

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

A media framework for the 21st century

Fields marked with * are mandatory.

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A media framework for the 21st century

Description

The Commission is consulting on the Directive 2010/13/EU on Audiovisual Media Services (AVMSD) first to check which parts of the Directive are currently fit for purpose as part of the Regulatory Fitness and Performance Programme (REFIT), and, second, to collect evidence and views on the future media services policy in the form of an impact assessment.

Targeted respondents

National regulators, broadcasters, producers, content providers telecom service providers, civil society organisations, academia and citizens

Duration

6 July 2015 - 30 September 2015

Comments received after the closing date will not be considered.

General information on respondents

* *I am responding as:*

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

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

- Yes
- No

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

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

- National administration
- National regulator
- Regional authority
- Public service broadcasters
- Non-governmental organisation
- Small or medium-sized business
- Micro-business
- Commercial broadcasters & thematic channels
- Pay TV aggregators
- Free and pay VOD operators
- IPTV, ISPs, cable operators including telcos
- European-level representative platform or association
- National representative association
- Research body/academia
- Press or other
- Other

My institution/organisation/business operates in:

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

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

Europa Distribution

* Please enter your address, telephone and email

72 rue de la Consolation - 1030 Brussels
+32 2 739 47 29
communication@europa-distribution.org

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

Europa Distribution's offices are in Brussels and we represent more than 140 leading independent distributors from 29 countries in Europe (and a bit beyond), which makes us feel European. The association serves as the voice of the sector and acts as a network and a think tank. Since its creation, Europa Distribution has accompanied and reinforced the integration and collaboration process between its members through brainstorming and training sessions, and this in the scope of various festivals and markets all around Europe (Sofia, Nyon, Annecy, Karlovy Vary, Locarno, San Sebastian, Rome...).

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* **Do you agree to your contribution being published on the Commission's website?**

- Yes, I agree to my response being published under the name I indicate (name of your organisation/company/public authority or your name if your reply as an individual)
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Background and objectives

The Audiovisual Media Services Directive (AVMSD[1]) has paved the way towards a single European market for audiovisual media services. It has harmonised the audiovisual rules of the Member States and facilitated the provision of audiovisual media services across the EU on the basis of the country of origin principle. Since its adoption in 2007, the audiovisual media landscape has changed significantly due to media convergence[2]. 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[3], the Commission announced that the AVMSD would be revised in 2016. Another REFIT exercise is being carried out, in parallel, in the field of telecoms with a view to come forward with proposals in 2016. Some of the issues treated in the current public consultation may have an impact on this parallel exercise and vice versa. In 2013, the Commission adopted a Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values"[4] inviting stakeholders to share their views on the changing media landscape and its implications for the AVMSD. On the basis of the outcome of this public consultation, the Commission has identified the following issues to be considered in the evaluation and review of the AVMSD:

1. Ensuring a level playing field for audiovisual media services;
2. Providing for an optimal level of consumer protection;
3. User protection and prohibition of hate speech and discrimination;
4. Promoting European audiovisual content;
5. Strengthening the single market;
6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities.

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

Questions

1. Ensuring a level playing field

Services to which the AVMSD applies

The AVMSD regulates television broadcasts and on-demand services. It applies to programmes that are TV-like[5] and for which providers have editorial responsibility[6]. The AVMSD does not apply to content hosted by online video-sharing platforms and intermediaries.

These platforms and intermediaries are regulated primarily by the e-Commerce Directive[3], which exempts them from liability for the content they transmit, store or host, under certain conditions.

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

Set of questions 1.1

Are the provisions on the services to which the Directive applies (television broadcasting and on-demand services) still relevant[8], effective[9] and fair[10]?

Relevant

- Yes
- No
- No opinion

Effective

- Yes
- No
- No opinion

Fair

- Yes
- No
- No opinion

Comments:

Services covered by the AVMSD are not relevant anymore due to convergence between linear and non-linear services. User-generated content platforms such as YouTube should be covered by the directive, as they provide the greatest access to European audio-visual works online. Regarding protection against piracy and promotion of European works, there is a need for a more harmonised regulation between broadcasters and online platforms including user-generated content ones.

