

CONSULTATION

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

A media framework for the 21st century

Questionnaire

General information on respondents

I'm responding as:

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

What is your nationality?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands

- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

What is your name? [Click here to enter text.](#)_____

Please your email: [Click here to enter text.](#)_____

I'm responding as:

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

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 register in the [Transparency Register](#) before answering this questionnaire. If your organisation/institution responds without being registered, the Commission will consider its input as that of an individual and as such, will publish it separately.

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.

**egta – association of television and radio sales
houses**_____

Please enter your address, telephone and email.

22 rue des comédiens, B-1000, Brussels ; +32 2 290 31 31 ;
conor.murray@egta.com_____

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

Brussels, Belgium.

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Background and objectives

The Audiovisual Media Services Directive (AVMSD¹) 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 convergence². 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 Europe³, 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.

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-audi>)

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-like⁵ and for which providers have editorial responsibility⁶. 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 Directive⁷, 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 relevant⁸, effective⁹ and fair¹⁰?

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?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

It is necessary to create a level playing field between TV broadcasters and other actors. The main reason for this is that from a consumer perspective the distinction can no longer be made. In addition, as these new services become important players in respective national markets and as their importance for society grows (see recital 5) they should be included in the scope of the AVMSD. When the AVMSD was adopted the provisions on the scope of the Directive were considered effective, however, looking forward to the time period in which a revised Directive may apply (e.g. 2020 and beyond) this will no longer be the case due to the increasing rate of media convergence and changing consumption patterns of audiovisual services. The emergence of a globalised, digital media environment featuring powerful OTT and VOD providers challenges the current provisions and means that obligations that are placed on TV broadcasters alone are unfair.

Additionally, egta recognises that the current relationship between the AVMSD and the E-Commerce Directive needs to be considered and welcomes the ongoing public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy.

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 – NO (If yes, please explain below)

COMMENTS:

Examples include connected devices, interfaces, OTT platforms and non-EU VOD services where regulated and non-regulated content can be seen on the same screen.

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)

PLEASE EXPLAIN YOUR CHOICE:

In view of changing consumption patterns and media convergence a legislative solution is needed. However, it should not simply be a matter of extending the current rules to all the new actors. A balanced set of lighter rules, with the focus on content rather than services, and based on key principles for all audiovisual media service providers should be the objective.

- The protection of minors and consumers is an objective that all those who offer audiovisual media services can agree on.
- Equally the rules surrounding commercial communications should apply to all players.
- The Country of Origin Principle should remain in place.

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 Directive¹¹.

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:

The provisions in the AVMSD are designed with satellite and cable television in mind, and in that respect the level of protection for European television viewers is relatively high. Nonetheless the non-linear services that are available to European audiences via the Internet do not necessarily offer the same level of protection as a significant number of them are from outside the EU and therefore do not fall within the geographical scope of the AVMSD.

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 – NO (If yes, please explain below)

COMMENTS:

In an increasingly borderless media environment broadcasters compete with global players operating from outside the EU which are not subject to the same regulation despite their business model revolving around European markets. This leads to unequal economic conditions and unfair competition. This in turn jeopardises the funding of original, quality European content.

Preferred policy option:

a) *Maintaining the status quo*

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)

- 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:

In general if an audiovisual service is targeting an EU audience then EU rules should apply to them regardless of whether they are on or offline. However a registration procedure alone does not give enough legal security and opens the door for possible 'jurisdiction shopping'.

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 communications¹², 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.

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.

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:

The current rules on commercial communications contain some elements that will continue to be relevant in a future regulatory environment. Specifically, Article 9 of the 2010 codified version of the AVMS Directive includes key basic principles that should remain in any future legislation. This should include high levels of protection to viewers, in particular strong rules on the identification of commercial communications and the separation of advertising from editorial content, whether linear or non-linear, alongside the bans on surreptitious advertising and on the use of subliminal techniques. However, there are other rules that need to be radically simplified (for instance those relating to product placement and sponsorship) and still others that do not make sense in the future and should no longer be included. Further elaboration will be provided in the answers to the following questions.

