymore the extension to commercial communications should be clearly spelled out. The report also misses an analysis of the international aspect of the revision as regards the consequences of shifting coverage for some services from the e-Commerce Directive to the AVMSD in the context of e.g. TTIP negotiations (obligation to protect internet service providers from liability with respect to transmission or storage of information).	Even if mainly based on the codification on a recent ECJ judgement, it is now again calrified that the proposal will include the removal of the "TV like" requirement. The reasons for not considering anymore the extension of some of the rules on commercial communications to video-sharing platforms have been be spelled out: the Unfair Commercial Practices Directive (UCPD) [247] applies to all misleading commercial practices. As regards commercial communications for tobacco products in video-sharing platforms, the existing prohibition in Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products ensures the required consumer protection. Advertising self-regulatory codes also apply in general indiscriminately to advertisements on all media (including TV and on-demand, print, radio, and online). In addition, there have been recent developments in some Member States, where regulatory authorities have issued guidelines on these matters.
Strengthen the links with the evaluation results. The streamlined problem description left behind some of the issues identified in the evaluation: this applies to the contentious 'TV-like' requirement for assessing the applicability of the AVMSD and consumer protection issues linked to the advertising of HFSS foods and alcohol.	The impacts of "TV like" requirement have been brought back in the options. Strengthening the rules on alcohol television advertising has been limited to a re-enforcement of self-co regulation, given that there is not sufficient evidence available to warrant the need to go further. The encouragement to develop codes of conduct

[247] 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.

	to protect minors from inappropriate AVCCs for HFSS foods has been spelled out.
Better specify the options and enhance the analysis of their impacts. The proposed options have been rationalised in line with the revised problem definition. However, they have also been changed in substance, omitting several important issues identified in the evaluation study (see above). As regards the soft-law option aiming at protection of minors in the on-line environment, the report should reassess its effectiveness given the reported uncertain results of the existing schemes and further analyse the latent fragmentation risks resulting from potentially 28 different national regimes. Some quantified options (such as the requirement to secure a 20% share of European works in Video-on-Demand Providers' catalogues could be explained)	The lack of effectiveness of the soft-law option aiming at protection of minors in the on-line environment has been better explained. The assessment of the impact on the internal market clarifies that by introducing a maximum harmonization preventing Member States to impose more detailed or stricter rules on video-sharing platforms. The choice of a 20% share of European works in Video-on-Demand Providers' catalogues has been explained in ANNEX 19.
Stress the REFIT aspects of the initiative. Improvements have been made to the presentation of costs/cost savings of the options, nevertheless the comparisons should be done against the baseline options and – as this is a REFIT initiative – the overall costs/cost savings should be summarised and simplification/burden reduction aspects should be brought out. The scale used to assess the overall impact should be explained: the costs of the preferred options to promote European content and for the protection of minors for VoD and platforms are qualified as "medium" while anecdotal evidence and stakeholders views point to significant costs (promotion of European content, extension of protection of minors provisions to VoD).	A table summarizing additional costs and costs savings has been added at the end of the IA. The assessment of the costs of the preferred options to promote European content has been backed up by providing more details on VoD providers' business model (revenue sharing). It has been highlighted that the costs for the protection of minors of the preferred option for VoD providers would be limited as many Member States have already set higher requirements. Moreover, the option dealing with addressing the lack of level playing field as regards protection of minors has been reinforced by proposing a full alignement.

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

- REFIT analysis (see ANNEX 4)
- **Stakeholder consultations** (see ANNEX 2).
- The findings of the **Commission's monitoring of the AVMSD** pursuant to Article 33[248] of the Directive (1st Application report for the years 2009-2010[249]; 2nd Application report on the AVMSD[250] for the years 2011-2013; reports on Articles 16 and 17[251]).

[248] 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.
[249] http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0203
[250] 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.
[251] https://ec.europa.eu/digital-agenda/en/avmsd-reports-european-works

- Policy recommendations from **other EU institutions**, namely the EP[252], the Council[253], the European Economic and Social Committee[254] and the Committee of the Regions[255].

- **Data gathering on AVMSD cost and benefits[256].** 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[257]), 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.

[252] Three Own-initiative reports adopted by the European Parliament. A) The January 2015 (still to be adopted) "Towards a Digital Single Market Act" (2015/2147(INI)); B)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.

[253] 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

[254] Opinion adopted by the European Economic and Social Committee 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

[255] 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

[256] 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.

[257] http://ec.europa.eu/digital-agenda/en/news/commission-decision-establishing-european-regulators-group-audiovisual-media-services

- **Publicly-tendered studies** [258] 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[259].

  - **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 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[260] 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[261]. 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)"[262] and "on-demand markets in the European Union – 2014 and 2015 developments"[263]) 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 orginal programming
  - linear audiovisual services including their revenues and investment in orginal programming

[258] http://ted.europa.eu/udl?uri=TED:NOTICE:212396-2015:TEXT:EN:HTML&ticket=ST-1292379-SKem8OGQ1reJn1IxAZqVGszP2zjXhYuZOoStsF8rBu0ZCOZKgO05NbMy9k6hQrTzIimWUTdcKGfvm49lhwu7y5m-Jj71zxYb8yr5J3R6eCTiGK-TqeqixAzhASPjqjbmnf8X5hXPzlpiWbUx9btUwoJzMau

[259] https://ec.europa.eu/digital-single-market/en/news/study-exposure-minors-alcohol-advertising-tv-and-online-services

[260] http://ec.europa.eu/digital-agenda/en/news/study-audiovisual-media-services

[261] http://ted.europa.eu/udl?uri=TED:NOTICE:279501-2014:TEXT:EN:HTML

[262] https://ec.europa.eu/digital-single-market/en/news/study-data-and-information-costs-and-benefits-audiovisual-media-service-directive-avmsd

[263] https://ec.europa.eu/digital-single-market/en/news/demand-audiovisual-markets-european-union-smart-20120028

- **Desk research and literature review done in-house by DG CONNECT and by** the contractors. The main sources used are:

MAVISE[264]	Number of linear and non-linear service providers.
IRIS Merlin[265]	Changes in media legislation in MS.
Eurostat	General social and economic statistics.
EPRA database[266]	Annual reports of national regulators. National legislation in MS, synthesis, analytical reports.
EU infringement cases[267]	Data on infringement cases related to AVMSD.
Freedom of press index	Data on media freedom.
AVMSDatabase[268]	National legislation transposing specific AVMSD Articles
National audiovisual services databases[269]	Data on market share of audiovisual service providers

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

4. **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[270] "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[271].
- In 2013, the Commission launched a Public consultation[272] 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.[273]

[264] http://mavise.obs.coe.int/
[265] http://merlin.obs.coe.int/
[266] http://www.epra.org/articles/media-legislation and http://www.epra.org/organisations
[267] http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en
[268] http://avmsd.obs.coe.int/cgi-bin/search.php
[269] For example, http://www.tns.lt/, http://www.tns.lv/, http://www.finnpanel.fi/, http://www.agtt.at/, http://www.kek-online.de/.
[270] http://ec.europa.eu/digital-agenda/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values
[271] https://ec.europa.eu/digital-agenda/en/news/publication-summaries-green-paper-replies
[272] http://ec.europa.eu/digital-agenda/en/news/public-consultation-independence-audiovisual-regulatory-bodies-read-contributions
[273] https://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st

- Data gathering 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[274].
- Discussions with Member States audiovisual regulators within the ERGA[275].
- 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[276], the Council[277], the European Economic and Social Committee[278] and the Committee of the Regions[279].

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.

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

[275] 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

[276] 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.

[277] 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. 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.

[278] Opinion adopted by the European Economic and Social Committee 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

[279] 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[280] on Directive 2010/13/EU on Audiovisual Media Services[281] (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[282], 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)

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, as well as on the independence of national regulators.

[280] http://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st
[281] 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
[282] COM (2015) 192 final, 6 May 2015.

- 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[283]

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%
Pay TV aggregators	0	0%
Press or other	0	0%
TOTAL	**438**	

[283] Based on the categories chosen by the respondents amongst those listed in the Public consultation questionnaire

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 but only 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 the need for possible changes 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 favored 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)161 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 – BUSINESS STRUCTURE IN THE AUDIOVISUAL MARKET

- The audiovisual sector mainly comprises **large companies:**

  - The turnover of the 50 leading European television group was EUR 87 bn in 2014 e.g. more than 80 % of the EU audiovisual market (EUR 105.8 bn)[284]. The rest of the audiovisual sector is made of US groups and a myriad of local TV channels. As regards on-demand services more specifically, there are mostly subsidiaries of big audiovisual groups.

  - Similarly, it is more common to find that the majority of the workforce works for large companies. This is the case in 12 Member States out of the 16 for which employment data are available. In those countries, large companies account for an absolute majority (more than half) of the workforce. Large companies 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 companies 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 companies, their share of sectoral value added peaking in the United Kingdom (90.8 %).[285]

- The AVMSD foresees exemptions for small broadcasting services when it comes to rules that do not directly relate to the protection of the vulnerable. Under Article 26 AVMSD, Member States have adopted exemptions of the quantitative rules on commercial communications (interruption and minutage rules) on television broadcasts intended solely for the national territory. Under Article 18, requirements on the promotion of EU works do not apply to television broadcasts that are intended for local audiences and do not form part of a national network. The exemptions of the requirements on the promotion of European works for small broadcasting services are implemented in the frame of Guidelines issued by the Contact Committee.

- Given the highly concentrated structure of the audiovisual market and the fact that small operators are normally exempted from the rules with the highest economic impact, the effect of the AVMSD on SMEs is deemed to be small. The preferred option foresees that that Member States would be required to waive the requirements on the promotion of EU works for low audience and thematic on-demand service providers or for small and micro enterprises.

[284] European Audiovisual Observatory yearbook 2015
[285] http://ec.europa.eu/eurostat/statistics-explained/index.php/Programming_and_broadcasting_statistics_-_NACE_Rev._2

ANNEX 4 – REFIT EVALUATION

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) [286] of the Audiovisual Media Services Directive (hereinafter "AVMSD").

In line with the "Better Regulation" requirements[287], 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 [288] " announces that the Commission will examine the functioning of the rules currently in force and will review the AVMSD in 2016[289].

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) [290].

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[291] entered into force, and 2007 is not covered by this evaluation.

2. Background

2.1 Situation prior to Directive

[286] 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.
[287] 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).
[288] COM(2015) 192 final of 6 May 2015
[289] 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."
[290] 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).
[291] 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.

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 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[292] 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[293].

2.2 Baseline

At the time the last revision was proposed in 2005[294], 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[295] 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

[292] 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
[293] Section 3.1 of SEC(2005) 1625/2
[294] Ref. Commission proposal for a Directive amending Council Directive 89/552/ECC, COM(2005) 646
[295] SEC(2005) 1625/2, Commission Staff Working Document – Annex to Commission proposal for a Directive amending Council Directive 89/552/ECC, COM(2005) 646

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.

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[296]) with often diverging requirements[297]. 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[298]. 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[299]. According to the 2005 Impact Assessment, maintaining the status quo would

[296] 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 parafiscal 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.

[297] See section 3.2.1 of the 2005 Impact Assessment

[298] 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.

[299] 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.

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.

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 [300]. The decrease in those Member States ranged from -5% to -36%[301].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.

[300] DE, ES, FR, GB, IT and NL

[301] 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

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 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

Needs/Drivers[1]

- Need to address Market developments
- Fragmentation of national rules for on-demand services: obstacles to free movement and to internal market, gaps in consumer protection
- Need to preserve and foster the competitiveness of operators including new business models
- Need to respond to greater consumer (including children) empowerment in on-demand services
- Complex advertising rules for broadcasting services
- Need to contribute to cultural diversity
- Actual or potential uncoordinated national rules regarding access to short extracts of events of high interest to the public

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

Specific Objectives

Protect consumers/viewers including human dignity and the physical, mental and moral development of minors

Ensure cultural diversity

Promotion of media pluralism, freedom of expression and access to information

Foster business competitiveness

Activities/tools

Rules on material (incl. for on-demand services) and geographical scope of application

Country Of Origin principle

- Rules on protection of minors
- Ban on incitement to hatred
- Quantitative and qualitative rules on commercial communications
- Provisions encouraging the use of self and co-regulation
- Right of reply

Rules on promotion of European works

- Provision encouraging accessibility of services
- Rules on events of major importance for society and short news reports
- Rule on cooperation amongst Member States in particular via independent regulators

- Graduated regulation
- Simpler advertising rules

External factors: Technological and Market Developments, Change in users' habits, Financial crisis

Other EU Policies: eCommerce Directive, Strategy for a better Internet for children, Unfair Commercial Practice Directive, MEDIA Programme, Digital Agenda for Europe, EU Disability Strategy, EU Copyright legislation, Digital Single Market strategy

Outputs	Results	Impacts
Broadcasting services and on-demand services are regulated at EU level. Only one MS has jurisdiction over an audiovisual media service provider established in the EU. Services transmitted under this jurisdiction comply with the rules of the MS for audiovisual media services.	Legal certainty and cost savings for providers Level playing field for operators	Free flow of information and AVMS; Growth in volume and circulation of AVMS and in consumer choice incl for transnational channels
Providers comply with rules of the MS that has jurisdiction and are free to provide services in any other MS without secondary control. Procedures are in place to support the functioning of this principle.	Legal certainty and cost savings for providers; Availability of content increases; Investments are fostered	Greater business competitiveness and competition Harmonised protection of public interest, consumers Media pluralism increases
Programmes which might seriously impair the physical, mental or moral development of minors, are not broadcasted and are normally not seen or heard by minors in on-demand services.	Protection of minors, with respect for fundamental rights and national sensitivities.	Rights of the child and other fundamental rights are protected in the EU
Audiovisual media services provided in the EU do not contain any incitement to hatred based on race, sex, religion or nationality.	Protection from hate speech in AVMS, with respect for fundamental rights and national sensitivities.	Fundamental rights, including non-discrimination, are protected in the EU
Advertising has time limits and does not contain messages that are prejudicial to human dignity and health (e.g. tobacco), to minors, etc.	Protection of all viewers and minors, with respect for fundamental rights and national sensitivities.	Human dignity and other fundamental rights are protected in the EU
Member States encourage self and co-regulation in the fields of the AVMSD.	AVMS providers actively support the measures to protect consumers	Stronger effectiveness of the AVMS measures to protect consumers
A right of reply is in place when assertions of facts are made in the course of a TV programme	Protection of consumers and fundamental rights on TV broadcasting	Fundamental rights are protected
EU works are at least 50% of TV transmission time; on-demand services providers promote the production of and access to European works	More EU content on TV and in on-demand services	Greater cultural diversity and boost in the EU audiovisual industry also vis-à-vis foreign competition
Audiovisual media services are gradually made accessible to people with a visual or hearing disability	Persons with disabilities and the elderly can access AVMS	Integration of persons with disabilities and of the elderly
Free TV access to national and non-national events of major importance; and to recent reports of sport events and news	Viewers are warranted access to content of major importance	High level of media pluralism
MS exchange information on the AVMSD via national regulators	Smooth cooperation amongst MS	Coordinated AVMSD application
In some domains of the AVMSD, there are lighter touch rules for on-demand services and stricter and more detailed rules for broadcast services	Level of regulation appropriate to the type of AVMS	Stronger business competitiveness
Broadcasters can use product placement, with conditions, and can use advertising more flexibly than before	Less constraints and cost savings for broadcasters in the field of advertising	Broadcasters extract higher value from advertising space. Content producers have more financial resources available.

[1] The needs/problems refer to the 2007 review. At that time, some of the existing provisions introduced in in 1989 and 1997 were still relevant and were left unchanged

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[302]; 2013 Public consultation on independence of audiovisual regulators[303] and 2015 Public consultation on the AVMSD[304] (the synopsis report is in Annex 2);
  - Policy discussions with Member States in the framework of the Contact Committee[305] meetings;
  - Discussions with regulators within the European Regulators Group for Audiovisual Media Services (ERGA)[306] 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[307] ;
  - Structured dialogues with representatives of the affected industry and consumers ("Media talks[308]").

- Recommendations, reports and policy discussions with other EU institutions, namely the European Parliament[309], the Council[310], the European Economic and Social Committee[311] and the Committee of the Regions[312].

- **Data gathered on the AVMSD costs and benefits** via a questionnaire sent to Member States' regulators within ERGA and to industry[313].

[302] 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)
[303] 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)
[304] 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
[305] In the Contact Committee established pursuant to Article 29 AVMSD.
[306] 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.
[307] 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).
[308] 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.
[309] 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) 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.
[310] 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. 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.
[311] 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
[312] 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
[313] A data gathering on costs and benefits of the AVMSD was sent to stakeholders via the national Regulators.

- **Evidence gathered through publicly-tendered studies**[314] on alcohol advertising exposure, independence of audiovisual regulators, self- and co-regulation and standardisation.

- **Commission's monitoring of the AVMSD** pursuant to Article 33[315] of the Directive (1st Application report for the years 2009-2010[316]; 2nd Application report on the AVMSD[317] for the years 2011-2013; Articles 16 and 17[318]).

- Literature review (e.g. reports of the European Audiovisual Observatory[319] (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.
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.

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

[314] http://ted.europa.eu/udl?uri=TED:NOTICE:212396-2015:TEXT:EN:HTML&ticket=ST-1292379-SKem8OGQ1reJn1IxAZqVGszP2zjXhYuZOoStsF8rBu0ZCOZKgO05NbMy9k6hQrTzIimWUTdcKGfvm49lhwu7y5m-Jj71zxYb8yr5J3R6eCTiGK-TqeqixAzhASPjqjbmnf8X5hXPzlpiWbUx9btUwoJzMau

[315] 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.

[316] http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0203

[317] 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.

[318] https://ec.europa.eu/digital-agenda/en/avmsd-reports-european-works

[319] Public reports (http://www.obs.coe.int/en/publications/2015 available on-line per year of publication, the Yearbook (http://www.obs.coe.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.

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[320] 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[321].

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 (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[322]. 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.

[320] 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.
[321] Ref. 1st Application report on the AVMSD
[322] EAO Yearbook 2015: http://www.obs.coe.int/

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 %)[323].

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[324].

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[325]) 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[326]. On average, 31% of the VoD services available in the Member States are established in another EU country[327].

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)[328].

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[329].

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%[330].

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

[323] Eurostat statistics: http://ec.europa.eu/eurostat/statistics-xplained/index.php/Programming_and_broadcasting_statistics_-_NACE_Rev._2
[324] Ibid
[325] Adaptations of a channel to the specificities of the target country in particular as regards advertising.
[326] 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)
[327] EAO Yearbook 2015
[328] 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
[329] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in linear television revenues
[330] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in video-on-demand revenues.

services[331]. 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[332]. It must be borne in mind that in 2014, Internet video stood for 64% of total consumer internet traffic. This share is expected to increase up to 80% by 2019[333]. The consumption of videos offered by video-sharing platforms is on the rise[334].

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[335].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[336].

The 1st 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 2nd 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 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

[331] On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)
[332] Ericsson mobility report; http://www.ericsson.com/res/docs/2014/emr-november2014-regional-appendices-europe.pdf
[333] 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)
[334] 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). 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).
[335] 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)
[336] On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)

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[337] 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[338] and then its update – the RADAR study of 2015[339].

6. Answers to the evaluation questions

6.1 Material scope of application

The AVMSD applies[340] 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

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

[337] 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
[338] http://ec.europa.eu/archives/information_society/avpolicy/docs/library/studies/regulators/final_report.pdf
[339] https://ec.europa.eu/digital-agenda/en/news/study-audiovisual-media-services
[340] Article 1(1) AVMSD

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[341] 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[342]. Most recently, the ECJ[343] 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[344] 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[345] and this often coincides with a fall in audiences for traditional TV bulletins[346]. In 2014, the number of children who read or watched news online almost tripled as compared to 2010[347]. Most recently, the ECJ[348] 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.

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

[341] Article 1(1) (b) AVMSD

[342] 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.

[343] 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).

[344] 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).

[345] 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.

[346] 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%20Institute%20Digital%20News%20Report%202015_Full%20Report.pdf

[347] EU Kids Online 2014, Children's online risks and opportunities

[348] In the New Media Online GmbH case

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[349] 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[350] 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[351] including on social media[352]. Consumer spending on digital video and this trend is related to the increasing popularity of connected TV and the soar in mobile usage[353]. 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[354]. 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[355].

  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)[356]. Watching video clips is the second prevalent online activity amongst minors aged 4-17, after listening music and watching films and cartoons[357]. Services such as YouTube are widely popular among children[358]. Connected devices such as

[349] 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/

[350] 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.

[351] 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/2``015/consumerlab/ericsson-consumerlab-tv-media-2015.pdf

[352] 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/

[353] 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

[354] 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

[355] http://ec.europa.eu/eurostat/statistics-explained/index.php/Internet_use_statistics_-_individuals

[356] 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

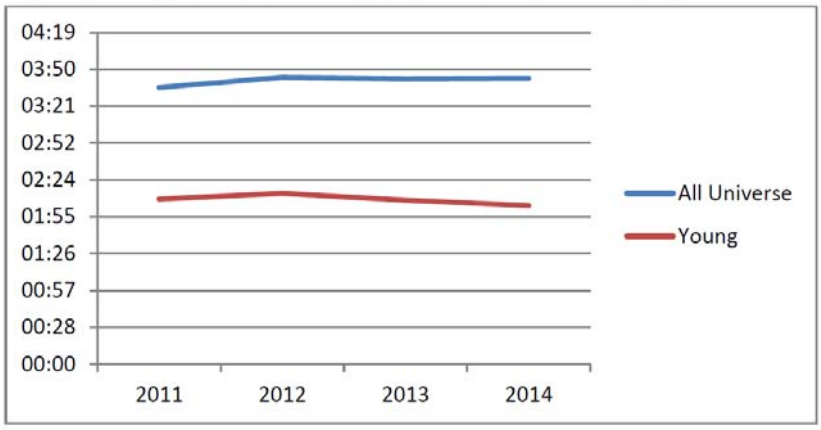
[357] Study on the exposure of minors to alcohol advertising on linear and non-linear audio-visual media services and other online services, including a content analysis, https://ec.europa.eu/digital-single-market/news/study-exposure-minors-alcohol-advertising-tv-and-online-services

[358] 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)

mobile phones, tablets and games consoles are increasingly used by minors, often without adult supervision[359]. More than half of YouTube views come from mobile devices[360].

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[361].

Figure 1: Average television viewing in the EU – 2011-204 (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[362]. In other cases, online versions of newspapers were not deemed to constitute an audiovisual media service[363].

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" (a term most commonly used by video-sharing platforms) are defined by the platforms themselves, in

[359] 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.
[360] https://www.youtube.com/yt/press/statistics.html
[361] On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)
[362] 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.
[363] See Ofcom's Sunvideo decision (http://stakeholders.ofcom.org.uk/enforcement/video-on-demand-services/sun-video-decision-appendices/

their terms of service/Community guidelines[364]. 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[365]. In another case, while YouTube removed a video of a woman being forced by her husband to walk naked in the street[366] for violation of YouTube's Community guidelines, the same video still appears on the website Liveleak.com[367].

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[368]. 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%)[369].

In the UK, ATVOD[370] found that at least 44 000 primary school children accessed an adult website in one month alone[371]. 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[372]. Potential exposure to harmful content or content inciting to hatred may also be fostered by new social media features such as live streaming[373].

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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[364] 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).

[365] 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

[367] http://www.liveleak.com/

[368] The risks associated with social networking sites are more predominantly related to issues such as cyberbulling and face-to-face contacts , EU kids On line: http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/Intheirownwords020213.pdf

[369] Ibid

[370] 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.

[371] 2014 report "For adults only? Underage access to online porn".

[372] 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/).

[373] 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[374] 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[375].
- "TV-likeness", also being subject to diverging interpretations[376].

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 2nd 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[377] and compliance[378] 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.

[374] 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)

[375] 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).

[376] 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".

[377] 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.

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 three media service providers 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[379].

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)[380]and is without prejudice to the ECD system of limited liability[381]. 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[382] 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 AVMDS applies[383] 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[384].

Relevance of the current rules

In the 2015 Public consultation on the AVMSD, a majority[385] of respondents belonging to different categories of stakeholders groups flagged that the relevance of the AVMSD rules on geographical

[378] 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).

[379] 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

[380] 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')

[381] 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.

[382] Services of a merely technical, automatic and passive nature implying neither knowledge of nor control over content

[383] Article 2 AVMSD

[384] Recital 54 AVMSD

[385] With the exception of Internet and satellite industries which consider the rules to be still relevant.

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.

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[386]. 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**[387]. 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 **2nd 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[388]. 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[389]. 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

[386] 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

[387] Some consumer organisations identify the source of the ineffectiveness of the rules in the lack of criteria related to the targeting of the consumer.

[388] 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).

[389] 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.

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.

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 AVSMD 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.[390]

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.[391] 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 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.[392] 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 2nd AVMSD Application report[393] 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.

EffectivenessAt the end of 2013, 5141 TV channels (no local and windows[394]) 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[395]. 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[396] 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[397]. 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

[390] Article 3 AVMSD
[391] Article 3 AVMSD
[392] Article 4 AVMSD
[393] Sections 2.2 and 4 of the 2nd AVMSD Application Report.
[394] Adaptations of a channel to the specificities of the target country in particular as regards advertising.
[395] EAO Refit data: *Note A1:* Linear Audiovisual Media Services
[396] 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
[397] Ibid

investment in the media sector[398]. 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[399] regarding the application of the derogation and circumvention procedures.

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 or the transposition of the rule that services intended exclusively for reception in third countries are not covered by the AVMSD. 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[400]. Similar jurisdiction issues arose in an earlier decision of the Commission regarding notifications of serious infringements of the rules on protection of minors[401]. 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 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[402], 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.[403] 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.*"[404]

[398] 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.
[399].A comprehensive document regarding the application of respectively the derogation and the circumvention procedure was presented and discussed at the 42nd meeting of the Contact Committee on 4 December 2015.
[400] See Commission Decision of 10.7.2015, C(2015) 4609 final, http://ec.europa.eu/newsroom/dae/itemdetail.cfm?item_id=24517
[401] Eurotica Rendez-Vous Television, Extasi TV.
[402] 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.
[403] "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.
[404] Council document no. 8965/15.

Except for one case, the **circumvention procedure** has not been used in practice[405]. The only case notified to the Commission concerned alcohol advertising in Sweden[406] 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 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[407].

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[408].

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

[405] 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.

[406] 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.

[407] 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

[408] 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.

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[409]. In addition, it is coherent with the ECD, including as regards the grounds for derogation from the freedom to provide services[410].

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 may include *potentially* harmful programmes (erotic content and mild violence) if children will not normally hear or see them[411].
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[412].

Relevance of the current rules
The existing framework does not match the most recent developments in the market and in children's viewing patters that were highlighted in the Effectiveness sub-section under section 6.1 on Material scope[413]. 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[414], certain concepts and rating systems for both broadcast and on-demand services are not harmonised at EU level[415]. 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

[409] This latter point was also highlighted by a number of contributors to the 2015 Public consultation on the AVMSD
[410] Article 3 ECD
[411] 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."
[412] 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."
[413] Some figures on children's viewing patterns were already provided in the sub-section Effectiveness in section 7.1 (Material scope).
[414] https://ec.europa.eu/digital-agenda/en/news/erga-report-protection-minors-converged-environment
[415] Although it is unlikely that fragmentation of rating systems constitutes a negative incentive for businesses from offering services cross-border.

labelling and rating content are widespread, there are different classification systems for audiovisual products at national level[416].

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

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[417].

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[418] 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[419], 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[420].
- 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

[416] 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.

[417] 2nd Application report on the AVMSD. The reasons for this lack of proactive monitoring are unknown, and they possibly differ across Member States.

[418] On this point, the views of the industry in the context of the 2015 Public consultation were however split

[419] 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.

[420] 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

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[421] for broadcasters did not increase since the last revision in 2007, as those providers were already subject to this rule.

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[422]. 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[423].

Finally, as indicated by three media service providers 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[424].

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

[421] 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.

[422] 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

[423] 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".

[424] 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

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[425] confirmed the continued relevance of the rules. However, 4 Member States[426] indicated that the list of grounds under which hate speech is banned in Article 6 is excessively limited[427].

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[428]. 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[429]. 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[430], 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[431] and disability[432]. 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

[425] 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.
[426] FR, BE-Vl, IE, LV
[427] Those Member States suggesting adding new grounds, i.e. FR: incitement to violence; BE-Vl: 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.
[428] 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.; 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; 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.
[429] 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.
[430] BG, CY, IT, MT, UK for VoD
[431] BE-French community; BE-German community; CR; DA; FI; FR; GR; IRL; LT; NL; PT; RO; SE; UK
432432 AT; BE French community; BE-German community; CR; FI; FR; GR; LV; NL; PL; PT; UK

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[433] of the EU Charter of Fundamental rights, which prohibits discrimination under broader set of grounds that those for which hate speech is prohibited in audiovisual media services.
Article 6 is neither fully coherent with the grounds[434] 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[435] and product placement[436] as well as alcohol[437] and tobacco[438] advertising.

The AVMSD also lays down detailed rules applying only to television broadcasting. These set a maximum of 12 minutes of advertising per hour[439] for traditional broadcasting (so-called "12-minutes rule"), define how often TV films, cinematographic works and news programmes can be interrupted by advertisement[440] and set the minimum duration of teleshopping windows[441].

Relevance of the current rules
The rules on audiovisual commercial communications contribute[442] 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[443] (qualitative rules) remains unquestioned[444] by all stakeholders.
However, in the frame of the 2015 Public consultation the majority of TV broadcasters questionned 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[445].

[433] 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.
[434] Article 1 (1) (a) AVMSD mentions race, colour, religion, descent or national or ethnic origin
[435] Article 10 AVMSD
[436] Article 11 AVMSD
[437] Article 9(1)((e) for all AVCC and stricter content requirements in Article 22 for television advertising
[438] Article 9(1)(d) AVMSD
[439] Article 23 AVMSD
[440] Article 20 AVMSD
[441] Article 20(2) AVMSD
[442] 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.
[443] 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.
[444] In the 2015 Public consultation, various stakeholders including consumer organisations (also from the health sector) acknowledged the relevance of the rules
[445] http://television.telerama.fr/television/etats-unis-et-maintenant-moins-de-coupures-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/

Moreover, television advertising in the EU has been shrinking in 2013 as compared to 2012[446], 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%)[447]. In Europe, online display advertising is the most dynamic form of advertising with video ads accounting for 16% of online advertising[448].

In 2013, advertising on TV broadcasting represented 33% of TV broadcasters' revenues[449]. 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[450]. 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[451] which represents 0.7% of the revenues generated by French TV broadcasters in 2013[452].

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"[453]. 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[454], 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[455] of the 12-minutes rule was regularly exceeded in a number of Member States. This is

[446] 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).

[447] Source: European Audiovisual Observatory/WARC

[448] 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 ".

[449] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in linear television revenues

[450] On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)

[451] Etude CNC l'économie de la télévision de rattrapage en 2014

[452] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in linear television revenues

[453] 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.

[454] BG, DK, DE, IE, FR, IT, LV, NL, AT, PT, RO, SK, UK

[455] 1st and 2nd 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"

primarily due to divergent national interpretations of various notions as mentioned above[456]. Consumers still have concerns about excessive advertising on TV[457].

As to the effectiveness of **qualitative rules**, 24 Member States have adopted stricter rules for alcohol advertising (involving channels, advertised products or time slots)[458]. 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[459] shows that on average, during one year (2013), a child in the EU saw 200 alcohol impacts[460] and an adult over 450 on television. A number of consumer organisations in favour of volume restrictions[461] 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[462] was lower than those in Germany, the UK or the Czech Republic[463] 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[464]. 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[465] pointed to the blurring lines between broadcast and on-demand services; to the voluntary character of some rules[466] and the lengthy

[456] 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.

[457] 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"[457]. 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 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

[458] http://ec.europa.eu/archives/information_society/avpolicy/docs/reg/tvwf/contact_comm/35_table_1.pdf

[188] 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

[460] 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.

[461] E.g. STAP, ACTIVE, EUCAM, Lithuanian tobacco and alcohol control coalition and viewers' association AUC, IOGT NTO

[462] Between 17:00 and 20:59

[463] 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.

[464] 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.

[465] 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.

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[467]; the links between alcohol advertising and sponsorship in sport events. Stakeholders in different industries[468] also ascribe the ineffectiveness of the rules to the fragmentation due to divergent national legislations.

Moreover, as also affirmed by 6 Member States, 4 regulators and by most broadcasters[469] 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[470].

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[471]. 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[472]) and compliance costs for broadcasters[473], 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[474] 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%[475]. If product placement rules were simpler, product placement revenues could see

[466] 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.
[467] As highlighted by associations protecting consumers from alcohol abuse
[468] Some public service and commercial broadcasters as well as advertisers who point in particular to the rules on self-and cross-promotion
[469] 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.
[470] 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*".
[471] Only Denmark kept the prohibition of product placement for programmes produced in Denmark
[472] Study on Defining a framework for the monitoring of advertising rules under the Audiovisual Media Services Directive
[473] 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.
[474] Ofcom, EL, NL
[475] 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.

a 10%-15% increase[476]. 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[477]. As mentioned above, this limitation is regularly overpassed. According to a large commercial 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.[478] 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[479] 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[480] (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).

[476] 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."
[477] 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.
[478] 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*".
[479] 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).
[480] 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.

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.[481]

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 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.[482] 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[483].

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[484].In 2011 and 2012 the average transmission time dedicated to European works by all reported channels was 64.1%[485].

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[486].

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)[487].

[481] Article 16 AVMSD
[482] Article 13 AVMSD
[483] 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.
[484] Programming time should be understood as followed: broadcaster's transmission time "*excluding the time allocated to news, sports events, games, advertising, teletext services and teleshoppin*g"
[485] 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.
[486] Second Report on the application of Articles 16 and 17 of Directive 2010/13/EU for the period 2011-2012 (pending publication).
[487] Study on the promotion of European works: https://ec.europa.eu/digital-single-market/en/news/study-promotion-european-works

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[488]. Annex 4 provides an overview of the diverse national approaches adopted. Fragmentation and lack of data regarding shares of European works in on-demand catalogues[489] (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[490], on-demand providers' investments in content production are lower than those of broadcasters[491] and on-demand catalogues may contain a lower share of European works than broadcasters' programmes do[492].
- Some VoD service providers are established in one Member State but mainly target a different Member State[493] because they often choose to establish themselves in countries

[488] 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 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).

[489] 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.

[490] 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).

[491] 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

[492] 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%.

[493] 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)

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[494] in 2013, i.e. 24% of TV broadcasters revenues (EUR 65 billion)[495] while on-demand providers made a minimal or even no 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)[496].

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[497] 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"[498] and the obligations to be met by TV broadcasters[499] 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[500] and on the number of channels operating in the Member State. For compliance costs in particular for commercial broadcasters[501] can be high as compared to

[494] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in linear television revenues

[495] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Investments in original content by audiovisual services

[496] Ibid

[497] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in video-on-demand 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

[498] Although some stakeholders argued in the 2015 Public consultation that this notion is unclear

[499] 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)]

[500] 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.

[501] 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.

producing and/or acquiring European content from other Member States than foreign content from third countries[502]. 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.

For **on-demand services**, compliance costs depend on national implementation. Whereas monitoring the application of the rules may be particularly costly[503] and reporting obligations for providers may be medium-high[504], 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[505].

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[506], 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

[502] Second Report on application of Articles 16 and 17

[503] 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)

[504] VoD service providers have reported medium to high administrative costs in relation to reporting obligations on the promotion of European works (ref ERGA questionnaire).

[505] Two Protocols on cultural cooperation are attached respectively to the EU-CARIFORUM Economic Partnership Agreement and to the EU-South Korea Free Trade Agreement.

[506] 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.

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 to the EU treaties and relevant case law[507], 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[508] 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 [509] 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 pre-requisite 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[510]. While most regulators fulfil what are considered the main criteria for independence[511], important features for regulatory independence are missing in a number of Member States [512] . The Council of Europe Recommendation (2000)23 [513] on the independence and functions of regulatory authorities for the broadcasting sector as well as a number of studies and reports[514] , 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;

[507] 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.

[508] 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.

[509] http://ec.europa.eu/digital-agenda/en/news/public-consultation-independence-audiovisual-regulatory-bodies-read-contributions

[510] 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).

[511] As set out by the 2011 INDIREG study : http://www.indireg.eu/

[512] 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.