Today, the regulation of audio-visual content is not effective as too many quality works are circulating via illegal platforms (through big intermediaries that are not liable) or are under-exposed on linear broadcast services as on non-linear ones. This undermines the objectives of promotion, fairness and lowers the capacity of creators and their representatives to produce and offer new contents.

There exists a huge gap between independent content makers and big companies. The access to circulation through linear broadcast is being narrowed everyday more, mostly limiting the access to commercial contents only. This trend is partially explained by the fact that there is a growing unfair competition between traditional broadcasters and online service providers who benefit from more flexible regulations. If we want to have a better circulation of European films, then it is essential to create a fair context for them to be screened. In the end, it is the real presence of European works on linear and non-linear services that is at stake.

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

- Yes (if yes, please explain below)
 No

Comments:

The fact that video sharing platforms or other user-generated content platforms are not regulated by the AVMSD creates a big disadvantage for film right-holders. As an association of independent distributors, Europa Distribution has many members victim of infringements of their works via online video-sharing platforms. The non-regulated platforms are breaking the value chain of creation by omitting copyrights and allowing the presence of illegal digital content.

For independent film distributors it is a nightmare and added work and costs to monitor the internet for infringements and to send out take down notices to these platforms and/or undertake legal action following the circumstances.

Preferred policy option:

- a) Maintaining the status quo
- b) Issuing European Commission's guidance clarifying the scope of the AVMSD. No other changes to Union law would be foreseen.
- c) Amending law(s) other than the AVMSD, notably the e-Commerce Directive. This option could be complemented by self and co-regulatory initiatives.
- d) Amending the AVMSD, namely by extending all or some of its provisions for instance to providers offering audiovisual content which does not qualify as "TV-like" or to providers hosting user-generated content.
- e) Other option (please describe)

Other option - describe

Amending the AVMSD and the e-Commerce Directive in order to extend the provisions of the former to all providers offering audio-visual content and to engage the liability of intermediary service providers by modifying articles 12 to 14 in the Directive 2000/31/EC.

Please explain your choice:

In order to re-establish fair-remunerated creative ways to produce and offer contents and to help promotion of European works, we believe that both user-content platforms and online intermediaries should be regulated. The former through the AVMSD, in order to be as involved as linear services in the creation, promotion and protection of European works; the latter through the reform of the e-commerce directive that would make intermediaries liable to the content they help sharing that is too often illegally offered online.

Geographical scope of AVMSD

The AVMSD applies to operators established in the EU. Operators established outside the EU but targeting EU audiences with their audiovisual media services (via, for instance, terrestrial broadcasting satellite broadcasting the Internet or other means) do not fall under the scope of the Directive[11].

Set of questions 1.2

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

Relevant?

- Yes
- No
- No opinion

Effective

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

Non-European operators are not obliged to comply with EU rules, increasing an unfair competition with European films and the European audio-visual sector. Non-EU operators, when targeting European audiences should participate, along with national operators, in the value chain and circulation of EU films. They also need to be liable, regarding local laws, for the content they offer in the European Member States they are covering with their services.

These non-European service providers are not subject to taxation or participation to any film financing regulation. In the end, at a similar content offer level, the situation between European and non-European operators is unfair. It is not the origin of the service providers or platforms that should matter, but the country where the content is consumed.

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

- Yes (if yes, please explain)
- No

If yes, please explain:

Comments:

Operators such as Netflix or Amazon Instant Video are not required to adhere to the quota of 50 per cent European content, when European public and commercial television channels do, nor are they obliged to pay fee for film creation (a rule which is compulsory for players in the big production countries such as France or Germany). As a non-European operator, Netflix is a free-rider: it has access to European audiences, with free management of the few European works it buys, and doesn't pay equal taxes as its European competitors (Canal +, Sky etc.). There is a clear competitive disadvantage for European on-demand services that have to comply with the Directive and to national regulations, obligations and taxation. It is essential to have a level playing field for all operators.