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

YES – NO (If yes, please explain below)

COMMENTS

Three issues to consider that are related to consumer protection and competitive disadvantage are the protection of **signal integrity**, the rules surrounding **self- and cross-promotion**, and **surreptitious advertising in user generated online content**.

Signal integrity: an example of the challenging nature of regulating commercial communications in an evolving market is the possibility for a third party to overlay advertising on a connected TV service

without the knowledge of a broadcaster, producer or even the brand itself. Such practices create a significant and unparalleled challenge to the regulatory system, given that the construction of European and national media regulation is based on the operator accepting, in a broadcasting licence, responsibility for what appears on screen. This technical evolution carries the risk of significant audiovisual rules being circumvented by third parties (e.g. children's and new programmes). Therefore if this editorial responsibility can no longer be guaranteed, then the question of what is regulated and how this is done needs to be raised.

Self- and cross-promotion: a second challenge is the issue of self- and cross-promotion. The current terminology used in article 23 (2) on self promotion, for example 'ancillary products directly derived from', has proven to be particularly confusing and unclear, and creates grey areas in which media service providers are unsure of what can and cannot be promoted. This is particularly sensitive because, as broadcasters offer more and more bespoke services around the world, international competitors are developing their businesses based on effective cross-promotion especially in light of the rate of audiovisual convergence.

An illustration of the current challenges in determining what aspects of self- and cross- promotion should be included in the quantitative limits is the example of YouView¹³ in the UK market where the media regulator has decided that promotion of the service by its operating broadcasters is to be considered as an advertising spot.

egta's position on this issue is that:

- Precise and clear definitions of what constitutes self- and cross-promotion should be included as a recital in a new directive in order to give guidance to media service providers and national regulatory authorities alike.
- Content related cross-promotion must be separated from the definition of advertising in order to enable EU media service providers to promote content-related offers and services, and cross-promotion of these services should not be included in the quantitative limits. Any new text should in particular clarify that cross-promotion of own products and services across platforms without commercial intent should not be included in the advertising minutage.

Surreptitious advertising/User generated content: another challenge is when Internet and YouTube celebrities promote specific products and/or services in short videos without respecting any of the commercial communication rules. Editorial content and advertising messages are complexly mixed up and consumers are very often unaware of the 'surreptitious' advertising included in these

¹³ YouView is an Internet TV service in the United Kingdom, operated by a partnership of three telecommunications operators and four broadcasters: <http://www.youview.com/>

short videos, especially when those spots mainly target young children.

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:

The most crucial aspect concerning the rules on commercial communications is the need to look to the future and to create a level playing field for all actors involved. The new set of rules will be operational in 2020 and beyond and therefore a greater degree of flexibility would be a first step in ensuring a competitive environment for all actors offering commercial communications. The audiovisual market is evolving at a remarkable pace as innovative technology creates new and varied methods of access, consumption and distribution. New rules should be clear about who is being protected and why.

A basic set of rules. The purpose of new or revised rules should be a core set of principles protecting the interests of consumers and minors in particular. As previously mentioned the guiding principles around fair and responsible advertising in Article 9 of the AVMSD are a solid starting point and continue to be relevant.

Legal certainty and simplification. At the same time, sustaining a vibrant European audiovisual content industry should be central to the new legislation as well as the proposed digital single market strategy. The rules should allow commercial communications to be a major source of funding for original European content allowing European broadcasters to compete with global companies who are investing in little or no European content. To achieve this there should be significant simplification of some of the advertising rules and less unnecessary and inappropriate detail.

- *Quantitative rules:* as indicated in our preferred policy option, egta member sales houses would like to see the rules on commercial communications become more flexible, especially those that determine the quantitative limits on advertising and on the number of interruptions.