[513] https://wcd.coe.int/ViewDoc.jsp?id=393649&

[514] 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

iii) open and transparent procedures for the nomination, appointment and removal of Board Members;
iv) knowledge and expertise of human resources;
v) financial[515], operational and decision making autonomy;
vi) effective enforcement powers;
vii) the possibility only for judicial power to review the regulatory bodies' decisions.

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[516] are not fully separated from ministerial bodies or government.
- As regards (ii), 4 Member States do not have any transparency provisions at the moment[517] and 2 Member States[518] 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.[519] As regards rules on conflict of interest for appointments, no such rules exist in 6 countries[520], there are no rules against conflict of interest with government[521] in 6 countries, and 9 do not have rules on conflict of interest with Parliament and political parties.[522] A small number of countries neither have rules on the possible conflict of interest with industry (5)[523]. In a few countries, no specific rules exist to protect Board members against arbitrary dismissal (5). [524]
- 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[525] 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[526]. The same can be said as regards staffing[527]. In this context, the RADAR study also concluded that the level of staff has been considered to be problematic for several regulators[528]. A more qualitative assessment by ERGA gave a close conclusion[529]. 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[530] to regulators.

[515] In line with the INDIREG study, financial autonomy means "*that the regulator is equipped with sufficient financial resources*".
[516] CY, EE, FI, LV, LT. Source: ERGA Report.
[517] 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
[518] Estonia and Luxembourg. Source: Final Report of AVMS-RADAR
[519] Final Report of AVMS-RADAR, p. 43-60 and ERGA Report p 17-21.
[520] AT, BG, DE (*some Länder*) , DK, RO, UK. Source: Final Report of AVMS-RADAR
[521] DE (*some Länder and ZDF*), ES, Pl, RO, SI, UK. Source: Final Report of AVMS-RADAR
[522] BE (all communities), EE, ES, FR, DE, NL, PT, RO ,SI.
[523] BE, DE (only RBB), EE, ES and FR.
[524] BE (VRM), DK, EE, LU, SE. Source: Final Report of AVMS-RADAR
[525] Final Report of AVMS-RADAR
[526] 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).
[527] Final Report of AVMS-RADAR Staff ranges from 2 persons in Iceland to 306 persons in France or 790 in the UK
[528] German speaking community of BE, CY, CZ, EL, HR, IE and RO .
[529] 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).
[530] 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

- As regards (vi), five regulators report that they do not have powers to enforce their decisions autonomously[531].
- As regards (vii), no particular issue has been identified[532].

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[533].

- 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[534]. The Commission's Country Reports pointed to problems with conflict of interest and the political nature of the nomination and appointment procedures in Bulgaria[535] and Romania[536].

- 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[537].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[538] 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

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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).

[531] Bulgaria, Luxembourg, Poland, Slovakia and Sweden report that they do not have powers to enforce its decisions autonomously; see ERGA report

[532] Final Report of AVMS-RADAR

[533] 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)

[534] 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***.

[535] Report On Progress in Bulgaria under the Co-operation and Verification Mechanism for the year xxx

[536] 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

[537] 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

[538] 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.

rules of the Directive not to be effective.[539] The respondents to the 2013 public consultation on independence of regulators noted that lack of independence could cause problems in particular in the domains of audiovisual commercial communications, jurisdiction and protection of minors.[540]

- 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[541].

- Moreover, regulatory authorities lacking independence are not in a position to guarantee media freedom and pluralism[542]. In many countries where independence of national regulatory bodies is weak, challenges to media freedom and pluralism over the last years have been reported[543]. 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[544]. The same happened in Hungary in 2010, where a number of provisions of a draft law raised concerns related to media pluralism. The Commission[545], the European Parliament[546], the OSCE Representative on Freedom of the Media[547], the Council of Europe[548] 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.

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[539] 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 considerded that AVMSD should do more to ensure the independence of regulators and lay down formal regulations.

[540] 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

[541] E.g. reply to the 2015 public consultation by UK Government or FOX International channels.

[542] 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."**

[543] Culture Council Conclusions of 26 November 2013.

[544] Progress Reports http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf

[545] 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

[546] 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

[547] Press release: http://www.osce.org/fom/90823 and http://www.osce.org/fom/74687

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

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[549]. 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[550]. The same happened in Hungary in 2010, where a number of provisions of a draft law raised concerns related to media pluralism. The Commission[551], the European Parliament[552], the OSCE Representative on Freedom of the Media[553], the Council of Europe[554] 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[555].

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[556].

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[557]. 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.

[549] Culture Council Conclusions of 26 November 2013.
[550] Progress Reports http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf
[551] 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
[552] 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
[553] Press release: http://www.osce.org/fom/90823 and http://www.osce.org/fom/74687
[554] http://www.coe.int/t/dghl/cooperation/media/publications/Hungary/Hungary%20Media%20Acts%20Analysis%20-%20Final%2014-05-2012%20(2).pdf
[555] http://www.osce.org/fom/167586
[556] 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
[557] 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

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[558]. A number of EU based companies also lodged complaints with the European Commission against Hungary and the Hungarian converged regulatory authority - Media and Infocommunications Authority (NMHH). Liberty Global also lodged a complaint against the Hungarian Media regulator that led to the preliminary ruling by ECJ[559].

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[560].

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[561] 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[562]; and Resolution No. 2 of the 7th European Ministerial Conference on Mass Media Policy[563] 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,*

[558] 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. 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 n their adversting revenues. The ruling is expected on 16 February 2016 (http://www.financialobserver.eu/ce/nervous-moves-on-the-hungarian-media-market/).

[559] Case C-475/12
http://curia.europa.eu/juris/document/document.jsf?text=&docid=151525&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1257558

[560] 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

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

[562] https://wcd.coe.int/ViewDoc.jsp?id=1089615

[563] http://www.coe.int/t/dghl/standardsetting/media/doc/DH-MM(2006)004_en.pdf

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.

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 2nd 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 1st Application report on the AVMSD of May 2012. For example, the level of subtitling services has increased since 2010 (reporting period for the 1st Application Report), either due to the regulatory action by the Member States[564] or voluntary commitments by the audiovisual media service providers[565]. Voluntary codes for broadcasting services have been introduced in 7 Member States[566] and for on-demand in 5[567].

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.[568]

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.[569] 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

[564] 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 descripted programmers 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).
[565] 1st and 2nd Application reports on the AVMSD.
[566] DE, FR, CY, LT, MT, PL, NL
[567] AT, DE, CZ, IE, UK
[568] E-accessibility study: https://ec.europa.eu/digital-agenda/news-redirect/12306
[569] Ibidem

study do not provide any signing (e.g. Germany or Luxembourg).[570] Overall, persons affected by disabilities still face significant barriers when accessing audiovisual content in the EU.[571]

In the 2015 Public consultation, viewers and regulators[572] 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 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[573] 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[574] have introduced statutory rules requiring providers to adopt measures to facilitate accessibility. While some Member States have very detailed statutory[575] or self- or co-regulatory rules[576], others have only very general provisions. Some limit the accessibility obligation to public service broadcasters (included in the public service contracts)[577]. In some Member States, an accessibility obligation is included in the broadcasters' licenses for the provision of broadcasting services.[578]As regards on-demand services, only 2 countries (Belgium and Greece) impose targets on the share of accessibility services[579].

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

Furthermore, as confirmed in the 1st and 2nd 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.

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[570] Ibidem

[571] 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.

[572] ATVOD, OFCOM, ES CNMC.

[573] E-accessibility study

[574] All the Member States with the exception of BG, LU, LV

[575] 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.

[576] DE, FR, CY, LT, MT, PL, NL and for on-demand AT, DE, CZ, IE, UK

[577] BE,DK, ES, FR, UK, HR, IE, PT, RO, SE;

[578] BG, DE, DK, EE, SE, UK

[579] 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.

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[580] argue that if more stringent rules on accessibility were in place, this would create obstacles for compliance by Member States and commercial broadcasters.

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[581].

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.[582] 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[583].

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[584].

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[585] 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[586]. 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) [587]. This proposal also covers audiovisual services. It provides an information requirement

[580] BE, EE, FI, FR, LU, NL, UK
[581] Reply by OFCOM and ATVOD to the 2013 Green paper Public consultation on AVMSD and to the 2015 AVMSD Public Consultation
[582] Sky plc reported a EUR 6.3 million, Canal + Groupe EUR 2.1 million of yearly costs.
[583] Peter Olaf Looms, The production and delivery of DTV Access Services, EBU Technical review – 2010 Q3
[584] Ibidem
[585] COM(2010) 636 final
[586] COM(2003) 650 final
[587] http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2400&furtherNews=yes

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.

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[588]. The AVMSD mentions the football World Cup and the European football championship as examples of such events[589]. 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 2nd Application report on the AVMSD mentions the adoption of a positive decision[590] 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[591].

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.[592] 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[593].

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[588] Article 14 AVMSD
[589] Recital 49 AVMSD
[590] OJ L 187 of 17.07 2012, pages 57-61
[591] 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
[592] Article 15 AVMSD
[593] Case C-283/11 Sky Österreich GmbH v Österreichischer Rundfunk http://curia.europa.eu/juris/liste.jsf?num=C-283+/11

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 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[594] (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[595].

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[596].

Relevance of the current rules

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[597].

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 1st 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 2nd AVMSD Application report mentions that since the previous Application report, four additional Member States[598] adopted new self-/co-regulation systems, mostly in the field of protection of minors (in particular in on-demand services) and accessibility.

[594] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006H0952&from=EN
[595] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998H0560&from=EN
[596] In the area of audiovisual commercial 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.
[597] See Annex 11.
[598] BE (fr), IE, ES, PL

In the field of **alcohol advertising**, a comparison of the 1st and the 2nd 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[599] 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 2nd AVMSD Application report mentions that as compared to the 1st Application report most Member States did neither update the current codes nor develop new codes of conduct[600]. There are still a number of Member States where there are no relevant measures in place[601] or the existing legislation only encourages the developments of such codes[602]. 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 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[603]. 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[604].

As regards **protection of minors**, many Member States have in place codes of conduct on minors' protection[605] or other self-regulatory systems[606].

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)[607] 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[608].

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

[599] 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 300 300 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.
[600] MS with new codes: EE, EL, PL; MS where codes were updated: IE, ES, NL, FR, PT.
[601] LU, HU, MT – but now legislation has been proposed
[602] CY, LT, LV
[603] EU Action Plan on Childhood Obesity 2014-2020 (http://ec.europa.eu/health/nutrition_physical_activity/docs/childhoodobesity_actionplan_2014_2020_en.pdf)
[604] 1st Application Report of May 2012 (http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0203&from=EN)
[605] AT, BE-V, BE-Fr, BG, CZ, DE, ES, IE, IT, SE
[606] EL, FR, HU, LV, LU, MT, NL, PL, PT, RO, SI, UK
[607] http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU(2015)536460_EN.pdf
[608] 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.

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[609] 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[610]). 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 the latest updates is Facebook's ban of content "praising terrorists[611]" 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[612]). Activists have demonstrated that Facebook enacts different standards for content moderation i.e. nudity images are removed more quickly than incitement to violence[613]. YouTube primarily relies on the number of complaints received to review content[614] and this has shortcomings[615]. The Council of Europe reported that community guidelines are ineffective against hate speech[616].

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.

[609] ERGA recommendations on protection of minors in a converged environment
[610] 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.
[611] http://venturebeat.com/2015/12/06/social-media-companies-step-up-battle-against-militant-propaganda/
[612] 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.
[613] http://www.theverge.com/2015/11/3/9662836/facebook-hate-speech-germany-protest-topless-photo-racism
[614] 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
[615] 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.
[616]https://www.coe.int/t/dg4/youth/Source/Resources/Publications/2014_Starting_Points_for_Combating_Hate_Speech_Online.pdf

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 2nd 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 by 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 250 000) 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. [617]

Coherence

The 2001 White Paper on European Governance[618] 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[619] 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[620] 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.

[617] Source: EASA (European Advertising Standards Alliance)
[618] COM (2001) 428.
[619] OJ C 321, 31.12.2003.
[620] COM (2005)97 final

By allowing for economies of scale, the COO principle in turn facilitates investment in the media sector[621]. 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.

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[622]. 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

[621] 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.
[622] Culture Council Conclusions of 26 November 2013.

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 competiveness 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.

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. 2nd 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 5 – EXECUTIVE SUMMARY OF THE "STUDY ON THE EFFECTIVENESS OF SELF-AND CO-REGULATION IN THE CONTEXT OF IMPLEMENTING THE AVMS DIRECTIVE" (SMART 2014/0054)

Objective of the study

This study on the "Effectiveness of self- and co-regulation in the context of implementing the Audiovisual Media Services Directive" has been prepared for the Directorate General for Communications Networks, Content and Technology (DG Connect), of the European Commission. The study has been carried out by Panteia and VVA Europe Valdani, Vicari & Associati, in close cooperation with experts from the European Network for Social and Economic Research (ENSR).

The Audiovisual Media Services Directive (AVMS Directive) aims broadly speaking, to ensure the free circulation of audiovisual services in the Internal Market. As demonstrated by Article 4(7), the AVMS Directive encourages the development of self- and co-regulatory schemes to implement some of its provisions.
Article 4(7) of the AVMS Directive provides that "*Member States shall encourage co-regulation and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement*".

The objectives of this study are to provide the Commission with:

1. A general description of the existing self- and co-regulatory structures in the EU Member States, in the selected areas, coordinated by the AVMS Directive.
2. An analysis of the effectiveness of the self- and co-regulatory systems in place and their acceptance by the stakeholders, based on the Principles for Better Self- and Co-regulation.
3. Identification of best practice examples of self- and co-regulation systems in the two selected areas.
   The two selected areas are 1) the protection of minors from harmful audiovisual content, and 2) audiovisual commercial communications, in both television broadcasting and in on-demand audiovisual media.

The overall analytical approach adopted was to carry out the assessments by evaluating the schemes using the Principles for Better Self and Co-Regulation[623], as well as additional enforcement stage criteria regarding complaints resolution and enforcements mechanisms. Criteria for best practices were then used to identify four examples of good practices. The main criteria on which the best practices were selected are effectiveness and stakeholder acceptance.

The information for this study is based on desk research and in-depth interviews with relevant stakeholders at the Member State level. In addition, a large number of European stakeholders from consumer and civil society groups, industry and media associations, media corporations, and interest groups related to regulating audiovisual media, were interviewed.

[623] European Commission, (2013) Principles for Better Self- and Co-Regulation, available at: https://ec.europa.eu/digital-agenda/en/news/principles-better-self-and-co-regulation-and-establishment-community-practice.

Overview of self- and co-regulatory schemes

The following tables provide an overview of the self- and co-regulatory schemes identified which focus on regulating audiovisual commercial communications and those which focus on protecting minors from harmful audiovisual content.

In table 1 the self- and co-regulatory schemes which have a primary focus on the protection of children from harmful audiovisual content in both television broadcasting and in on-demand audiovisual media services are presented.
Table 2 presents the self- or co-regulation schemes with a primary focus on commercial communication in both television broadcasting and in on-demand audiovisual media services. This overview also includes codes with focus on advertising towards children, as well as alcohol advertising. Some of the schemes with a primary focus on commercial communications contain a general code and several more specific sub-codes which focus on, for instance, specific products such as alcoholic beverages, tobacco products and certain food products. These sub-codes have not been collected and assessed separately, but as part of the main scheme.
In the Member States that are not included in this table, no relevant self- and co-regulation schemes were identified.

table 1 Self- or Co-regulation schemes with primary focus on protection of minors from harmful audiovisual content in both television broadcasting and in on-demand audiovisual media services

Country	Name Scheme
Germany	Voluntary Self-Monitoring Television (Freiwillige Selbstkontrolle Fernsehen (FSF))
Italy	Code TV and Minors (Codice TV e Minori)
Netherlands	Viewing Guide (Kijkwijzer)
Poland	Code of Good Practice on the Protection of Minors in On-demand Audiovisual Media Services (Kodeks dobrych praktyk w sprawie szczególowych zasad ochrony maloletnich w audiowizualnych uslugach medialnych na zadanie)
Portugal	Classification of TV programmes (Classificação de Programas de Televisão (RTP, SIC, TVI))
	Agreement on the representation of violence in television (Acordo sobre a Representação da Violência na Televisão)
Romania	Deontological Code (Cod Deontologic)
Spain	Code of self-regulation for audiovisual contents and minors (Codigo de Autorregulacion de contenidos televisivos e infancia)

Note: Due to different definitions of self- and co regulation schemes and different study focus, the schemes identified in this study may vary from other studies.

table 2 Self- or Co-regulation schemes with primary focus on commercial communication in both television broadcasting and in on-demand audiovisual media services

Country	Name scheme
Austria	Advertising Industry Ethics Code (Ethik-Kodex der Werbewirtschaft)
	Annex to the Advertising Industry Ethics Code: Code of conduct of the Austrian broadcaster regarding inappropriate audiovisual commercial communication in connection with children's programmes and food (Anhang zum Ethik-Kodex der Werbewirtschaft: Verhaltenskodex der österreichischen Rundfunkveranstalter hinsichtlich unangebrachter audiovisueller kommerzieller Kommunikation in Zusammenhang mit Kindersendungen und Lebensmittel)
	Annex to the Advertising Industry Ethics Code: Communication Code of the Austrian Brewing Industry (Anhang zum Ethik-Kodex der Werbewirtschaft: Kommunikationskodex der österreichischen Brauwirtschaft)
	Self-commitment declaration: Resignation of private broadcasters to broadcast commercials interrupting children's programmes (Selbstverpflichtungserklärung: Verzicht von Privatsendern auf Unterbrecherwerbung in Kinderprogrammen)
Belgium	Advertising Code of the Advertising Council (Reclamecode van de Raad voor de Reclame; Code de la publicité du Conseil pour la Publicité)
	The Belgium Pledge
Bulgaria	National Ethics Standards For Advertising And Commercial Communication In Bulgaria (НАЦИОНАЛНИ ЕТИЧНИ ПРАВИЛА ЗА РЕКЛАМА И ТЪРГОВСКА КОМУНИКАЦИЯ В Р БЪЛГАРИЯ)
Croatia	HURA's Advertising Code (HURA Kodeks oglašavanja i tržišnog komuniciranja)
Cyprus	Cyprus Code of Communication Ethics (Κυπριακός Κώδικας Δεοντολογίας Επικοινωνίας)
Czech Republic	The Code of Advertising Practice (Kodex reklamy)
Denmark	Code of Practice for Marketing of Alcoholic Beverages (Norm for markedsføring af alkoholholdige drikkevarer)
	The Code of Responsible Food Marketing Communication (Kodeks for fødevarereklamer)
Estonia	Responsible commercial communication policy in children's programmes (Vastutustundlik reklaamipoliitika lastesaadetes)
Finland	Ethical Code of the Council of Ethics in Advertising (Mainonnan eettinen neuvosto)
France	Rules of the ARPP (Règles de l'ARPP)
Germany	Code of conduct of the German Advertising Standards Council (Verhaltensregeln des Deutsches Werberat)
Greece	Hellenic Advertising Communication Code (ΕΛΛΗΝΙΚΟΥ ΚΩΔΙΚΑ ΔΙΑΦΗΜΙΣΗΣ – ΕΠΙΚΟΙΝΩΝΙΑΣ (ΕΚΔ-Ε))
	Self-Regulation for Commercial Communication of the Hellenic Association of Brewers (ΕΛΛΗΝΙΚΗΣ ΕΝΩΣΗΣ ΖΥΘΟΠΟΙΩΝ)
	Statement of Principles and Self-Regulation Plan (Δήλωση αυτοδέσμευσης Μελών)

Country	Name scheme
Hungary	The Hungarian Code of Advertising Ethics (Magyar Reklámetikai Kódex)
Ireland	ODAS Code of Conduct
	Code of Standards for Advertising and Marketing Communications in Ireland
Italy	Code of Marketing Communication Self-Regulation Italy (Codice di atodisciplina della communcazione commerciale)
Lithuania	Lithuanian Ethics Code of Advertising (Lietuvos reklamos etikos kodeksas)
Luxembourg	Deontological Code of Advertising in Luxembourg (Code de déontologie de la publicité au Luxembourg)
Netherlands	Dutch Advertising Code (Reclamecode)
Poland	Television Broadcasters' Agreement on the rules of distributing Advertisements and Sponsor Recommendations regarding foodstuffs or beverages containing ingredients whose presence in excess amounts in the daily diet is not recommended (Porozumienie nadawców w sprawie zasad rozpowszechniania Reklam i Wskazan sponsorskich dotyczacych artykulów spozywczych lub napojów zawierajacych skladniki, których obecnosc w nadmiernych ilosciach w codziennej diecie jest niewskazana)
	Code of Ethics in Advertising (Kodeks Etyki Reklamy)
Portugal	ICAP conduct code (Código de conduta do ICAP)
Romania	The Code of Advertising Practice (Codul de practica in publicitate)
Slovak Republic	The Ethics Code of Advertising Practice (Etický kodex reklamnej praxe)
Slovenia	Slovenian Code of Advertising Practice (SCAP) (Slovenski oglaševalski kodeks)
Spain	AUTOCONTROL Advertising Code of Conduct (Código De Conducta Publicitaria de AUTOCONTROL)
Sweden	The Swedish Advertising Ombudsman (Reklamombudsmannen (RO))
United Kingdom	Broadcast Committee of Advertising Practice Code (BCAP Code)
	The Committee of Advertising Practice Code (CAP code)

Note: Some of the schemes with the primary focus on commercial communication contain a general code and several sub-codes which focus on specific products such as alcoholic beverages, tobacco products and certain food products. These sub-codes have not been collected and assessed separately, but as part of the main scheme.

One of the first general observations made was that in general there is much more statutory regulation in place and consequently less self- or co-regulation for the protection of minors from harmful content audiovisual media. Protecting children across sectors is an important policy objective, and in the audiovisual media sector this observation is supported by the higher levels of governmental regulation. 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.

Assessing the self- and co-regulatory schemes

Based on the assessments carried out for the self- and co-regulatory schemes in place in the EU Member States, a criterion based analysis was carried out. The key results from this analysis are summarised below. The analysis follows the Principles of Better Self- and Co-Regulation which examines criteria regarding the conception and the implementation of schemes respectively, as well as the three additional enforcement stage criteria. These criteria are complaints resolution mechanisms, the outcomes of these complaints resolution mechanisms, and the sanctions used to enforce compliance with schemes.

Conception

Participants

Principles for Better Self- and Co- Regulation definition:

- *Except in cases where the competitive nature of an initiative makes this inappropriate, participants should represent as many as possible of potential useful actors in the field concerned, notably those having capacity to contribute to success.*

Good approaches for this criterion centre on a balanced representation of stakeholders. Ideally therefore consumer and civil society groups should be included in the conception of a self- or co-regulatory scheme along with the relevant industry and regulatory stakeholders.

The data collected for this study demonstrates that in most cases, the relevant private and business sectors were 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 and civil society groups were often not represented in the development of the majority of the schemes.

Openness

Principles for Better Self- and Co- Regulation definition:

- *Envisaged actions should be prepared openly.*
- *The preparatory phase should include the involvement of any interested parties: public authorities, enterprises, legislators, regulators and civil society. Public authorities should be ready to convene, moderate or observe, as most helps the process and is deemed appropriate.*
- *The initial blueprint, or "concept agreement", for any action should be multi-stakeholder and developed in a concerted and collaborative way involving open exchange between interested parties. (some text omitted from overview).*

The definition for “openness” recommends an open and transparent approach to developing a self- or co-regulatory scheme. All participants should be involved and in a collaborative way.

There were rarely cases where participating stakeholders felt excluded or that information was being withheld (for whatever reason) during the development stage. While the end product, the final self- or co-regulatory scheme, was usually available online, or at least to signatories of the scheme, documentation of the development process was rarely available. Although there were some exceptions to this, the predominant approach in developing self- and co-regulatory schemes was that the group of stakeholders involved was relatively closed.

Good Faith

Principles for Better Self- and Co- Regulation definition:

- *Participants of different sizes and types have different contributing capacities. The different capabilities of participants, including the situation of SMEs, and smaller non-profit organisations, should be taken into account when designing the envisaged action.*
- *Participants should bring to the preparatory process all information available to them that can contribute to a full analysis of the situation. Similarly, in launching an action, participants should ensure that their activities outside the action's scope are coherent with the aim of the action.*
- *Both in developing and in executing self- and co-regulatory actions, participants are expected to commit real effort to success. They retain the possibility to withdraw, should the action fail to reach the agreed objectives.*

Good faith as a criterion is based on the idea that participants make real efforts to commit to the scheme, according to their varying capabilities in a manner coherent with the goals of the scheme.

In practice, discovering whether real effort or commitment was made by the participants involved was somewhat difficult as the exact capacities of each stakeholder involved was not known. In some cases this was because schemes have been in existence for some time already (decades in many cases), and the details of the development of a scheme were not recalled. However, in general, based on the data collected there was no indication that the stakeholders involved felt disrespected or not taken seriously.

Objectives

Principles for Better Self- and Co- Regulation definition:

- *The objectives of the action should be set out clearly and unambiguously. They should start from well-defined baselines, both for the issue on which change is being pursued and for the commitments that participants have made. They should include targets and indicators allowing an evaluation of the impact of the action undertaken.*

In most cases a general policy goal or objective was provided as the guiding principle for a scheme. The objectives criterion however indicates that SMART formulated objectives should be developed, including targets and indicators to monitor and evaluate the performance. In few cases were objectives developed with specifically developed targets and indicators.

Legal compliance

Principles for Better Self- and Co- Regulation definition:

- *Initiatives should be designed in compliance with applicable law and fundamental rights as enshrined in EU and national law. Participants are encouraged to have recourse to existing guidance provided by public authorities. In case of doubts, an assessment clarifying, inter alia, impact and complementarity with the acquis and with the Charter of Fundamental Rights should be conducted.*

Legal compliance according to the definition above 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, and a large number of schemes are based on or connected with a specific law.

Implementation

Iterative improvements

Principles for Better Self- and Co- Regulation definition:

- *Successful actions will usually aim for a prompt start, with accountability and an iterative process of "learning by doing". A sustained interaction between all participants is required. Unless the action covers a short time-span, annual progress checks should be made, against the chosen objectives and indicators, as well as any available broader background data.*

A number of schemes do not have any systems for iterative improvements in place. This lack of a systematic process for implementing improvements is in part related to the system of monitoring and evaluation in place for a scheme. Monitoring and evaluation provide feedback on the performance of a scheme.

Despite iterative processes not being universally implemented, this is not to say that they are lacking entirely. A common trend amongst those schemes with a system for making improvements is the use of consumer complaints as an indicator for compliance, as well as for identifying key areas of non-compliance. Other approaches include regular meetings with stakeholders to discuss the performance of a scheme and areas that are not regulated properly in the scheme. Although in many cases there are processes for identifying improvements or new areas of focus, these were not always carried out systematically or made explicit.

Monitoring

Principles for Better Self- and Co- Regulation definition:

- *Monitoring must be conducted in a way that is sufficiently open and autonomous to command respect from all interested parties. Each participant shall monitor its performance against the agreed targets and indicators. Monitoring results are shared by each actor for discussion with the participants as a whole, and are made public. A monitoring framework or template will be commonly agreed. The results of the monitoring will be aggregated where possible. This should be done in a way that is transparent and objective.*

The requirements sketched above for an appropriate monitoring system, according to the Principles for Better Self- and Co-Regulation, were in most cases not implemented fully in the schemes identified. There is often no system in place which specifically monitors the scheme objectives, and indicators and targets are often missing. However, in most cases the schemes do have a form of monitoring in place, usually based on a complaints system. Complaints are often taken as the main indicator for the achievement of a scheme's objective(s).

Evaluation

Principles for Better Self- and Co- Regulation definition:

- *Evaluation will allow participants to assess whether the action may be concluded, improved or replaced. The participants regularly and collectively assess performance not only against output commitments, but also as to impact. This should identify any short-fall in expected collective impact, any scope to improve the efficiency or effectiveness of the action, and any other desirable improvements.*

Few evaluation systems were in place which undertook regular assessments of the scheme, its performance, possible areas for improvement, as well as its broader impact. The fact that such formalised evaluation mechanisms are not common appears to be related in part to the lack of explicit and operationalised objectives with appropriate indicators and targets. The lack of a formal evaluation of a scheme also has other causes; in some cases there simply was not enough budget available for an evaluation. In other cases the schemes were designed and implemented some time ago, before the need for systematic evaluations was a prevalent part of policy making, or because the culture of evaluation is less established in a country.

Resolving disagreements

Principles for Better Self- and Co- Regulation definition:

- *Disagreements inevitably arise involving either participants or others. As part of the iterative process of improvement, such disputes should receive timely attention, with a view to resolving them. These procedures may be confidential.*

- *In addition, complaints by non-participants should be submitted to a panel of independent assessors which consist of majority of non-participants. The outcome of their work is made public. Non-compliance should be subject to a graduated scale of sanctions, with exclusion included and without prejudice to any consequences of non-compliance under the terms of the Unfair Commercial Practices Directive.*

In most of the schemes, there is a system for resolving disagreements, specifically a complaints resolution system. Systems for resolving complaints from participants in the scheme were not always present or formalised. In those cases with more formalised systems for resolving disagreements the basic process for handling complaints is the same for external (consumer) and internal (participant) complaints. In the schemes where a complaints systems for non-participants is in place, there is also usually an adjudicating body in place for assessing and ruling on complaints. The composition of these adjudicating bodies is quite varied. Industry representatives tend to be present in the large majority of these bodies, with varying representation of regulators, legislators, independent experts, or consumer or civil society actors.

Financing

Principles for Better Self- and Co- Regulation definition:

- *Participants to the action will provide the means necessary to fulfil the commitments. Public funders or others may in addition support the participation of civil society organisations lacking fully adequate means themselves to play their appropriate role. Such financial support should be made publicly known.*

In many cases membership fees are the main source of financing. Some schemes receive government support. 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, as can the classification of a programme according to a classification system. Sanctions can also form a source of finance. A practice which is considered to be quite effective when financing schemes on commercial communications is the use of industry wide fees for participating advertisers and media companies. A proportionality element in determining the level of fees to be paid ensures fair contributions from the participants of the scheme.

Additional enforcement stage assessment criteria

Besides the Principles for Better Self- and Co-Regulation, additional enforcement stage criteria were used when assessing the self- and co-regulatory schemes. These criteria concern complaints resolution mechanisms, outcomes of complaints resolution, and sanctions.

Complaints resolution mechanisms

Consumer complaints resolution mechanisms are examined based on several aspects. These include the number of complaints received and their resolution and, ideally, the promptness of the compliance decisions made.

The information collected on the self- and co-regulatory schemes show that complaints are not always recorded with the same level of detail. In some cases, complaints resolution mechanisms are simply not a priority to implement more fully. This could be because compliance with the rules in place are generally high and no real need is felt to implement a complaints resolution system, or because only a few complaints are received. The number of complaints received is something of an ambiguous indicator; the reasons for the low number of complaints could be a favourable indication of high compliance but also an indication of low knowledge of the scheme amongst the public.

In most cases, complaints received are recorded and the number of complaints resolved is recorded as well. In many cases the information regarding complaints did not go into further detail beyond what

was received and resolved; information on the sector or product group concerned, the nature or basis of the complaint, and the nature of the outcome or decision is not always recorded.

Outcomes of complaints mechanisms

This criterion examines the outcomes of the complaints resolution mechanisms. The understanding adopted here centres on the satisfaction with the complaints procedure, and whether the procedure contributes to better overall compliance with the rules of the self- or co-regulatory scheme in place.

The satisfaction with the complaints procedure is not often measured specifically. In those cases, the rate of resolution (number of complaints received versus number of complaints solved) is sometimes used as an indicator for the performance of the complaints resolution mechanism. In a similar vein, in some schemes the number of appeals made against an adjudicating body's decision is used as an indicator of the outcome of the complaints system. The number of appeals is thought to provide insight into the level of satisfaction with the system.

An important point regarding complaints and 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 complainant this can feel unsatisfactory. When examining statistics on complaints and satisfaction with their resolution, the number of complaints received, those which are accepted, and those which are ultimately resolved should all be considered.
Though dismissing a complaint due to lack of foundation could lead to an unsatisfied feeling for the complainant, sharing the response of the adjudicating body concerning the complaint can be very useful. By providing both parties involved in a complaint procedure with the reasoning for the decision, both parties can understand the reasoning behind the decision and this can improve consumer satisfaction. In the case of consumers this means that in many cases, consumers feel heard and not as though their complaints have fallen on deaf ears.

Sanctions

For this criterion, the presence and nature of sanctions and their enforcement are 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. The element of proportionality concerning breaches in compliance and the sanctions for these breaches is important here.
The types of sanctions which can be applied include the request for an adjustment of the audiovisual content or advertisement, naming, shaming and faming, exclusion from membership from a scheme or association, sanctions or fines, the withdrawal of the audiovisual content or suspension of the advertisement, or notifying public authorities to implement further judicial sanctions. 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.

Best practices selected

Based on the criteria of stakeholder acceptance and effectiveness respectively, four best practices are selected for this study. The practices selected scored well during the assessment on the criteria for stakeholder acceptance and effectiveness; however within this selection, two scored especially well on the former and two scored especially well on the latter criterion. A representative collection of best

practices was sought which structured the protection of minors from harmful audiovisual content and those which regulated audiovisual commercial communications. The best practices are presented in table 3 below.

table 3 Best practices selected

	Strong in overall Effectiveness	*Strong in Stakeholder Acceptance*
Scheme regulating audiovisual commercial communications	The Committee of Advertising Practice Code (CAP code), United Kingdom	National Ethics Standards for Advertising and Commercial Communication, Bulgaria
Scheme on protecting minors from harmful audiovisual content	Code of self-regulation for audiovisual contents and minors, Spain	Kijkwijzer, Netherlands

The Committee of Advertising Practice Code (CAP code), United Kingdom

The Office of Communications (Ofcom) together with the private self-regulator for advertising communication, the Advertising Standards Authority (ASA), are the main initiators of the establishment of the Committee of Advertising Practice (CAP) Code. The objectives of the scheme are ultimately to make every advertisement shown in the UK responsible in order to protect consumers, notably children, and to improve the quality and trust in the advertising industry. The CAP is part of the ASA, which regularly revises its targets, and has quantitative and qualitative indicators in place to monitor the scheme's performance.

Every quarter, the ASA reports on its performance indicators to Ofcom. In addition, the ASA and the CAP publish an annual statement regarding the progress made towards achieving its objectives and targets. Complaints are generally handled by the ASA, which has produced a set of specific procedures governing the process. The ASA Council serves as an independent jury that is solely responsible for deciding if the Advertising Codes have been breached. There are several sanctions which can be employed by the ASA in different types of breaches with the CAP Code.

Code of self-regulation for audiovisual contents and minors, Spain

The scheme is initiated by the Ministry of Industry, Tourism and Trade with four major television networks. The aim of scheme is to promote further control over television contents and particularly to avoid harmful content reaching children. The development of the scheme involved public authorities, industries, consumers and civil society groups. The scheme participants are the companies which produce television contents, and professionals of the information technology sector. The Code constitutes a classification system based on different age groups and programme contents. The Code includes a process for monitoring the application, where representative organisations of youth and children, of parents and educators, and of consumers and users are involved through the monitoring bodies. Although regular evaluations are carried out of the number of complaints received, the evaluations do not appear to cover progress of the scheme achieving its policy goals or its objectives. There are two monitoring organisations. The first is the Self-Regulation Committee (SRC) consisting of representatives from television networks. This body receives complaints from consumers and members alike and makes a ruling on the complaint. The second is the Joint Monitoring Commission (JMC) which then checks the complaint and ruling made by the SRC and in case of a breach, contact the SRC.

National Ethics Standards for Advertising and Commercial Communication, Bulgaria

The Code for National Ethics Standards for Advertising and Commercial Communication (henceforth, the Code), was initiated by the National Council for Self-regulation (NCSR). The Code is intended to

promote responsibility and good practices in advertising and marketing communications in Bulgaria. The Code was developed in 2009 based on the ICC's Consolidated Code of Advertising and Marketing Practices. It took the specifics of the advertising industry in Bulgaria into account, as well as recommendations from the advertisers, advertising agencies and media service providers. The content of the Code was consulted on with all relevant state authorities, including the state Council of Electronic Media (CEM) and the State agency for child protection (SACP).
The Committee for Post-Monitoring (CPM) is responsible for the monitoring. It has two main functions, monitoring the execution of the decisions issued by the Ethical Committee (EtC) or the Appeal Committee (AC), and monitoring advertising and commercial communications. According to the NCSR statutes, the decisions of the EtC or the AC are binding for the NCSR members.

