

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.

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.

Mérték Médiaelemző Műhely Közhasznú Nonprofit Kft (Mertek Media Monitor)

* Please enter your address, telephone and email

1042 Árpád út 90-92. Budapest, Hungary
+36 20 498 62 88
info@mertek.eu

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

Hungary, Budapest

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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)
- No, I do not want my response to be published

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:

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

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

See below in the explanation.

Please explain your choice:

Media policy instruments, and in increasingly wider circles media consumption patterns too, are in the process of erasing distinctions between linear/on-media demand. The supply side is adjusting to this development. While television media service providers can no longer afford to be absent from the on-demand market, the players in this market lure consumers with content they have produced themselves. Moreover, audiovisual content has emerged as an essential element of all content services, be it the website of a traditional press product or of an NGO. Due to the advances in the technology of receiving sets and changes in consumption patterns, any type of audiovisual content stands an increasingly better chance of receiving a slice of the time that consumers devote to the consumption of audiovisual contents. Our opinion is that in the prevailing media environment, and even more so in the foreseeable media environment, the special situation of television media services will end.

Based on research about media consumption patterns, it is becoming possible for regulators to arrive at an increasingly accurate picture of what types of content are most suitable for satisfying the same demands of consumers. At the same time, in the present media environment one needs to design regulatory frameworks that flexibly adapt to continuous changes and can thus be maintained even under as of yet unknown conditions governing the selection of media offerings and media consumption patterns.

Moreover, in addition to the aforementioned, it is also advisable to keep in mind that, for the most part, television media services markets still tend to be the strong suits of European media corporations. In the

market for on-demand media services, be that edited or user-generated content, European media services are facing stiff competition from market players from outside Europe; enforcing European regulations against these players is nigh impossible. This should motivate the European regulator to create a favourable regulatory framework for European media corporations that will end up boosting the latter in the global competition.

To ensure that strong European players enter the on-demand market, it is not only necessary to make sure that this market is not excessively regulated, but one must also provide a boost for European players who are currently active in the television market, which could serve as an incentive for a more vigorous presence in the on-demand market on the part of the latter. The current processes in the media market will define the positions of individual players and regions in the near future, which is why at this time boosting their competitiveness is the primary consideration.

In light of the above, we propose that it would be advisable to extend the scope of the directive to all audiovisual media services. However, the Directive's scope of application can only be construed jointly with the requirements applicable to individual types of services. The extension of the scope of application may not constitute a rise in the levels of administrative burdens applicable to any type of service. Indeed, our position is that any extension of the scope of application must be accompanied by a significant reduction in the burdens of television media services. This follows both from the end of the special status of television media services and the intention of strengthening the positions of European media service providers. At the level of the Directive, this objective primarily provides a basis for rethinking advertising regulations; it is also advisable to review the instruments used to subsidise European show production.

Nor does the extension of the scope of application imply that the same rules must apply across the board to all types of services.

Nevertheless, in terms of enacting differentiated regulatory burdens in the context of designing the arsenal of child protection, the instruments used to subsidise European productions, and in implementing advertising content regulations the primary emphasis should be on self-regulation by various sectors of the media industry and on the regulatory efforts of member states, which provide the framework of self-regulation and co-operate therewith. In order to ensure that this solution does not endanger the unified internal market, it is necessary to review the Directive's "minimal regulation" character, and it is also advisable to specify the upper limits of intervention in the context of individual regulatory burdens.

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:

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:

Any regulatory solution must of course primarily aim at improving the competitive position of European services vis-à-vis non-European-based on-demand media services. In some European countries, however, television shows broadcast from abroad can also have a sensitive impact on the domestic political situation (e.g. Russian language shows broadcast in Estonia).

Comments:

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)

Please explain your choice:

The unilateral determination of extraterritorial jurisdiction not based on international agreements between the countries involved will in all probability lead to serious failures of implementation. Especially since the areas regulated by the Directive affect culturally and constitutionally sensitive issues, a territorial extension of the scope of European regulations would elicit forceful international protests. The most sensitive regulatory issue is presumably the protection of users' personal information, though this issue falls outside the scope of the Directive.

Hence the competitiveness of European media service providers should be strengthened in the way suggested in the previous point, by rethinking the requirements governing their operations and relaxing them. At the same time, improving media literacy might be an efficient instrument for reducing risks to consumer and data protection rules.