Taking the quantitative rules first, the majority of egta member sales houses would recommend Member States being given the freedom to shift from the current hourly limit to a daily limit as this would lead to either sustaining or increasing investment in original European content. TV advertising markets operate differently between Member States. Some Member States should be allowed to maintain the current hourly limit, or where necessary stricter regulation, if this helps sustain investment in original European content and at the same time protect viewers. Any policy change should be evidenced based and take into account the audiovisual sector as a whole.

For those countries seeking a daily limit this immediately provides greater flexibility for broadcasters, agencies and brands without exposing the public to a possible higher amount of advertising. The objective for policy makers and audiovisual media service providers alike should be to determine the scheduling and commercial breaks according to consumer expectation and not according to regulation. A daily limit would facilitate this option. Daily limits would allow channels to optimise advertising inventory in order to maintain the highest ratings while keeping inventory as high as possible. The current hourly limit sometimes forces channels to place commercial breaks at certain times, knowing that this has the potential to disrupt the viewing experience. A daily limit would reverse this practice.

With regard to the existing insertion rules/interruption of programmes the objective should be to schedule programmes, and the commercials around them, to match viewer expectation and desirability. Some flexibility in the current provisions on the number of interruptions would be desirable; however, when it comes to children's programmes a certain degree of protection should be retained. Similarly egta supports the current provision which do not allow for the insertion of advertising during religious services.

- *Product placement*: the majority of egta member sales houses consider that there is a lack of legal certainty in the current product placement rules. This lack of clarity and the prescriptive nature of the provisions have actively discouraged media service providers from utilising product placement fully. One egta member has estimated that since 2010 product placement revenue has dropped from 2% to 1% of total advertising revenue as a direct result of the unnecessarily strict interpretation of the detailed rules. Others have indicated that a radically simplified set of rules on product placement could result in an increase of product placement revenues by approximately 10% - 15%.

We would recommend the deletion of article 11(3) c regarding the notion of undue prominence. The large majority of egta members believe that this clause has led to

inconsistencies of interpretation between national regulatory authorities and sometimes in the same market. An example of the current difficulties faced by broadcasters with the undue prominence clause is in Germany where one broadcaster was faced with two different interpretations of what constituted undue prominence by its media regulator with regard to two product placement campaigns by the same brand in the same series. One was deemed acceptable and one was not, however, the final decision is pending. We would therefore argue that the notion of undue prominence has proven to be unhelpful and has discouraged brands and broadcasters from utilising product placement in certain instances.

The revised rules should expressly allow product placement as long as it is labelled and identified as such, the content does not affect the editorial independence of the media service provider, and there is no product placement for banned products. A certain degree of protection should be maintained with regard to children's and news programmes. As a final point on the issue of product placement we feel that it is important to highlight the rise of adblocking technology in the European market. As adblocking becomes more prevalent, media service providers will become increasingly dependent on alternative and more creative advertising revenue streams such as product placement and therefore the rules should allow more scope for creativity and innovation.

- *Sponsorship*: similarly the current sponsorship provisions are too detailed. The definition of sponsorship and the sponsorship rules contain notions that could be interpreted by the national media regulators in different/stricter ways. For example the second sentence in article 10 (4) states that 'Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes'. The suggestive nature of the language used is not necessary while Member States retain the scope and capacity to impose stricter national provisions. We would therefore recommend deleting this sentence from the existing article. Editorial independence, transparency and no sponsorship from banned products is all that is required.
- *Isolated spots*: isolated spots should not be the exception (as is the case under article 19.2) but explicitly allowed. They would provide greater flexibility for media service providers while also appealing to viewer expectation in certain instances via shorter advertising breaks.
- *Consumer protection*: egta members believe strongly that the existing rules on alcohol advertising and advertising of products high in fat, salt and sugars have been successful in providing a high level of protection to consumers, in particular those who are most vulnerable and should be retained in their current form.