Kijkwijzer, Netherlands

The Kijkwijzer is a code developed by the advertising industry in the Netherlands. The Kijkwijzer is a classification system for programmes on television. The Institute for the Classification of Audiovisual Media (NICAM) is the code owner of the Kijkwijzer. The objective is to promote the provision of information regarding the potential harmfulness of audiovisual products towards young people. It aims to do so by regulating the audiovisual sector itself by means of a classification system for programmes. NICAM itself also performs regular quality assessments of compliance with the rules. In addition, it regularly tests consumer perception and the use of the Kijkwijzer. The Media Authority (Commissariaat voor de Media) uses the results for the yearly evaluation of NICAM. The results of these evaluations are included in a letter to the government. These letters are also published on the website of the Media Authority. NICAM and the Kijkwijzer are evaluated every year by the Media Authority.

ANNEX 6 - MAIN DEVELOPMENTS AFFECTING THE EU MARKET FOR AUDIOVISUAL MEDIA SERVICES

- The overall size of the European audiovisual sector in 2014 was around EUR 105.790 million[624]. 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[625] 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[626]. 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[627].

  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)[628].

  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 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 yearolds 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 [629]. 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

[624] EAO Yearbook 2015
[625] AU, BE, HR, CZ, DK, Fin, FR, DE, GR, HU, Irl, IT, LX, NL, PL, PT, SK, SL, ES, SW, and UK
[626] Data covering 21 MS. Source: IHS technology database.
[627] Data covering 21 MS. Source: IHS technology database
[628] 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
The development of the European market for on-demand audiovisual services. The figures include linear TV as well as short term catch-up (up to 7 days in some countries.)

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[630].

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%)[631].

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%[632].

A recent Eurobarometer[633] 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[634] watch about half less than television than the aver-age 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).

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).

[630] EAO On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)
[631] http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/yearFrom/1973/yearTo/2014/surveyKy/2041
[632] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in video-on-demand revenues
[633] Eurobarometer 411, "Cross border access to online content", August 2015
[634] EAO On-demand Audiovisual Markets in the European Union (2014 and 2015 developments)

- **Audiovisual content** is increasingly offered in **innovative (namely shorter) formats**. Mobile video traffic grew to 55% by the end of 2014[635]. It is estimated that nearly 3/4 of the world's mobile data traffic will be video by 2019[636]. 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%)[637].

  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[638], 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 2013. 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)[639].

  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)[640].

  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.

[635] http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white_paper_c11-520862.html
[636] Source: Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update 2014–2019 White Paper
[637] Source: European Audiovisual Observatory/WARC
[638] Published in September 2015
[639] Source: WARC
[640] 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 7 - COMPARATIVE TABLE OF SERVICES THAT MAY BE QUALIFIED AS AVMS – EPRA SURVEY FOR 35TH EPRA PLENARY (31 MAY – 1 JUNE 2012) UPDATED IN 2015 IN THE ERGA SUB-GROUP ON MATERIAL JURISDICTION

The table below has been provided to give respondents update a comparative table included in the comparative document prepared for **Plenary Session 1 - New Media & Regulation: Towards a Paradigm Shift?** ***New Services and Scope: "What's in, what's out Revisited"***[641] **–** at the 35th EPRA Plenary in Portoroz on 31 May – 1 June 2012.

The table compared responses to the following question, included in a survey among EPRA's members to prepare for the plenary session. **Please state which services your NRA would TEND to qualify as an AVMS – provide all 7 cumulative criteria of Art. 1.1 (a) of the AVMS Directive are fulfilled.**

Please fill out the third and fourth columns with yes or no answers.

Answer	**Country (2012)**	**Please state whether this would tend to be classified as an AVMS in your country (2015)**	**Has there been any change since 2012 (Yes/No)**
VOD	AT, BA, BE–VRM, BE-CSA, BG, CH, CY, CZ, DE, DK, FI, HR, HU, IT, LT, LU, LV, ME, MK, MT, NL, NO, PT, RO, SE, SI, SK	Yes	No
Catch-up TV	AT, BA, BE-VRM, BE-CSA ES–CAC, CY, DE, DK, FI, HR, HU, IT, LU, ME, MK, NL, NO, MT, PT, RO, SI, SK	Yes	No
OTT-TV /connected TV applications	AT, BE-CSA, CY, FI, LU, NL, SI	Yes	No
Professional channels on UGC	AT, BE-CSA,	Yes	No

641 http://epra3-production.s3.amazonaws.com/attachments/files/2011/original/Plenary%201_overview_responses_questionnaire_publicversion.pdf?1340972148

platforms	FI, IT, NL, SI		
Newspaper websites with searchable video section - if not merely complementary to the articles	AT, BE-CSA, CZ, DK, FI, LU, LT, ME, NL, NO, SE, SI	Yes	No
Network personal video recorder services (NPVR)	HU, LU, NO, SK	No	No
Electronic Program Guides (EPG)	CY, HU, LT, LU, ME, PT, RO	No	No
Download to own (DTO) services	BE-CSA, CY, CZ, HU, LU, NL, NO, SK	No	No
Download to rent (DTR) services	BE-CSA, CY, CZ, HU, IT, NL, NO, SK	No	No

ANNEX 8 - EXTRACTS OF COMMUNITY GUIDELINES (AS OF 10/01/2016) OF A SAMPLE OF INTERNET PLATFORMS WHOSE SERVICES DO NOT FALL WITHIN THE AVMSD SCOPE AND EXISTING INTERVENTIONS BY INTERNET PLATFORMS TO PROTECT CONSUMERS FROM HATE SPEECH AND MINORS FROM HARMFUL CONTENT

1. Extracts of Community guidelines (as of 10/01/2016) of a sample of Internet platforms whose services do not fall within the AVMSD scope

	YouTube[642]	Facebook[643]	Twitter[644]	Instagram[645]
Minimum age to use the service	**Children under 13 years are not permitted to set up a YouTube account. Below are the minimum age requirements to own a Google Account:** **•United States: 13 or older** **•Spain: 14 or older** **•South Korea: 14 or older** **•Netherlands: 16 or older** **•All other countries: 13 or older**	**Facebook requires everyone to be at least 13 years old before they can create an account (in some jurisdictions, this age limit may be higher).**	**Twitter's services are not directed to persons under 13.** **Via age screening, brands and others to determine online whether a follower meets a minimum age requirement, in a way that is consistent with relevant industry or legal guidelines. This makes it easier for advertisers and others with content not suitable for minors (e.g. alcohol advertisers) to advertise on Twitter.**	**Instagram requires everyone to be at least 13 years old to use the Service.**
Handling of content that may be harmful to minors	**Age-restricted content** **Some videos don't violate our policies, but may not be appropriate for all audiences. In these cases, minors or logged out users may not be able to view the content.** **When evaluating whether content is appropriate for all ages, here are some of the things we consider:** **•Vulgar language** **•Violence and disturbing imagery** **•Nudity and sexually suggestive content** **•Portrayal of harmful or dangerous activities** **What we consider when age-restricting depictions of graphic or violent content** • **Whether the video shows scenes containing**	**Nudity. People sometimes share content containing nudity for reasons such as awareness campaigns or artistic projects. We restrict the display of nudity because some audiences within our global community may be sensitive to this type of content – particularly because of their cultural background or age. In order to treat people fairly and respond to reports quickly, it is essential that we have policies in place that our global teams can apply uniformly and easily when reviewing content. As a result, our policies can sometimes be more blunt than we would like and restrict content shared for legitimate purposes. We are always working to get better at evaluating this content and enforcing our standards. We remove photographs of people displaying genitals or focusing in on fully exposed buttocks. We also restrict some images of**	**We do not tolerate child sexual exploitation on Twitter. When we are made aware of links to images of or content promoting child sexual exploitation they will be removed from the site without further notice and reported to The National Center for Missing & Exploited Children ("NCMEC"); we permanently suspend accounts promoting or containing updates with links to child sexual exploitation.** **Violent threats (direct or indirect). Users may not make threats of violence or promote violence, including threatening or promoting terrorism. Users also may not make threats or promote violence against a person or group on the basis of race, ethnicity, national**	**You may not post violent, nude, partially nude, discriminatory, unlawful, infringing, hateful, pornographic or sexually suggestive photos or other content via the Service.** **GENERAL NUDITY[646]** **Post photos and videos that are appropriate for a diverse audience.** **We know that there are times when people might want to share nude images that are artistic or creative in nature, but for a variety of reasons, we don't allow nudity on Instagram. This includes photos, videos, and some digitally-created content that show sexual intercourse, genitals, and close-ups of fully-nude buttocks. It also includes some photos of female nipples, but photos of post-**

[642] https://www.youtube.com/yt/policyandsafety/communityguidelines.html
[643] https://www.facebook.com/communitystandards
[644] https://twitter.com/tos?lang=en; https://support.twitter.com/articles/18311#
[645] https://help.instagram.com/478745558852511
[646] https://help.instagram.com/477434105621119/

	physical attacks where the injury sustained is bloody or gory. • **Whether the video shows the graphic aftermath of a violent act.** • **Whether the shots of violence or gore are the focal point of the video.** • **Whether the violence contained in the video is realistic when posted in a dramatic context.** • **Other factors include:** • **The length of time an image appears in the video** • **Fleeting vs. prolonged exposure especially relative to the overall length of the video.** • **The camera angle and focus** • **The relative clarity of the images in the video** • **The video thumbnail** **Child endangerment. YouTube has a zero-tolerance policy for sexual content involving minors. Uploading, commenting, or engaging in any type of activity that sexualizes minors will immediately result in an account suspension.** **Nudity or sexual content. Sexually explicit content like pornography is not allowed. Videos containing fetish content will be removed or age-restricted depending on the severity of the act in question. In most cases, violent, graphic, or humiliating fetishes are not allowed to be shown on YouTube. A video that contains nudity or other sexual content may be allowed if the primary purpose is educational, documentary,**	**female breasts if they include the nipple, but we always allow photos of women actively engaged in breastfeeding or showing breasts with post-mastectomy scarring. We also allow photographs of paintings, sculptures and other art that depicts nude figures. Restrictions on the display of both nudity and sexual activity also apply to digitally created content unless the content is posted for educational, humorous or satirical purposes. Explicit images of sexual intercourse are prohibited. Descriptions of sexual acts that go into vivid detail may also be removed.** **Violence and Graphic Content. Facebook has long been a place where people share their experiences and raise awareness about important issues. Sometimes, those experiences and issues involve violence and graphic images of public interest or concern, such as human rights abuses or acts of terrorism. In many instances, when people share this type of content, they are condemning it or raising awareness about it. We remove graphic images when they are shared for sadistic pleasure or to celebrate or glorify violence.** **When people share anything on Facebook, we expect that they will share it responsibly, including carefully choosing who will see that content. We also ask that people warn their audience about what they are about to see if it includes graphic violence.** **Bullying and Harassment. We don't tolerate bullying or harassment. We allow you to speak freely on matters and people of public interest, but remove content that appears to purposefully target private individuals with the intention of degrading or shaming them. This content includes, but is not limited to:** **Pages that identify and shame private individuals; images altered to degrade private individuals; photos or videos of physical bullying posted to shame the victim; sharing personal information to blackmail or harass people and repeatedly targeting other people with unwanted friend requests or messages. We define**	**origin, religion, sexual orientation, gender, gender identity, age, or disability.** **Abuse and harassment. Users may not engage in targeted abuse or harassment. Some of the factors that we take into account when determining what conduct is considered to be targeted abuse or harassment are:** **•if a primary purpose of the reported account is to send abusive messages to others;** **•if the reported behavior is one-sided or includes threats;** **•if the reported user is inciting others to harass another user; and** **•if the reported user is sending harassing messages to a user from multiple accounts.**	**mastectomy scarring and women actively breastfeeding are allowed. Nudity in photos of paintings and sculptures is OK, too.** **NUDITY OF CHILDREN** **People like to share photos or videos of their children. For safety reasons, there are times when we may remove images that show nude or partially-nude children. Even when this content is shared with good intentions, it could be used by others in unanticipated ways.** **Instagram is not a place to support or praise terrorism, organized crime, or hate groups. Offering sexual services, buying or selling firearms and illegal or prescription drugs (even if it's legal in your region) is also not allowed. Remember to always follow the law when offering to sell or buy other regulated goods. Accounts promoting online gambling, online real money games of skill or online lotteries must get our prior written permission before using any of our products.** **We have zero tolerance when it comes to sharing sexual content involving minors or threatening to post intimate images of others.**

	scientific, or artistic, and it isn't gratuitously graphic. For example, a documentary on breast cancer would be appropriate, but posting clips out of context from the same documentary might not be. Remember that providing context in the title and description will help us and your viewers determine the primary purpose of the video. **Real depictions of graphic or violent content. Increasingly, YouTube is becoming an outlet for citizen journalists, documentarians and other users to publish accounts of what is happening in their daily lives. It is inevitable that some of these videos will contain content that is violent or graphic in nature.** **If the violence shown in your video is particularly graphic, please make sure to post as much information as possible in the title and metadata to help viewers understand what they are seeing. Providing documentary or educational context can help the viewer, and our reviewers, understand why they may be seeing the disturbing content.** **It's not okay to post violent or gory content that's primarily intended to be shocking, sensational or disrespectful. If a video is particularly graphic or disturbing, it should be balanced with additional context and information. For instance, a citizen journalist who captures footage of protesters being beaten and uploads it with relevant information (date, location, context, etc) would likely be allowed. However, posting the same**	**private individuals as people who have neither gained news attention nor the interest of the public, by way of their actions or public profession.** **Sexual Violence and Exploitation. We remove content that threatens or promotes sexual violence or exploitation. This includes the sexual exploitation of minors and sexual assault. To protect victims and survivors, we also remove photographs or videos depicting incidents of sexual violence and images shared in revenge or without permission from the people in the images. Our definition of sexual exploitation includes solicitation of sexual material, any sexual content involving minors, threats to share intimate images and offers of sexual services. Where appropriate, we refer this content to law enforcement. Offers of sexual services include prostitution, escort services, sexual massages and filmed sexual activity.**		

	footage without contextual or educational information may be considered gratuitous and may be removed from the site. **Dramatized depictions of graphic or violent content. Some people post videos that contain dramatized depictions of violence. Much like movies and TV, graphic or disturbing content that contains a certain level of violence or gore is not suitable for minors and will be age-restricted.** **Harmful or dangerous content. While it might not seem fair to say you can't show something because of what viewers might do in response, we draw the line at content that intends to incite violence or encourage dangerous or illegal activities that have an inherent risk of serious physical harm or death.** **Videos that we consider to encourage dangerous or illegal activities include instructional bomb making, choking games, hard drug use, or other acts where serious injury may result. A video that depicts dangerous acts may be allowed if the primary purpose is educational, documentary, scientific, or artistic (EDSA), and it isn't gratuitously graphic. For example, a news piece on the dangers of choking games would be appropriate, but posting clips out of context from the same documentary might not be.** **Videos that incite others to commit acts of violence are strictly prohibited from YouTube. If your video asks others to commit an act of violence or threatens people with serious acts of violence, it will be removed from the**			

	site. **We are very sensitive to any harmful or dangerous content that involves minors. If your video shows a minor participating in a harmful or dangerous activity, do not post it. In the interest of protecting minors, we may age-restrict videos containing adults participating in activities that have a high risk of injury or death.**			
Handling of hate speech content	**We encourage free speech and try to defend your right to express unpopular points of view, but we don't permit hate speech. Hate speech refers to content that promotes violence or hatred against individuals or groups based on certain attributes, such as:** **•race or ethnic origin** **•religion** **•disability** **•gender** **•age** **•veteran status** **•sexual orientation/gender identity** **There is a fine line between what is and what is not considered to be hate speech. For instance, it is generally okay to criticize a nation-state, but not okay to post malicious hateful comments about a group of people solely based on their race.** **Content Related to Terrorism. YouTube strictly prohibits content intended to recruit for terrorist organizations, incite violence, celebrate terrorist attacks or otherwise promote acts of terrorism. We also do not permit foreign terrorist organizations to use YouTube. Content intended to document events connected to terrorist acts or news reporting on terrorist activities may be allowed on the site**	**Facebook removes hate speech, which includes content that directly attacks people based on their: race, ethnicity, national origin, religious affiliation, sexual orientation, sex, gender or gender identity, or serious disabilities or diseases. Organisations and people dedicated to promoting hatred against these protected groups are not allowed a presence on Facebook. As with all of our standards, we rely on our community to report this content to us. People can use Facebook to challenge ideas, institutions and practices. Such discussion can promote debate and greater understanding. Sometimes people share content containing someone else's hate speech for the purpose of raising awareness or educating others about that hate speech. When this is the case, we expect people to clearly indicate their purpose, which helps us better understand why they shared that content. We allow humour, satire or social commentary related to these topics, and we believe that when people use their authentic identity, they are more responsible when they share this kind of commentary. For that reason, we ask that Page owners associate their name and Facebook Profile with any content that is insensitive, even if that content does not violate our policies. As always, we urge people to be conscious of their audience when**	**Hateful conduct. You may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, or disease. We also do not allow accounts whose primary purpose is inciting harm towards others on the basis of these categories.**	**You must not defame, stalk, bully, abuse, harass, threaten, impersonate or intimidate people or entities and you must not post private or confidential information via the Service** **Serious threats of harm to public and personal safety aren't allowed. This includes specific threats of physical harm as well as threats of theft, vandalism, and other financial harm. We carefully review reports of threats and consider many things when determining whether a threat is credible[647]** **Encouraging or urging people to embrace self-injury is counter to this environment of support, and we'll remove it or disable accounts if it's reported to us. We may also remove content identifying victims or survivors of self-injury if the content targets them for attack or humor.**

[647] https://help.instagram.com/477434105621119/

	with sufficient context and intent. However, graphic or controversial footage may be subject to age-restrictions or a warning screen.	**sharing this type of content.** **Dangerous Organisations. What types of organisations we prohibit on Facebook.** **We don't allow any organisations that are engaged in the following to have a presence on Facebook:** **•terrorist activity, or** **•organised criminal activity.** **We also remove content that expresses support for groups that are involved in the violent or criminal behaviour mentioned above. Supporting or praising leaders of those same organisations, or condoning their violent activities, is not allowed. We welcome broad discussion and social commentary on these general subjects, but ask that people show sensitivity towards victims of violence and discrimination.** **Criminal Activity. We prohibit the use of Facebook to facilitate or organise criminal activity that causes physical harm to people, businesses or animals, or financial damage to people or businesses. We work with the police when we believe that there is a genuine risk of physical harm or direct threats to public safety. We also prohibit you from celebrating any crimes that you've committed. We do, however, allow people to debate or advocate for the legality of criminal activities, as well as address them in a humorous or satirical way.**		
Reporting tools	**Flagging content. We rely on YouTube community members to flag content that they find inappropriate. YouTube staff review flagged videos 24 hours a day, seven days a week, and videos that violate our Community Guidelines are removed from YouTube. Videos that may not be appropriate for all younger audiences are age-restricted.** **Flagged videos are not automatically taken down by the flagging system. If a**	**Reporting abuse: If you see something on Facebook that you believe violates our terms, please report it to us. Governments also sometimes ask us to remove content that violates local laws but does not violate our Community Standards. If after careful legal review we find that the content is illegal under local law, then we may make it unavailable only in the relevant country or territory.** **Please bear the following in mind:** **• We may take action whenever something violates the Community Standards.** **• We may ask Page owners**	**You can report directly from an individual Tweet or profile for certain violations, including: spam, abusive or harmful content, inappropriate ads, self-harm, impersonation, child sexual exploitation, pornography,** **Once you have submitted your report, we will review the reported account and/or Tweets. If we determine that the account and/or Tweets are in violation of our policies, we will take action (ranging from warning the user to permanently**	**Each of us is an important part of the Instagram community. If you see something that you think may violate our guidelines, please help us by using our built-in reporting option. We have a global team that reviews these reports and works as quickly as possible to remove content that doesn't meet our guidelines. Even if you or someone you know doesn't have an Instagram account, you can still file a report.** **You may find content you don't like, but doesn't violate the**

	video doesn't violate our guidelines, no amount of flagging will change that, and the video will stay on the site. You might not like everything you see on YouTube. Some of the content might offend you. If you think it's inappropriate, locate the flagging feature on the video and submit it for review by our YouTube staff. **Our staff reviews flagged videos 24 hours a day, 7 days a week to determine whether they violate our Community Guidelines. When they do, we remove them. Sometimes a video doesn't violate our guidelines, but might not be appropriate for everyone. These videos may get age-restricted. Accounts are penalized for Community Guidelines violations, and serious or repeated violations can lead to account termination. If an account is terminated, that person won't be allowed to create any new accounts.** **When we remove content for violating our Community Guidelines, the uploader will typically receive a Community Guidelines strike.** **If you receive a Community Guidelines strike, you'll receive a notification via email and in your Channel Settings with information about why your content was removed (e.g. for sexual content or violence). If you feel that content was removed without just cause, you can appeal the strike on your account.** **We understand that users make mistakes, and don't intend to violate our policies. That's why strikes don't last forever -- if you don't receive another strike for six months, your initial strike will expire. If**	**to associate their name and Facebook Profile with a Page that contains cruel and insensitive content, even if that content does not violate our policies.** **• Reporting something doesn't guarantee that it will be removed because it may not violate our policies.** **• Our content reviewers will look to you for information about why a post may violate our policies. If you report content, please tell us why the content should be removed (e.g. is it nudity or hate speech?) so that we can send it to the right person for review.** **• Our review decisions may occasionally change after receiving additional context about specific posts or after seeing new, violating content appearing on a Page or Facebook Profile.** **• The number of reports does not impact whether something will be removed. We never remove content simply because it has been reported a number of times.** **• The consequences for violating our Community Standards vary depending on the severity of the violation and the person's history on Facebook. For instance, we may warn someone for a first violation, but if we continue to see further violations we may restrict a person's ability to post on Facebook or ban the person from Facebook.** **Not all disagreeable or disturbing content violates our Community Standards. For this reason, we offer you the ability to customise and control what you see by unfollowing, blocking and hiding the posts, people, Pages and applications you don't want to see – and we encourage you to use these controls to better personalise your experience. People also often resolve issues they have about a piece of content by simply getting in touch with the person who posted it. We've created tools for you to communicate directly with other people when you're unhappy with posts, photos or other content you see on Facebook.** **What should I do if I see**	**suspending the account).**	**Community Guidelines. If that happens, you can unfollow or block the person who posted it. If there's something you don't like in a comment on one of your posts, you can delete that comment.** **We may work with law enforcement, including when we believe that there's risk of physical harm or threat to public safety.**

	you receive a strike, make sure to review the reason your content was removed to learn from your mistake. A bit more information about what happens with each strike you receive: **•First Strike: The first strike on an account is considered a warning.** **•Second Strike: If your account receives two strikes within a six month period, you won't be able to post new content to YouTube for two weeks. If there are no further issues, full privileges are restored automatically after the two week period.** **•Third Strike: If an account receives a third Community Guidelines strike before the first strike has expired, the account will be terminated.** **Sometimes content is removed for other reasons, for example: the safety of the person who posted a video, a first-party privacy complaint, court order, or other non-malicious issue. In these cases the uploader will not receive a strike and the account will not be penalized.**	**images on Facebook of a child being physically abused?**		
Accounts termination	**Reasons accounts are terminated:** **•Repeated violations of the Community Guidelines or Terms of Service** **•A single case of severe abuse (such as predatory behavior or spam)** **•Accounts dedicated to a policy violation (hate speech, harassment, impersonation, etc)**		**When an account violates our abusive behavior policy, the actions we take against that account depend on the severity of the violation. We may ask users to verify or provide information, delete specific Tweets, or we may suspend or lock the account temporarily or permanently.**	**Violation of these Terms of Use may, in Instagram's sole discretion, result in termination of your Instagram account. You understand and agree that Instagram cannot and will not be responsible for the Content posted on the Service and you use the Service at your own risk. If you violate the letter or spirit of these Terms of Use, or otherwise create risk or possible legal exposure for Instagram, we can stop providing all or part of the Service to you.** **We reserve the right to modify or terminate the Service or your**

				access to the Service for any reason, without notice, at any time, and without liability to you. If we terminate your access to the Service or you use the form detailed above to deactivate your account, your photos, comments, likes, friendships, and all other data will no longer be accessible through your account (e.g., users will not be able to navigate to your username and view your photos), but those materials and data may persist and appear within the Service (e.g., if your Content has been reshared by others. **We may, but have no obligation to, remove, edit, block, and/or monitor Content or accounts containing Content that we determine in our sole discretion violates these Terms of Use.**
Ads policy	**All advertisements on YouTube must conform to our Community Guidelines, Technical Guidelines, and Advertising Policies described in this section and be appropriate for a general audience of YouTube users aged 13 or older.[648]** **All advertisements sold in the YouTube Kids app must comply with the additional advertising policies[649].** **Except for the First Watch ad products, YouTube allows alcohol advertising that promotes the branding and sale of alcohol with some restrictions (described in more detail below).** **Campaigns may only target countries where these ads are permissible under applicable laws and regulations and all ads must comply with local restrictions.[650]**	**Pages promoting the private sale of regulated goods or services (including firearms, alcohol, tobacco, or adult products) must restrict access to a minimum age of 18.** **Pages that promote or facilitate online gambling, games of skill or lotteries, including online casino, sports books, bingo, or poker, are only allowed in specific countries with prior authorization from Facebook.** **Pages must not promote the sale of prescription pharmaceuticals. Pages for online pharmacies may be permitted with prior approval from Facebook.[651]**	**Twitter restricts the promotion of online and offline sale of alcohol and general awareness of alcohol brands. These restrictions are based on the specific product or service being promoted, as well as the country that the campaign is targeting.** **To determine the policy for your product or service and the country or countries you wish to target, see the country-specific information below. Unless listed below, the promotion of alcohol content is prohibited.** **Any advertisement for alcohol content that is allowed under the country-specific information below must in addition:** • **not target minors or encourage, suggest, or entice underage drinking** • **not use characters, sports-persons,**	**There may be links from the Service, or from communications you receive from the Service, to third-party web sites or features. There may also be links to third-party web sites or features in images or comments within the Service. The Service also includes third-party content that we do not control, maintain or endorse. Functionality on the Service may also permit interactions between the Service and a third-party web site or feature, including applications that connect the Service or your profile on the Service with a third-party web site or feature** **(…)** **You expressly acknowledge and agree that Instagram is in no way responsible or liable for any such third-party services or features.**

[648] https://support.google.com/youtube/answer/188570?hl=en&ref_topic=30084
[649] https://support.google.com/youtube/answer/6168681?hl=en&ref_topic=30084
[650] https://support.google.com/youtube/answer/1304652?hl=en&ref_topic=30084

	All Pharmaceutical campaigns or programs must adhere to the AdWords policies around the advertisement or sale of prescription drugs in the country where the ad is targeted. All pharmaceutical ads must be clearly branded under the manufacturer's name and must comply with all regulatory and legal guidelines applicable to the advertiser.		**celebrities, or images/icons appealing to minors** • **not use minors or pregnant women as models in advertising** • **not imply that drinking in excess is good, or that alcohol has therapeutic, relaxing or stimulative properties** • **not imply that alcohol has health benefits, can improve sexual, social, athletic or professional performance or standing** • **not mislead or confuse users into thinking alcoholic beverages are soft drinks or candy** • **not associate drinking with activities that are potentially dangerous, require significant care, skill, etc. (e.g., driving a motor vehicle), or are antisocial or illegal (e.g., illegal drugs)** • **not depict people under the influence of alcohol** • **not emphasize a product's alcoholic strength (promoting a product as having low or no alcohol content is acceptable)** **Twitter prohibits the promotion of drugs and drug paraphernalia globally** **Twitter prohibits the promotion of tobacco brands and the online and offline sale of tobacco and tobacco accessories globally.** **Twitter prohibits the promotion of hate content, sensitive topics, and violence globally.** **This policy applies, but is not limited, to:**	**Some of the Service is supported by advertising revenue and may display advertisements and promotions, and you hereby agree that Instagram may place such advertising and promotions on the Service or on, about, or in conjunction with your Content. The manner, mode and extent of such advertising and promotions are subject to change without specific notice to you.** **You acknowledge that we may not always identify paid services, sponsored content, or commercial communications as such.**

[651] https://www.facebook.com/page_guidelines.php

			• Hate speech or advocacy against an individual, organization or protected group based on race, ethnicity, national origin, color, religion, disability, age, sex, sexual orientation, gender identity, veteran status or other protected status.Violence or threats of violence against people or animals **• Glorification of self-harm or related content** **• Organizations or individuals associated with promoting hate, criminal, or terrorist-related content** **• Inflammatory content which is likely to evoke a strong negative reaction or cause harm.** **•Offensive, vulgar, abusive or obscene content** **This policy generally does not prohibit:** **•News and information that calls attention to hate, sensitive topics, or violence, but does not advocate for it** **•Commentary about products, services, companies, or brands, including potentially negative commentary**	
Applicable law	**The Terms, and your relationship with YouTube under the Terms, shall be governed by:** **Austria: Austrian law** **Belgium: English law** **Bulgaria: English law** **Croatia: internal laws of the State of California (excluding provisions relating to conflict of laws)** **Republic of Cyprus: ???** **Czech Republic: Czech law** **Denmark: English law** **Estonia: English law** **Finland: Finnish law** **France: French law** **Germany: English law** **Greece: English law** **Hungary: English law** **Ireland: Irish law** **Italy: Italian law** **Latvia: English law** **Lithuania: English**	**The laws of the State of California will govern this Statement, as well as any claim that might arise between you and us, without regard to conflict of law provisions.**	**These Terms and any action related thereto will be governed by the laws of the State of California without regard to or application of its conflict of law provisions or your state or country of residence.** **If you are a federal, state, or local government entity in the United States using the Services in your official capacity and legally unable to accept the controlling law, jurisdiction or venue clauses above, then those clauses do not apply to you. For such U.S. federal government entities, these Terms and any action related thereto will be governed by the laws of the United States of America (without reference to conflict of laws) and, in**	**These Terms of Use are governed by and construed in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law AND WILL SPECIFICALLY NOT BE GOVERNED BY THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, IF OTHERWISE APPLICABLE**

	law **Luxembourg: English law** **Malta: ???** **Netherlands: Dutch law** **Poland: Polish law** **Portugal: English law** **Romania: Romanian law** **Slovakia: Slovakian law** **Slovenia: internal laws of the State of California (excluding provisions relating to conflict of laws)** **Spain: Spanish law** **Sweden: Swedish law** **United Kingdom: English law**		**the absence of federal law and to the extent permitted under federal law, the laws of the State of California (excluding choice of law).**	
Jurisdiction	**You and YouTube agree to submit to the exclusive jurisdiction of the courts of:** **Austria: courts of Austria** **Belgium: courts of England** **Bulgaria: courts of England** **Croatia: competent court in the Santa Clara county, California** **Republic of Cyprus: ???** **Czech Republic: Czech courts** **Denmark: Danish courts** **Estonia: courts of England** **Finland: courts of Finland** **France: courts of France** **Germany: courts of England** **Greece: courts of England** **Hungary: courts of England** **Ireland: courts of Ireland** **Italy: courts of Italy** **Latvia: courts of England** **Lithuania: courts of England** **Luxembourg: courts of the UK** **Malta: ???** **Netherlands: courts of Amsterdam** **Poland: courts of Poland** **Portugal: courts of England** **Romania: courts of Romania** **Slovakia: courts of Slovakia** **Slovenia: competent court in the Santa Clara county, California** **Spain: competent**	**You will resolve any claim, cause of action or dispute (claim) you have with us arising out of or relating to this Statement or Facebook exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County, and you agree to submit to the personal jurisdiction of such courts for the purpose of litigating all such claims.**	**All claims, legal proceedings or litigation arising in connection with the Services will be brought solely in the federal or state courts located in San Francisco County, California, United States, and you consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum.**	**ARBITRATION NOTICE: EXCEPT IF YOU OPT-OUT AND EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND INSTAGRAM WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION** **Except if you opt-out or for disputes relating to: (1) your or Instagram's intellectual property (such as trademarks, trade dress, domain names, trade secrets, copyrights and patents); (2) violations of the API Terms; or (3) violations of provisions 13 or 15 of the Basic Terms, above ("Excluded Disputes"), you agree that all disputes between you and Instagram (whether or not such dispute involves a third party) with regard to your relationship with Instagram, including without limitation disputes related to these Terms of Use, your use of the Service, and/or rights of privacy and/or publicity, will be resolved by binding, individual arbitration**

	court (not specified) Sweden: courts of Sweden United Kingdom: Courts of England to resolve any legal matter arising from the Terms. Notwithstanding this, you agree that YouTube shall still be allowed to apply for injunctive remedies (or other equivalent types of urgent legal remedy) in any jurisdiction. Analysis The applicable law and jurisdiction problem is quite diverse within the YouTube company. In general, Member States' national laws and courts jurisdiction apply. For 12 countries listed below, the applicable law is the one of England with the jurisdiction of English courts: Belgium Bulgaria Denmark (English law with the jurisdiction of Danish courts) Estonia Germany Greece Hungary Latvia Lithuania Luxembourg (the only country stating that the UK courts have the jurisdiction, not only the English ones) Portugal United Kingdom Moreover, 2 of the Member States' (Croatia and Slovenia) Youtube Terms and Conditions are governed by the law of California State (with the jurisdiction of relevant courts of California).			**under the American Arbitration Association's rules for arbitration of consumer-related disputes and you and Instagram hereby expressly waive trial by jury As an alternative, you may bring your claim in your local "small claims" court, if permitted by that small claims court's rules. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Use.**

2. Existing interventions by internet platforms to protect consumers from hate speech and minors from harmful content

The largest Internet platforms (e.g. video sharing platforms like YouTube) use software and human intervention with a view to protecting viewers from hate speech and minors from harmful content. The criteria against which content is deemed "inappropriate" (as in the jargon most commonly used by Internet platforms) are defined by the platforms themselves, in their terms of service/Community guidelines as described above. Examples of initiatives that are being undertaken are:

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. However, there are shortcomings.

First of all, the large number of videos uploaded each day[652] makes content moderation a complex exercise.

Secondly, when it comes to minors, the EU Kids Online report to the European Commission on the "CEO Coalition for a Better Internet for children" states that children rarely use reporting buttons.

Thirdly, activists have proven that YouTube verifies as a priority content which receives a larger number of complaints received[653]. This has shortcomings as regards the level of protection afforded to individual consumers.

Lastly, as also reported in the ERGA inventory paper on protection of minors, the filtering systems that are applied to conduct content moderation might not be optimized[654].

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+. However, it seems that age restrictions are only partially effective for UGC[655].

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 (e.g. YouRateIt, piloted by Mediaset. However, YouRateIt has not been taken up by YouTube).

5. Parental controls offered by the platforms or devices. However, there are figures showing that not all parents take a proactive role. ERGA Inventory paper on protection of minors states that "in a converging media environment […] it seems virtually impossible for parents to be aware of the provenance of any content, especially to have the knowledge in terms of all the relevant technical solutions available". EU Kids online research has shown that 40% of parents are unaware of their child's exposure to sexual images online. In the UK, OFCOM found that just 12% of parents of 5-15y

[652] For example, 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.

[653] Online activists have called volunteers to report collectively some abusive content, thus prompting YouTube to more expeditiously review and eventually taken down content. http://www.entrepreneur.com/article/253631

[654] In 2014, jugendschutz.net, the joint organisation of all German states for the protection of minors on the Internet, conducted a test with 11 filtering systems from 8 different providers (KIM-Study 2014, Pedagogical Media Research Center Southwest, www.mpfs.de). The tests proved that filtering systems and technical systems worked best on pornographic content. However, it could also be observed that there are continuing problems with regard to filtering specific types of content: in the case of right-wing extremist content, depictions of violence and racism only 50 % of the content was filtered correctly.
The ERGA inventory paper reports that so far, content on social media platforms and video sharing platforms like YouTube can only be either blocked or unblocked as a whole because filters do not work on single entries on web sites.