Even until now foreign television shows with an impact on the political situation in a given country were not subject to the country of origin principle. Their re-transmission is not protected by European regulations, the rules concerning their transmission fall into the competence of member states. Support for the diverse information of linguistic minorities should probably become one of the designated areas of European media subsidies. This might provide European resources for the production of broadcasts for linguistically isolated audiences that have a limited selection of media offerings in their own language, thus offering them an alternative to shows broadcasts from abroad.

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

Yes, please explain

The past years have seen an acceleration in the process whereby the resources dedicated to content production expand far more slowly than the number of media market players that seek a share of said resources. Regulatory solutions that place European media corporations at a disadvantage as compared to international competitors could inflict long-term damage on the business positions of European media corporations.

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:

In light of the current selection of media services, limitations on advertising time have lost their relevance. Consumers will react to excessive advertising by switching to other services. Moreover, in the case of on-demand services, restrictions on the amount of advertising are not even realistic.

In line with our comments in the previous sections, we assess that a more restrictive regulation of television media services is no longer called for. Our view is that the restrictions on advertising time should be abolished, thereby improving the competitiveness of media corporations. Before rendering such a decision, it is worthwhile to examine the television market practices of countries that did not have such restrictions in the first place (e.g. the US).

In parallel, it would also be advisable to review instruments meant to ensure the separation between advertisements and editorial content in various types of media services. Another important instrument for countering the manipulation of consumers is the promotion of media literacy.

Before amending advertising content regulations concerning products that constitute potential risks to consumers, it would be advisable to examine whether any verifiable damages have resulted from the deficiencies of the existing regulations. Pictograms depicting risks or the extent of these risks may be well-suited for rendering the health risks transparent; these can be published on any media surface.

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

Yes - please explain

The Hungarian legal system lays out prohibitions on the incitement to hatred in both criminal law and media law provisions. The Media Authority applies the media law provisions more broadly than what the Hungarian Constitutional Court considers constitutionally acceptable when it comes to criminal law restrictions. Nevertheless, even in the media authority's application of the law, the substance of media law prohibitions have failed to become unequivocal or predictable.

It would be advisable to establish in the Directive that the prohibition on the incitement to hatred can only be ensured through proportional legislative solutions that offer predictable sanctions. Though this follows unequivocally from the Directive's character as a European source of law, it would also be sensible to establish that the prohibition of the incitement to hatred does not require separate media law regulations; general criminal law and potential civil law provisions are sufficient and suitable for implementing the relevant European regulations. It is furthermore also recommended to note just as the preamble does that in the interest of the transparent and predictable application of the law national media authorities may publish recommendations concerning the prohibition of incitement to hatred, the adoption of which will be preceded by a consultation with the affected stakeholders.

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:

Insofar as children's family and educational environments devote the necessary attention to implementing the provisions of the Directive, then in the case of linear media services underage media consumers can in all likelihood be prevented from encountering harmful content on the screen. This is why, in addition to the education of minors, raising the awareness and media literacy of adults is of pre-eminent importance. This can be realised through developments in extracurricular Media Literacy education that reaches adults. In amending the Directive, the general responsibilities regarding the promotion of Media Literacy should also be laid down in the European regulatory framework. Media Literacy is no longer merely a tool for the protection of underage media consumers, but in recommendation 2009/625/EC it is "defined as the ability to access the media, and to understand and critically evaluate different aspects of the media and media content. Media literacy also includes the ability to communicate in a variety of contexts. [...]A media literate society would be at the same time a stimulus and a precondition for pluralism and independence in the media." It is also necessary to review whether the measures in the recommendation are actually being implemented and whether they are effective, and to then incorporate into the Directive those measures deemed effective in terms of their regulatory impact.

Moreover, it is important to emphasise that in recent years the media consumption patterns of children and youth have shifted away from contents that are regulated under the scope of the Directive. The Directive does not provide protections in the context of those contents increasingly consumed by these age groups. Due to the Directive's lack of protections, the only effective safeguard is the promotion of conscious and competent media consumption. As compared to previous attempts at solving this issue, a media literacy approach should place a greater emphasis on child protection considerations than previous European regulations. To this end, it should set out development goals and ensure proper funding.