Preferred policy option:

- a) Maintaining the status quo
- b) Extending the scope of application of the Directive to providers of audiovisual media services established outside the EU that are targeting EU audiences. This could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.
- c) Extending the scope of application of the Directive to audiovisual media services established outside the EU that are targeting EU audiences and whose presence in the EU is significant in terms of market share/turnover. As for option b), this could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.
- d) Other option (please describe)

Other option: describe

Extending the scope of application of the Directive to providers of audio-visual media services established outside the EU that are targeting EU audiences. The rules of the Member State in which the film is broadcast should apply and there should be a harmonisation of rules and taxation between the European Member States.

Please explain your choice:

Any provider of audio-visual media service targeting European audiences should be included in the scope of the Directive. Though, the country of origin principle has limits in Europe because many different exceptions exist within Member States regarding audio-visual jurisdiction. Non-European platforms choose to establish themselves in countries where rules and taxations are the less restrictive. We think it is necessary to let each Member State's rules to apply according to the geographical audience targeted by the operator with a specific programme - as a "country of delivery principle".

2. Providing for an optimal level of consumer protection

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

In the area of commercial communications [12], the AVMSD sets out certain rules, which apply to all audiovisual media services and regulate, for example, the use of sponsorship and product placement. They also set limits to commercial communications for alcohol and tobacco.

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

Set of questions 2.1

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

Relevant?

- Yes
- No
- No opinion

Effective

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

- Yes (if yes, please explain)
- No

Preferred policy option:

- a) Maintaining the status quo
- b) Rendering the rules on commercial communications more flexible, notably those setting quantitative limits on advertising and on the number of interruptions.
- c) Tightening certain rules on advertising that aim to protect vulnerable viewers, notably the rules on alcohol advertising or advertising of products high in fat, salt and sugars.
- d) Other options (please describe)

Please explain your choice:

3. User protection and prohibition of hate speech and discrimination

General viewers' protection under the AVMSD

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

Set of questions 3.1

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

- Yes (please explain)
- No

Comments:

Protection of minors

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

Set of questions 3.2

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

- Yes
- No
- No opinion

Comments:

What are the costs related to implementing such requirements?

Comments:

What are the benefits related to implementing such requirements?

Comments:

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

- Yes (please explain)
- No

Comments:

Preferred policy option:

a) *Maintaining the status quo*

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

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

c) *Introducing further harmonisation* This could include, for example, more harmonisation of technical requirements, coordination and certification of technical protection measures.

Other possibilities could be the coordination of labelling and classification systems or common definitions of key concepts such as minors, pornography, gratuitous violence, impairing and seriously impairing media content.

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

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

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

content (for instance still images) One option could be that these services would be subject to the same rules on protection of minors as on-demand audiovisual media services.

f) *Other option (please describe)*

Please explain your choice:

4. Promoting European audiovisual content

The AVMSD aims to promote European works and as such cultural diversity in the EU. For television broadcasting services, the EU Member States shall ensure, where applicable and by appropriate means, a share of EU works^[13] and independent productions^[14]. For on-demand services, the EU Member States can choose among various options to achieve the objective of promoting cultural diversity. These options include financial contributions to production and rights acquisition of European works or rules guaranteeing a share and/or prominence of European works. The EU Member States must also comply with reporting obligations on the actions pursued to promote European works, in the form of a detailed report to be provided every two years.

Set of questions 4

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

Relevant?

- Yes
- No
- No opinion

Effective

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

The AVMSD should have an impact on the choice offered to the consumer on their linear and non-linear services. Today, on TV as on VoD, a European citizen will find essentially the same blockbusters. There is no real diversity in genre and origin in the offer, and when there is, the less commercial films find themselves relegated in difficult slots (sometimes even at night!) or on smaller, niche channels, which means they don't exist to the audience, especially when they are not promoted nor branded. So it may seem that European films are screened, but in the end, it is always the same few obvious commercial titles the audience can/will see. This has also a consequence on the education to film as the audience doesn't have an objective view of what a European film may be in all its wonderful rich diversity. It creates a lack of diversity, and per se doesn't allow a REAL circulation of all European films. The quotas as they are today, even when they are put in place, don't serve the original purpose, unfortunately.