[655] EU Kids Online 2014, (http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20II%20%282009-11%29/EUKidsOnlineIIReports/ShortSNS.pdf): Fewer younger than older children use SNS but, nonetheless, many 'under-age' children are using SNS. Setting aside the question of whether it is appropriate for young children to use SNS services, it seems clear that measures to ensure that under-aged users are rejected or deleted from the service are not successful on the top SNS services used by children in Europe.
SNS differ in whether they set age limits for young children. On sites with an age restriction, the rates of displaying an incorrect age in their profile are higher among those under than over the age limit, suggesting that 'forbidden fruit' is attractive. Since a child generally must declare an incorrect age (or date of birth) to create a profile on an age restricted site, it may be that age limits encourage children to declare an incorrect age to gain access; this may matter little when interacting with people they already know and who know their real age, but may be risky when making new contacts.
Furthermore, page 33 of the ERGA inventory paper on protection of minors mentions that "recent tests showed that protection tools do not meet the requirements of the rapid changes in the online world, especially when it comes to filtering of user generated content or allowing for access to the web in a manner differentiating by age."

said they use YouTube's safety mode, while 73% said they were not aware of this tool. In Germany, according to the recent KIM study[656] examining the media usage of 6 to 13 year olds, only 14% of parents has installed protection tools on devices used by their children.

To conclude, current initiatives are either not specifically related to audiovisual content by online platforms or are on a stand-alone basis insufficient as demonstrated above.

[656] KIM-Study 2014, Pedagogical Media Research Center Southwest, <www.mpfs.de>.

ANNEX 9 – DETAILS OF THE PROVISIONS AND IMPLEMENTATION OF THE COUNTRY OF ORIGIN PRINCIPLE

Member State jurisdiction

Jurisdiction can be based on the providers' (i) establishment in a Member State or (ii) use of a satellite up-link/satellite capacity situated in/appertaining to a Member State.

Establishment:
The Directive foresees that a provider is established in the Member State where it has its head office and editorial decisions are taken.
If these two places do not coincide, the provider shall be deemed to be established in the Member State where a significant part of its workforce operates.
If a significant part of its workforce operates in both Member States, the provider is deemed to be established in the Member State where its head office is located.
If a significant part of its workforce operates in neither of these Member States, the provider is deemed to be established in the Member State where it first began its activity, provided that it maintains a stable and effective link with the economy of that Member State.
If a provider has its head office in a Member State but decisions on the audiovisual media service are taken in a third country, or the other way round, it shall be deemed to be established in the Member State, provided that a significant part of the workforce operates there.
Use of a satellite up-link/satellite capacity:
Providers are deemed to be under the jurisdiction of a Member State if they use a satellite up-link situated in that Member State. If they do not use a satellite up-link in a Member State, they will still be under the jurisdiction of a Member State if they use satellite capacity appertaining to that Member State.

Permissible restrictions of the reception and retransmission of services freely circulating within the EU

Regarding broadcasting, any such restrictions are limited to cases of incitement to hatred and infringement of the provisions on protection of minors. For on-demand services, there is a longer list of grounds justifying restrictions. This list includes public policy, public security, including the safeguarding of national security and defence, the protection of public health and the protection of consumers. The relevant procedure includes a first cooperation phase where the Member State concerned contacts the transmitting Member State to try to produce an amicable settlement. If no amicable settlement has been produced and the receiving Member State decides to restrict the freedom of reception, it needs to notify the measures taken to the Commission. The Commission then has to take a decision whether the notified measures are compatible with Union law. This is the so-called **"derogation procedure"**.
Member States may adopt stricter or more detailed rules in an area coordinated by the Directive. 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'**. 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. Before a receiving Member State may adopt restrictive measures to counter circumvention, it needs to notify the sending Member State and the Commission of its intention to do so. The Commission then needs to take a decision whether the notified measures are compatible with Union law. This is the so-called "circumvention procedure".

Application of derogation procedure

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.[657]

The Lithuanian case also brought to the fore uncertainties and disagreements with Sweden about what Member State had jurisdiction over the Russian language channel. Similar jurisdiction issues have arisen in the Commission's earlier decisions on notifications regarding serious infringements of the provisions on protection of minors (*Eurotica Rendez-Vous Television*, *Extasi TV*).

These difficulties in applying the derogation procedure prompted the Commission services in August 2015 to provide the members of the AVMSD Contact Committee and ERGA with clarifications on that procedure. Some months later, similar procedural difficulties arose in the context of a new notification.[658] In view of these issues, the Commission services have drafted a more comprehensive document regarding the application of the derogation procedure as well as the circumvention procedure. This document will be presented to and discussed by the Contact Committee at its December 2015 meeting.

Application of circumvention procedure

The 2nd Application report on the AVMSD reports a circumvention case regarding alcohol advertising in Sweden. 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. Procedural issues also arose in this case. In particular, the notification lacked full details describing the procedure at national level in order to adopt restrictive measures[659]. Again, the notification raised the issue whether the broadcasters' right to be heard had been respected.

Derogation procedure under the eCommerce Directive

The derogation provision concerning non-linear services is modelled on a similar provision in the eCommerce Directive which contains the same grounds of derogations as the AVMSD. It emerges from the Staff Working Document accompanying the 2012 Communication on eCommerce[660] that, contrary to what might have been expected, the derogation appears to have been used very rarely. Thus, in the last decade, the Commission services have received only 30 notifications, mainly dealing with measures to protect consumers. The Commission never declared a measure incompatible with EU law. Since 2013 relevant notifications under the eCommerce Directive are submitted through IMI (Internal Market Information System), which is an interface connecting national administration with the Commission and among themselves. Since then the number of notifications appears to have increased slightly.
The Court of Justice has held that the principles contained in the derogation procedure in the eCommerce Directive must be interpreted in the same manner as those governing the Internal Market

[657] C(2015) 4609 final.
[658] 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.
[659] This included both the procedure before the national regulator as well as the procedure before the court to which the regulator needs to apply for fines.
[660] http://ec.europa.eu/internal_market/e-commerce/docs/communication2012/SEC2011_1641_en.pdf

freedom provisions of the Treaty.[661] The same considerations would in all probability also apply to the AVMSD. Hence, the grounds of derogation would need to be interpreted restrictively.

Simplification of jurisdiction rules

The jurisdictional criteria would continue to focus on the place of the head office and editorial decisions. If these places do not coincide, the Member State having jurisdiction could be determined by reference to where the majority of the workforce (instead of currently a "significant part of the workforce") is located. This would make reference to further complex subsidiary jurisdiction criteria superfluous, with establishment in a Member State remaining as a fall-back if jurisdiction cannot be determined by other means.

[661] Ker-Optika judgment, par. 76

ANNEX 10 - COST OF THE COUNTRY OF DESTINATION – PROMOTION OF EUROPEAN WORKS IN THE 5 BIGGEST MARKETS FOR ON-DEMAND SERVICES

Objective:

Determine the additional cost for a VoD provider to comply with the financial contributions with a view to promoting in the 5 biggest EU markets (Germany, France, UK, Spain and Italy).

Background:

According to the country of origin principle, a provider under the jurisdiction of a Member State will only have to comply with the rules of that Member State, while being able to roll out its services in other Member States.
Moving to the country of destination principle for the financial contribution related to the promotion of European works, would mean that providers would need to comply with each and everything related national legislations of countries where their services are available.

Scope:

The calculation would cover only 5 big markets which according to the EAO represent 70 % of the on demand services market[662].

Methodology:

Data available and hypothesis:

The first difficulty for calculating the costs of moving to the country of destination for financial contributions is that reliable information on the market share of on demand services in each of the 5 big markets is missing. The only information available found in this regard was found via google search and is the share of those services in Germany: 38.9 % for Amazon, 11,3 % for Itunes, 11,3 % for Maxdome, 10,8 % for Google Play, 8 % for Netflix, 4,4 % for Unitymedia, 3,1 % for Videoload and 2,3 % for Whatchever[663]. For recollection and according to the MAVISE Database, Amazon is established in Germany and Google Play is deemed to be established in the US.

For this calculation, Itunes and Netflix will be used as examples for estimating the costs.

The requirements in the 5 big markets as regards financial contributions are as follows:

DE: There is a general financial obligation of between 1.8% and 2.3% of the turnover. For this calculation the higher option i.e. 2.3 % was used.

FR: On demand services shall promote European works by financially contributing to the development of European cinematographic and audovisual works by reserving at least 12% to 26% (depending on the kind of service) of their net revenues. In this calculation 15 % have been used as an average. As for Germany, there is a general financial obligation of 2 % of the turnover.

UK: No measure

[662] Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD) - Trends in video-on-demand revenues
[663] http://www.broadbandtvnews.com/2015/02/24/amazon-prime-instant-video-leads-german-vod-market/

IT: On demand services shall promote European works by reserving a 20% share for European works in their catalogues (5% during a 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. A strong assumption is that Itunes (VoD) and Netflix (SVoD) would be asked to contribute financially.

ES: On demand services shall financially contribute to the funding of audiovisual content with at least 5% of their turnover.

Calculation:

Based on the above rules and figures, the costs were estimated according to the following calculation:

DE

	Turnover
Itunes	35,6
Netflix	25,2

	Levy
Itunes	0,8
Netflix	0,6

FR

	Turnover
Itunes	37,3
Netflix	26,4

	Financial contribution - investment	Levy	Total
Itunes	5,6	0,7	6,3
Netflix	4,0	0,5	4,5

UK

No levy or financial contribution

IT

	Turnover
Itunes	13,3
Netflix	9,4

	Financial contribution - investment
Itunes	0,7
Netflix	0,5

ES

	Turnover
Itunes	7,1
Netflix	5,0

	Financial contribution - investment
Itunes	0,4
Netflix	0,3

TOTAL

Itunes	**8,2**
Netflix	**5,8**

The costs of moving to the country of destination for the financial contributions related to the promotion of European works would be between EUR 5.8 and 8.2 million.

ANNEX 11 – COMPLIANCE OF NATIONAL REGULATORS WITH INDIREG CRITERIA ON INDEPENDENCE

Member States/ INDIREG criteria	Lack of recognition of independence in national framework	Lack of full separation from ministerial/ government bodies	Appointment procedures v- Lack of conflict of interest rules before appointment x- lack of conflict of interest rules with the Government during the term of office	Status and power Lack of policy setting powers	Autonomy of decision making bodies V – no power to decide its own internal organisation and procedures x – no power to decide on human resources **Z-** regulatory powers limited by the power of other bodies to overturn their decisions y - regulatory powers limited by the power of other bodies to give instruction	Financial autonomy- Lack of adequate budgetary resources	Knowledge and staffing Lack of adequate staffing resources	Lack of transparency during the decision making process
Austria			v	v	x			
Belgium				v	z y	v	v	
Bulgaria			v	v	x y	v		
Croatia							v	
Cyprus		v		v	y		v	
Czech Rep.				v	x	v	v	
Denmark	Implicit recognition		v	v	v z y			v
Estonia	v	v			v			
Finland	Implicit recognition	v		v	y			
France				v	y			v
Germany			v x	v				v
Greece				v	x	v	v	
Hungary								
Italy				v	y			
Ireland					y		v	
Latvia		v				v		
Lithuania		v		v				
Luxembour					x y			

g								
Malta				v	y	v		
Netherlands				v	z			
Poland	Implicit recognition		x	v				
Portugal				v				
Romania			v		y		v	
Slovakia				v				
Slovenia			x					
Spain				v	v			v
Sweden				v	y			
The UK			v		y			
Member States/ INDIREG criteria	Recognition of independence in national framework	Full separation from ministerial/ government bodies	Appointment procedures /Conflict of interest rules before appointment	Status and power v- policy implementation powers x-policy setting powers	Autonomy of decision making bodies V - power to decide its own internal organisation and procedures x – power to decide on human resources z- regulatory powers limited by the power of other bodies to overturn their decisions y - regulatory powers limited by the power of other bodies to give instruction	Financial autonomy- Adequate budgetary resources	Knowledge and staffing	Transparency during the decision making process
Austria	v	v		v	v	v	v	v
Belgium	v	v	v	v	X v z y			v
Bulgaria	v	v		v	X v y			v
Croatia	v	v	v	V x	X v			v
Cyprus	v		v	v	X v y		v	v
Czech Rep.	v	v	v	v	X v			v

Denmark	v	v		v	X v z y	v	v	
Estonia			v	V x	X v	v	v	v
Finland	v		v	v	V y	v	v	v
France	v	v	v	v	X v y	v	v	
Germany	v	v		v	x	v	v	
Greece	v	v	v	v				v
Hungary	v	v	v	V x	x	v	v	v
Italy	v	v	v	v	X y	v	v	v
Ireland	v	v	v	V x	X y	v	v	v
Latvia	v		v	V x	x			v
Lithuania	v		v	v	x	v	V	v
Luxembourg	v	v	v	V x	X y	v	v	v
Malta	v	v	v	v	X y	v	v	v
Netherlands	v	v	v	v	X z	v	v	v
Poland	v	v	v	v	x	v	v	v
Portugal	v	v	v	v	x	v	v	v
Romania	v	v		V x	X y	v		v
Slovakia	v	v	v	v	x			v
Slovenia	v	v	v	v	x			v
Spain	v	v	v	v	x	v	v	
Sweden	v	v	v	v	X y			v
The UK	v	v		V x	X y	v	v	v

ANNEX 12 – CRITERIA OF INDEPENDENCE OF NRAS

1. Independence from Third Parties

Studies and Council of Europe

It implies that the audiovisual regulatory body should form a separate legal entity; it also refers to the impartiality of the decision-making. All the articles and studies related to the issue of independence of regulators agree that "the regulatory body can achieve the relevant degree of structural independence from the government only if established as a separate legal entity." A *functional separation* between the ministry and the regulatory body shelters the autonomy of the regulatory body from politics but also from industry, because industry capture can also be performed via political channels.[664]

EU Legislative Frameworks

- Telecom Framework: only separation from economic operators "legally distinct and functionally independent of all organizations providing electronic communications networks, equipment, services."[665] The NRA should not seek or take instructions from any other body in relation to the exercise of these tasks assigned to it.[666]
- Data Protection: These authorities shall act with complete independence in exercising the functions entrusted to them.[667]
- Postal Services: "Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators"
- Gas and Electricity Frameworks: Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:

  (a) Is legally distinct and functionally independent from any other public or private entity;

  (b) Ensures that its staff and the persons responsible for its management:

  (i) Act independently from any market interest; and

  (ii) Do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. This requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 37.[668]

2. Transparent Decision-Making Processes and Accountability to Relevant Stakeholders

Studies and Council of Europe

[664] INDIREG Final Report, p. 359, http://www.indireg.eu/?p=360
[665] Article 3 Framework Directive (Directive 2002/21/EC)
[666] INDIREG Final Report, p. 359, http://www.indireg.eu/?p=360
[667] Article 28 Data Protection Directive (Directive 95/46/EC)
[668] Article 35(5) Electricity Directive (Directive 2009/72/EC) and Article 39 (5) Gas Directive (Directive 2009/73/EC)

As argued in the literature on the topic, accountability and transparency mechanisms can help deter undue influences by other actors or their attempts to influence public opinion. Therefore, the minimum of transparency regarding decision making is essential for all regulatory bodies to act in an impartial manner. Broader public accountability measures (represented by parliament or other legitimised bodies) provide legitimacy and also function as a means to provide the regulatory body with autonomy. The regulatory body should have an obligation to conduct open consultations in an inclusive and transparent manner and should have a reporting obligation to the public at large. [669]

EU Legislative Frameworks

- Telecom Framework: it shall exercise its powers impartially, transparently and in a timely manner.[670]
- Data Protection: Each supervisory authority shall draw up a report on its activities at regular intervals. The report shall be made public.[671]

3. Open and Transparent Procedures for the Nomination, Appointment and Removal of Board Members

Studies and Council of Europe

The nomination and appointment process regarding the highest decision-making organ can comprise influence factors therefore the procedures for the nomination and appointment have to be structured in a way that prevents a structural bias. To ensure that the members of the highest decision-making organ of the regulatory body are not bound to interests that prevent them from making important decisions, rules against conflict of interest with regard to all relevant actors are needed as an essential characteristic of independence. Dismissal shall only be possible for limited reasons strictly defined in law. [672]

EU Legislative Frameworks

- Telecom framework: The Head of Board members of the NRA may be dismissed only in no longer fulfil the conditions required for the performance of their duties (laid down in advance in national law). Dismissal decision shall be made public and a statement of reasons shall be made available.[673]
- Electricity Framework: In order to protect the independence of the regulatory authority, Member States shall in particular ensure that: (b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once. In regard to point (b) of the first subparagraph, Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.[674]

4. Knowledge and Expertise of Human Resources

Studies and Council of Europe

[669] INDIREG Final Report, p.364, http://www.indireg.eu/?p=360
[670] Article 3 Framework Directive (Directive 2002/21/EC)
[671] Article 28 (5) Data Protection Directive (Directive 95/46/EC)
[672] INDIREG Final Report, pp 361-362, http://www.indireg.eu/?p=360
[673] Article 3 Framework Directive (Directive 2002/21/EC)
[674] Article 35(5) Electricity Directive (Directive 2009/72/EC) and Article 39 (5) Gas Directive (Directive 2009/73/EC)

Knowledge of the staff of the regulatory authority is essential both for fulfilling the regulatory tasks effectively and for wielding counteracting power when actors are trying to put pressure on a regulatory body. The regulatory body should thus this be equipped with sufficient human resources and adequate expertise, which comprise expertise of the members of the highest decision making body itself and/or expertise gained from external advice.[675] As argued in the studies on the independence of regulators, independence is positively linked to the development and application of technical expertise because expertise can be a source of resistance against improper influences." [676]

EU Legislative Frameworks

- Telecom Frameworks: NRA shall have adequate financial and human resources to enable them to carry out their tasks, also at EU level.[677]
- Gas and Electricity Frameworks: In order to protect the independence of the regulatory authority, Member States shall in particular ensure that: (a) the regulatory authority (…) has adequate human and financial resources to carry out its duties.[678]

5. Financial, Operational and Decision Making Autonomy

Studies and Council of Europe

Financial autonomy has been considered an important indicator for dependency potential of the regulatory body. Where external parties have legal influence on the level of the budget, they can both exert pressure to get politically motivated decisions from the body, as well as undermine its operational capacity through inadequate financing.[679] Like all organisations, regulators depend on resources to fulfil their tasks in an adequate and especially impartial manner. If funding of regulatory body is insufficient this indicates serious risk potentials for the regulatory body's independence. The regulatory authority should play a significant role in the budget setting process.[680]

EU Legislative Frameworks

- Telecom Framework: NRA shall have adequate financial and human resources to enable them to carry out their tasks, also at EU level. This also means that NRAs must have a separate annual budget.[681]
- Data Protection: Each Member State shall provide that the supervisory authorities are consulted then drawing up administrative measures or regulations relating to the protection of individuals' rights and freedoms with regard to the processing of personal data.[682]
- Gas and Electricity Frameworks: In order to protect the independence of the regulatory authority, Member States shall in particular ensure that: (a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties.[683]

6. Effective enforcement powers

Studies and Council of Europe

[675] INDIREG Final Report, p.363 http://www.indireg.eu/?p=360
[676] INDIREG Final Report, pp.31-32, http://www.indireg.eu/?p=360
[677] Article 3 Framework Directive (Directive 2002/21/EC)
[678] Article 35 (5)Electricity Directive (Directive 2009/72/EC); Article 39(5) Gas Directive (Directive 2009/73/EC)
[679] INDIREG Final Report, p.55.http://www.indireg.eu/?p=360
[680] INDIREG Final Report, p.360, http://www.indireg.eu/?p=360
[681] Article 3 Framework Directive (Directive 2002/21/EC)
[682] Article 28 (2) Data Protection Directive (Directive 95/46/EC)
[683] Article 35(5) Electricity Directive (Directive 2009/72/EC)

Enforcement power of NRA is a very important criterion to measure its independence. The range of enforcement powers given to a regulator dictates whether it can act independently or whether it needs to go to courts or another entity to enforce compliance with the rules. Regulator needs monitoring and enforcement powers at its own disposal to supervise audiovisual media services in an effective manner. The regulatory body needs to be equipped with the powers that are binding for the regulators and go beyond the status of mere recommendations.

EU Legislative Frameworks

- Data Protection: Each authority shall in particular be endowed with:
  - Investigative powers, such as powers of access to data forming the subject-matter of processing operations and powers to collect all the information necessary for the performance of its supervisory duties,
  - Effective powers of intervention, such as, for example, that of delivering opinions before processing operations are carried out, in accordance with Article 20, and ensuring appropriate publication of such opinions, of ordering the blocking, erasure or destruction of data, of imposing a temporary or definitive ban on processing, of warning or admonishing the controller, or that of referring the matter to national parliaments or other political institutions,
  - The power to engage in legal proceedings where the national provisions adopted pursuant to this Directive have been violated or to bring these violations to the attention of the judicial authorities.[684]
- Postal Services: The national regulatory authorities shall have as a particular task ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.[685]

7. The Possibility only for Judicial Power to Review the NRAs' Decisions

Studies and Council of Europe

Instructions or overruling by any other body than the court should not be possible at all when it comes to the specific decision of the regulatory body. [686]

EU Legislative Frameworks

- Telecom framework: only appeal bodies that are independent of the parties involved shall have the powers to suspend or overturn NRAs decisions.[687]
- Data protection: Decisions by the supervisory authority which give rise to complaints may be appealed against through the courts.[688]
- Postal services: Member States shall ensure that effective mechanisms exist at national level under which any user or postal service provider affected by a decision of a national regulatory authority has the right to appeal against the decision to an appeal body which is independent of the parties involved. Pending the outcome of any

[684] Article 28 (3) Data Protection Directive (Directive 95/46/EC)
[685] Article 22 (2) Postal Services Directive (Directive 200!/6/EC)
[686] INDIREG Final Report, p.358, http://www.indireg.eu/?p=360
[687] Article 4 Framework Directive (Directive 2002/21/EC)
[688] Article 28 (3) Data Protection Directive (Directive 95/46/EC)

such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise. [689]

[689] Article 22 (3) Postal Services Directive (Directive 200!/6/EC)

ANNEX 13 – 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	Federal Act on Audio-visual Media Services (AMD-G) - consolidated 30 July 2015 - Article 40: *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.* Federal Act on the Austrian Broadcasting Corporation (ORF-G) - consolidated 13 August 2015 - Article 12: *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 Directive), OJ No. L 95, of 15 April 2010, page 1.
Belgium FL	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.	Act on Radio and Television Broadcasting - Consolidated 12 August 2014 – Article 157: *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.* *A considerable share of the promotional resources, referred to in the first indent, has to be used for Dutch-language European productions.* *The Flemish Government can lay down the potential resources and measures, as mentioned in the first indent.*
Belgium FR		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 **levy**.	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	Audiovisual media services decree - consolidated 29 January 2015 - Article 46: *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*

					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 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.	*highlight the list of European works available.* Article 41: *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.*
Bulgaria		No	Yes	No	On demand services shall use an accesible and attractive presentation of European works on their catalogues.	Radio and Television Act - Consolidated version of 24 December 2014 - Article 19 (2)-(3): *(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.* *(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.
Croatia		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.	The Electronic Media Act - Consolidated 8 July 2011 - Art. 21 (1)-(3): *(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.* *(2) Promotion of the works referred to in paragraph 1 of this Article 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.* *(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 .* Electronic Media Act, OG 153/09,84/11,94/13,136/13, unofficial consolidated text
Cyprus		Yes (20%)	No	No	On demand audiovisual services providers shall ensure that their catalogues include at	Law on Radio and Television Stations - Article 31A. (2) (a) and (b): *(a) Audiovisual media service providers shall ensure that on-demand audiovisual media services promote,*

					least 20% of European works titles. *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) **the percentage is 10%.**	*where practicable and by appropriate means, the production of and access to European works.* *(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,* *It being understood that the above percentage may be revised periodically by the Authority following consultations with the audiovisual media service providers.*
Czech Republic		Yes (10%)	No	Yes (1% total revenues)	On demand services must 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.	Act 132/2010 on On-demand Audiovisual Media Services - Article 7. (1) and (2): *(1) An on-demand audiovisual media service provider shall, where practicable, reserve for European works8) 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.* *(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:* *a) the production of European works, or* *b) the paid acquisition of rights to use European works through the on-*

						demand audiovisual media service.
Denmark	X	No	No	No	On demand services shall use appropriate means to promote European works when possible.	Executive Order on Registration-Based Programme Activity and On-Demand Audiovisual Programme Activities - Consolidated nr. 100 of 28 January 2010 - Section 10 (1): *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.* *The Radio and Television Broadcasting Act - consolidated 6 May 2010 - Article 48:* *The minister for Culture may lay down rules about the programming activities, including rules about the 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.* Furthermore rules banning promotion of terrorism may be laid down.
Estonia		No	Yes	Yes (not speficied)	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)	Media Service Act - Article 24: *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:* *1) provision of financial support for the production of European works,*

					presenting their origin and year of production.	*ordering of the works or obtaining the rights for the transmission thereof;* *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;* *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.*
Germany		No	No	No	No national implementation measures have been notified for the promotion of European works.	Art. 11d Interstate Broadcasting Treaty:
Finland	X	No	No	No	On demand services shall promote European works by, as a means of example, financial contributions, enhanced visibily or other means.	Information Society Code - consolidated 18 September 2015 – Article 209: *A broadcaster shall reserve a major part of its annual broadcasting time for European works.* *The broadcasting time referred to above does not include time reserved for:* *1) news;* *2) sports events;* *3) competitive entertainment programmes;* *4) advertising;* *5) teletext services;* *6) teleshopping.* *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. *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.*
France		Yes (60%)	Yes	Yes (15%-26% net revenues) In the form of a **levy (extraterritorial application envisaged)**	On demand services shall promote European works by means of: (i) reserving 60% share (progressively applied) 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 audovisual works by at least 12% to 26% (depending on the kind of service) of their net revenues.	Law n° 86-1067 of 30 September 1986 on the Freedom of communication - consolidated 16 October 2015 - Articles 3-5 and 12 of Decree No. 2010-1379 of 12 November 2010: *Art. 3* *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.* *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. *Art. 4* *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:* *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;* *2. 21% and 17% when they offer at least 10 full-length cinematographic 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;* *3. 15% and 12% in other cases.* *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. *Art. 5* *I. — Services other than those mentioned in Articles 3 and 4, especially pay-per-view services, shall devote each year:* *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;* *2. 15% at least of their net annual revenues of the previous financial year resulting from the exploitation of 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.* *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).* *Art. 12* *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: *1. 60% for European works;* *Art. 13* *On their homepages, providers of services ensure that a substantial proportion is devoted to works, which promotionis ensured by other means than the reference to the title, to european works (...)*
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.	Decree No. 109 - Article 14 (1): *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 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.*
Hungary		Yes (25%)	No	No	On demand services shall allocate at least one quarter of the total annual length of programmes available to European works.	Act CLXXXV of 2010 on Media Services and Mass Media - Consolidated July 2015 Article 20: *(1) The media service provider* *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;* *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. *(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.*
Ireland	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>European Communities (Audiovisual Media Services) Regulations 2010 (S.I. No. 258 of 2010)</u> – <u>Article 11 (1)(2)(3):</u> *(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.* *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. *(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.*
Italy		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 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	Audiovisual Media Services Code - Consolidated 13 August 2015 - Article 44 1., 4. and 7.: *1. Audiovisual media services providers, both linear and non-linear, shall promote the development and circulation of European audiovisual production.* *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.* *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-*

					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.	*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.* Regulation no. 188/11/CONS: 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.
Latvia		Yes (not specified)	No	No	On demand services shall include European works in their catalogues	*Electronic Mass Media Law - Section 23. (5):* *An electronic mass medium which provides on-demand audiovisual services shall include European audiovisual works in its catalogue.*
Lithuania		Yes (50%)	No	No	On demand services shall ensure that their catalogues include at least 50% of European titles.	*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.
Luxembourg	X	No	No	No	On demand services will, insofar as it is feasible and by appropriate means, promote European works.	Grand ducal regulation of 17 December 2010 amending the grand dual 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):* *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.*
Malta		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.	Broadcasting Act 350 - consolidated as latest amended in 2015 - 16N (1) (2): *On-demand audiovisual media services provided by media service providers 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 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.* The RA has Subsidiary Legislation 350.34 Notification of On-Demand Audiovisual Media Services Order in place which specifically deals with *The Notification of on Demand and Audiovisual Media Services Order*. 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
Netherlands	X	No	No	No	On demand services promote the production and access to European works.	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: *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.*
Poland		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 works and providing information and materials; AND (ii) reserving at least 20% of their catalogues to European works.	Broadcasting Act - Consolidated 12 October 2012 - Art. 47f: *Art. 47f. 1. Providers of on-demand audiovisual media services shall promote European works, including works produced originally in the Polish language, in particular by: 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 2) placement of information and materials promoting European works, including works produced originally in the Polish language. 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. *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.* *4. Paragraph 2 shall not apply to the catalogues, in which only audiovisual programs other than European works are provided to the general public.*
Portugal		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 **levy**	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 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).	Television Act 2007 - Article 45 2. and 3: *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.* *3 - On-demand audiovisual services 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.* 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)
Romania		Yes (20%)	Yes	No	On demand services will, insofar as it is feasible and by appropriate	The Audiovisual Law - consolidated 22 November 2009 - Art. 23 (1): *On-demand audiovisual media services promote, where practicable*

					means, promote European works. By means of example through: financial contributions, shares and/or prominence measures.	*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.* 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) *Providers are required to promote the home page of the web site, equally, and European audiovisual works of fiction available in the catalog.*
Slovakia		Yes (20%)	No	No	On demand services shall promote European works by reserving a 20% share for European works in their catalogues.	Act 308/2000 on Broadcasting and Retransmission and on the amendment of Act No. 195/2000on Telecommunications - consolidated 3 February 2015 - § 27a (1): *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.*
Slovenia		Yes (10%)	No	Yes (1% total	On demand services	Audiovisual Media Services Act (ZAvMS) - Art. 16 (2) and (3):

		OR		revenues)	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.	*(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.* *(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.*
Spain		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 audiovisual content with at least 5% of their turnover.	General Law No 7/2010 of 31 March on Audiovisual Media - consolidated 1 May 2015 - Article 5 2. and 3: *Article 5 2. para. 2* *[…]* *Providers of a catalogue of programmes shall reserve 30% of the catalogue for European works. Half of this amount shall be in one any of Spain's official languages.* *[…]* *Article 5 3 para.1* *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. *Article 5 3. para. 9* *[…]* *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.* *[…]*
Sweden	X	No	No	No	On demand services shall, when practicable, use suitable methods to promote European works.	The Radio and Television Act - consolidated 17 June 2010 - Chapter 5. 8§: *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.*
United Kingdom	X	No	No	No	On demand services shall, where practicable and by appropriate means, promote production and access to European works.	Electronic Communications Broadcasting - The Audiovisual Media Services Regulations 2009 - 368C (3) and 368Q (3): *368C (3)* *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).* *368Q (3)* *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).

ANNEX 14 – 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
AT	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.	*"Seriously impair"*: (pornography; gratuitous violence): banned.	*"Seriously impair"*: allowed with access restriction.
				"Likely to impair": allowed with some form of protection. On-screen icons required by law + technical filtering devices or software used by broadcasters.	*"Likely to impair":* allowed without restriction.
BE (Flemish Comm.)	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	*"Seriously impair"* (pornography, unnecessary violence): banned	*"Seriously impair"*: allowed with access restrictions (PIN codes)
				"Likely to impair": allowed with some form of protection On-screen icons or acoustic warnings required by law.	*"Likely to impair":* allowed without restriction
BE (French Comm.)	Décret SMA, as modified – Art. 9.2 a) and b) Order of the Government of 21.02.2013	Some elements of self and co-regulatory system for linear and for non-linear services. 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).	Stricter legal approach: general prohibition for "seriously impair" content on VOD services	*"Seriously impair"* (pornography, violence): banned	*"Seriously impair"* (pornography, violence): banned on VOD
				"Likely to impair": allowed with some form of protection 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	*"Likely to impair":* allowed with some form of protection Parental code (PIN code) + on-screen age-related icons on electronic programme guide and catalogues (Art. 9.2b) SMA).

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
		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. 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.		(Art. 9.2a) SMA). In practice, acoustic warning is not currently used.	
BG	Radio and Television Act (Art. 19 on-demand services) Bill amending the RTA of 14.5.2014	Regulatory authorities have issued rules and general guidance for the protection of minors on audiovisual media services, whether linear or on-demand. 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.	Integrated approach across all audiovisual media services regarding protection of minors (including general prohibition for "seriously impair" content on VOD).	*"Seriously impair"*: banned.	*"Seriously impair"* (restrictive definition): banned on VOD services.
				"Likely to impair": allowed with access restrictions. On-screen icons or acoustic warnings required by law + technical filtering devices or software used by broadcasters.	*"Likely to impair"*: allowed with some form of protection. Technical access restrictions, such as filtering, encryption, pre-locking/PIN codes or other age verification systems).
CY	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)	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. Media literacy policies are encouraged. Acoustic warnings of news stories unsuitable for minors are given more than once (that is required by law).	Graduated approach between linear and non-linear services regarding "seriously impair" contents.	*"Seriously impair"* (pornography, gratuitous violence): banned	*"Seriously impair"*: allowed with access restrictions. Age rating, content filtering and parental access codes.
				"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.

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
CZ	Radio and TV Broadcasting Act On-demand Audiovisual Service Act (Section 6(3) on-demand 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.	*"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 (Länder), Art. 5, Art. 11 (applicable to broadcasting and telemedia services)	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") under the Youth Protection Act, check that the provisions of the JMStV are adhered to by their members. 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	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.
				"Likely to impair": allowed with some form of protection. Watershed + on-screen icons or acoustic warnings required by law + technical filtering devices or software used by broadcasters.	*"Likely to impair"*: allowed with some form of protection: 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

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
		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. 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. 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 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. 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			card checks, passport number checks and combinations thereof. "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).