Supporting self and co-regulation. Legislative provisions are necessary but the case for further self- and co-regulation that complements AVMS legislation is both strong and appealing. That case is further strengthened by the achievements in the field of online behavioural advertising (OBA). Companies and other stakeholders (including egta) that provide and market OBA have developed a standard framework for labelling and opt-out mechanisms by forming the European Interactive Digital Advertising Alliance (EDAA¹⁴), a cross industry self-regulatory initiative to introduce pan-European standards to enhance transparency and user control for OBA.

Some may point out that self-regulatory initiatives such as those outlined above are a convenient way of avoiding excessive regulation, however, with regard to OBA and other Internet based activities, legislation alone will never be able to keep pace with technological developments. .

A level playing field. In an era of globalised media content the goal of regulation must be to secure a level playing field. This involves common rules for comparable content and services that are offered via different distribution methods. It is worth considering worldwide advertising trends in the context of the current revision of the AVMS Directive: the major development in the near decade since the adoption of the Directive has been the rise of online advertising. Search, social and display advertisements, regardless of device, have become an indispensable part of marketing. Warc data¹⁵ from 2005 to 2015 confirm as much. From just 6% of global adspend in 2005, online is forecast to account for 29% in 2015. That figure is comparable to the combined adspend share of radio, print, cinema and outdoor advertising (31%). TV is the only media that currently retains the capacity to better that output with an expected 40% share for 2015.

Globally, the Internet is the fastest growing channel for the past decade and is set to increase by a further 16.3% in 2015. TV on the other hand is predicted to grow at a comparatively low 2.2%. The Internet has also overtaken TV to become the single biggest spending advertising channel in major markets such as the UK, China and Canada.

In summary the advertising market is developing as viewers' attention is shifting to digital platforms at the expense of other media. As such the need for flexibility to encourage and enhance innovation has never been greater. The European Audiovisual market needs rules that are not just about TV and are not just about today but are about the future.

The notion of what constitutes TV has shifted dramatically and broadcasters are now one of many players in a global video environment competing for viewers. However, new actors are treated with a

¹⁴ Further details available at www.edaa.eu

¹⁵ Source: Warc Data & Forecasts

far lighter regulatory regime. Acknowledging the speed with which this development has taken place and imagining a continuation of this pace, it is vital that policy makers enable a level playing field now. This revised regulatory rulebook could then be applied to all those offering audiovisual content to viewers, be it linear or non-linear – delivering fair competition in the Digital Single Market and meaningful consumer protection.

New technology is delivering a richer and broader range of video services to the public. These new services are having an impact on time spent on broadcast TV and are largely funded by advertising revenues. The newly converged audiovisual landscape is typified by a high quantity of available content but a comparatively low availability of quality content. Quality programming is the key to securing viewer engagement and is one of broadcasting's major strengths. Broadcasters therefore need to concentrate on delivering high level content over all available distribution channels.

According to a recent report by ZenithOptimedia¹⁶ the average amount of time that people will spend consuming online video each day is projected to increase by 23.3% in 2015 and by an additional 19.8% in 2016. Twelve markets in particular, including China (27.2%), France (50.0%), Germany (27.5%) and the US (12.3%), are seeing regular online video viewers increase at double-digit rates. The U.S. joins Italy as the two markets with the highest proportion of total internet spend going to online video (16.5% each in 2015).

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:

The overall level of protection in the areas mentioned above is reasonably high and the provisions established in the AVMSD must be maintained.

¹⁶ ZenithOptimedia's (ZO) *Online Video Forecasts*

However, there are instances of user protection being jeopardised by accessing unregulated content via connected devices. In order to ensure optimum consumer protection all providers of audiovisual media services should comply with the highest standard of qualitative rules.

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

YES – NO (If yes, please explain below)

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:

As consumption patterns change and audiovisual services are accessible across different platforms and devices so there should be a consistent amount of viewer protection, especially amongst minors. The same level of protection for young audiences should be afforded regardless of the means of

consumption; the more important issue is the content. Therefore Articles 12 and 27 of the current Directive should be merged to form one consistent set of rules protecting minors. However, this merger should in no way result in a levelling-down of the protections of minors.