But there are also good examples of course, like CANVAS in Belgium, the second and very well branded channel of the Flemish public television that does a real work on the circulation of independent films from all over the world through a broad-minded programming, at regular good slots (weekend days around 9-10pm): <http://www.canvasvernieuwt.be/film>

In order to achieve a better visibility and promotion of European national and non-national content across the Member States, there should be an increased presence of our European cinematography in the programmes, at better time slots and with a real work of promotion and editorialisation to create a brand and make the films exist. Regulations should enhance the broadcast of a certain amount of European independent national and non-national films on prime time, films that would vary in genre and origins and show a real cultural diversity.

This is especially true for public television, which should have a responsibility towards its national/regional audience, promote and show regularly very diverse films, which is unfortunately often not the case today, the same films being screened again and again.

Regarding the on-demand services, a guarantee of share of national and non-national European works should be ensured by all platforms but is far from enough and here also, a real work of editorialisation and promotion of European films is a minimum.

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

- a) the right amount
- b) too much
- c) too little
- d) no opinion

Comments:

Not only there is an overall lack of non-national European films in the catalogues of linear and non-linear services, but more particularly a lack of recent ones. A lot of providers prefer to rely on safe bets and as a result, only the few same films are regularly broadcast.

A regulation should ensure that recent works are broadcast (and again, at normal slots) for example by imposing a certain share of culturally rich and varied in genre and origins non-national EU films of the past 5 years: it would enhance cultural diversity for the viewers while supporting European talents.

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

- Yes
- No
- No opinion

Comments:

Independent distributors are a key element in the circulation of films, national and non-national, European and non-European. By buying the rights for films, they create diversity, but need to find the supports to have these films screened, and this is where the AVMSD should be an essential asset. It is of course not the only one, and we need to create a brand around European cinematography and support it much more than today, have more transparency on the admissions made on linear and non-linear supports, and of course enhance the discoverability of the legal offer while fighting piracy.

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

- Yes (please explain)
- No

Comments:

There should be more promotion of European works resulting from the AVMSD. There is support to some works, but not enough diversity of genres and origins. As a result, consumer's choice is reduced and it may have an impact on their interest in film and shape their taste. We think that if consumers may watch easily only some very commercial national films, their potential interest for European cinema will decrease or disappear totally, which would have a disastrous effect on the future of cultural diversity.

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

Unfortunately the direct benefits cannot really be evaluated. It is not always easy to put on the linear and non-linear services a film that wasn't a commercial success in the theatres. To lower risk, most broadcasters and platforms will go for films that have already won the audience and as a result, it is mainly the national and US blockbusters that are broadcast on prime time on popular channels.

Visibility remains very low for smaller European films, and distributors find enormous difficulties to sell their non-national European films to TV and/or VOD platforms when they are not blockbusters, since only the commercial success prevails. As a result, works that won prestigious film awards may not be broadcast on both linear and non-linear services, and by consequence won't make any monetary gain on these supports. It makes it more difficult for distributors to defend these films and make them exist and has an impact on cultural diversity on linear and non-linear services.

This is why we feel a more efficient regulation on the quotas should be made, so that the AVMSD can fully fulfil its objective in terms of promotion and diversity of European works, and not only benefit a few.

Introducing additional quotas for non-national European works will improve the visibility and circulation of these films, and play a significant input in their promotion and, through them, cultural diversity. The quotas should concern:

- recentness of films
- for televisions: time slots of broadcasting of non-national EU works: more time slots and better ones (cfr the Canvas example)
- for on-demand services: harmonisation towards an obligatory share of European films and a minimum of promotion and editorialisation of content (such as the visibility of the films on the home pages)

Comments:

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

Comments:

Preferred policy option:

- a) Maintaining the status quo
- b) Repealing AVMSD obligations for broadcast and/or for on-demand services regarding the promotion of European works. This would entail the removal of EU-level harmonisation on the promotion of European works, which would then be subject to national rules only.
- c) Introducing more flexibility for the providers' in their choice or implementation of the measures on the promotion of European works. This could imply, for example, leaving more choice both to TV broadcasters and video-on-demand providers as to the method of promoting European works.
- d) Reinforcing the existing rules. For television broadcasting services this could be done, for example, by introducing additional quotas for non-national European works and/or for European quality programming (e.g. for fiction films, documentaries and TV series) or for co-productions; or by setting a clear percentage to be reserved to Recent Independent Productions [15] (instead of "an adequate proportion"). For on-demand services, further harmonisation could be envisaged: by introducing one compulsory method (among e.g. the use of prominence tools, an obligatory share of European works in the catalogue or a financial contribution – as an investment obligation or as a levy) or a combination of these methods.
- e) Other options (please describe)

Please explain your choice:

5. Strengthening the single market

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

Set of questions 5

Is the current approach still relevant, effective and fair?