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
		usually decides on all age classification within companies.			
DK	Radio and Television Broadcasting Act (Section 48). 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).	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. 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).	Graduated approach between linear and non-linear services regarding "seriously impair" contents. 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.	*"Seriously impair"* (pornography, unnecessary violence): banned (Art. 6)	*"Seriously impair"* (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).
				"Likely to impair" (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). 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 services. The commercial public service broadcaster, TV 2, has the same as all the other linear services written about the protection of minors in a	"*Likely to impair"* (e.g. sexually explicit content): allowed without restrictions

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
				clause in their public service license and in Order no. 881 of 28 June 2013, Article 4. 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. 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.	
EE	Media Services Act: §19(2)-(6) (linear TV services / §19(7) (on-demand services)	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.	*"Seriously impair"* (pornography, promotion of violence or cruelty): banned.	*"Seriously impair"*: allowed with some form of protection
				"Likely to impair": allowed with some forms of protection Watersheds + Acoustic warnings required by law.	*"Likely to impair"*: allowed without protection Technical access restrictions available (such as filtering, encryption, pre-locking/PIN codes or other age verification systems.
ES	Spanish General Law 7/2010 of Audiovisual Communication (Art. 7.2)	Almost all of free to air DTT national providers in Spain signed a Self-regulation Code for the audiovisual content and minors. Non-compliance with self-regulatory codes constitutes a breach of administrative law and operators can	Graduated approach between linear and non-linear services regarding "seriously impair"' contents.	*"Seriously impair"* (pornography, gratuitous violence, gender violence and mistreatment): banned.	*"Seriously impair"* (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
		be penalized accordingly. 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.		*"Likely to impair":* 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).	*"Likely to impair"*: 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).
FI	Amendment to Act No. 744/1998 on Radio and Television Broadcasting (Laki *television-ja radiotoiminnasta*) Acts nos. 306/2010 and 712/2011 and Act No. 710/2011 on audiovisual programmes (*Kuvaohjelmalaki*) / classification and labelling of various types of audiovisual content. 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	Some elements of self and co-regulatory system for linear and for non-linear services. 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.	Graduated approach between linear and non-linear services regarding "seriously impair" contents. (Measures or initiatives pending to introduce greater consistency).	*Seriously impair"*: Banned	*"Seriously impair"*: allowed with spome form of protection.
				"Likely to impair": allowed with some form of protection. Age-rating, on-screen icons + acoustic warnings required by law.	*"Likely to impair"*: allowed with some form of protection
FR	Law n° 86-1067 of 30/09/1986 related to the freedom to communicate Art. 1 and 15 Recommendation of 7/06/2005 to TV services	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	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	*"Seriously impair"*(criminally unlawful material; (attempt to human dignity: violence, sexual perversion, degrading to the human person; child pornography; hard-core violence): banned	*"Seriously impair"*: 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
	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 Deliberation of the CSA of 15.12.2004 on the broadcasting on television of programmes unsuitable to under 18s 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	categories and definitions are common to linear and non-linear audiovisual services.	protection tools.	"*Likely to impair"*: allowed with some form of protection "-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 "-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 "-10" (contents which are likely to shock children under 10): no restriction.	"*Likely to impair"*: 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)
GB	Broadcasting Act 1996 Communications Act 2003 (sections 3(4)(h) and 319(2)(a) and (f) Audiovisual Media Services Regulations 2009 (Art. 368E - harmful material and ODAVMS) Audiovisual Media Services Regulations 2010 Audiovisual Media Services Regulations 2014	Fully-fledged self and co-regulatory system implemented specifically for on-demand audiovisual media services. 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) 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	Graduated approach between linear and non-linear services regarding "seriously impair" contents.	"*Seriously impair"*: illegal content, extremely violent pornography, R18+: banned.	*"Seriously impair"*: material likely to incite hatred based on race, sex, religion or nationality: banned on VOD. Material which might seriously impair the physical, mental or moral development of persons under the age of 18: allowed with access restrictions. 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). Since new legislation of 1 December 2014, content stronger than R18 (i.e. "seriously impair") is now also

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
		programme services (Rule 11). 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. 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. 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.			banned on non-linear services.
				"Likely to impair" : 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). Watershed, on-screen icons or acoustic warnings required by law + technical filtering devices or software used by broadcasters.	*"Likely to impair"*: allowed with some form of protection.
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.	*"Seriously impair"*: banned.	*"Seriously impair"*: 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.
				"Likely to impair": allowed with some form of protection. Classification of contents + on-screen icons + acoustic warnings required by law.	*"Likely to impair":* 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	Act CLXXXV of 2010 on Media Services and Mass Media (Art. 9: Linear TV services) / (Art. 11: on-demand AVMS) 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 Rules on Protection of minors, Art. 2, par 1. OG 60/10: Recommendation of 19.07.2011 of the Media Council of the National Media and Communications Authority	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).	*"Seriously impair":* (category VI): banned.	*Seriously impair":* allowed with some form of restrictions.
				"Likely to impair": allowed with some form of protection. Rating +on-screen icons + acoustic warnings required by law.	*"Likely to impair":* allowed with some form of restrictions. Technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems.
HR	Electronic Media Act (EMA) Art. Art. 20 (on-demand services) / Art. 26 (linear TV services) Rulebook of the Council for Electronik Media on TV broadcasters for the purpose of the protection of minors, of April 2008	Regulatory authorities have issued rules and general guidance for the protection of minors on audiovisual media services, whether linear or on-demand. 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.	Graduated approach between linear and non-linear services regarding "seriously impair" contents.	*"Seriously impair":* (pornography; gratuitous violence): banned.	*"Seriously impair":* allowed with access restrictions
				"*Likely to impair*": allowed with some form of protection. Watershed + technical tools of access restrictions required by law.	"*Likely to impair*": allowed with some form of protection. Visual symbols + labelling restrictions (age classification) + PIN code.
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"	*"Seriously impair"* (pornography, gratuitous violence): banned.	*"Seriously impair":* 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)	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. 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.	contents (classification for cinema, but not for DVDs).	*"Likely to impair"*: allowed with some form of protection. 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.	*"Likely to impair"*: allowed with some form of protection.
IT	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	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. 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) Industry self-regulation exists also in Italy. In 2002, all Italian broadcasting	Graduated approach between linear and non-linear services regarding "seriously impair" contents, except for public service broadcasters, subject to stricter rules than commercial broadcasters.	*"Seriously impair"* (gratuitous or insistent or brutal violence or pornography, including cinematographic works classified as unsuitable for minors under 18): banned.	"Seriously impair": allowed with access restriction: parental control systems + PIN code, except for VOD by PSB (banned).
				"Likely to impair": Allowed with some form of protection Rating, watersheds, on-screen icons + acoustic warnings required by law and also by codes of conduct + technical filtering devices or software used by broadcasters.	*"Likely to impair"*: 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	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 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	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.	*"Seriously impair"*: (physical or psychological violence or vandalism: restrictive definition) banned.	*"Seriously impair"*: banned on VOD (restrictive definition).
				"Likely to impair": allowed with some form of protection. Watersheds + on-screen icons + acoustic warnings required by law.	*"Likely to impair"*: allowed with some form of protection. Technical access restrictions (such as filtering, encryption, pre-locking/PIN codes or other age verification systems.
LU	Law of 27 July 1991 on Electronic Media, as amended (17.12.2010): Art. 27ter (linear TV services) / Art. 28quater (on-demand services) Regulation on Protection of Minors in Audiovisual Services of 08.01.2015	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. 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.	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.	*"Seriously impair"* (pornography, gratuitous violence): banned.	*"Seriously impair"*: allowed with access restrictions.
				"Likely to impair": allowed with some form of protection (watersheds + on-screen icons + text display warnings required by law).	*"Likely to impair"*: 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.	*"Seriously impair"*: Banned	*"Seriously impair"*: 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).
				"Likely to impair": 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).	*"Likely to impair"*: 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.	*"Seriously impair"*: banned.	*"Seriously impair"*: allowed with access restrictions (PIN code), except for VOD by public service broadcaster.
				"Likely to impair": allowed with some form of protection. On-screen icons + acoustic warnings required by law -, except for VOD by public service broadcaster (banned).	*"Likely to impair"*: 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	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. 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. 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. 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.	Public service media is subject to stricter regulation than private media. Rules that apply to linear and non-linear content of public service media, and linear content of private media: - Seriously harmful programs are absolute forbidden (directly supervised by CvdM) - Harmful programs are only allowed if broadcaster joins NICAM. Rules that apply to non-linear content of private media: - Seriously harmful videos are only made available in such a way as to ensure that minors will not normally hear or see them - No rules regarding harmful videos.	*"Seriously impair"*: banned	*"Seriously impair"*: allowed with access restrictions, except for non-linear content of public service media (banned).
				"Likely to impair": 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).	*"Likely to impair"*: 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).

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	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. 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. There is an area in protection of minors field which gives the possibility of self-regulation: 1) in determining effective technical security measures in non-linear media services 2) in placing advertisements of the so-called unhealthy foods in children's programmes - in linear media services. 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. As regards to advertisements of the so – called "unhealthy food", at the end of	Graduated approach between linear and non-linear services regarding "seriously impair" contents.	*"Seriously impair"*: banned	*"Seriously impair"*: allowed under specific conditions - effective technical security measures -.
				"Likely to impair": allowed with some form of protection Watershed + on-screen icons required by law	*"Likely to impair"*: 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.	*"Seriously impair"*: Banned.	*"Seriously impair"*: 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.
				"*Likely to impair"*: allowed with some form of protection. Watersheds + on-screen icons required by law and also by codes of conduct.	"*Likely to impair"*: 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).	*"Seriously impair"*: banned.	*"Seriously impair"*: allowed with access restrictions, except for VOD by public service broadcaster (banned).
				"Likely to impair": allowed with some form of protection. On-screen icons + acoustic	*"Likely to impair:* 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			warnings required by law + 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).	*"Seriously impair":* Banned	*"Seriously impair"*: (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.
				"Likely to impair": 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.	*"Likely to impair":* 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	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	Graduated approach between linear and non-linear services regarding "seriously impair" contents.	*"Seriously impair"* (pornography, gratuitous violence): banned.	*"Seriously impair"* (hard pornography): allowed with access restrictions. PIN code or other adequate technical

Country	LEGAL BASIS	CO/SELF REGULATION	APPROACHES LINEAR / NON-LINEAR AVMS	PROTECTION TOOLS IN LINEAR SERVICES	PROTECTION TOOLS IN NON-LINEAR SERVICES
	Act on 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.	measures to prevent minors from accessing harmful contents. 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. 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.			restriction).
				"Likely to impair": allowed with some form protection. Watersheds or technical protection of access restriction required by law required by law.	*"Likely to impair"* (explicit sexual content): allowed with some forms of protection. PIN code + classification of any sexual content labelled 18 in special section of the catalogue.
SK	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	Integrated approach through all regulated audiovisual sector regarding age classification system and labelling (with certain specificities for each sector).	Graduated approach between linear and non-linear services regarding "seriously impair" contents	*"Seriously impair"*: banned in linear services	*"Seriously impair"*: allowed with access restrictions. Labelling restrictions (age classification)
				"Likely to impair": allowed with some form protection On-screen icons required by law.	*"Likely to impair":* 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
NO	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) Film and Video Act of 5.5.2006	Integrated approach through all regulated audiovisual sector regarding age classification system and labelling (with certain specificities for each sector).	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).	*"Seriously impair"*: banned.	*"Seriously impair"*: banned.
				"Likely to impair": allowed with some form of protection: rating + PIN codes, watershed, payment by credit card (although no binding access restriction by law).	*"Likely to impair"*: allowed with some form of protection: rating + PIN codes, watershed, payment by credit card (although no binding access restriction by law).
				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.	

Watershed period in broadcasting services

Comparative table across Europe [690]

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
AT	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.	*"Seriously impair"*: (pornography; gratuitous violence): banned in linear services / allowed with access restriction in non-linear services. *"Likely to impair":* 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.
BE (Flemish Comm.)	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.	*"Seriously impair"* (pornography, unnecessary violence): banned in linear services / allowed with access restrictions (PIN codes) in non-linear services *"Likely to impair":* 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 schedullling of programmes apply depending on Flemish television channels).
BE (French Comm.)	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 watersheds on linear services or parental PIN code).	*"Seriously impair"* ("hard" pornography, violence): banned in linear services and in VOD services. *"Likely to impair":* 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 channels and only accessible through parental access code. These watersheds are not applied to non-linear services (VOD) or to linear services accessible

[690] Table updated as of March 2015.

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
				by personal access code.
BG	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.	*"Seriously impair"*: banned in linear services / banned on VOD services (restrictive definition) *"Likely to impair"*: 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.
CY	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	*"Seriously impair"* (pornography, gratuitous violence): banned in linear services / allowed with access restrictions in non-linear services (age rating, content filtering and parental access codes). *"Likely to impair"*: 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.
CZ	Radio and TV Broadcasting Act On-demand Audiovisual Service Act (Section 6(3) on-demand 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.	*"Seriously impair"* (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). *"Likely to impair"*: 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.	Only programmes that "can be watched by children" can be aired until 22:00. After 22:00, adult-orientated programmes may be aired.
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 (Länder), Art. 5, Art. 11 (applicable to broadcasting and telemedia services)	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. 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.	*"Seriously impair"* (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). *"Likely to impair"*: 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). "*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 Protection of Young Persons Act. Certified technical systems for the protection of minors for '*telemedia*' content which could impair minors (Art. 11 JMStV).	- +16: allowed between 22:00 and 06:00 - +18: allowed between 23:00 and 06:00 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. For some content "+12", the watershed is between 20:00 and 06:00, but there is no general watershed for such content. 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. 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. 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

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
				rating.
DK	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). 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).	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.	*"Seriously impair"* (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). *"Likely to impair"* (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.	All pornographic films are automatically rated at 16 years and above. However, the law does contain no explicit regulations concerning the question of violence. 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. A watershed is not necessary if a decoder is used to receive programme. The guidelines used by Danmarks Radio are inspired by EBU.
EE	Media Services Act: Art. 19(2)-(6) (linear TV services / Art. 19(7) (on-demand services)	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.	*"Seriously impair"* (pornography, promotion of violence or cruelty): banned in linear services / allowed with some form of protection in non-linear services *"Likely to impair"*: 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	General watershed from 6:00 until 22:00 for "likely to impair" contents. Such programmes shall be accompanied by appropriate symbol indicating that it is uinsuitable for minors. A watershed is not necessary if a decoder is used to receive programme.

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.	*"Seriously impair"* (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. "*Likely to impair"*: 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).	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. Two watersheds for free to air television: - 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. - Special watershed: during which this time slot any program considered inappropriate for minors under 13 cannot be broadcast. - Working days: from 08:00 to 09:00 and from 17:00 to 20:00. - Saturdays, Sundays and festive days: from 09:00 to 12:00.
FI	Amendment to Act No. 744/1998 on Radio and Television Broadcasting (*Laki television-ja radiotoiminnasta*) Acts nos. 306/2010 and 712/2011 and Act No. 710/2011 on audiovisual programmes (*Kuvaohjelmalaki*) / classification and labelling of various types of audiovisual content. 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	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. 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.	*"Seriously impair"* : Banned in linear services / Allowed with some form of protection (age-rating) in non-linear services. *"Likely to impair"*: allowed in linear services with some form of protection (on-screen icons + acoustic warnings required by law).	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	Law n° 86-1067 of 30/09/1986 related to the freedom to communicate Art. 1 and 15 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 Deliberation of the CSA of 15.12.2004 on the broadcasting on television of	"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. <u>*Rule:*</u> - 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 (under	*"Seriously impair"* (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. *"Likely to impair"*: allowed with some form of protection in linear services. "-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. "-16" *and* "-12" (erotic material, violent content) / repeated physical or psychological violence / theme that may trouble	-10: not allowed in programmes for children. -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. -16/-18 rated programmes/films: not allowed in general channels before 22:30 and 20:30 on movie channels respectively.

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
	programmes unsuitable to under 18s Deliberation of the CSA of 20.12.2011 on the protection of young audiences, deontology, and the accessibility of programme on on-demand AVMS Tableau signalétique 2014	the age of 10/12/16/18) and scheduling time.	children under 12): Available in cinema and PPV services and other services with age rating obligations + watersheds + broadcast time restrictions. "-10" (contents which are likely to shock children under 10): no restriction. 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.	-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. The watershed for all ratings finishes at 06:00 the following morning. 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).
GB	Broadcasting Act 1996 Communications Act 2003 (sections 3(4)(h) and 319(2)(a) and (f) Audiovisual Media Services Regulations 2009 (Art. 368E - harmful material and ODAVMS) Audiovisual Media Services Regulations 2010 Ofcom Guidance Notes, Section 1	Ensure that people under 18 are protected. <u>*Rule:*</u> - 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 people under 18. - Children must also be protected by appropriate scheduling from material that is unsuitable to them (under 15)	"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. *"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.	Watershed only applies to: - Free-to-air TV: between 21:00 and 05:30 - Not protected premium or pay-per-view services: from 20:00 to 06:00. - Protected (by pin code) premium or pay-per-view services: No watershed 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. Advertisements also have to comply with the same set of rules, and can be restricted when shown outside the watershed.

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
GR	Presidential Decree 109/2012 Art. 13 (on-demand AVMS) Art. 26 (linear TV services)	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.	*Seriously impair'*: 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). *"Likely to impair":* allowed in linear services with some form of protection (classification of contents + on-screen icons + acoustic warnings required by law) / allowed without protection.	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. - A white rhombus in green or a white circle in blue indicates unrestricted programming. - A white triangle in orange indicates programming that could upset younger children, and is only allowed between 19:00 and 06:00. - A white square in purple indicates programming that may be unsuitable for children, and is only allowed between 21:00 and 06:00. - 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. 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.

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
HU	Act CLXXXV of 2010 on Media Services and Mass Media (Art. 9: Linear TV services) / (Art. 11: on-demand AVMS) 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 Rules on Protection of minors, Art. 2, par 1. OG 60/10: Recommendation of 19.07.2011 of the Media Council of the National Media and Communications Authority	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. 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.	*Seriously impair":* (category VI): banned in linear services / allowed with some form of restrictions in non-linear services. *"Likely to impair":* 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).	Six classification categories: - Category I / "-6" (programmes that may be viewed or listened to by persons of any age: no watershed. - 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. 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.
HR	Electronic Media Act (EMA) Art. Art. 20 (on-demand services) / Art. 26 (linear TV services) Rulebook of the Council for Electronik Media on TV broadcasters for the purpose of the protection of minors, of April 2008	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. 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.	*"Seriously impair":* (pornography; gratuitous violence): banned in linear services / allowed with access restrictions in non-linear services. "Likely to impair": 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).	- 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. - 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. - 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.

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
IE	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.	*Seriously impair'* (pornography, gratuitous violence): banned on traditional TV / allowed with access restrictions in non-linear services. *"Likely to impair"*: 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.
IT	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.	*"Seriously impair"* (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). *"Likely to impair"*: 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.	- Between 07:00 to 23:00: all channels must broadcast "general audience" programmes. - +14 programmes: allowed after 23:00 - +18 programmes: prohibited from television altogether, with the only exception of satellite and cable premium adult channels and VOD 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.

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
LT	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 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 Rules for the categorization and dissemination of information, which might have a negative effect on minors (came into force on 1.11.2010)	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"*: (physical or psychological violence or vandalism: restrictive definition) banned in linear services / banned on VOD (restrictive definition). *"Likely to impair"*: 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).	Broadcasters themselves are obliged to assess and determine if the "to-be-published information" might have a negative effect on minors. The Rules provide three TV programme categories: - N-7 (programmes for viewers under 7). - N-14 (under 14). - S (under 18): allowed from 23:00 to 06:00. 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.
LU	Law of 27 July 1991 on Electronic Media, as amended (17.12.2010): Art. 27ter (linear TV services) / Art. 28quater (on-demand services) Regulation on Protection of Minors in Audiovisual Services of 08.01.2015	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. 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.	*"Seriously impair"* (pornography, gratuitous violence): banned in linear services / allowed with access restrictions in non-linear services *"Likely to impair"*: 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) 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.	According to the regulation: - No age distinction: programmes appropriate for all audiences; -10: classified as unsuitable for minors under 10 -12 (physical and psychological violence in a systematic and repeated manner): may not be broadcast in unencoded form between 06:00 and 20:00 -16 (erotic character or great violence): allowed in uncoded form after 22:00 and before 06:00 -18 (sexually explicit or highly violent character): encoded + personal access code + broadcast only between 24:00 and 05:00.

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 2011Art. 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.	*"Seriously impair"*: banned in linear services / allowed in non-linear services with access restrictions (PIN code), except for VOD by public service broadcaster. *"Likely to impair":* 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).	*"Seriously impair"*: banned in linear services / allowed in non-linear services with access restrictions, except for VOD by public service broadcaster (banned). *"Likely to impair"*: 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
PL	Broadcasting Act of Dec. 29,1992, as amended in 2011	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 under specific conditions / effective technical security measures). *"Likely to impair":* 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.	Double-tier watershed system, as well as five age ratings. All age ratings must be displayed throughout the whole of the programme, with the exception of commercial breaks and news bulletins. 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. - "12" programmes (war theme and/or stronger violence): not allowed within children's schedules. - "16" programmes (very strong violence, bad language and/or erotic situations): not allowed within children's schedules or before 20:00 on mainstream channels. - "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).
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)	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 (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. "Likely to impair": 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.	"16" and "18" programmes: allowed on open-air channel only between 23:00 and 06:00. 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.
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 Regulatory Code of	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	*"Seriously impair"*: banned in linear services / allowed in non-linear services with access restrictions, except for VOD by public service broadcaster (banned). *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	- All categories: no restrictions nor watersheds - "AP" programme: only with parents' permission for minors under 12 - "12" prohibited under 12: allowed after 20:00 + warning sign

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).	- "15": allowed between 23:00 and 06:00 + warning sign - "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 - "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.
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 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).	- "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. - "-12" (occasional and moderate violence, horror scenes, use of tobacco/alcohol, inappropriate language, discreet sex scene..): allowed after 21:00 +

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
				rating. - "-15"(frequent moderate violence, dangerous scene, horror, discrimination, sex scenes, etc.) : allowed after 22:00 + rating. - "-18" (severe violence, suffering, intense horror scene, nudity and sex, discrimination, etc.): allowed after 24:00 + rating. - 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.
SK	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	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 (labelling restrictions (age classification) *"Likely to impair"*: allowed in linear services with some form protection (on-screen icons required by law) / allowed without protection.	+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. +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).

Country	LEGAL BASIS	PRINCIPLE AND RULES	NATURE OF CONTENT	WATERSHEDS
NO	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) Film and Video Act of 5.5.2006	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).	*"Seriously impair"*: banned in linear and non-linear services *"Likely to impair"*: 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). 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.	New age limits are introduced in the new Act: All / 6 / 9 / 12 / 15 / 18. 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.

ANNEX 15 – 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	YES for regional TV programmes (see § 16 (2) last sentence and § 16 (4) last two sentences of the ORF-Act) No product placement for spirits (§ 13 (4) ORF-Act and § 42a AMS-Act)	Federal Act on Audio-visual Media Services (AMD-G) - consolidated 30 July 2015 – See also § 32 AMS-Act and § 13 (2) ORF-Act as far as product placement is included Federal Act on the Austrian Broadcasting Corporation (ORF-G) -	§ 38. (1) Product placement shall be prohibited, subject to the provisions of paragraphs 2 and 3. § 16. (1) Product placement (§ 1a paragraph 1 subparagraph 10)	§ 38. (2)-(4) (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. (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. (4) Programs that contain product placement shall meet the following requirements: 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. 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. 3. They shall not give undue prominence to the product in question. 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.	§ 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. § 16. (4) Notwithstanding the provisions of § 13, programmes may not include product placement for the benefit of undertakings whose

		consolidated 13 August 2015	shall be prohibited, subject to the provisions of paragraphs 2 and 3.		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.
BE (Flemish Comm.)	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 change, 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 responsibility and the editorial independence of the broadcaster shall be affected; 2° they shall not directly encourage the viewer to purchase or rent goods or services, by specifically recommending these products or services;	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.

				3° they shall not give undue prominence to the product or the service in question; 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. § 2. The conditions of paragraph 1 are applicable to programmes which have been produced after the commencement of this Act.	
BE (French Comm.)	YES No derogation concerning PP in the children programmes and television news even with product props. 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 decree - consolidated 29 January 2015	Art. 21 § 1. Product placement is forbidden.	Art. 21 § 2 Further to the exemption stated in § 1er, product placement is admissible: 1° in film and televisual works of fiction as well as in sports or entertainment programmes, or 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. These exemptions do not apply to programmes for children or to television news. Programmes that involve product placement comply at least with all the following conditions: 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; 2° They do not encourage to buy or hire goods or services, especially with particular promotional references to these products or services; 3° They do not put the said product forward in an unjustified manner; 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.	
BE (German Comm.)	NO Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider	Decree on Radio Broadcasting and Cinema Presentations - consolidated 2 March 2015	Art. 10.1 § 1Product placement is prohibited.	Art. 10.1 § 2In 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, or2. 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.	
BG	YES PP prohibited in the news, religious programmes (without derogations) and audiovisual media services of public-service providers (derogations concerning	Radio and Television Act - Consolidated version of 24 December 2014		Art. 83 (1) Product placement in news, religious programmes and in audiovisual media services of public-service providers shall be prohibited. (2) Product placement in children's programmes, including in programmes referred to in Paragraph (3), shall be prohibited. (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	Art. 84 (3) Programmes must not contain product placement of: 1. cigarettes or tobacco products or product placement of similar products from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;

	cinematographic works, in films and series made for audiovisual media services) Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider			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. (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. (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. (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. Art. 84 (1) Programmes that contain product placement must meet the following requirements: 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; 2. they must not directly encourage the purchase or rental of goods of services, in particular by making special promotional references to those goods or services; 3. they must not give undue prominence to the product in question; 4. viewers must be clearly informed of the existence of product placement. (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 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.	2. specific medicinal products available only on prescription, or medical treatment available only on prescription.

CY	YES Production props and prizes not allowed in children's programmes. No product placement for toys Maximum 3 minutes in cinematographic films and 1 minute for series, sports and light entertainment programmes *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.	Law on Radio and Television Organizations (1998-2015)	Art. 30G. (1) Product placement in programmes shall be prohibited.	Art. 30G. (2) and (3) (2) By way of derogation from paragraph (1), product placement shall be admissible in the following cases: (a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes; (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. (3) Programmes that contain product placement shall meet all of 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 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 products in question, including display thereof in close-up or/and for a prolonged time. (d) Viewers shall be clearly informed of the existence of product placement as follows: (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; (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 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, It being understood that programmes not produced or	Art. 30G. (4) (a) and (b) Notwithstanding any other provision, programmes 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; (b) specific medicinal products or medical treatments available only on prescription in the Republic; (c) Toys, in accordance with the provisions of paragraph (5), article 33 of this legislation. (d) any other product, goods or services which are forbidden from advertising according to this law and its regulations.

				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.	
CZ	NO Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider	Act 132/2010 on On-demand Audiovisual Media Services		§ 10. (1)-(3) (1) Product placement in programmes shall be admissible only: 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, 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. (2) Programmes containing product placement shall meet the following requirements: 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, 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 c) they shall not give undue prominence to the product in question. (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 provider or a person affiliated to the on-demand audiovisual media service provider as a controlling or controlled entity under other legislation).	§ 10. (4) (4) Programmes 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, b) medicinal products or medical treatments available only on prescription in the Czech Republic. § 53a. (4)(4) Programme units shall not contain product

		Act 231/2001 on Radio and Television Broadcasting and on amendment to other acts - Consolidated 21 April 2010		§ 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).	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.
DE	YES Narrow definition of the "Light entertainment programmes" Detail: MS chose to use the waiver and not apply identification requirement to	Interstate Treaty on Broadcasting and Telemedia - consolidated 1 January 2013 Provisional Tobacco Act - consolidated 31 August 2015		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 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,	Article 21b (3) product placements in programs produced after December 19, 2009 for the benefit of tobacco products or for the benefit of an company whose principal activity is the maufacture or sale of tobacco products are prohibited. [Prohibition of medical

	programmes neither produced nor commissioned by the AVMS provider			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. 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. 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. Article 44 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 unless they	products included in § 10 HWG.]

				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. 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.	
DK	YES No PP in programmes produced in Denmark (OK in certain purchased programs produced abroad)	The Radio and Television Broadcasting Act - consolidated 20 March 2014	§ 85 a. (1) Product placement in programmes on television and in on-demand audiovisual media services shall not be permitted	§ 85 a. (3)-(4) (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 1) the good, service or trade mark is of no material value and 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. (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.	§ 32. (1) 5)-6) 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. 6) Programs must not include product placement of medicinal products dispensed only on prescription pursuant to the Medicinal Products Act.
		Detailed rules with respect to product placement are laid down in Executive	§ 31. (1) Product placement in programmes on television and in on-demand audiovisual media services shall	§ 32. (1) 1)-4), (4) and (5) (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	

		Order on advertising and sponsorship - consolidated 21 June 2013	be prohibited; but see Section 32	services, sports programmes and light entertainment programmes shall be permitted in accordance with the following rules: 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. 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. 3) The programme must not give the goods concerned an unnecessarily prominent role. 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). (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. (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.	
EE	YES Besides product placement, production props and prizes are not allowed in children's programmes - could amount to a stricter rule. Detail: MS chose to	Media Service Act	§ 31. (2) Product placement shall be prohibited except in the cases provided for in this section.	§ 31. (3)-(5) and (7) (3) Product placement shall be admissible: 1) in films made for the cinema and television, and television series or serials; 2) sports programmes; 3) light entertainment programmes; 4) 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) A programme containing product placement shall meet the following requirements:	§ 31. (6) (6) Product placement shall be prohibited with regard to the following products: 1) tobacco products or cigarettes or the goods of such undertakings whose principal activity is the manufacture and sale of cigarettes and other tobacco products; 2) prescription medicinal products or medical

	use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.			1) product placement shall not affect the responsibility and editorial independence of the media service provider; 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; 3) in the programme they shall not give undue prominence to the product in question; 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. (5) Product placement in children's programmes shall be prohibited. (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.	treatments available only on a medical prescription.
ES	YES Production props and prizes seem not allowed in children's programmes - could amount to a stricter rule. More detailed rule "significant value" Detail: MS chose to use the waiver and not apply identification requirement to programmes neither	General Law No 7/2010 of 31 March on Audiovisual Media - consolidated 1 May 2015 Royal Decree 1624/2011 of 14 November		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. 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.	

	produced nor commissioned by the AVMS provider.			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	
FI	NO More detailed on the way to indicate that a programme contains PP: This identification shall not take the form of advertising. Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.	[FI] Information Society Code - consolidated 18 September 2015		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. 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. Viewers shall be clearly informed of the existence of product 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	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.

				advertising break. This identification shall not take the form of advertising. 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.	
FR	YES PP allowed only in TV and cinematographic films and in music videoclips. Stricter list of products not allowed to be placed in TV programmes (alcohol, baby food, weapons)	Law n° 86-1067 of 30 September 1986 on the Freedom of communication - consolidated 08 January 2016 Délibération n° 2010-4 du 16 février 2010 relative au placement de produit dans les programmes des services de télévision		Art 14 1. 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. The Higher Council for the Audiovisual Sector shall ensure that the programmes including product placement are in compliance with the following requirements: 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. 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. 3. They shall not give undue prominence to the product in question. 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. IV. - Emissions pouvant comporter du placement de produit Le placement de produit est autorisé dans les oeuvres cinématographiques, les fictions audiovisuelles et les vidéomusiques, sauf lorsqu'elles sont destinées aux enfants. Il est interdit dans les autres programmes.	V. - Produits et services ne pouvant faire l'objet d'un placement Les produits suivants ne peuvent faire l'objet d'un placement : - les boissons comportant plus de 1,2 degré d'alcool ; - le tabac, les produits du tabac et les ingrédients définis à l'article L. 3511-1 du code de la santé publique ; - les médicaments au sens de l'article L. 5111-1 du code la santé publique, qu'ils soient ou non soumis à prescription médicale ; - 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 ; - les préparations pour nourrissons au sens de l'article L. 121-50 du code de la consommation. Les produits ou services du parrain d'une émission ne peuvent faire l'objet d'un placement dans cette

					émission.
EL	YES Product placement is prohibited in cases where TV advertisement is forbidden under Greek law (Art. 12 par. 6c of Presidential Decree 109/2010). Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.	Presidential Decree 109/2010 on AVMS	Article 12 1.Product placement shall be prohibited.	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.	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.
HU	YES PP not allowed in news, political, religious programmes and reporting official events even as product props.	Act CLXXXV of 2010 on Media Services and Mass Communication - Consolidated 1 July 2015	30. § (1) With the exceptions provided under Paragraph (2), product placement in media services shall be prohibited.	30. § (2) and (3) b) (2) Product placement in programmes shall be permitted (a) in cinematographic works intended for showing in cinemas; cinematographic works or film series intended for showing in media services; sports programmes and entertainment programmes; (b) in programmes other than those stipulated in Point (a), provided that the manufacturer or distributor of the product	30. § (4) a) c) Programmes shall not contain product placements of the following products: (a) tobacco products, cigarettes or other products originating from undertakings, the primary activity of which

	"Children" - minors under the age of 14.			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. (3) No product display shall take place (a) in a news programme and political information programme; (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; (c) in a programme reporting on the official events of national holidays (d) in a programme of religious or ecclesiastic content. 31. § (1) and (3) Programmes containing product placements shall comply with the following requirements: (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; (b) they shall not call upon the purchase or rent of a product or the use of a service in a direct manner; (c) they shall not give unjustified emphasis to the product so displayed, which does not otherwise stem from the content of the programme flow. (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.	is the manufacture or sale of cigarettes or other tobacco products; (c) medicines, medicinal products, or therapeutic procedures, which may only be used upon medical prescription.
HR	NO Detail: MS chose to use the waiver and not apply identification requirement to programmes neither	The Electronic Media Act - Official Gazette No. 153/09,84/11, 94713, 136/13	Art. 18 (1) Product placement shall be prohibited.	Art. 18 (2)-(5) (2) By way of derogation from paragraph 1 of this Article, product placement shall be admissible: - 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 - where there is no payment to the media services provider, but	Art. 18 (6) In any event audiovisual programmes shall not contain product placement of: - tobacco products or cigarettes or product placement of natural and legal persons whose principal

	produced nor commissioned by the AVMS provider.			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. (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. (4) Audiovisual programmes that contain product placement shall meet all of the following requirements: - 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, - 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, - they shall not give undue prominence to the product in question, - viewers shall be clearly informed of the existence of product placement, - 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. (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 provider.	activity is the manufacture or sale of cigarettes and other tobacco products, or - specific medicinal products or medical treatments available only on prescription.
IE	NO	Broadcasting Act - consolidated 1 December 2014	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. 43. (4) Broadcasting rules shall provide for the matters required to be provided for by Chapters IIA, IV and V of the Council Directive.	Article 7 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. 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.	Article 7 4. Product placement shall not be permitted: - for products and services prohibited by this Code (include cigarettes and tobacco as well as products, treatments or services only available on medical prescription); - 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).
		BAI General Commercial Communications Code	Article7. Television Product Placement 1. Product Placement is prohibited unless permitted as specified in the Code.	3. Programmes that contain acceptable product placement shall meet 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 broadcaster and the placement therein shall be editorially justified; (b) their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster; © 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; (d) they shall not give undue prominence to the products or services in question; (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 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.	

		S.I. No. 258/2010 - European Communities (Audiovisual Media Services) Regulations 2010. Regulations 8 to 9 Code of Conduct On-Demand Audiovisual Media Services	8. (1) Subject to this Regulation, product placement in an on-demand audiovisual media service is prohibited. Section 13(1) Media service providers of on-demand	5. Product integration and thematic placement are not permitted. 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 itself or a company affiliated to the media service provider, when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.	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. 9. Programmes shown on an

			audiovisual media services shall, in co-operation with the BAI, and other relevant bodies develop codes of conduct relating to Regulations 5, 6, 7, 8, 9, 10 and 12.	6. Product Placement shall be 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 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. 7. 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 and any product placement shall be editorially justified. 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; 8 d. Viewers shall be clearly informed of the existence of product placement. 8. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and where practicable, when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer. This provision only applies where the programme in question has either been produced or commissioned by the media service provider.	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.
IT	NO Detail: MS chose to use the waiver and	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	Art. 40a 4.The placement of tobacco products or cigarettes, or products from companies whose main activity is the manufacture or sales of

	not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.			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.	cigarettes and other tobacco products, is prohibited. The placement of medicinal products or medical treatments only available on prescription is also prohibited.
LT	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 question; 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	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.

				advertising break in order to avoid any confusion on the part of the viewer. 4. Product placement in children's programmes and news programmes shall be prohibited.	
LU	NO Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.	Grand ducal regulation of 17 December 2010 amending the grand dual regulation of 5 April 2001 setting the rules on advertising, sponsorship, teleshopping and self-promotion in television programmes		Art. 5bis (1) and (2) (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: a) in cinema works, films and series made for audiovisual media services and in sports and entertainment programmes; or 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. The derogation in a) above does not apply to children's programmes. (2) Programmes with product placement shall comply with at least all the following requirements: 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; b) they shall not directly encourage the purchase or rental of goods or services by, especially, specifically promoting those products or services; c) they shall not unjustifiably highlight the product in question; 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. Point d) shall not apply unless the programme concerned was produced or commissioned by the audiovisual media service provider itself or by an associate.	Art. 5bis (3) 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.
LV	NO	Electronic Mass Media Law	Section 35. (10) Product placement in the programmes of an electronic mass medium is prohibited except for the cases	Section 35. (11) 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,	Section 45. (3) Product placement of the following goods and services in the broadcasts of an audiovisual electronic media is prohibited:

			referred to in Section 45, Paragraph one of this Law.	trademarks and the like) and it is not possible to avoid them. Section 45. (1) and (2)(1) Product placement in programmes is allowed only in the following cases: 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 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. (2) Broadcasts containing product placement shall meet at least all of the following requirements: 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; 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; 3) undue prominence to the product in question shall not be given in a broadcast; and 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.	1) tobacco products, cigarettes or products of undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; and 2) and medical treatment available in Latvia only on prescription or direction of a physician.
MT	YES No derogation concerning product props in the programmes for children No product placement of alcohol and gambling services during certain times of the	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 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. (3) Programmes that contain product placement shall meet at	16M (4) (4) In any event programmes 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

	day (watershed) Waiving possibility left to the Authority			least all of 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 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; (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: 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.	products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls; Sub article 16M(4)(c) of the Broadcasting Act was not included; this states (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. 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 concerting tatoos can only be aired between 21.00 and 6.00am.
NL	YES	Act no 552	Art PSB: 2.88b 3.b	Art. 3.19a 2.Unless the programming is specially intended for	Article 5.2 of the Tobacco Act

	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) "Children" - under 12 years old.	amending the Media Act 2008 and the Tobacco Act for the implementation of the Audio-Visual Media Services Directive	The media output contains no product placement. Art. 3.19a 1. In programming of commercial broadcasting services product placement is prohibited.	children under twelve, the first paragraph is not applicable to programming consisting of:a. films;b. series;c. sports programmes;d. light entertainment programmesArt. 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.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; anb. The product in question does not receive excessive attention.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.5. The Commission can place further rules concerning the application of product placement in programming, with these rules requiring the approval of Our Minister.	prohibits product placement for tobacco products.
PL	YES No derogation concerning product props in the programmes for children More detailed rule: 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	Broadcasting Act - Consolidated 12 October 2012	Art. 16c. 2) 16c. The following shall be prohibited: 2) product placement, subject to Article 17a,	Art. 17a. 1.-5. 1. Product placement shall be admissible exclusively: 1) in cinematographic works, films or series made for audiovisual media services, sports programmes and light entertainment programmes, or 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. 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. 3. Neutral information on the producer or seller of the placed product or an entity providing the placed service as well as on	Art. 17a. 6. Product placement of goods and services referred to in Article 16b paragraph 1 shall be prohibited. 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 paragraph 8, except for the provisions relating to

	service shall be inserted at the end of the programme			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. 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. 5. Programmes that contain product placement shall not: 1) give undue prominence to the product in question, 2) directly encourage the purchase or rental of goods or services, in particular by making promotional references to those goods or services. Art. 47d. 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.	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
PT	YES Stricter rules for programmes for children - presentation of any type of commercial message liable to prejudice minors (i.e.unhealthy food) is prohibited. TV Act, Art. 41-A (8) - No derogation concerning PP in the children programmes even without payment. TV Act, Art. 41-A (2)	Television Act 27/2007 (as amended by laws 8/2011, 40/2014 and 78/2015) Law 37/2007, of 14 August, (Tobacco Act) Advertising Code		Article 41-A 1.-7. and 9.-11, of the Television Act 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. 2 - Product placement in children's programmes is prohibited. 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. 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. 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 such reference is likely to mislead the public with respect to their nature, or by the recurrent form in which such items are	Articles 16 and 18 of the Tobacco Act Article 19 of the Advertising Code

	More detailed rules concerning product props and "Significant commercial value" TV Act, Art. 41-A (7)(9)(10)(11) 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)			presented or shown. 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. 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. 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. 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. 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). 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 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.	
RO	NO Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.	**The Audiovisual Law 504/2002 - consolidated**	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.
SE	YES PP prohibited for alcohol products	The Radio and Television Act - consolidated 17 June 2010 Complemented	Chapter 6 Section 11. Television or on-demand television programmes must not include product placement unless	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 4.[...]3§. Programmes that include product placement may only be broadcast if the programme does not unduly promote	Chapter 6. Section 2 para. 2[...]However, the first paragraph above shall not apply to programmes that are primarily aimed at children under 12 years of age nor to

		by law SFS 2015:662 on the influence of PP on the editorial independence.	Section 2 determines otherwise.	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 re-commences 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, or2. give undue prominence to a product or a service.)	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, or3. 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 appropriately identified at the start and the end of the programme, and when a programme resumes after an	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.