Depictions of sexuality and violence receive special attention in the current regulations. It is our opinion that the range of potentially harmful contents currently regulated should be expanded so that respect for human dignity, the values of a diverse society, and a behavioural culture based on cooperation can receive proper protection.

What are the costs related to implementing such requirements?

The costs of the current regulatory solution differ significantly from country to country. What is certain, however, is that the costs of the burdens resulting from the regulations are typically borne by service providers. Developing media literacy is primarily dependent on the availability of state funding, which also indicates the need for the allocation of EU funds to this end.

Comments:

What are the benefits related to implementing such requirements?

Advantages: Since the changed media environment harbours manifold dangers and risks, the current regulatory solutions used in the Directive are incapable of providing full protection. At the same time, the proposed rules contribute to the goal of continually sustaining public interest, raising awareness and keeping the issue on the public agenda. As we previously explained, the level of awareness among adults is a decisive factor in the effective enforcement of proper protections.

Comments:

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

- Yes (please explain)
- No

Comments:

OBSERVATIONS: As compared to the European average, Hungarian regulations formulate stricter requirements. Since the overwhelming majority of providers in the Hungarian television market do not operate under Hungarian jurisdiction, one of the problems is that domestic providers perform their activities in a more difficult competitive environment than their foreign competitors. Solving this problematic situation is incumbent on Hungarian media policy and media regulation, and should not be addressed within the framework of amendment of the Directive.

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:

In light of the current media environment and the media consumption patterns of children and youths, self- and co-regulation provide a more efficient, cheaper and more flexible regulatory model in the area of child protection, while they also offer more security for providers. In the interest of the more effective enforcement of the rules aimed at protecting minors, it would be necessary for the Directive to introduce self- and co-regulation in this area. As we previously noted, we consider it necessary to further develop Media Literacy both for adults and minors through the instruments of media regulation. In addition to laying down the development goals, this also necessitates the identification of proper institutional solutions and provisions for making sufficient resources available to this end.

Furthermore, we also believe that it is worthwhile to consider the notion that the Directive ought to deal with the coordination of technical requirements and technical protection measures, as well as their potential harmonisation at the European level.

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:

Before rendering a decision on whether to preserve the quota regulations that apply to European media productions, it would be worthwhile to review how European media service providers are likely to react to the abolition of the quota. Our position - which we cannot back up with data, however - is that in recent decades the regulation concerning the subsidisation of European-produced media contents has created a sustainable market for such productions. In the framework of the quota system, European media service providers have produced popular shows that have defined their brands, and they would not forgo these even in the absence of the quota.

Nevertheless, since our position is that the objective of European regulations today is above all to improve the competitiveness of European media enterprises and media contents, which ultimately serves the long-term availability of European media selection, the Directive needs to continue to support European-produced shows in the future. The quota regulation is meant to provide a more predictable environment and more stable financing background for the production of European shows.

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:

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

- Yes
- No
- No opinion

Comments:

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:

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).

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:

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:

The country of origin principle is not only an instrument for realising a unified single market but though this may not be its expressed goal is also an efficient instrument against member state regulations that unduly limit the editorial and business freedoms of media businesses. In light of the aforementioned, our opinion is that the substance of this regulation should not change. This regulation will continue to act as a major deterrent against undue member state interventions in the media market.

In the context of the rules on the determination of the country of establishment, it would be advisable to review if the current complex set of criteria have not in fact lost their effectiveness; the question in this context is, for example, how many service providers determine their place of establishment based on where their employees reside. It is our position that the simplification of this regulation would not yield significant changes as compared to the current situation, which is why any efforts to this effect are worthy of support.

Nevertheless, based on the prevailing practice it appears that the procedures introduced by the Directive make it impossible to investigate violations of the law. It would be advisable to speed up the procedures used by the authorities in question and by the Commission, and to lay down guarantees in the Directive that serve to ensure that media service providers that fail to comply with European requirements face legal consequences.

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

Yes, please explain

From the European Council to the OSCE and the UN, numerous organisations have voiced grave concerns about the independence of the Hungarian Media Council, but the European Union did not address this issue in the process of examining the Hungarian media regulations. Most recently it was the Venice Commission which observed that the rules concerning the election of the Media Council and its operations fail to exclude the possibility of political influence. An analysis of the Media Council's practice shows that political influence also has a palpable impact on frequency tenders.