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

Regarding film broadcasting and non-linear services, jurisdiction in Europe can be very different, according to practices of creation and financing in Member States. Rules for film distribution and film financing are very nationally tailor-made: in at least ten EU countries, all distribution services are required by law to contribute to the funding of national production; release-windows are not harmonised etc. As a consequence, with the increase of non-linear audio-visual services, the AVMSD current “country of origin” principle doesn’t fit at all with the cinematographic industry and derogations planned in the Directive fail to cover this specificity. Many providers decide to settle where legislation regarding film financing is lighter. Certain European audio-visual industries see their main national VOD providers being in direct competition with ones operating outside of their territory. These non-national companies based abroad may for example offer national feature films but do not pay any levy for financing movies. These operators, playing the game of rules differentiation between states are not only creating a deprivation of revenue for national providers, but at the end of the value chain, are fostering a substantial derivation of public funds for creation.

It creates unfair competition as of course a new pan-European provider will always choose to establish itself in the country where the rules are the most favourable, something a European national platform can’t do.

As previously said, the European film market is very diverse and national rules very specific to a Member State market. To increase fairness among the online audio-visual content providers and re-balance competition between European operators, we see in “the country of delivery principle”, the fairest solution. Maintaining different film regulations and territorial differences within Member States is a way of maintaining European diversity of content.

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

- Yes (please describe)
- No

Comments

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

- Yes
- No

Comments:

Preferred policy option:

- a) Maintaining the status quo
- b) Strengthening existing cooperation practices
- c) Revising the rules on cooperation and derogation mechanisms, for example by means of provisions aimed at enhancing their effective functioning
 - d) Simplifying the criteria to determine the jurisdiction to which a provider is subject, for example by focusing on where the editorial decisions on an audiovisual media service are taken.
- e) Moving to a different approach whereby providers would have to comply with some of the rules (for example on promotion of European works) of the countries where they deliver their services.
- f) Other options (please describe)

Please explain your choice:

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

Independence of regulators

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

Set of questions 6.1

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

- Yes (please explain)
- No

Comments:

Preferred policy option:

- a) Maintaining the status quo
- b) Laying down in the AVMSD a mandate for the independence of regulatory authorities, for example by introducing an explicit requirement for the Member States to guarantee the independence of national regulatory bodies and ensure that they exercise their powers impartially and transparently.
- c) Laying down minimum mandatory requirements for regulatory authorities, for example detailed features that national regulatory bodies would need to have in order to ensure their independence. Such features could relate to transparent decision-making processes; accountability to relevant stakeholders; open and transparent procedures for the nomination, appointment and removal of Board Members; knowledge and expertise of human resources; financial, operational and decision making autonomy; effective enforcement powers, etc.
- d) Other options (please describe)

Please explain your choice

Must Carry/Findability

In the context of the regulatory framework applicable to the telecoms operators, under the Universal Service Directive[16], Member States can in certain circumstances oblige providers of electronic communications networks to transmit specific TV and radio channels ("must-carry" rules). Under the Access Directive[17], Member States can also set rules on the inclusion of radio and TV services in electronic programme guides (EPGs)[18] and on presentational aspects of EPGs such as the channel listing. Most recent market and technological developments (new distribution channels, the proliferation of audiovisual content, etc.) have highlighted the need to reflect on the validity of the must-carry rules and on whether updated rules would be required to facilitate or ensure access to public interest content (to be defined at Member State level), for instance by giving this content a certain prominence (i.e. ensuring findability/discoverability).

Set of questions 6.2

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

- Yes
- No
- No opinion

Comments:

As mentioned above, it is essentially the commercial national movies that benefit from the AVMSD and that get to be widely visible and easily accessible.