				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. (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.	
SK	NO - "Children" - minors up to 12 years of age. Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.	Act 308/2000 on Broadcasting and Retransmission and on the amendment of Act No. 195/2000on Telecommunications - consolidated 3 February 2015	§ 39a (2) (2) Product placement shall be permitted only under the conditions laid down by this act.	§ 39a (2) to (6) (2) Product placement shall be permitted only under the conditions laid down by this act. (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). (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. (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. (6) Product placement shall be prohibited in programmes intended for minors up to 12 years of age.	§ 39a (7) 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. § 31a (10) Media commercial communication for medicinal products available only on prescription and medical treatments paid from public health insurance under specific legislation shall be prohibited.

UK	YES No derogation concerning product props in programmes for children 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…) Detail: MS chose to use the waiver and not apply identification requirement to programmes neither produced nor commissioned by the AVMS provider.	[GB] Electronic Communications Broadcasting - The Audiovisual Media Services Regulations 2009 Ofcom Broadcasting Code – Section 9 (rules 9.6 to 9.11 Stricter rules applying to product placement included in all programmes produced under UK jurisdiction (rules 9.12 to 9.13)		368H (3), (6)-(10), (13) (3) Product placement is prohibited in children's programmes included in on-demand programme services. (6) Product placement is otherwise permitted in programmes included in on-demand programme services provided that— (a) conditions A to F are met, and (b) if subsection (14) applies, condition G is also met. (7) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is— (a) a film made for cinema; (b) a film or series made for a television programme service or for an on-demand programme service; (c) a sports programme; or (d) a light entertainment programme. (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. (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. (10) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned. (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— (a) at the start and end of such a programme, and (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. 9.6 Product placement is prohibited except in the following programme genres: a) films; b) series made for television (or other audiovisual media services); c) sports programmes; and d) light entertainment programmes.	368H (4) Product placement is prohibited in on-demand programme services if— (a) it is of cigarettes or other tobacco products, (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 (c) it is of prescription-only medicines. Ofcom Broadcasting Code For programmes produced under UK jurisdiction: 9.12 Product placement is not permitted in the following: a) religious programmes; b) consumer advice programmes; or c) current affairs programmes. 9.13 The product placement of the following is prohibited: a) alcoholic drinks; b) foods or drinks high in fat, salt or sugar ("HFSS"); c) gambling; d) infant formula (baby milk), including follow-on formula; e) all medicinal products f) electronic or smokeless cigarettes, cigarette lighters, cigarette papers, or pipes intended for smoking; or g) any product, service or trade mark that is not allowed

				9.7 Programmes that fall within the permitted genres must not contain product placement if they are: a) news programmes; or b) children's programmes. 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. 9.9 References to placed products, services and trade marks must not be promotional. 9.10 References to placed products, services and trade marks must not be unduly prominent.	to be advertised on television.

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 given clock hour shall not exceed 20 %.**	Article 23(2) AVMSD **Paragraph 1 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.**
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 **20%** of this period. For **non-linear services**, The maximum time allotted to advertisement and teleshopping cannot exceed **20%** 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 **twenty percent** 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 **20%** 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 **12 minutes.**	shall not apply to announcements made by the broadcaster in connection with its own programme services, programmes and ancillary products derived from those programmes,

			For **PSB channels** (BNT): **15 minutes over a period of 24 hours** and **4 minutes per hour** 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 **regional PSB channels**: may not exceed **6 minutes** per hour.	promotion of European films, as well as to charity appeals and public-benefit causes.
Czech Republic	YES for PSB	Act 231/2001 on Radio and Television Broadcasting and on amendment to other acts - Consolidated 21 April 2010 - § 50(2) and 50(4)	During each hour of television broadcasting by any broadcaster the time allocated to advertising and teleshopping spots shall not exceed **12 minutes**. PSB: general ban for advertising spots with the exception for two channels (ČT2, ČT4) that shall not exceed 6 min. an hour within 19 -22hours and 0,5% of the daily transmission time.	shall not apply to a broadcaster's notification 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	NO	The Radio and Television Broadcasting Act - consolidated 20 March 2014 - § 75. (1) Executive Order on advertising and sponsorship - consolidated 21 June 2013 - § 6.	***Section 75(1) of the Radio and Television Broadcasting Act:*** "Advertisements on radio and **television** may occupy a maximum of **12 minutes per hour**" Advertisements on radio and television may occupy a maximum of **12 minutes** per hour. Time devoted to teleshopping spots is counted in the time limit for advertising	References by the broadcasters made to their own programmes and ancillary products which are derived from said programmes, public service announcements and charity appeals broadcast free of charge are not considered to be advertising (Executive Order on advertising and sponsorship § 1(3)).
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 **20 per cent**. **PSB**: Article 16(1) provides that on **working days** the total advertising time on ARD and ZDF must be a **maximum of 20 minutes** (calculated as an **annual average**). Sponsoring and product	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.

			placement are not counted. **After 8 p.m.** as well as on **Sundays** and on **public holidays** celebrated in the whole of Germany, **advertising may not be broadcast.**	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 - § 29. (1)	The hourly transmission time of television and radio advertising spots and teleshopping shall not exceed **12 minutes**	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 commercial broadcasters and even stricter rules for PSBs.	Broadcasting Act - consolidated 1 December 2014 - 43.(1) (b)	The Authority shall prepare the rules as to the maximum amount of advertising in any given hour for the transmission of advertisements and teleshopping. The total daily time for broadcasting advertising and teleshopping spots shall not exceed a maximum of **18 per cent of the total broadcast day**. The time to be given to advertising and teleshopping spots in any clock hour **shall not exceed a maximum of 12 minutes**. These rules apply solely to commercial broadcasters. The number of advertising minutes on Public Service Broadcasters is determined by the Minister for Communications, Energy & Natural Resources **and currently stands at 6 minutes per clock hour**. (*Section 106(3) of the Broadcasting Act 2009*)	
Greece	NO but more details on exceptions to 12-minute rule	Decree No. 109 - Article 23 1 and 3. L. 4279/2014, Article 6	The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed **20%**.	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. Decree 1624/2011, 14 November	Television media service providers may exercise that right by broadcasting **12 minutes** 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." The length of one Telepromotion should be at least2 minutes
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 08 January 2016 **Décret n°92-280 du 27 mars 1992 pris pour l'application des articles 27 et 33 de la loi n° 86-1067 du 30 septembre 1986 et fixant les principes généraux définissant les obligations des éditeurs de services en matière de publicité, de parrainage et de télé-achat. (dernière modification**	Article 53 : For PSB channels: no advertising between 8pm and 6am Art. 15 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 **9 minutes per hour on average** over all the schedule periods and **not more than 12 minutes** in	

		: 1 janvier 2011)	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: **fixed individually and in any case, not more than 12 minutes** 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 Art. 15.1 Pour les services de cinéma et les services de paiement à la séance, les programmes faisant l'objet de conditions d'accès particulières ainsi que les programmes dont la diffusion en clair a été autorisée à titre exceptionnel par le Conseil supérieur de l'audiovisuel ne peuvent pas comporter de messages publicitaires. Toutefois et par dérogation à l'article 8, pour les services de cinéma distribués par câble ou diffusés par satellite ou par voie hertzienne terrestre en mode numérique, les programmes faisant l'objet de conditions d'accès particulières peuvent comporter des messages publicitaires concernant le secteur du cinéma. Les proportions fixées en application du V de l'article 15 sont alors respectées, respectivement, pour les programmes diffusés en clair et pour les programmes faisant l'objet de conditions d'accès particulières.	

			Art.16 Aucune publicité ne peut être insérée dans les diffusions de services religieux.	
Croatia	YES for PSB	Electronic Media Act - Consolidated 8 July 2011 - Art. 32 (1)-(2) Croatian Radio –television Act – Official Gazette 137/10, 76/12 – Art. 37 (2) and(4)	The duration of advertising spots and teleshopping spots within a given clock hour (…) shall not exceed **12 minutes**. Electronic Media Act – Official Gazette No 153/09, 84/11, 94/13, 136/13 Art. 32 (1) Croatian Radio - Television The duration of advertising spots in general television programmes within a given clock hour (…) shall not exceed **9 minutes**, while in the period from 18 to 22 hours (prime time), within a given clock hour shall not exceed 4 minutes. Croatian Radio- Television shall not broadcast advertising spots on specialized television programming channels or broadcast advertising spots to the general television programming channels separately by region.	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. Electronic Media Act – Official Gazette No 153/09, 84/11, 94/13, 136/13 Art. 32 (2)
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 **20 percent**. For PSB: "shall not exceed **4 percent of the weekly** programming schedule and **12 percent of every hour**; any excess, in any case not exceeding 2 percent in one hour, must be recovered in the previous or following hour."	"Shall not apply to announcements by broadcasters, including of analogue, in relation to their programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements."

			For national free-to-air channels: "shall not exceed **15 percent of the daily** programming schedule and **18 percent of a determined and distinct clock hour**; 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. " 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, **12 percent of a determined and distinct clock hour**; any excess, in any case not exceeding 2 percent during the hour, must be recovered in the previous or following hour."	
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 **20%**.	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 - Section 42. (1) and (2) 1).	The time reserved for advertising and teleshopping (…) may not exceed **20 per cent** 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 **10 per cent** of each natural clock hour.	Shall not include: "announcements of the audiovisual electronic mass media regarding their own broadcasts and other products which are directly derived from their broadcasts, sponsors' announcements and product placement"

Lithuania	YES for PSB	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 **20%**. No advertising on PSB channels.	"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 **20 %**.	"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) l)	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 **teleshopping windows** may not exceed **three hours** 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 particularly in Part V of the Broadcasting Act with Article 19(2)(3) (4) (5) & Para 15 and 16 Third Schedule).	The proportion of advertising spots and teleshopping spots within a given clock hour shall not exceed **20%**. (Para 15 of the Third Schedule of the Broadcasting Act 350) By Article 19 (3) the Authority is given the power to legislate further than what is actually imposed by the current provisions. Article 19 (4) implies that the Authority can exercise methods of control for the purpose of securing that the provisions of the code are complied with, and the Authority has the power to give directions to exclude any particular advertisement	"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." (Para 16 of the Third Schedule of the Broadcasting Act 350) Article 19 (8) of the Broadcasting Act items designed to give publicity to charitable purposes; reviews of literary or artistic or other publications; announcements of the place of any performance included in the programme; amongst others, would not fall under advertisement.

			Article 19 (5) gives the power to the Authority to give directions on the time when advertisements are to be allowed. Such directions mentioned in Article 19 (4) are qualified in Article 19 (11) (a),(b) and (c) and may relate to the amount of advertising time, the minimum interval which must elapse between any two periods given over to advertisements and the exclusion of advertisements from a specified broadcast. General Interest Objectives (Television Services) (Selection Criteria) Regulations (S.L. 350.32 Par 3(3)) establishing a maximum allocation of 3 hours for teleshopping windows between 7:00 and 23:00	
Netherlands	YES for PSB	Act no 552 amending the Media Act 2008 and the Tobacco Act for the implementation of the Audio-Visual Media Services Directive - Article 2.95 1b-c.	The programming on a programme channel consists of a maximum of twelve minutes per hour of advertisement and teleshopping messages. PSB : per channel no more than **15% of the total daily** duration of the programmes and no more than **12 min per hour**	Articles 2.95 (1) and 3.8 (1) state that the share of advertisement and teleshopping messages shall not exceed 12 minutes per hour. Announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements are not mentioned so those messages do not count for the maximum.
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 **20 per cent** 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 **42 minutes per day per**	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

			channel, deviations of not more than 20 per cent per day being permissible.	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 and for some PSB TV channels (RTP1 and RTP 2)	Television Act 27/2007 (as amended by laws 8/2011, 40/2014 and 78/2015) - Article 40 1 and 2. PSB Concession contract of 2015, clause 23, (1) and (2)	Broadcasting time allotted to television advertising and teleshopping between two-hour periods may not exceed **10% in the case of conditional access television programme services** and may not exceed **20% in the case of free-to-air television** programme services, whether unrestricted or subject to subscription. The transmission time devoted for commercial advertising in RTP 1 shall not exceed 6 minutes within a give clock hour; RTP2 can not transmit commercial advertising	"The limits established in the preceding paragraph do not apply to self-promotions, telepromotions and blocks of teleshopping, as well as to the promotion of ancillary products, directly related to programmes of the television operators."
Romania	Yes for PSB	The Audiovisual Law 504/2011 - consolidated Art. 35 (1)-(2)	The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed **20%**, 12 minutes respectively; in case of **public television**, their duration shall not exceed **8 minutes** 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 **12 minutes** 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. 195/2000on Telecommunications - consolidated 3 February 2015 - § 36 (2) and § 37a (1) a) and § 37a (1)(e)	Broadcasting time reserved for advertising spots and teleshopping spots must not exceed **20 %** of broadcasting within one hour (12 min.). Broadcasting time reserved for advertising **between 7.00 p.m. and 10.00 p.m. by a public service broadcaster** must not exceed **eight minutes** per a given whole hour.	Shall not apply to : - " self-promotion including information about the broadcaster's own programmes, " *§ 37a(1)(a)* - "Identification of the sponsor of a programme broadcast under § 38(2) and the identification of product placement under § 39a (5)(d)." *§ 37a(1)(e)*
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 **12 minutes** 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	YES for PSB	Radio and Television Act - consolidated 17 June 2010 - Chapter 8 1§ para. 1 and 16§. The broadcasting licence of the public service-broadcaster prohibits transmissions of	Advertising may be broadcast on television for no more than **12 minutes** per full clock hour. +additional rule on minimum time: "The total time devoted to promotional messages in a television broadcast **may**	"shall not apply to advertising that a media service provider makes for its programme activities. "

		advertising (with the exception of advertising of own and other psb programming).	**not be less than one minute** in any given case(…)" Does not apply to broadcasts of live sports events. However, no advertising is allowed in PSB programming	
United Kingdom	YES for PSB and other channels	Ofcom Code on the Scheduling of Television Advertising – 4 and 7	Time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed **12 minutes**. In addition: - for **PSB**, must not exceed: i) **an average of 7 minutes** per hour for every hour of transmission time across the broadcasting day ; and ii) subject to (i) above, **an average of 8 minutes** an hour **between 6pm and 11pm**; -on **other channels**, time devoted to television advertising and teleshopping spots must not exceed **an average of 12 minutes** of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, **of which no more than 9 minutes may be television advertising**.	

Source: EAO AVMSDatabase http://avmsd.obs.coe.int/cgi-bin/search.php [accessed on 25/11/2015], complemented by Commission own information

Various stricter/additional national rules, including alcohol advertising, advertising in children's programmes and showing of a sponsorship logo in children's programmes

MS	*Legal basis*	*Prohibition of advertising in children's programmes*	*Legal basis*	*Additional prohibition /regulation of alcohol/spirits advertising*	*Legal basis*	*Prohibition of sponsorship logo in children's programmes (Article 10(4)) AVMSD)*
AT		NO PSB must not broadcast advertising targeting minors immediately before and after children's programmes		YES No audiovisual commercial communication for spirits		NO
BE (French Community)		YES	Article 72.2 c) d) e) du contrat de gestion conclut entre le Gouvernement de la Communauté française et la RTBF Article 16 du décret SMA	YES No spirits advertising on PSB Broadcasters advertising alcohol should provide equivalent free space for prevention campaigns	Art 18 §3 du décret SMA	YES on PSB and local televisions "la publicité, le télé-achat et l'autopromotion ne peuvent être insérés dans les journaux télévisés, dans les programmes pour enfants, dans les retransmissions de cérémonies religieuses et laïques."
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
BG		NO		YES No direct spirits advertising No indirect spirits advertising before 22.00		YES

CY		NO	Paragraph F(2)(a) of Index IX (Reg.50), of the Advertising and Sponsorship Code.	YES No advertising of spirits containing 1,2% alcohol or above is permitted in breaks: - During, before or after children's programmes - During, before or after programmes suitable for persons under the age of eighteen. - During, before or after programmes with religious content.		NO
CZ		NO		NO		NO
DK		NO		NO		NO
DE		YES		NO In general, no advertising on PSB after 20.00, on Sundays and official holidays		YES
EL	Law 1730/1987 article 3, Ministerial Decision (Regulation 3/1991 article 9-Code of Ethics for radio and television advertisement-National Council for Radio and Television), Consumer Protection Act:.	YES Prohibition of advertising war games targeting minors. Prohibition of advertising toys on TV during transmission hours considered to address minors (practically from 07.00 to 22.00). -Prohibition of war games	Presidential Decree 109/2010, (Article 10, par.4 and Article 11, par. 3)	YES The transmission of audiovisual commercial communications for alcoholic beverages during children's programmes or during the children's television zone is strictly forbidden. Programmes whose content is evidently directed at minors are prohibited from accepting sponsorship about alcoholic beverages	Decree No. 109/2010 (Article 11, par. 6) (Directive 1/2011, Article 11 National Council for Radio and Television)	YES

	L. 2251/1994, article 9, as amended by L. 3587/2007 article 11, Presidential Decree 109/2010, article 10, par. 4)	The transmission of audiovisual commercial communications for alcoholic beverages during children's programmes or during the children's television zone is strictly forbidden.				
EE		NO		YES No alcohol advertising on PSB /Comment: there is no advertising on PSB according to Estonian Public Broadcasting Act. Advertising and sponsorship on PSB channels can be allowed only on special cases/. No alcohol advertising between 7.00 and 21.00		YES
FI	Alcohol advertising: Act No. 1143/1994 on alcohol (Alkoholilaki) Suspension of certain audiovisual programs by advertising: Information Society Code - consolidated 18 September 2015 (Tietoyhteiskun	YES No alcohol advertising in children's programmes A children's program may be interrupted by advertising only if the scheduled duration of the program is more than 30 minutes	Alcohol advertising: Act No. 1143/1994 on alcohol (Alkoholilaki) Tobacco advertising: Act No. 693/1976 on tobacco (Tupakkalaki)	YES No spirits advertising No alcohol advertising between 07.00 and 21.00 No tobacco product advertising or indirect advertising		NO

	takaari)					
FR	**Décret n°92-280 du 27 mars 1992 pris pour l'application des articles 27 et 33 de la loi n° 86-1067 du 30 septembre 1986 et fixant les principes généraux définissant les obligations des éditeurs de services en matière de publicité, de parrainage et de télé-achat. (dernière modification : 1 janvier 2011)**	NO	Law n° 86-1067 of 30 September 1986 on the Freedom of communication – consolidated 08 January 2016 **Décret n°92-280 du 27 mars 1992 pris pour l'application des articles 27 et 33 de la loi n° 86-1067 du 30 septembre 1986 et fixant les principes généraux définissant les obligations des éditeurs de services en matière de publicité, de parrainage et de télé-achat. (dernière modification : 1 janvier 2011)**	YES No alcohol advertising Art.8 : Est interdite la publicité concernant, d'une part, les produits dont la publicité télévisée fait l'objet d'une interdiction législative et, d'autre part, les produits et secteurs économiques suivants : - boisson comprenant plus de 1,2 degré d'alcool ; - édition littéraire sauf sur les services de télévision exclusivement distribués par câble ou diffusés par satellite ; - cinéma ; - distribution pour les opérations commerciales de promotion se déroulant entièrement ou principalement sur le territoire national, sauf dans les départements d'outre-mer et les territoires de la Polynésie française, des îles Wallis et Futuna, dans la collectivité départementale de Mayotte et en Nouvelle-Calédonie. Au sens du présent décret, on entend par opération commerciale de promotion toute offre de produits ou de prestations de services faite aux consommateurs ou toute organisation d'événement qui présente un caractère occasionnel ou saisonnier, résultant notamment de la durée de l'offre, des prix et des conditions de vente annoncés, de	**Décret n°92-280 du 27 mars 1992 pris pour l'application des articles 27 et 33 de la loi n° 86-1067 du 30 septembre 1986 et fixant les principes généraux définissant les obligations des éditeurs de services en matière de publicité, de parrainage et de télé-achat. (dernière modification : 1 janvier 2011)**	NO

				l'importance du stock mis en vente, de la nature, de l'origine ou des qualités particulières des produits ou services ou des produits ou prestations accessoires offerts.		
HU		YES • Media Act Section 33: Programs broadcast in linear media services may not be interrupted with advertisements or teleshopping if the program is intended for minors under the age of fourteen, if its duration does not exceed thirty minutes Virtual or split screen advertisements cannot be inserted in programs broadcast in linear audiovisual media services, whichare intended for minors under the age of fourteen, if their duration does not exceed thirty minutes;		YES No alcohol advertising on PSB No spirits advertising between 18.30 and 21.30		NO

HR	Electronic Media Act, Article 16, paragraph 8	NO, but: Audiovisual commercial communications shall not: – cause physical or moral detriment to minors, – directly encourage minors to buy or hire a product or service by exploiting their inexperience or credulity, – directly encourage minors to 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 AND Children's programmes, when their duration is less than 30 minutes, shall not be interrupted by short advertising spots and/or short teleshopping spots.	Electronic Media Act, Article 16, paragraph 6 Electronic Media Act Article 31, paragraph 4 and 5	YES Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages. Advertising and teleshopping for alcohol and alcoholic beverages shall be prohibited, unless the Food Act, and the subordinate legislation passed by virtue thereof, provide otherwise. Advertising and teleshopping for alcohol and alcoholic beverages referred to in paragraph 4 of this Article shall comply with the following criteria: - it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages, - it shall not link the consumption of alcohol to enhanced physical performance or to driving, - it shall not create the impression that the consumption of alcohol contributes towards social or sexual success, - it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts, - it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light, - it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.	Electronic Media Act, Article 17, paragraph 5	YES The showing of a sponsorship logo during children's programmes and religious programmes shall be prohibited.

	Electronica Media Act, Article 32, paragraph 6	The children's programmes may be interrupted by advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes.				
IE		YES Alcohol advertising is not allowed in advertising breaks in programmes where the audience profile indicates that the adult audience for the programme would be less than 75% of the total audience.		YES No spirits advertising No alcohol advertising in or around children's programmes In addition, all alcohol advertising, purchased in any media, based in Ireland, and/or aimed at the Irish marketplace is subject to the Alcohol, Marketing, Communications and Sponsorship Codes of Practice (http://asai.ie/wp-content/uploads/Alcohol-Codes-of-Practice-2008.pdf), which comprises a set of voluntary self-regulatory codes that includes specific sections dealing with Television and Radio advertising. All broadcasters in Ireland are required to comply with these codes under rule 11, section 8.1 of the Broadcasting Authority of Ireland's Commercial Communications Code (http://www.bai.ie/wordpress/wp-content/uploads/201308_GCCC_English_vFinal.pdf)		YES European Communities (Audiovisual Media Services) Regulations 2010 (S.I. No. 258 of 2010) – Article 7(7) "*Sponsorship logo shall not be displayed during children's programmes, documentaries and religious programmes in an on-demand audiovisual media service.*" BAI Childrens Commerical Communications Code 14(5) "*Sponsor logos may not be shown during the editorial segments of Children's Programmes*."

IT		NO but protected time slot between 16.00 and 19.00 and during children programmes (no alcohol, call and contraceptive advertising)	Italian AVMS Code	YES No spirits advertising between 16.00 and 19.00 No spirits advertising during breaks immediately before or after children programmes Article 34, paragraph 7, of the Italian AVMS Code: "Broadcasters, even the analogue ones, are also required to ensure […] the application of specific measures to protect children during the hours of programming from 16.00 to 19.00 and within the programs directly aimed at children, with particular regard to advertising, promotions and other forms of audiovisual commercial communications". Art. 36-bis, paragraph 1, lett. e), of the Italian AVMS Code: "Audiovisual commercial communications of alcoholic beverages shall not be aimed specifically at minors nor encourage immoderate consumption of such beverages ". Article 37, paragraph 9, and 11, of the Italian AVMS Code: "9. Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria: a) not be aimed specifically at minors or, in particular, do not depict minors consuming these beverages; b) do not link the consumption of alcohol to physical performance of particular importance or driving cars; c) do not create the impression that the		YES

				consumption of alcohol contributes to social or sexual success; d) do not claim that alcoholic drinks have therapeutic qualities or stimulating or calming of resolving personal conflicts ; e) do not encourage an excessive and uncontrolled use of alcohol or to present in a negative light abstinence or moderation; f) do not use an indication of the high degree of alcohol as a positive quality of beverages. […] 11. "The provisions of this Article shall also apply to advertising and teleshopping broadcast by radio stations ". Article 39, paragraph 2, of the Italian AVMS Code: "The audiovisual media services or programs shall not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products or the manufacture or sale of spirits". Article 4, paragraph 4, litt. a), of Self-regulation Code on TV and minors → No spirits advertising during breaks immediately before or after children programmes.		
LT		YES for PSB	Law on Alcohol Control – Consolidated 1 November 2015 - Art. 29.2 (3)	YES No alcohol advertising 6.00 and 23.00 except during direct or continuously broadcasted international art, culture or sports events.		NO

LV		NO		YES No spirits advertising		NO
LU		NO		NO		NO
MT		NO Also teleshopping windows may not be broadcast immediately before or after a programme aimed at children.		YES No alcohol advertising between 06.00 and 21.00. In sponsored programmes, it shall not be permitted to use the name of an alcoholic drink as the name of the sponsor between 06.00 and 21.00 But particular alcohol advertising which promote cut price offers, happy hour drinks, buy two and get one free, money off coupons and similar advertisements which encourage excessive or immoderate consumption are unacceptable and are prohibited and are not tied to any water shed. The rest of the Requirements as to Advertisements, Methods of Advertising and Directions Applicable to Alcoholic Drink Advertising, Sponsorship and teleshopping) (**S.L. 350.24)** target the content of advertising implying that alcohol should be consumed with moderation, should not imply that drinking is essential to social success or acceptance, should not imply that drinking is an essential part of the daily routine. Such advertising should not use aggressive, anti-social or irresponsible behaviour.		YES The showing of a sponsorship logo during children's programmes shall be prohibited.

				Advertising referring to alcohol advertising and which are listed in the Main Broadcasting Act point out to a number of criteria amongst them such advertising may not be aimed specifically at minors or depict minors acquiring or consuming such beverage.		
NL	Act no 552 amending the Media Act 2008 and the Tobacco Act for the implementation of the Audio-Visual Media Services Directive Articles 2.97 and 2.106	YES PSB: no advertising in children's programmes. Children's programmes may not be sponsored.	Act no 552 amending the Media Act 2008 and the Tobacco Act for the implementation of the Audio-Visual Media Services Directive Articles 2.94 2 b (PSB) and 3.7 2 b (Commercial media services)	YES No alcohol advertising between 06.00 and 21.00		NO
PL		YES		YES No alcohol advertising except beer No beer advertising 06.00 and 20.00 (except during sporting games)		NO
PT	Portuguese TV Act, Art. 40-B (3) (c) (split screen adv.) Art. 41-D (2) (interactive adv.) Art. 41-A (8)	NO but no split screen advertising in children's programmes and no interactive advertising in and around children's programmes No advertising for HFSS during children's programmes and no teleshopping in and	Portuguese Advertising Code, Art. 17 (2)	YES No alcohol advertising between 7.00 and 22.30.		NO

	(adv. for HFSS) Art. 40-B (3) (b) (teleshopping) Art. 41-A (2) (product placement)	around children's programmes No product placement in children's programmes				
RO	**Decision NAC 220/2011 - consolidated, art.107 alin. (3) lit.a)**	NO but prohibition of split screen advertising in programmes destined to minors	**Decision NAC 220/2011 – consolidated art.98 alin.(3); art.113**	YES No spirits advertising between 06.00 and 22.00		NO
SK		NO	Act No. 308/2000 on Broadcasting and retransmission and on the amendment of Act No. 195/2000 on Telecommunications as amended	YES No alcohol advertising except beer and wine between 06.00 and 22.00 No wine advertising between 06.00 and 20.00		NO
SI		NO	Act Regulating the Sanitary Suitability of Foodstuff, Products and Materials Coming into Contact with Foodstuffs (ZZUZIS),	YES No advertising of alcoholic beverages containing more than 15 per cent of alcohol. No alcohol advertising between 07.00 and 21.30. Article 15		NO

			Article 14-15.b	The advertising of alcoholic beverages, containing more than 15 % of alcohol by volume, is prohibited. Article 15a It is forbidden to advertise alcoholic beverages on radio and television between 7 a.m. and 9.30 p.m. Article 15b The advertising message shall comply with the following conditions: it - shall not be directed at young and shall not contain scenes in which alcohol is consumed; - shall not portray persons under 25 years of age; - shall not be displayed in or on buildings, premises and adjacent grounds, where health services and educational and sport activities are being carried out; - shall not be displayed on hoardings, signboards, posters or illuminated advertising signs which are less than 300 metres away from kindergartens and schools; - shall not be displayed at manifestations and sports events where the audience or the participants are primarily underage persons; - shall not contain any symbols, images, characters from cartoons and other youth programmes;		
ES		NO	General Law 7/2010 of 31 March on	YES Forbidden advertising for all spirit drinks over 20°		NO

			Audiovisual Media	For spirits drinks below 20° advertising only between 20.30H and 06.00 in the next morning		
SE	Radio and Television Act 2010:696) Ch 8, 3 & 7§§	YES: There is a general ban for any advertising targeting the attention of children under the age of 12. Further: A program mainly targeting children below 12 must not be interrupted by advertising and no advertising must be placed directly before or after such a program.	Alcohol Act (2010:1622) Ch 7, 3§ The Radio and Television Act (2010:696) Ch 7, 2§	YES No alcohol advertising is allowed in tv or radio transmissions No sponsoring by companies whose main activity is to produce or sell alcohol is allowed.	Broadcasting license for public service broadcasters	YES for PSBs where no sponsoring is allowed for programs mainly targeting children under 12 years.
UK		NO but may not be advertised in or adjacent to : ***programmes for minors audiences :** -Gambling (with some exceptions) / betting -Slimming products /		YES No advertising of alcoholic drinks should be targeted at persons under 18 years of age, and should not imply, condone or encourage immoderate, irresponsible or anti-social drinking. See www.cap.org.uk - Principle 19 on Alcohol.		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.

		treatments /establishments -Certain religious matters -Live premium rate services ***programmes for young audiences :** -Lotteries/gaming/betting -Medicines, vitamins or dietary supplements -Computer games with 18+, 16+ or 15+ rating -HFSS products -Matches -Trailers for videos carrying an 18 or 15 certificate ***programmes for children** -Sanitary protections -Condoms Also see The Committees of Advertising Practice Principle 5 on children – www.cap.org.uk.				

Transposition of article 9(2) AVMSD on HFSS foods advertising

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)	Federal competence. No specific measures in this area. Art. 7 of the "health law" 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 Flemish community	Art.77 of the Decree of 27 March 2009 stipulates that commercial communications for children and young people may not encourage or condone excessive consumption of HFSS foods	FEVIA code – ICC food framework enforced by JEP (Belgian Advertising Ethics Board)	Federal competence. Art. 7 of the "health law" 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.
Bulgaria		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 + The ethical Code of the Bulgarian Media – voluntary rules on HFSS foods and children	
Croatia		The codes of conduct have not yet been produced and published. In 2012, the Agency for Electronic Media organized the first meeting of the Working Group for drafting a **co-regulation** 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 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. 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. 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.	
Cyprus		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: http://www.fed.org.cy/fed/page.php?pageID=180&mpath=/138/265)	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. Such a code should be submitted for approval by the Authority within a year from the entry into force of the Act. *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 in consultation with FED.
Czech Rep.		Self-regulatory body RPR, the Council for Advertising (including broadcasters and advertisers) uses its code of conduct which applies the **ICC principles,** including the „Framework for Responsible Food and Beverage Marketing Communications 2012“.	
Denmark		Code of conduct by Forum for Responsible Food Marketing Communication – aimed at children under 13 Forum: representatives of food industry, consumer goods retailers , media and advertising sectors 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 guide explaining which foods	

		and media the code includes. It covers commercials on TV, internet (social media) and other media. Since the Code was signed in 2008, the marketing of food with a high content of sugar, fats or salt has disappeared.	
Estonia	Original text available: Relevant Code of conduct http://www.tja.ee/public/documents/Elektrooniline_side/Sideteenused/Meediateenused/Lastele_suunatud_reklaami_eneseregulatsioon.pdf	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.	Article 27 of the Media Services Act – media may establish codes of conduct - if media operators fail to establish the codes- possibility of regulation by the Minister responsible for the area.
Finland		General guidelines by the Consumer Agency on marketing of foods aimed at children 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.	
France	Co-regulation: 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 producers and Author's Union. 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.		
Germany	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 media. 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	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.' 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. 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 professional advertising organisations in the ZAW thus held themselves to these codes of conduct. 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,	

	force since July 2009.	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 http://www.werberat.de/lebensmittel. 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. 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 & 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 Conditions of ARD Werbung Sales & Services GmbH). 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.	
Greece		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.	Article 10(5) of Presidential decree 109/2010 obliges audiovisual media providers to draw up codes of conducts related to inappropriate audiovisual commercial communications of HFSS foods accompanying or included in

		Additionally, there exist **specific voluntary commitments** by media service providers: The pay -TV and -radio service provider Multichoice Hellas S.A., (now Forthnet Media S.A.) has elaborated, since its entry into operation, **a code of conduct for audiovisual commercial communications of foods high in fat, sugar and salt targeting children** 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, having knowledge in the areas of pedagogy, law and marketing. The broadcaster APT CITY NEWS S.A. states that it has prepared a code of conduct and does not accept to broadcast audiovisual commercial communications of HFSS foods to children. - The **Hellenic Association of Brewers** has adopted a scheme focusing on issues of "high sensitivity", targeting persons under 18 and highlighting the association of beer consumption with driving. What's more, a booklet based on the said Code was issued in order to facilitate the users and raise their awareness in what concerns the spirit of the Code. - The **Federation of Greek Distillates and Spirits** – (SEAOP) and the **Association of Drinks Companies** (ADC) adopted a Code aiming at informing and protecting particularly vulnerable social groups such as young people. The Code prohibits advertising that	children's programmes, within one year of commencing their programme The National Broadcasting Council should review the codes every two years. The code has not yet been established. The Code has not yet been established. - Consumer Protection Act (Law 2251/1994), as amended by Law 3587/2007 (Article 9, para.6 on Commercial Communication), prohibits advertising of toys on TV during transmission hours considered to address minors (practically from 07.00 to 22.00). The advertising of tobacco, war games, medicinal products as well as medical treatments available on prescription is totally prohibited. - Law 2328/1995 (Article 3, para. 16 & 17), explicitly provides for the possibility of adopting codes of conduct or relevant regulatory instruments regarding the content of television programs following consultation of interested stakeholders, in the direction of taking co-regulating action in cooperation with the Greek National Council for Radio and Television. - Article 10 of Presidential Decree 77/2003, constitutes the Code of Ethics on News-journalistic-political broadcasts and prohibits either the presentation of "minors through image, name or other way which makes their identity clear, or their participation in all emissions included in this code".

		directly or indirectly is addressed to minors or projects social recognition through consumption of alcoholic beverages. Important innovations lie on joint planning of the competent state bodies with private initiative, information campaigns and public awareness on the consequences of the abuse of alcoholic beverages, as well as the organization and the operation of a mechanism that would monitor compliance with the Code. - The broadcaster APT CITY NEWS S.A. states that it has prepared a code of conduct and does not accept to broadcast audiovisual commercial communications of HFSS foods to children.	Directives and Recommendations issued by Greek NCRTV (National Council for Radio and Television) -Directive n. 2/18.2.2014 regarding the transmission by TV broadcasters of advertising of toys addressed to children under the age of 14. -Directive n. 1/12.7.2011 regarding the interpretation and application of Presidential Decree 109/2010 on sponsorship, product placement, advertising and teleshopping.
Hungary	**NO RULES**		
Italy		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. 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.	Article 36-bis, paragraph 2, legislative decree n. 177/2005: "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 in the general diet is not recommended".
Ireland	**Statutory rules:** **Linear services:** The BAI has updated (in June 2013) broadcasting codes and rules to	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.	