In our opinion, the independence of media regulatory authorities is a fundamental safeguard for realising the objectives of legal harmonisation. The joint European regulatory goals can only be realised if all those who are subject to the law, including all market players, can perform the activities regulated by the relevant directives under identical legal conditions and based on equal opportunities. And the media regulatory authorities for their part play an active role in shaping the specific legal conditions that have an impact on market players. If their decisions are shaped by one-sided political influence, then instead of realising the underlying regulatory objectives, the European legal framework will ultimately serve certain partial interests.

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;
- d) 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.
- e) Other options (please describe)

Please explain your choice

In our opinion, the regulatory solutions employed in the areas of electronic communications, energy markets and data protection would also constitute necessary and efficient guarantees in the regulation of audiovisual media services. Moreover, they would also provide the conditions needed for a European-level review of the independence of regulatory authorities. We believe that it is essential to establish the requirement of media authority independence as a set of binding legal norms, and that the application of these norms should be subject to the review of the European Court. European regulations establish an obligation for member states to provide for the transparent operations of such authorities, free of partisan/biased influences. The guarantees of organisational and financial independence should be laid down at least in the level of detail found in the regulations concerning electronic communications (2002/21/EC).

In line with the Freiberga Report, we also recommend the creation of a monitoring system. The goal of the monitoring system is to ensure that by analysing regulatory authorities' real activities on an ongoing basis, it will become possible to draw conclusions regarding the independence of the authority. As compared to incidental analyses of the member state laws that provide a structural, financial and procedural framework for the operations of media authorities, the proposed regulatory solution will result in a considerable more nuanced view of how effectively independence is safeguarded. Based on the transparency of operations, frequency tenders and market regulations, as well as the practice of applying sanctions, the monitoring system will compile a well-founded assessment of media authorities' independence, and should the need arise, it may signal the Commission that it is necessary to apply European legal instruments to restore independence.

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:

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).

f) other: please describe

Must-carry regulations need to be limited.

Please explain your choice:

Normally must-carry regulations ensure that public service media and local channels are available to everyone. Though the market of media services are incomparably more diverse than previously, this regulation continues to be relevant to this day.

When must-carry regulations were first introduced, public service broadcasters were typically operating with few channels, which simultaneously meant that all channels were subject to the regulation. It is no longer rare for public service broadcasters to operate as many as 6-8 channels. That is precisely why must-carry regulations need to be limited, so that at most they apply to one or two channels.

Insofar as a public service broadcaster's channels are indeed the subject of public interest, they will definitely be included in privileged positions in the packages and channel lists of broadcasting companies (cable, satellite and IPTV operators). If these channels are not competitive with those of other market players, however, then must-carry rules only distort the market: Certain channels are given a privileged role even though without the regulatory assistance they would not be competitive.

It is readily apparent that in Hungary public service media are the most important instruments of government propaganda. There are already seven public service channels in operation, and the launching of further channels has been announced. Moreover, the majority of these are at the top of the channel list and can be reached by selecting a single digit on the remote. Though the news channel and the sports channel are competing in thematic segments of the media, thanks to the must-carry rules they enjoy a significant competitive advantage over other market players.

The number of channels subject to must carry rules should therefore be limited, for there is no reasonable justification for that fact that all channels of a publicly-funded public service broadcaster are covered by must carry rules.

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).

b) Other - please describe

A regulatory intervention that holds out the possibility of reducing competition through the introduction of listed events is not called for.

Please explain your choice

A significant portion of the highlighted events are sports events, and sports increasingly operate as a competitive market in Europe as well. A regulatory intervention that holds out the possibility of reducing competition through the introduction of listed events is not called for.

In most countries this would not result in substantial problems, but in the case of a less competent authority, or, for that matter, an authority that seeks to reduce competition, the use of listed events could result in significant market distortion. A proposal concerning listed events had been drafted in Hungary years ago. It referred to essentially all major sports events (but no other types of events, thus no cultural events). Ultimately, this proposal was never adopted, but there is a risk that with the launching of the public service broadcaster's sports channel (in July 2015) the issue will come up again, and may result in distorting both the television and sports markets.

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>)

Contact

✉ Suzanne.Vanderzande@ec.europa.eu