On the other hand, because there are so many options, it is more difficult for European citizens to know where to access easily the content they would like to see, in our case European films. The promotion of well-branded services is essential, as improving the discoverability could help enhance the visibility and access of public interest content and enhance cultural diversity.

Some European Member States are already developing reference websites that raise public awareness on piracy and help people find where they can legally watch the films they want to, whether it is online or offline (depending on the websites). Here are a few examples that could easily be duplicated and adapted in the other member states:

- France: Reference website developed by the CNC <http://vad.cnc.fr/>
- UK : Find Any Film <http://www.findanyfilm.com/>
- Spain : Me Siento de Cine <http://mesientodecine.com/>
- The Netherlands: The Content Map <http://www.thecontentmap.nl/>

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

- Yes (please explain)
- No

Comments:

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

- Yes
- No

Comments:

Preferred policy option:

- a) Maintaining the status quo, i.e. keeping in place the current EU rules on must carry/ EPG related provisions (i.e. no extension of the right of EU Member States to cover services other than broadcast).
- b) Removing 'must carry' /EPG related obligations at national level/at EU level.
- c) Extending existing "must-carry" rules to on-demand services/and or further services currently not covered by the AVMSD.
- d) Amending the AVMSD to include rules related to the "discoverability" of public interest content (for instance rules relating to the prominence of "public interest" content on distribution platforms for on-demand audiovisual media services).
- e) Addressing potential issues only in the context of the comprehensive assessment related to the role of online platforms and intermediaries to be launched at the end of 2015 as announced in the Digital Single Market Strategy for Europe.
- f) Other options (please describe).

Please explain your choice:

Accessibility for people with disabilities

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

Set of questions 6.3

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

- Yes
- No
- No opinion

Comments:

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

- Yes (please describe)
- No

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

- Yes
- No

Comments:

Preferred policy option:

- a) Maintaining the status quo*
- b) Strengthening EU-level harmonisation of these rules.* Instead of encouraging it, the EU Member States would be obliged to ensure gradual accessibility of audiovisual works for people with visual and hearing impairments. This obligation could be implemented by the EU Member States through legislation or co-regulation.
- c) Introducing self and co-regulatory measures*
- This could include measures related to subtitling or sign language and audio-description.
- d) Other option (please describe).*

Please explain your choice

Events of major importance for society

The AVMSD authorises the Member States to prohibit the exclusive broadcasting of events which they deem to be of major importance for society, where such broadcasts would deprive a substantial proportion of the public of the possibility of following those events on free-to-air television. The AVMSD mentions the football World Cup and the European football championship as examples of such events. When a Member State notifies a list of events of major importance, the Commission needs to assess the list's compatibility with EU law. If considered compatible, a list will benefit from 'mutual recognition'.

Set of questions 6.4

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

- Yes (please explain)
- No

Comments:

Preferred policy option:

- a) Maintaining the status quo
- b) Other options (please describe).

Please explain your choice

Set of questions 6.5

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

- Yes
- No

Comments:

Preferred policy option:

- a) Maintaining the status quo
- b) Other options (please describe).

Please explain your choice

Right of reply

The AVMSD lays down that any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies.

Set of questions 6.6

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

- Yes (please explain)
- No

Preferred policy option:

- a) Maintaining the status quo
- b) Other options (please describe).

Conclusions and next steps

This public consultation will be closed on 30 September 2015

On the basis of the responses, the Commission will complete the Regulatory Fitness and Performance (REFIT) evaluation of the AVMSD and inform the Impact Assessment process on the policy options for the future of AVMSD.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

Footnotes

[1] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. Hereinafter, "the AVMSD" or "the Directive".

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

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

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

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

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

[7] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

[8] Relevance looks at the relationship between the needs and problems in society and the objectives of the intervention.

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

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

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

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

[13] For European works: a majority proportion of broadcasters' transmission time.

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

[15] Works transmitted within 5 years of their production

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

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

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

Useful links

AVMSD (<https://ec.europa.eu/digital-agenda/en/audiovisual-media-services-directive-avmsd>)

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