	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: http://www.bai.ie/?page_id=3364 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: • Include celebrities or sports stars; • Include programme characters; • Include licensed characters e.g. characters and personalities from cinema releases; • Contain health or nutrition claims;	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.	

	• Include promotional offers; 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. HFSS foods are defined with reference to **the Nutrient Profiling Model developed by the UK Food Standards Agency.** **On-demand services:** BAI has approved (further to statutory instrument 258/2010) self-regulatory Code of Conduct for On-demand Audiovisual Media Service Providers		
Latvia		Discussions on the establishment of code of conduct are taking place (Ministry of Health, advertising, food and media industry). The regulatory authority is currently checking the public availability of these codes of conduct.	Article 24(5) of the Electronic Mass Media Law requires electronic media providers to draw up publicly available codes of conduct on AVCC 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	**NO RULES** 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	The Code for the Protection of Minors (**S.L 350.05)** provides legal		The Broadcasting Code provides that the Media Authority should encourage media

	basis in line with Article 9 (2) of the AVMSD particularly with Articles 4, 8 and 19 . 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". Article 8 states that "Advertisements shall not include any material that may result in harm to minors either physically, mentally or morally". Article 19 states that "Advertisements for confectionery and snack foods shall not suggest that such products may be substituted for balanced meals." 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		service providers to develop codes of conduct regarding the audiovisual commercial communications of HFSS foods targeted at children. As per Article 31 of Broadcasting Code for the Protection of Minors (**S.L 350.05)** 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 conduct regarding inappropriate audiovisual commercial communiation, accompanying or included in children's programmes, of foods and beverages containg nutrients and substances with a nutritional or physcological 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". 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 persuade their parents or

	teleshopping aimed at children". The proposed legislation prohibits audiovisual commercial communication of a number of HFSS products thirty minutes before during and thirty minutes after the children's programme. 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. 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 - (b) as to such other matters concerning standards and practice		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."

	for programmes broadcast by the Authority or by any person providing broadcasting services in Malta, as the Authority may consider suitable for inclusion in the code; 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. 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 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)		
Netherlands		Dutch Advertising Code for Food Products(part of the Dutch advertising Code) prohibits unhealthy food advertising to children under 7 years old. Enforced by the Advertising Code Authority (composed of advertising and media industry).	

		+ other initiatives by broadcasters (Kids Vitaal) and food industry (FNLI – Dutch Food Industry Website) targeting children up to age of 12 years	
Poland		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. 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. Polish Advertising Council – Commission of Ethic in advertising enforces ICC framework for responsible food and beverage marketing communication.	Polish Broadcasting Act establishes that programmes for children should not be accompanied by commercial communications for HFSS foods. 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.
Portugal		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 Code of Self-Regulation in respect of commercial Communications in food and beverages to children , set up I may 2010 was revised and the new version entered into force on 22 July 2014. Also the General Direction for Consumers issued recommendations regarding nutrition and health claims	

		made about foods. 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.	
Romania	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) Co-regulation The Romanian Advertising Council adopted 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.	The Romanian Advertising Council signed EU Pledge and adopted it as the Code of Ethics for food advertising aimed at children.	According to Article 29(8) of the Audiovisual Act av media service providers are encouraged to set up relevant codes of conduct
Slovakia		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, however not	

		exclusively targeting children. 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 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. 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).	
Slovenia		Ministry of health od Republic of Slovenia is drafting guidelines on HFSS. Service providers will be able to draft codes of conduct in accordance with the guidelines. Ministry of Health set up an interdepartmental group whose role is to prepare measures for limiting the advertising of unhealthy foods and evaluate the	Article 23 of the Audiovisual Media Services Act, adopted in November 2011 and amended in 2015 states: (1) Providers must develop codes of conduct regarding inappropriate audiovisual commercial communications,

		possibility of restricting advertising of those foods.	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, transfatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended, and publish these codes of conduct. (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. (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.
Spain	In 2012 a new Code was signed, **a co-regulation,** in order to comply with the Food Safety and Nutrition Law 2011. The new code extended the scope of application of the PAOS code to Internet directed at children less than 15 year old. 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 rules concern	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 Enforcement entrusted to the Spanish Advertising Self-regulatory body- Autocontrol –possibility to impose financial sanctions 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-	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.

	the restrictions on sales pressure, education and nutritional information, presentation and information about products etc In 2015 a new Code to protect children has been published	regulation at this NRA.	
Sweden	Sweden bans TV advertising aimed at children		
UK	Linear services: **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** (Statutory rules by stages since 2007, final phase January 2009) Administered by ASA on behalf of Ofcom. 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. Total ban on product placement of HFSS foods **On demand** : 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. In case of non-compliance with ASA adjudication case is referred to Ofcom, empowered to impose sanctions, including financial penalty.		

ANNEX 16 – DETAILED ESTIMATES OF SOME COSTS RELATED TO THE PROMOTION OF EU WORKS

Calculations and assumptions underpinning the estimates of the baseline administrative costs

A1.1 Baseline administrative costs

A1.1.1 Overall framework

Baseline administrative costs have been separately calculated for each of the following groups for each Member State:

- Broadcasters;
- On-demand service providers; and
- Regulators.

The following formula was used to calculate the administrative costs:

Σ P x Q

For industry:

- P (for Price) = Hourly wage rate x Average time spent compiling and reporting compliance data to the national regulator (number of hours)
- Q (for Quantity) = Number of businesses (broadcasters and on-demand service providers)

For regulators:

- P = Hourly wage rate x {Average time spent on monitoring & verification of compliance data per regulated entity + Average time spent on reporting to the European Commission per regulated entity}
- Q = Number of regulated entities (broadcasters and on-demand service providers)

A1.1.2 Inputs and assumptions

A1.1.2.1 Hourly wage rate

Data on hourly wage rate was sourced from Eurostat. We used the wage rates for the following NACE category: "*Education; human health and social work activities; arts, entertainment and recreation; other service activities*". As the latest available data is for year 2014, we calculated 2015 wage rates by applying a growth rate of 2% (the compound annual growth rate in wages observed between 2004 and 2015 across the EU) – see Table A1.1.

Table A1.1 Total labour costs, euros per hour

GEO/TIME	2014	2015 (estimated)
EU	24.7	25.2

GEO/TIME	2014	2015 (estimated)
BE	34.1	34.8
BG	3.8	3.9
CZ	8.6	8.8
DK	37.1	37.8
DE	30.1	30.7
EE	8.6	8.8
IE	33.8	34.5
GR	15.1	15.4
ES	22.2	22.6
FR	32.7	33.4
HR	9.6	9.8
IT	32.3	32.9
CY	17.7	18.1
LV	6.4	6.5
LT	6.1	6.2
LU	37.4	38.1
HU	5.9	6.0
MT	13.9	14.2
NL	35.4	36.1
AT	30.6	31.2
PL	9.0	9.2
PT	14.4	14.7
RO	4.1	4.2
SI	15.7	16.0
SK	8.7	8.9
FI	31.0	31.6
SE	32.8	33.5
UK	22.5	23.0

Source: Eurostat [data extracted on 22.01.2016; last updated on 26.03.2015]

A1.1.2.2 Average time spent on monitoring and reporting activities

To derive this variable, we first classified each Member State according to the reporting system put in place:

- SR = self-reporting/ no verification
- IM = independent monitoring
- IV = independent verification

Table A1.2 System put in place to monitor compliance with Articles 16 & 17 (Broadcasters) and Article 13 (On-demand)

	Monitoring system (Broadcasters)	Monitoring system (On-demand)
AT	SR	SR
BE (CFR)	IV	SR
BE (VLG)	IV	SR

	Monitoring system (Broadcasters)	Monitoring system (On-demand)
BG	IV	SR
CY	IM	SR
CZ	IV	SR
DE	SR	SR
DK	SR	SR
EE	IM	SR
ES	IV	SR
FI	SR	SR
FR	IM	SR
UK	SR	SR
GR	SR	SR
HU	SR	SR
HR	SR	SR
IE	IV	SR
IT	IM	SR
LT	SR	SR
LU	SR	SR
LV	SR	SR
MT	SR	SR
NL	IV	SR
PL	IV	SR
PT	IM	SR
RO	SR	SR
SE	SR	SR
SI	IV	SR
SK	SR	SR

The following assumptions were then made regarding the average time spent by the different actors on the various monitoring and reporting activities:

Table A1.3 Working assumptions: average time spent by the different actors on the various monitoring and reporting activities (hours)

Reporting system	Average time spent compiling and reporting compliance data to the national regulator		Regulators			
			Average time spent on monitoring & verification of compliance data per regulated entity		Average time spent on reporting to the European Commission per regulated entity	
	Broadcasters	On-demand service providers	Broadcasters	On-demand service providers	Variable time (hours per entity)	Fixed time
Self-reporting/ no verification	31*	12*	-	-	1	20
Independent monitoring	*As monitoring is carried out by an independent body, no cost is*		50	50	1	20

	incurred by AVM service providers					
Independent verification	31*	12*	35	35	1	20

** the time spent is assumed to be the same as both systems involve self-reporting by AVM service providers. The only difference being that in the latter, independent verification of self-reported data is carried out.*

These assumptions were based on:

- Data collected from regulators and broadcasters;
- Expert judgement.

A1.1.2.3 Number of broadcasters and on-demand service providers

The number of broadcasters subject to AVMSD reporting requirements was derived from the following two pieces of information:

- Data on the number of channels sourced from the EAO Yearbook; and
- Member States reports on the application of articles 16 & 17, Statistical statements.

Similarly, the number of on-demand service providers subject to AVMSD reporting requirements was derived from combining the following pieces of information:

- Data on the number of on-demand services per Member State sourced from the MAVISE database

The results of our calculations are presented in Table A1.4.

Table A1.4 The number broadcasters and on-demand service providers subject to AVMSD reporting requirements

	Channels (total)[1]	Channels *(actually covered by MS reporting in 2012)* 2	Broadcasters *(actually covered by MS reporting in 2012)* 2	On-demand services 3	On-demand service providers 3
AT	74	23	12	10	7
BE - fr	32	16	6	17	10
BE - nl	62	30	13	23	8
BG	127	65	44	9	7
CY	36	8	6	19	3
CZ	188	75	40	38	10
DE	428	33	22	89	56
DK	43	20	4	14	8
EE	13	9	5	3	2
ES	248	36	19	24	16
FI	57	14	6	16	8
FR	507	102	55	128	65

	Channels (total)[1]	Channels *(actually covered by MS reporting in 2012)* 2	Broadcasters *(actually covered by MS reporting in 2012)* 2	On-demand services 3	On-demand service providers 3
UK	1515	132	25	135	57
GR	77	128	61	6	4
HU	51	33	26	7	5
HR	59	10	7	7	6
IE	17	5	3	5	4
IT	430	91	16	15	7
LT	18	11	2	5	4
LU	61	14	4	84	5
LV	37	6	3	3	2
MT	45	11	9	3	2
NL	245	21	8	74	19
PL	121	69	22	35	15
PT	90	28	12	9	8
RO	225	53	23	12	7
SE	252	53	14	45	11
SI	52	12	8	9	4
SK	44	27	26	8	5
Total EU	5154	1135	501	852	365

(1) source: EAO Yearbook 2014, TV channels by kind of transmission, available and established in the European countries, December 2013, In units. (p124-125)

note: Two categories are excluded from the numbers presented here on the basis that they are likely to be exempted channels (news / sport channels and below threshold channels in terms of audience share - 0.3%): Regional or territorial channels; Local stations and open channels (terr. or cable)

(2) source: Member States reports on the application of articles 16 & 17, Statistical statements

(3) source: MAVISE database, List of on-demand AV services established in the country. Data extracted Jan 16. Presented statistics include the following genres only: VOD film, VOD TV fiction, VOD film and TV fiction, VOD Animation / Children, VOD Generalist, VOD Documentary, VOD Lifestyle and Health

A1.1.3 Detailed results

The detailed results of the above analysis are presented in the table below.

Table A1.5 Baseline administrative cost estimates, euros

Member State	Cost to industry - compiling and reporting compliance data to the national regulator*		Cost to regulator - on monitoring & verification of compliance data*		Cost to regulator - reporting to the European Commission**	
	Broadcasters	On-demand	Broadcasters	On-demand	Broadcasters	On-demand
AT	11,611	2,622	375	218	999	843
BE (CFR)	6,469	4,174	7,304	348	904	1,043
BE (VLG)	14,017	3,339	15,826	278	1,148	974
BG	5,287	326	5,969	27	248	105
CY	-	650	5,416	54	469	415
CZ	10,877	1,053	12,281	88	526	263
DE	20,939	20,632	675	1,719	1,289	2,333
DK	4,692	3,633	151	303	908	1,060
EE	-	211	2,193	18	219	193
ES	13,337	4,348	15,058	362	883	815
FI	5,881	3,036	190	253	822	885
FR	-	26,016	91,724	2,168	2,502	2,835
UK	17,786	15,698	574	1,308	1,033	1,767
GR	29,125	739	940	62	1,248	370
HU	4,851	361	156	30	277	150
HR	2,125	705	69	59	264	255
IE	3,206	1,655	3,620	138	793	827
IT	-	2,767	26,357	231	1,186	890
LT	386	299	12	25	137	149
LU	4,730	2,289	153	191	916	954
LV	607	157	20	13	150	144
MT	3,956	340	128	28	411	312
NL	8,953	8,231	10,109	686	1,011	1,408
PL	6,261	1,652	7,069	138	386	321
PT	-	1,410	8,813	118	470	411
RO	2,982	351	96	29	180	113
SE	14,520	4,416	468	368	1,138	1,037
SI	3,971	769	4,484	64	448	384

Member State	Cost to industry - compiling and reporting compliance data to the national regulator*		Cost to regulator - on monitoring & verification of compliance data*		Cost to regulator - reporting to the European Commission**	
	Broadcasters	On-demand	Broadcasters	On-demand	Broadcasters	On-demand
SK	7,152	532	231	44	408	222
Total EU	203,723	112,410	220,458	9,367	21,373	21,479

**It is understood that in some Member Sates these costs are only incurred during the years the Member States have to report to the Commission (i.e. once every 2 years for broadcasters and once every 4 years for on-demand service providers). To date no monitoring or reporting of on-demand service providers has actually taken place.*

*** These costs are incurred once every 2 years for broadcasters and once every 4 years for on-demand service providers*

Calculations and assumptions underpinning the estimates of administrative and compliance costs associated with financial levies

A1.2 Substantive compliance costs

A1.2.1 Overall framework

The substantive compliance costs were calculated as follows:

Σ N x L X T

Where

- N = Number of VOD providers established abroad in Member States likely to introduce financial levies
- L= Levy as a percentage of turnover
- T = Projected turnover of VOD providers established abroad in 2017 (the earliest year in which levies are likely to be introduced)

A1.2.2 Inputs and assumptions

A1.2.2.1 Number of VOD providers established abroad in Member States likely to introduce financial levies

The data on the number of VOD providers established abroad was extracted from the MAVISE database.

It was then assumed that Member States that currently have a system of financial contributions in place are the most likely candidates for applying financial levies in future to VOD providers established abroad. The list of included countries is however quite large as it includes all countries which have in place some form of provisions regarding financial contribution to European works by on-demand AVMS providers and/or distribution platforms (including where

the scheme is not mandatory – for example, when the obligation can be met via respecting a share of catalogue). In addition, the list is not limited to the film fund option, it includes countries e.g. in Spain, where the obligation takes the form of direct investment obligations.

Table A1.6 Number of VOD providers established abroad and the likelihood of Member State introducing financial levy

Member State	VOD providers established abroad [1]	Is the MS likely to introduce financial levies? [2]
AT	35	No
BE (CFB) (2)	31	Yes
BE (DSG) (2)	30	Yes
BE (VLG) (2)	31	Yes
BG	5	No
CY	18	No
CZ	4	Yes
DE	35	Yes
DK	18	No
EE	7	No
ES	28	Yes
FI	28	No
FR	45	Yes
GB	33	No
GR	20	No
HR	3	Yes
HU	11	No
IE	31	No
IT	28	Yes
LT	7	No
LU	21	No
LV	7	No
MT	18	No
NL	11	No
PL	15	Yes
PT	21	Yes
RO	7	No
SE	9	No
SI	21	Yes
SK	8	No

[1] source: MAVISE database, List of on-demand AV services available in the country but not established in the country. Data extracted Feb 17. Presented statistics include the following genres only: VOD film, VOD TV fiction, VOD film and TV fiction, VOD Animation / Children, VOD Generalist, VOD General Interest programmes, VOD Documentary, VOD short movies, VOD Lifestyle and Health.

[2] source: EAO (2015) The development of the European market for on-demand audiovisual services. Table 84 Summary of mandatory financial contributions by providers of on-demand audiovisual services and/or providers of audiovisual services in EU countries (2014)

A1.2.2.2 *Levy as a percentage of turnover*

It was assumed that the financial levy will, on average, be set at 2%. This is based on the current rate of mandatory financial contributions by providers of on-demand audiovisual services and/or providers of audiovisual services in EU countries which averages at 2% - Table A1.7.

Table A1.7 Mandatory financial contributions by providers of on-demand audiovisual services and/or providers of audiovisual services in EU countries

Member State	Rate of levy
BE (French)	1.4 to 2.2% of turnover, depending on size turnover (for providers of broadcasting and/or VoD services; to a film fund or direct investment)
BE (Dutch)	€3 million a year or €1.3 per subscriber (for service distributors; ; to a film fund or direct investment)
CZ	1% of total revenues (for on-demand providers, via direct investment, optional – otherwise share of catalogue)
DE	1.8 to 2.3% of turnover (for on-demand providers, via a fund)
ES	5 % of revenues (for on-demand providers and distributors, via direct investment)
FR	2% of revenues (for on-demand providers, via a fund) + 15% to 26% of net turnover (direct investment)
HR	0.5 % of their annual gross income (for on-demand providers and distributors, via a fund)
IT	5 % of revenues (for on-demand providers, via direct investment, optional – otherwise share of catalogue)
PL	1.5% of revenues (for distributors, via a fund)
PT	1% of revenues of VoD services + 4% on the advertising price + € 1 for each individual subscription paid to on-demand broadcasters (via direct investment)
SI	1% (for on-demand providers, via direct investment, optional – otherwise share of catalogue)

Source: EAO (2015) The development of the European market for on-demand audiovisual services. Table 84 Summary of mandatory financial contributions by providers of on-demand audiovisual services and/or providers of audiovisual services in EU countries (2014)

A1.2.2.3 *Projected turnover of VOD providers established abroad in 2017*

2017 revenue projections for non-demand services were based on:

- Actual data on on-demand consumer revenues by Member State for the period 2010-2014 compiled by the EAO;
- Compound Annual Growth Rate (CAGR) over the period 2010-2014 calculated by ICF; and
- Expected future growth by market based on historical growth rates, stakeholder interviews, EAO reports and expert judgement.

The results of the calculations are provided below.

Table A1.8 Past and future trends: on-demand consumer revenues

MS	Total on-demand consumer revenues (€ million) [1]					Per capita spend 2014	CAGR (2010-2014)	YoY Growth (2014/13)	Recent trend	Projected growth
	2010	2011	2012	2013	2014					
AT	5.3	7.5	10.6	13.7	16.8	1.975	26%	23%	Stable	Strong
BE	36	46.2	65	84.9	99.9	8.916	23%	18%	Stable	Stable

MS	Total on-demand consumer revenues (€ million) [1]					Per capita	CAGR (2010-	YoY Growth	Recent trend	Project ed
BG	0	0.2	1	1.9	2.6	0.359	90%	37%	Strong	Explosive
CY	0.4	0.5	0.8	0.9	1.1	1.282	22%	22%	Stable	Explosive
CZ	0.4	1.1	3.9	7.7	11.8	1.122	97%	53%	Strong	Explosive
DE	83.5	108.1	166.6	248	315.2	3.903	30%	27%	Stable	Strong
DK	11.5	16.7	26.2	52	95.8	17.024	53%	84%	Strong	Stable
EE	1	1.6	2.3	2.6	3.2	2.432	26%	23%	Stable	Strong
GR	1.2	1	1.7	2.7	4	0.366	27%	48%	Strong	Explosive
ES	54.9	47.3	38.1	43.3	62.5	1.344	3%	44%	Strong	Explosive
FI	0.8	2.2	4.3	16	40	7.338	119%	150%	Explosive	Strong
FR	209.3	243.3	287.3	298.8	330.5	5.020	10%	11%	Stable	Stable
HR	0	0.1	0.3	0.7	0.8	0.188	68%	14%	Stable	Explosive
HU	0.8	1.5	3.1	4.7	6.3	0.638	51%	34%	Stable	Explosive
IE	11.9	14.1	19.3	26.1	34.7	7.534	24%	33%	Stable	Stable
IT	117.4	120.1	121	111.1	117.8	1.938	0%	6%	Stable	Strong
LT	0.3	0.4	0.6	0.8	1	0.340	27%	25%	Stable	Explosive
LU	0.3	0.4	0.8	1	16.2	29.472	122%	1520%	Explosive	Stable
LV	0.2	0.4	0.9	1.3	1.4	0.699	48%	8%	Stable	Explosive
MT	0	0	0.2	0.3	0.4	0.940	26%	33%	Stable	Explosive
NL	20	31.2	57.1	75.9	140.8	8.366	48%	86%	Strong	Strong
PL	17.1	25.3	42	43.8	54.2	1.426	26%	24%	Stable	Explosive
PT	16.8	19.2	24.4	28.9	34.6	3.318	16%	20%	Stable	Strong
RO	0.1	0.1	2.2	5.9	10.8	0.541	155%	83%	Strong	Explosive
SE	29.5	39.7	55.9	99.6	154.6	16.029	39%	55%	Strong	Stable
SI	0.8	1.2	3	4	5.5	2.668	47%	38%	Stable	Explosive
SK	0.7	1.1	2.6	4.3	6.2	1.145	55%	44%	Strong	Explosive
UK	298.8	307	464.4	640	932.4	14.499	26%	46%	Strong	Stable
EU	**919**	**1038**	**1406**	**1821**	**2501**	**5.029**	**22%**	37%		

[1] source: IHS cited in Refit exercice: contribution of data and information by the European Audiovisual Observatory. Note B.2: market revenues and investments - VoD revenues. Draft October 2015.

Key:

Stable growth	**22%**
Strong growth	**51%**
Explosive growth	**116%**

Additional pieces of evidence used for triangulation:

- Estimated CAGR for German VoD market assuming arrival of one big SvoD player: 22% [source: EAO (2015) The development of the European market for on-demand audiovisual services]
- According to a market forecast elevision and video-on-demand services will hit $1,633 million (1,266 million euros) by the end of the year (2014) and eventually $5,502 million (4,266 million euros) by 2020, with the UK leading the market and Germany not too far behind:. This translates into CAGR of 22% [source: European Online TV & Video Forecasts produced by DigitalTV Research]

Table A1.9 Revenue projects for 2016 and 2017: on-demand consumer revenues

Country	Expected future growth trend	2016	2017
AT	Strong	25.4	38.3
BE	Stable	122.0	149.1
BG	Explosive	5.6	12.2
CY	Explosive	2.4	5.2

CZ	Explosive	25.5	55.3
DE	Strong	476.1	719.2
DK	Stable	117.0	143.0
EE	Strong	4.8	7.3
GR	Explosive	8.7	18.7
ES	Explosive	135.3	292.9
FI	Strong	60.4	91.3
FR	Stable	403.8	493.3
HR	Explosive	1.7	3.7
HU	Explosive	13.6	29.5
IE	Stable	42.4	51.8
IT	Strong	177.9	268.8
LT	Explosive	2.2	4.7
LU	Stable	19.8	24.2
LV	Explosive	3.0	6.6
MT	Explosive	0.9	1.9
NL	Strong	212.7	321.3
PL	Explosive	117.3	254.0
PT	Strong	52.3	78.9
RO	Explosive	23.4	50.6
SE	Stable	188.9	230.7
SI	Explosive	11.9	25.8
SK	Explosive	13.4	29.1
UK	Stable	1139.1	1391.6

ICF calculations

Market share of VOD players established abroad was then assumed to be in the range of 10 – 25% based on expert judgement and the data for France (the only country for which this data is available).

A1.2.3 Detailed results

The detailed results of the above analysis are presented below.

Table A1.10 Substantive compliance costs – financial levies

Member State	VOD providers established abroad	Is the MS likely to introduce financial levies?	Levy as % of turnover	Projected turnover - on demand: € million (2017)	Projected turnover - VOD providers established abroad € million		Substantive compliance costs € million	
					LOWER BOUND (10% market share)	UPPER BOUND (25% market share)	LOWER BOUND	UPPER BOUND
AT	35	No						
BE (CFB) (2)	31	Yes	2%	149.10	14.91	37.28	0.30	0.75
BE (DSG) (2)	30	Yes						
BE (VLG) (2)	31	Yes						
BG	5	No						
CY	18	No						
CZ	4	Yes	2%	55.31	5.53	13.83	0.11	0.28
DE	35	Yes	2%	719.18	71.92	179.79	1.44	3.60

DK	18	No						
EE	7	No						
ES	28	Yes	2%	292.94	29.29	73.23	0.59	1.46
FI	28	No						
FR	45	Yes	2%	493.28	49.33	123.32	0.99	2.47
GB	33	No						
GR	20	No						
HR	3	Yes	2%	3.75	0.37	0.94	0.01	0.02
HU	11	No						
IE	31	No						
IT	28	Yes	2%	268.78	26.88	67.19	0.54	1.34
LT	7	No						
LU	21	No						
LV	7	No						
MT	18	No						
NL	11	No						
PL	15	Yes	2%	254.04	25.40	63.51	0.51	1.27
PT	21	Yes	2%	78.95	7.89	19.74	0.16	0.39
RO	7	No						
SE	9	No						
SI	21	Yes	2%	25.78	2.58	6.44	0.05	0.13
SK	8	No						
TOTAL				**2,341.09**	**234.11**	**585.27**	**4.68**	**11.71**

A1.3 Administrative costs

A1.3.1 Overall framework

The following formula was used to calculate the administrative costs:

Σ P x Q

For industry:

- P (for Price) = Hourly wage rate x Average time spent compiling and reporting compliance data to the national regulator (number of hours)
- Q (for Quantity) = Number of VOD providers established abroad

For regulators:

- P = Hourly wage rate x {Average time spent on monitoring & verification of compliance data per regulated entity + Average time spent on reporting to the European Commission per regulated entity}
- Q = Number of VOD providers established abroad

A1.3.2 Inputs and assumptions

The inputs and assumptions used for the above calculations are summarised below.

Table A1.11 Overview of the inputs and assumptions used for calculating administrative costs of financial levies

Inputs/ assumptions	Source
Hourly wage rate	Eurostat – see Table A1.1 in **Error! Reference source not found.**
Average time spent compiling and reporting compliance data to the national regulator	35 – 50 hours per VOD provider (assumption based on data collected from regulators and broadcasters and expert judgement)
Average time spent on monitoring & verification of compliance data per regulated entity and reporting to the European Commission	14 – 21 hours per VOD provider (assumption based on expert judgement)
Number of VOD providers established abroad	MAVISE database – see Table A1.6

A1.3.3 Detailed results

The detailed results of the above analysis are presented below.

Table A1.12 Administrative costs – financial levies

Member State	Region	Hourly wages €	Industry		Regulator	
			LOWER BOUND	UPPER BOUND	LOWER BOUND	UPPER BOUND
			35 hours	50 hours	14 hours	21 hours
BE	fr (2)	38.11	41,353	59,076	16,541	24,812
BE	de (2)	38.11	40,019	57,171	16,008	24,012
BE	nl (2)	38.11	41,353	59,076	16,541	24,812
CZ		8.91	1,247	1,781	499	748
DE		32.54	39,859	56,941	15,944	23,915
ES		22.92	22,459	32,084	8,984	13,475
FR		34.51	54,359	77,656	21,744	32,616
HR		9.68	1,017	1,452	407	610
IT		34.92	34,221	48,888	13,689	20,533
PL		9.49	4,983	7,119	1,993	2,990
PT		14.62	10,747	15,354	4,299	6,448
SI		15.87	11,665	16,664	4,666	6,999
		TOTAL	**303,284**	**433,262**	**121,313**	**181,970**

ANNEX 17 - SECOND REPORT ON THE APPLICATION OF ARTICLES 16 AND 17 OF DIRECTIVE 2010/13/EU FOR THE PERIOD 2011-2012

EUROPEAN
COMMISSION

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 the period 2011-2012

Promotion of European works in EU scheduled 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') [691]. 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[692] 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[693] 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"[694] and Member States who joined the EU at an earlier stage[695] 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

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

691 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.

692 Former Articles 4 and 5 of Directive 89/552/EEC

693 Norway, Iceland, Liechtenstein

694 Member States which joined the EU in 2004 and 2007 (EU-12)

695 Member States which joined the EU up to 1995 (EU-15)

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[696] 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.[697] 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'[698] 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[699] only reported about 4 such exemptions, this number was 270 in Denmark, 266 in the Netherlands and 338 in the United 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

[696] '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

[697] 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.

[698] https://ec.europa.eu/digital-agenda/en/news/revised-guidelines-monitoring-application-articles-16-and-17-audiovisual-media-services-avms

[699] Germany and Poland

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.[700] 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[701].

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.[702]

EU-average compliance rates[703] 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

[700] 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.

[701] 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.

[702] See Staff Working Paper – Part II – Section 2

[703] 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.

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[704]. This section also reports on the broadcast of **recent European works by independent producers** (hereinafter "recent independent productions")[705].

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)

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[706] 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)

[704] 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.

[705] 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.

[706] See footnote 11

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**

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[707]. 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**

[707] See in particular Recital 67 of the Directive

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.

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.[708]

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.

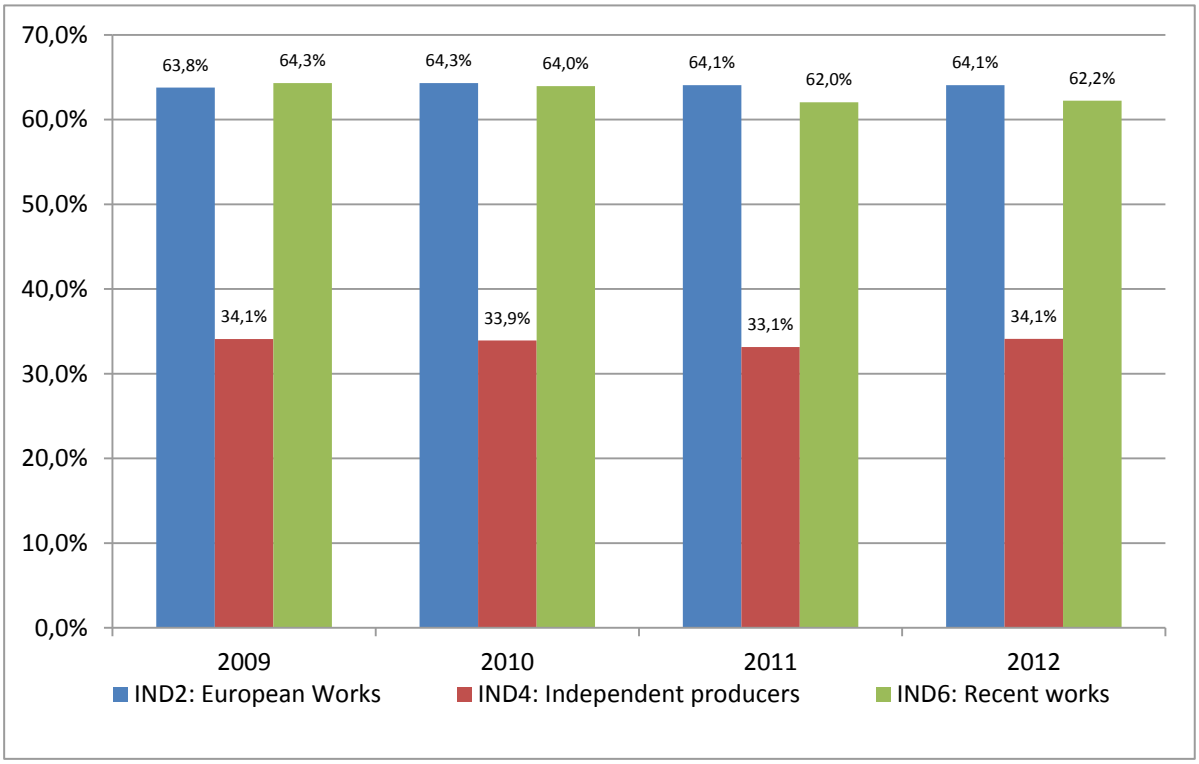
This report shows that the provisions of Articles 16 and 17 are overall correctly implemented by Member States. Current rules on promotion of European works have led to strong shares of transmission of European works, independent productions and recent independent productions.

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 18 - 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[709].

2.1 Coordination

The **European Strategy for a Better Internet for Children**[710] 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[711]. 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[712], 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 than 22.5 million people and worked with approximately 12,000 youth in 30 countries (all MSs, plus Norway and Iceland)[713].

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).

[709] Final evaluation of the multi-annual Community programme Safer Internet
[710] COM(2012) 196 final
[711] http://www.bestcontentaward.eu/
[712] http://www.youthmanifesto.eu/
[713] Annual report INSAFE/INHOPE 2014:
http://www.inhope.org/Libraries/Annual_reports/Joint_Insafe_INHOPE_Annual_Report_2014.sflb.ashx

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.[714] 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"*[715] 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.[716]

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.[717]

2.2 Funding

The Telecom/Digital Service Infrastructure funded under CEF[718] 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.[719] 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

[714] ttp://www.inhope.org/Libraries/Statistics_Infographics_2014/INHOPE_stats_infographics_for_2014.sflb.ashx
[715] http://www.intgovforum.org/cms/workshops/list-of-published-workshop-proposals
[716] http://eprints.lse.ac.uk/60512/1/EU%20Kids%20onlinie%20III%20.pdf
[717] http://ec.europa.eu/digital-agenda/en/news/study-better-internet-kids-policies-member-states
[718] Regulation of the European Parliament and of the Council on guidelines for trans-European telecommunications networks and repealing Decision No1336/97/EC
[719] https://www.betterinternetforkids.eu/

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.

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[720]). 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.

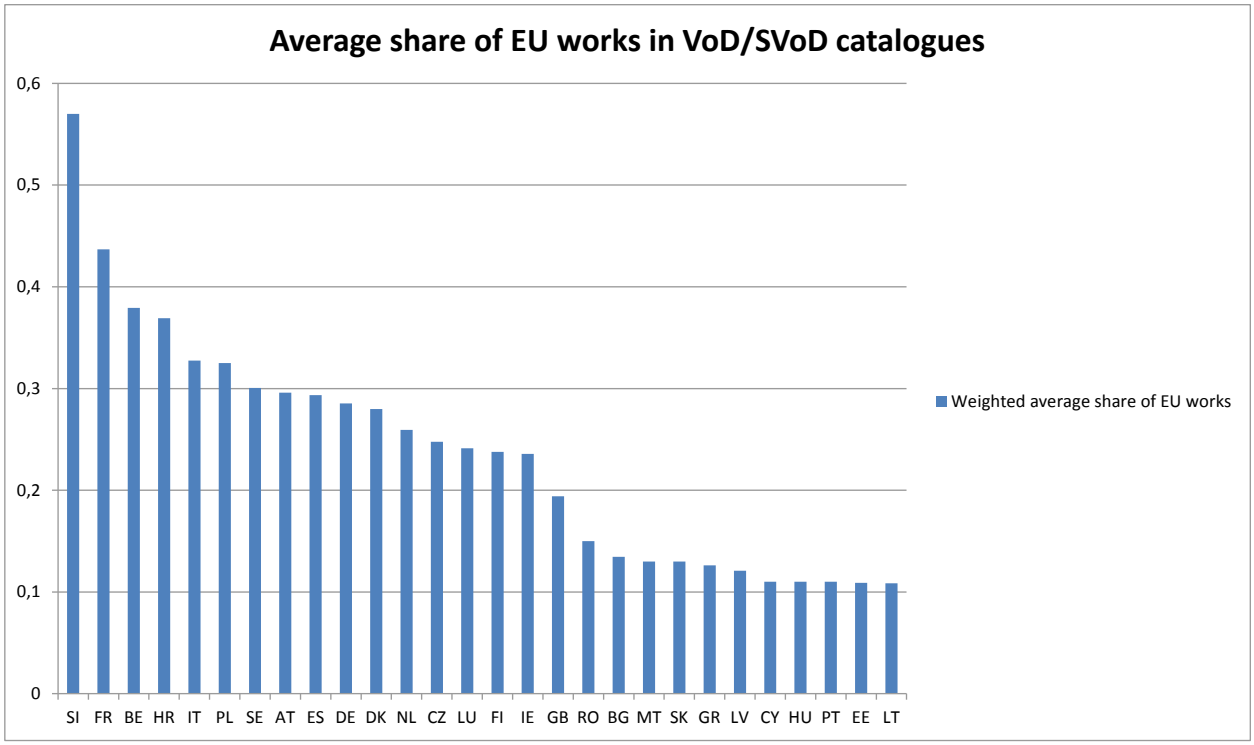
The CEO coalition raised quite significant support and visibility, leveraged tangible effects in organisations and fostered collaboration across the whole-industrial value chain.

[720] http://www.pegi.info/en/index/id/1068/nid/50

ANNEX 19 – CALCULATION OF THE 20% SHARE OF EUROPEAN WORKS

According to the study on-demand Audiovisual Markets in the European Union (2014 and 2015 developments), the average share of EU films in 75 big EU VoD catalogues was 27 % in 2015 and 30% in 16 big SVoD catalogues. However, there are great disparities among catalogues of pan-European VOD providers (from almost 0% to to 70%) and among Member States (from an average of less than 10% to an average of almost 60%).

The median average share of European works in VoD catalogues offered in the EU-28 Member States is 24% i.e. that the average share is equal or lower to 24% in 14 Member States. Among this 14 Member States, 12 Member States are below 20% and only 2 between 20% and 24%. The following figure gives an insight into the availability of EU works in each MS:



The figure below provides an overview of the availability of EU films from the point of view of the major pan-European on-demand services (EU 28 row):

Table 77 Overview of Pan-European VoD and SVoD services – Catalogue Averages: Region of origin and Age of films – in figures and %

		Netflix		cMore		iTunes		Chili TV		SF Anytime		Wuaki	
	All films	1151		1 238		3 381		2 004		4 128		2110	
Breakdown by Region of Origin*	European	254	22%	446	36%	732	23%	523	26%	1 220	30%	571	27%
	EU 28	241	21%	406	33%	672	21%	515	26%	1 158	29%	552	26%
	National	65	6%	71	6%	149	5%	221	11%	158	4%	221	11%
	Non-European	887	78%	782	64%	2 476	77%	1 469	74%	2 814	70%	1518	73%
	US	785	69%	706	57%	1 985	62%	1 381	69%	2 405	60%	1387	66%
	Others	102	9%	77	6%	492	15%	88	4%	409	10%	131	6%
Breakdown by Age of Production	[0-2[	68	6%	76	6%	383	11%	226	11%	515	12%	377	18%
	[2-5[	254	22%	139	11%	819	24%	371	19%	1 264	31%	483	23%
	[5-10[	359	31%	309	25%	690	20%	499	25%	1 417	34%	472	22%
	[10-20[	328	28%	551	45%	617	18%	468	23%	621	15%	430	20%
	>20	142	12%	162	13%	872	26%	439	22%	312	8%	348	16%

*the films for which we had country of origin data available

Source: OBS Research on VoD catalogues October 2015

By setting a 20% share of European works in on-demand services catalogues, the AVMSD would secure:

- a minimum level of diversity across Europe;
- a safety net below which share of EU works in catalogues should not fall. This approach would mitigate the risk of on-demand services not rolling their services in some MS. It would also take into consideration the uncertainties resulting from the absence of data on non feature works.
- Countries will preserve the opportunity to set higher standards.

Moreover, a mandatory exemption applies for small and micro-companies and thematic or low audience services.

ANNEX 20 – DETAILED DESCRIPTION OF THE OPTIONS

INSUFFICIENT MINORS AND CONSUMERS PROTECTION IN VIDEO-SHARING PLATFORMS

Status quo	Option A	Option B
The AVMSD does not apply to UGC in video-sharing platforms (e.g. YouTube). Video-sharing platforms are covered by the ECD, which warrants them limited liability for illegal content under certain conditions. The AVMSD applies to television broadcasts and 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"). Most recently, the ECJ has clarified the "TV likeness" and "principal purpose" requirements in the "New Media Online GmbH" case[721].	1) The AVMSD scope would be adapted to cover all audiovisual content under the editorial responsibility of a provider including short video clips placed by providers. This would be achieved by removing the "TV like" requirement. In addition, it would be clarified that the AVMSD would also cover other type of content such as stand-alone video sections in newspapers' websites. This would be achieved by codifying the interpretation of the "principal purpose" criterion in the light of the ECJ recent case-law in the case of "New Media Online GmbH". 2) Member States and the Commission would encourage video-sharing platforms to adopt self-regulatory measures to restrict access to content harmful to minors or inciting to hatred. Video-sharing platforms would be defined as those that exercise a degree of control, short of editorial responsibility, over the presentation of audiovisual content (including UGC), and whose principal business purpose is the provision of audiovisual services [722]. This	1) The "TV like" requirement would be removed and the ECJ recent case-law in the case of "New Media Online GmbH" would be codified as under Option A. 2) Member States would have to ensure that video-sharing platforms put in place appropriate measures to: - Protect minors from harmful content; access to which would have to be restricted; - Protect all citizens from content containing incitement to hatred. Video-sharing platforms would be defined as those that exercise a degree of control, short of editorial responsibility, over the presentation of audiovisual content (including UGC), and whose principal business purpose is the provision of audiovisual services[723]. This degree of control would include automatic means (such as tagging and sequencing a large amount of audiovisual content), including algorithms. This would exclude services such as mere hosting, caching,

[721] 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).
[722] As defined by Articles 56 and 57 TFEU.

	degree of control would include automatic means (such as tagging and sequencing a large amount of audiovisual content), including algorithms. This would exclude services such as mere hosting, caching, cloud computing, mere conduit, search engines and business services, which are subject to the ECD. The notions of content harmful to minors and incitement to hatred would be the same as the ones applying to audiovisual media services under the AVMSD. The Commission would play a facilitating role in encouraging the development of European codes of conduct by providing examples of measures that could be adopted by video-sharing platforms (these could include some of the examples of on-going initiatives mentioned in ANNEX 8 and 18). The general provisions on self- and co-regulation (Article 4(7)) would be reinforced by indicating new benchmarks for the effectiveness of existing and new codes.	cloud computing, mere conduit, search engines and business services, which are subject to the ECD. The notions of content harmful to minors and incitement to hatred would be the same as the ones applying to audiovisual media services under the AVMSD. The terms and conditions of the platforms would have to be brought in line if necessary with these notions and other relevant rules of the Directive. Member States should not impose on providers any general obligation to monitor content ex ante. Member States would require video-sharing platforms to develop co-regulation providing mechanisms (e.g. age-verification systems, content description, age rating systems) to achieve these objectives. These mechanisms would have to be chosen by the industry which would be subject to an obligation of means (i.e. to use all reasonable means to achieve the desired results). The AVMSD would not mandate adoption of specific technologies or tools. The terms and conditions of the platforms should contain an appropriate reference to these mechanisms. This would be a maximum harmonization

[723] As defined by Articles 56 and 57 TFEU.

		provision under which Member States shall not be able to impose more detailed or stricter rules on video-sharing platforms. The Commission and ERGA would facilitate exchanges of best practices on co-regulatory systems across the EU. If considered appropriate, the Commission would facilitate the development of EU codes on which ERGA might be requested to give an opinion. A complaint mechanism for consumers and minors should also be foreseen at national level in case of non-compliance. Any sanction should be proportionate and take into account as mitigating factor the fact that video sharing platforms lack proper editorial responsibility. For the specific purpose of this provision, a video-sharing platform would be under the jurisdiction of the Member State in which it, its parent company, one of its subsidiaries or an entity within the same group is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.

PROMOTION OF EUROPEAN WORKS

Status quo	Option A	Option B
Under the AVMSD, TV broadcasters must, where practicable, reserve a majority proportion of their transmission	Member States would allow TV broadcasters either to reserve the majority of their broadcasting time to European works or to	For TV broadcasters the status quo would be maintained.

time to European works and at least 10 % of their transmission time or of their programming budget to European works created by independent producers. An adequate proportion of this quota has to be reserved to "recent" independent works. On-demand service providers, where practicable, must promote the production of and access to European works. The Directive gives the following examples of how this can be done but leaves the choice of the measures to Member States: i) financial contribution to the production and rights acquisition of European works; ii) a share of European works in the catalogues; and/or iii) prominence of European works in the catalogues.	invest at least 50%[724] of their programming budget in European works. Providers would be obliged to choose at least one option. In addition, Member States would allow on-demand services to promote European works either through a share of European works, their prominence in the catalogues or through a financial contribution. On-demand service providers would be obliged to choose at least one option. It will be up to Member States to decide on the level of requirement for each measure.	For on-demand service providers, Member States should require them to secure at least a 20% share[725] of European works in their catalogue and give prominence to those works. In addition, on-demand service providers would be required to report to the Commission on their compliance with these obligations. A Member State would be allowed to require a contribution (e.g. levies and/or direct investment in content[726]) to the production of European content from video on-demand service providers established in other Member States if: - they target consumers in its territory, - the contribution applies only to the revenues generated in that Member State and - these revenues are not already subject to an equivalent contribution in the Member States of establishment. Member States would be required to introduce exceptions for low audience and thematic on-demand service providers or for small and micro enterprises[727].

[724] Public service media organizations in Europe invest around EUR 16.6 billion in content (Source EBU-MIS based on Member States' data.) and EUR 15 billion are invested, per year, in content by Europe's largest commercial broadcasters (http://www.acte.be/) i.e. 31 million in total. As mentioned in Section 2.2.2.1 A the investment of the main TV groups in 15 countries in original content, deemed to be European, amounted to EUR 15.7 billion in 2013. By setting a share at 50 % at least, we align the situation across the EU on the average.

[725] According the EAO study on on-demand Audiovisual Markets in the European Union (2014 and 2015 developments), the average share of EU films in 75 big EU VoD catalogues was 27 % in 2015 and 30% in 16 big SVoD catalogues. In order to take into account SMEs which may have less European works in their catalogues, the share is set to 20%.

[726] Levies are contributions that companies exploiting audiovisual content must pay to audiovisual Funds. The Funds use the contributions to finance funding measures. Direct investment is a investment from companies exploiting audiovisual content into audiovisual content production.

[727] This could be done on the basis of the current Contact Committee Guidelines.

PROTECTION OF MINORS IN ON-DEMAND SERVICES

Status quo	Option A
TV broadcasts must not include seriously harmful programmes (pornography and strong violence). They may include potentially harmful programmes (erotic content and mild violence), but should do it in a way which prevents minors from hearing or seeing them. On-demand service providers are also 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 for on-demand services.	The rules on protection of minors applicable to on-demand audiovisual media services would be strengthened by requiring them to restrict access to any kind of "harmful content" (gratuitous violence, pornography erotic and mildly violent content) [728]. The same rule would apply to TV broadacsters. The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures providing a high degree of control, such as age verification pin codes or even by a "by default" mechanism that would not make this type of content available except when activated by an adult. In addition Member States would have to ensure that all audiovisual media service providers provide sufficient information to consumers about the possible harmful nature of the content in programmes by means of co-regulatory systems [729]. The Commission and ERGA would facilitate exchanges of best practices on co-regulatory systems across the EU. If considered appropriate, the Commission would facilitate the development of EU codes on which ERGA might be requested to give an opinion. The general provisions on self- and co-regulation (Article 4(7)) would be reinforced by indicating new benchmarks for the effectiveness of the existing and new codes.

[728] Article 12 AVMSD: "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".
[729] The actual age rating systems will continue to be defined at Member State level, according to the different national sensitivities but it will be complemented by content descriptors (words or symbol) which provide guidance to consumers on the harmful nature of the content (for example bad language, sex, violence, drugs, discrimination, etc.). Age rating systems as such would not be harmonised.

COUNTRY OF ORIGIN PRINCIPLE

Status quo	Option B
Member State jurisdiction Jurisdiction can be based on the providers' (i) establishment in a Member State or (ii) use of a satellite up-link/satellite capacity situated in/appertaining to a Member State. Establishment: The Directive foresees that a provider is established in the Member State where it has its head office and editorial decisions are taken. If these two places do not coincide, the provider shall be deemed to be established in the Member State where a significant part of its workforce operates. If a significant part of its workforce operates in both Member States, the provider is deemed to be established in the Member State where its head office is located. If a significant part of its workforce operates in neither of these Member States, the provider is deemed to be established in the Member State where it first began its activity, provided that it maintains a stable and effective link with the economy of that Member State. If a provider has its head office in a Member State but decisions on the audiovisual media service are taken in a third country, or the other way round, it shall be deemed to be established in the Member State, provided that a significant part of the workforce operates there. Use of a satellite up-link/satellite capacity: Providers are deemed to be under the jurisdiction of a Member State	Option B would entail (i) simplifying the criteria to determine jurisdiction; (ii) ensuring transparency and legal certainty via the implementation of a database of service providers under Member States jurisdiction; and (iii) revising the cooperation procedures to make them more effective. In case of disagreement over which Member State has jurisdiction (in particular when applying the cooperation procedures foreseen by the Directive), the Commission would settle the matter after requesting an opinion from ERGA. The same derogation procedure and grounds for derogating from COO would apply to TV broadcasting and on-demand services (i.e. incitement to hatred, protection of minors and public security). The urgency procedure currently available for on-demand services only would also apply to TV broadcasting services. The cooperation procedure would clarify the right to be heard of audiovisual media service providers in relation to measures restricting their freedom to broadcast.

if they use a satellite up-link situated in that Member State. If they do not use a satellite up-link in a Member State, they will still be under the jurisdiction of a Member State if they use satellite capacity appertaining to that Member State. **Permissible restrictions of the reception and retransmission of services freely circulating within the EU** Regarding broadcasting, any such restrictions are limited to cases of incitement to hatred and infringement of the provisions on protection of minors. For on-demand services, there is a longer list of grounds justifying restrictions. This list includes public policy, public security, including the safeguarding of national security and defence, the protection of public health and the protection of consumers. The relevant procedure includes a first cooperation phase where the Member State concerned contacts the transmitting Member State to try to produce an amicable settlement. If no amicable settlement has been produced and the receiving Member State decides to restrict the freedom of reception, it needs to notify the measures taken to the Commission. The Commission then has to take a decision whether the notified measures are compatible with Union law. This is the so-called **"derogation procedure"**. Member States may adopt stricter or more detailed rules in an area coordinated by the Directive. 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'**. 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. Before a receiving Member State may adopt restrictive measures to counter circumvention, it needs to notify the sending Member State and the	

Commission of its intention to do so. The Commission then needs to take a decision whether the notified measures are compatible with Union law. This is the so-called "circumvention procedure". **Application of derogation procedure** 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.[730] The Lithuanian case also brought to the fore uncertainties and disagreements with Sweden about what Member State had jurisdiction over the Russian language channel. Similar jurisdiction issues have arisen in the Commission's earlier decisions on notifications regarding serious infringements of the provisions on protection of minors (Eurotica Rendez-Vous Television, Extasi TV). These difficulties in applying the derogation procedure prompted the Commission services in August 2015 to provide the members of the AVMSD Contact Committee and ERGA with clarifications on that procedure. Some months later, similar procedural difficulties arose in the context of a new notification.[731] In view of these issues, the Commission services have drafted a more comprehensive document	

[730] C(2015) 4609 final.

[731] 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.

regarding the application of the derogation procedure as well as the circumvention procedure. This document will be presented to and discussed by the Contact Committee at its December 2015 meeting. **Application of circumvention procedure** The 2nd Application report on the AVMSD reports a circumvention case regarding alcohol advertising in Sweden. 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. Procedural issues also arose in this case. In particular, the notification lacked full details describing the procedure at national level in order to adopt restrictive measures[732]. Again, the notification raised the issue whether the broadcasters' right to be heard had been respected. **Derogation procedure under the eCommerce Directive** The derogation provision concerning non-linear services is modelled on a similar provision in the eCommerce Directive which contains the same grounds of derogations as the AVMSD. It emerges from the Staff Working Document accompanying the 2012 Communication on eCommerce[733] that, contrary to what might have been expected, the derogation appears to have been used very rarely. Thus, in the last decade, the Commission services have received only 30 notifications, mainly dealing with measures to protect consumers. The Commission never declared a measure incompatible with EU law. Since 2013 relevant notifications under the eCommerce Directive are submitted through IMI (Internal Market Information System), which is an	

[732] This included both the procedure before the national regulator as well as the procedure before the court to which the regulator needs to apply for fines.
[733] http://ec.europa.eu/internal_market/e-commerce/docs/communication2012/SEC2011_1641_en.pdf

interface connecting national administration with the Commission and among themselves. Since then the number of notifications appears to have increased slightly. The Court of Justice has held that the principles contained in the derogation procedure in the eCommerce Directive must be interpreted in the same manner as those governing the Internal Market freedom provisions of the Treaty.[734] The same considerations would in all probability also apply to the AVMSD. Hence, the grounds of derogation would need to be interpreted restrictively. **Simplification of jurisdiction rules** The jurisdictional criteria would continue to focus on the place of the head office and editorial decisions. If these places do not coincide, the Member State having jurisdiction could be determined by reference to where the majority of the workforce (instead of currently a "significant part of the workforce") is located. This would make reference to further complex subsidiary jurisdiction criteria superfluous, with establishment in a Member State remaining as a fall-back if jurisdiction cannot be determined by other means.	

INDEPENDENCE OF REGULATORS

Status quo	Option A
The AVMSD does not contain a formal obligation for the Member States to create an independent regulatory body if one does not already exist.	The AVMSD would set minimum mandatory requirements for regulatory bodies. Such requirements could include: i) independence from third parties; ii) transparent decision-making processes and accountability to relevant stakeholders; iii) open and transparent

[734] Ker-Optika judgment, par. 76

Article 30 requires Member States to take appropriate measures to exchange, among them and with the Commission, the information necessary to apply the Directive. This should in particular be done through their competent regulatory authorities and in view of the application of the cooperation and circumvention mechanisms detailed in the baseline scenario related to the COO principle. Recital 94 underlines that Member States 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. This should let them carry out their work in implementing the Directive impartially and transparently. More specifically, the instruments chosen should contribute to the promotion of media pluralism.	procedures for the removal of Board Members; iv) knowledge and expertise of human resources; v) financial[735], operational and decision making autonomy; vi) effective enforcement powers; vii) the possibility only for judicial power to review the NRAs' decisions. These are based on the Council of Europe Recommendation (2000)23 [736], a number of studies and reports (see Section 5.2.4.1) and the requirements set by EU law in other legislative frameworks (see ANNEX 12) The AVMSD would also require that the regulators have competences in all the areas covered by the AVMSD. They should exercise these competences impartially and transparently and in accordance with the AVMSD objectives (media pluralism, cultural diversity, consumer protection, internal market, distortion of competition). This option shall not prevent supervision in accordance with national constitutional law. The role of ERGA, currently set by a Commission Decision[737], would be embedded in the AVMSD and include new tasks deriving from the review of the Directive (see Sections 5.1.3, 5.2.2 and 5.2.3). This would not imply the creation of an Agency. Existing financing mechanisms would be maintained.

[735] In line with the INDIREG study, financial autonomy means "*that the regulator is equipped with sufficient financial resources*".
[736] https://wcd.coe.int/ViewDoc.jsp?id=393649&
[737] C(2014) 462 final

COMMERCIAL COMMUNICATIONS

Status quo	Option A
For TV broadcasting services and on-demand services, audiovisual commercial communications (AVCCs) shall be recognisable, non-discriminatory and not encourage harmful behaviour[738]. AVCCs must not harm minors, must not directly exploit their inexperience or credulity or encourage them to pressurize parents to make a purchase. Sponsorship and product placement are allowed, subject to certain conditions[739]. AVCCs for alcohol must not be aimed at minors or encourage excessive alcohol consumption. On AVCCs 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. For TV broadcasting services, advertising and teleshopping[740] on television are subject to a set of tighter rules on presentation[741] and content. They must also comply with stricter rules when it comes to television	For both TV broadcasters and on-demand services, sponsorship rules would be made more flexible by focusing on the principles of editorial independence, transparency (clear indication that the programme has been sponsored) and no sponsorship for banned products such as tobacco. Similarly, product placement would be explicitly allowed and the rules would be relaxed by deleting the "undue prominence" criterion and focusing on the principles of editorial independence, transparency (clear indication that the programme contains product placement) and no product placement for banned products (such as tobacco or medicines on prescription). The prohibition of product placement in children's programmes would remain. For TV broadcasters, films could be interrupted more often (once for each period of 20 minutes) except for children's programmes for which the current rule would remain. Isolated spots would be allowed. As regards quantitative limitations for advertising, TV broadcasters would be allowed more flexibility by transforming the 20 % per hour limitation into a daily limitation.

[738] AVCCs must:
- be readily recognisable, not use subliminal nor surreptitious techniques:
- respect human dignity, not include/promote discrimination (e.g. based on sex, nationality, religion),
- not encourage behaviour harmful to health, safety or the environment, not promote tobacco or prescription medication.

[739] In particular, they shall not influence either the content or the scheduling of the programme. They shall not encourage the purchase of a product or service. They must be clearly identified as such in an appropriate way. Programmes featuring product placement should not give undue prominence to the product or service referred to.

[740] Teleshopping windows must last at least 15 minutes and be clearly identifiable

[741] Advertising and teleshopping must be easily recognizable, distinguished as such by auditory and visual means (though this principle should not prevent the use of new advertising techniques), and should, where possible, not be isolated (apart from broadcast sports events). For alcoholic drinks it must comply with specific restrictions.

advertising and teleshopping for alcoholic beverages: (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages; (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving; (c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success; (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts; (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages. They may not take up more than 20% of any given hour of broadcasting time. By way of exception, broadcasters' self-promotion - i.e. announcements about their own programmes or products derived from them - are not counted in this 12-minute limit. Advertising and teleshopping may be inserted only once in a scheduled period of at least 30 minutes during children's programmes, films and news programmes.	More types of commercial messages would be excluded from the advertising limit (e.g. cross-promotion including announcements for programmes of other broadcasters or other media within the same media group). As regards qualitative rules, the status quo would remain[742]. Regarding the provisions on AVCCs for alcohol (Article 9(1)e)) and HFSS foods accompanying or included in programmes with a significant children's audience (Article 9(2)), self- and co-regulation would be encouraged, also at EU level if necessary. Member States would be encouraged to ensure that self- and co-regulatory codes are effectively used to reduce the exposure of children to audiovisual commercial communications of alcoholic beverages and of HFSS foods. The Commission and ERGA would facilitate exchanges of best practices on co-regulatory systems across the EU. If considered appropriate, the Commission would facilitate the development of EU codes on which ERGA might be requested to give an opinion. The general provisions on self- and co-regulation (Article 4(7)) would be reinforced with new benchmarks for the effectiveness of the existing and new codes.

[742] See Article 9 AVMSD.

ANNEX 21 – GLOSSARY (LAST ANNEX)

Glossary AVMSD
Excerpt from the Digital Agenda for Europe website: https://ec.europa.eu/digital-agenda/en/glossary

Advertising
The Audiovisual Media Services Directive (AVMSD) defines advertising in television as any form of announcement whether in return for payment or for similar consideration by a private or public undertakings in connection with trade, business, craft or profession in order to promote the supply of goods or services.

Advertising spot
Advertising spots on television may not exceed 12 minutes per hour. In line with the Commission's position, the Court adopted a wide and uniform interpretation of the notion of 'advertising spot' in line with the purpose of the AVMSD, which is to protect the viewer from an excessive amount of advertising. The Court found that an advertising spot is any type of advertising broadcast between programmes or during breaks, unless it is covered by another form of advertising expressly governed by the AVMSD.

Cinematographic and other audiovisual works
Audiovisual works intended for a first screening in cinemas. Circulation of European cinematographic works is hampered by a number of factors, e.g. the fragmentation of the European market and strong competition from the US. European films rely heavily on public funding. The 2013 Cinema Communication of the Commission lays down the guidelines for granting state aid for films. The Commission Communication on European Film in the Digital area adopted in May 2014 outlines the policy proposed for the adaptation of the sector to the new digital environment.

Codes of conduct against advertising for "unhealthy" food and beverages in children's programmes
The AVMSD obliges Member States and the Commission to encourage media service providers to develop codes of conduct regarding advertising for 'unhealthy' food and beverages in children's programmes. Self-regulatory practices have been promoted at EU level through the EU Platform for Action on Diet, Physical Activity and Health. Significant progress has been made, but further work is needed. The Commission will support the development of a definition of stricter age and audience thresholds and more consistent nutritional benchmarks across companies.

Connected TV
Devices that can be connected to the Internet. In a broader sense, the term refers to technical solutions that bring linear TV and the Internet world closer together, e.g. TV sets with added internet connectivity, set-top boxes delivering audio-visual content 'over-the-top', audio-visual services provided via tablet computers or smartphones.

Contact Committee
To facilitate effective implementation of the AVMSD, the so-called Contact Committee has been set up to allow regular consultation on practical problems arising from the application of the Directive. This committee is chaired by the Commission and made up of representatives of the competent authorities of the Member States. It addresses not only current audiovisual policy but also relevant new developments emerging in this sector (Article 29 AVMSD).

Convergence
The result of digital technologies whereby information (voice, text, audio and video) can be converted into digital form and transmitted through different networks and accessed from different end-user terminals. The result is the convergence of ICT, media and telecommunications industry services. Applied to the audio-visual sector, convergence relates to the progressing merger between online and broadcast content. The practical result is online content on the TV screen and broadcast content on the PC, mobile phone or tablet.

Cooperation and circumvention procedure
The AVMSD provides a mechanism for addressing a dispute between Member States regarding cross-border broadcasts: a broadcaster under the jurisdiction of one Member State (of origin) directs its broadcast wholly or mostly towards another Member State (target). The latter claims that the broadcaster is violating national law. As a first step, a consultation procedure between the two Member States is foreseen. If the result is deemed unsatisfactory by the traget Member State, it may impose binding measures against the broadcaster circumventing its national rules, subject to ex-ante control by the Commission.

Co-production
The AVMSD contains measures to encourage the production and distribution of European works both in linear and on-demand services. The term "European work" is defined in Article1(n) AVMSD. It includes works produced within the framework of bilateral co-production treaties between Member States/the EU and third countries if the Community co-producers supply a majority share of the production cost and control the production.

Country of origin principle
The rule that an audiovisual media service must only be regulated by the Member State where its provider is established, as defined by the Audiovisual Media Services Directive (AVMSD). Only exceptionally can a receiving Member State limit reception or retransmission of services, following the procedure foreseen in the AVMSD ,for example when the service breaches domestic rules on the protection of minors or hate speech. The principle applies to both linear and on-demand audiovisual media services.

Derogation from the obligation to ensure freedom of reception
The AVMSD establishes the principle that Member States must ensure freedom of reception and may not restrict retransmission on their territory of AV media services from other Member States (Article 3(1)). However, following a detailed procedure, they may suspend retransmission of a television broadcast from another Member State if they consider that it manifestly, seriously and gravely infringes on rules for the protection of minors or incitement to hatred. A Member State can also restrict the retransmission of on-demand audiovisual media services under certain conditions (Article 3(4) AVMSD).

Disability - Access for people with a visual or hearing disability
The AVMSD (Article 7) intends to facilitate the access to audiovisual media services for people with visual or hearing disabilities. Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability. Some of the means envisaged to this end are subtitling, sign language and audio description.

European Audiovisual Observatory (EAO)
A Partial Enlarged Agreement of the Council of Europe. Members of the Observatory include all EU Member States, the EU and other European countries. The EU is represented by the Commission, DG CONNECT is the lead service. The legal basis and the financing is provided by the Creative Europe Regulation managed by DG EAC. The Observatory focuses on

collection, preparation and distribution of economic and legal information on the film, linear TV and VOD sectors in Europe. DG CONNECT has a service contract on statistical information on VOD.

European Convention on Transfrontier Television
This Convention of the Council of Europe lays down a number of rules for the free and unhindered circulation of television programmes across the countries concerned. In 2007 the revision of the convention was put on hold after the Commission reminded Member States that the EU enjoys exclusive competence in this area and has no interest in joining the Convention which covers similar areas as the AVMSD. The Parliamentary Assembly of the CoE suggested in 2014 to explore the possibilities for continuing the works on the amendments of the Convention.

European Regulators Group for Audiovisual Media Services (ERGA)
ERGA brings together heads or high level representatives of national independent regulatory bodies in the field of audiovisual services, to advise the Commission on the implementation of the EU's Audiovisual Media Services Directive (AVMSD). Its objectives are set out in the Commission Decision of 3 February 2014. The first meeting of the Group took place on 4 March 2014, in Brussels.

European works
To support the production and distribution of European works, the AVMSD lays down in Article 16 that Member States must ensure that broadcasters reserve a majority proportion of their transmission time for such works. Article 13 also requires on-demand audiovisual services to promote production of and access to European works. 'European work' is defined in Article 1 (n) AVMSD. It includes not only works produced in a Member State but also in a state party to the European Convention on Transfrontier Television and works produced within co-production treaties.

Events of major importance for society
The AVMSD provides that the public may be guaranteed access on free-to-air television to the broadcasts of events of major importance for society (Article 14). Each Member State may draw up a list of such events. They must be broadcast unencrypted. On the basis of the principle of mutual recognition, Member States must ensure that broadcasters under their jurisdiction respect the lists of other Member States. The events concerned may be national or other, e.g. major sports events.

Freedom of expression
The TEU stipulates that the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, notably Article 10 on the right to freedom of expression. Article 11 of the EU Charter of Fundamental Rights on freedom of expression and information guarantees those same rights, as well as the freedom and pluralism of the media.

Free-to-air broadcasting
Broadcasting, either public service or commercial, of programmes which are accessible to the public without paying any specific fees (except licence fees and/or the basic tier subscription fees to a cable network). 'Free to air' television may cover transmission by cable, satellite or terrestrial technologies but excludes services to which access is limited by conditional access systems such as Pay-TV Services.

Free-to-view broadcasting

Broadcasting of services that may require a one-time activation fee, but without subsequent costs for viewers. Usually this takes the form of encrypted broadcasts, requiring an access card for decryption and viewing.

Linear Audiovisual Media Service
A linear audiovisual media service (i.e. television broadcast) is provided for simultaneous viewing on the basis of a programme schedule, contrary to a non-linear service (i.e. on-demand service) that will be available at the moment chosen by the user, at his request and on the basis of a catalogue.

Media Pluralism
Embraces a number of ideas, eg diversity of ownership, variety of sources of information and range of content available. In the political debate, media pluralism has come to mean, almost exclusively, pluralism of ownership. Media pluralism however includes all measures that ensure citizen's access to a variety of information sources, opinion, voices etc. in order to form their opinion without undue influence of one dominant opinion forming power.

Media Service provider
Media service provider means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of an audiovisual media service and determines the manner in which it is organised. This does not include natural or legal persons who merely transmit programmes for which the editorial responsibility lies with third parties.

New Advertising Techniques
New advertising techniques such as Interactive Advertising, Split-screen and Virtual Advertising have emerged over the past few years. The AVMSD recognizes the specificity of new advertising techniques stating that the separation principle should not prevent the use of new advertising techniques.

On-demand audio-visual media services
On-demand / non-linear audio-visual media services are provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his/her individual request on the basis of a catalogue of programmes selected by the media service provider.

Parental controls
Automated tools to help parents protect their children and set restrictions for using devices and services. These controls may include: alerting a parent when their child's device leaves school, limiting their car speed to a certain maximum speed, controlling the content which the child views on a device connected to the Internet, or limiting the amount of time they can use their device.

Pay TV
Users obtain access to additional or premium content in return for a specific fee e.g. regular subscription or 'pay per use'. Pay-TV channels broadcast in an encoded (encrypted) form so that access (via a decoder) is limited to only those people who have subscribed to the Pay-TV offers. Pay-television services, as audiovisual media service providers, are covered by the AVMS Directive.

Protection of Minors
Programmes which might seriously harm minors are prohibited on TV. Programmes which might be harmful must be encrypted or shown at a time when minors will normally not see them, contain an acoustic warning or made identifiable by a visual symbol. The provisions of

the Directive are complemented by Recommendations on the protection of minors and human dignity, and by the Communication "European Strategy for a Better Internet for Children".

Public Service Broadcaster, Amsterdam protocol
Broadcaster entrusted with a public service mandate. According to the Protocol on the System of public broadcasting in the Member States attached to the Treaty of Amsterdam, public broadcasting is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. The definition of the public service mandate falls within the competence of the Member States, which can decide at national, regional or local level.

Surreptitious audiovisual commercial communication
Prohibited by Article 9(a) of the AVMS Directive. AVMSD (Article 1(1)(j)) defines surreptitious audiovisual commercial communication as "the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature".

Telepromotion
A form of television advertising. Studio programmes (e.g. game shows) are interrupted by slots devoted to the presentation of products or services. The programme presenters momentarily swap their role for one as "promoters" of the goods or services which are the object of the advertising presentation. The Commission considers that telepromotions are compatible with the AVMSD, provided they are kept quite separate from other parts of the programme service by optical and/or acoustic means enabling viewers to readily recognise their commercial nature.

Teleshopping
Direct offers broadcast to the public for the supply of goods or services, including immovable property, rights and obligations, in return for payment. There are Teleshopping Spots, Teleshopping windows and there are channels devoted to teleshopping, i.e. Teleshopping Channels.

Television broadcast
Transmission over air, cable or satellite for public viewing. Under the AVMS Directive the media service provider is the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the service and determines the manner in which it is organised. For television broadcasts, this will be done on the basis of a programme schedule for simultaneous viewing.

Video-on-demand (VOD)
A system allowing viewers to order and see a programme at the exact time the viewer specifies. VOD can be offered through streaming of the content through a set-top box, a computer or other device, allowing viewing in real time, or by download to a device such as a computer, for viewing at any time. Traditionally VOD meant that the viewer paid per programme. However, other forms of on-demand services, such as "subscription video on demand" (SVOD), that requires users to pay a monthly fee to access the catalogue are becoming very popular.

Watershed:
The watershed is the point in time after which programmes with adult content may be broadcast. In the same way that a watershed refers to the crest dividing two drainage basins, a broadcasting watershed serves as a dividing line. It divides the day into the overnight period

where family-oriented programming suitable for children may be aired and where programming aimed at or suitable for a more adult audience is permitted, though not required. It may also mean the period of time during which programmes with adult content may be broadcast.