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

YES – NO – NO OPINION

COMMENTS:

The AVMSD rules have been effective with regard to linear and regulated non-linear services. But as access to non-regulated services – via connected devices – is so easy, in reality only a click away, it is no longer accurate to say that children are protected from seeing or hearing content that may harm them.

What are the costs related to implementing such requirements?

Costs:

COMMENTS:

Divergent rules on the protection of minors in a converged media landscape make little sense and are disproportionately prohibitive for linear broadcasters.

What are the benefits related to implementing such requirements?

Benefits:

COMMENTS:

The recognition of the role that media play in the protection of minors is important and should be maintained. Media service providers also benefit in that they are distributing their content in a safe environment for younger viewers.

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

YES – NO (If yes, please explain below)

COMMENTS:

With younger viewers consuming content over less-regulated (lighter rules for non-linear services) or unregulated (those that fall outside the scope of the Directive) platforms they run the risk of being exposed to content that may harm them.

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:

As previously mentioned the protection of minors should be one of the key principles of any future Directive. This should apply regardless of how the content is accessed. It does not make sense to have a two tier level of protection for younger audiences. All content that is directed at minors should be regulated in the same manner. This should not result in a levelling down of the protection of minors. An effective protection of minors makes it necessary to regulate short-form audiovisual content in a similar way as for traditional television programmes. To remain effective, protection also needs to be available at the platform level. At the same time there is scope for complementing the existing

measures via self- and co-regulation. Media literacy in a globalised, digital environment has never been more important and should be promoted wherever and however possible. Self- and co-regulation also has the added value of being able to identify current trends, threats and challenges for the protection of minors and adapting in a flexible and efficient manner to reflect them.

It is also of paramount importance that parents are encouraged to research ways to protect their children from harmful content. Media companies do their best to communicate youth protection mechanisms offered but parents must play an active supervisory role for example by changing PINs often and informing themselves about software, as well as carefully reading/watching the material supplied by broadcasters. Today's parents are not sufficiently aware about the more active role they need to take supervising across devices in comparison to the days of the simple watershed rule.

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 works¹⁷ and independent productions¹⁸. 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:

In terms of European works, including non-national ones (i.e. those produced in another EU

¹⁷ For European works: a majority proportion of broadcasters' transmission time.

¹⁸ For European works created by producers who are independent of broadcasters: 10% of broadcasters' transmission time.

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 – NO (If yes, please explain below)

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).

Benefits:

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?

Costs:

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 Productions¹⁹ (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.

¹⁹ Works transmitted within 5 years of their production.

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:

The country of origin principle enables an effective cross border market place for audiovisual media services and is fundamental in the development of a true European digital single market. It is the cornerstone of the current directive and has been effective in commercial communications.

The rules on possible derogation are different for linear and non-linear services as well with respect to the reasons and to the procedure. The procedures as such are very complicated and heavy. There should be a streamlining of these rules and the procedure should be easily applicable and effective.

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

YES – NO (If yes describe and explain their magnitude)

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

Estimate of costs:

Estimate of benefits:

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:

egta supports the country of origin principle and believes that it should remain as the cornerstone of any future directive.

However there are certain areas with regard to the incitement of hatred and the protection of minors as well as possible ‘jurisdiction shopping’ where there may be a need to provide further safeguards so as not to weaken existing national measures. Therefore there may be a case to strengthen the cooperation practices (e.g. with regard to the incitement of hatred and the protection of minors).

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 – NO (If yes, please explain below)

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 Directive²⁰, 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 Directive²¹, Member States can also set rules on the inclusion of radio and TV services in

²⁰ Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, as amended by Directive 2009/136/EC

²¹ 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

electronic programme guides (EPGs)²² 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 – NO (If yes, please explain below)

COMMENTS:

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

YES – NO (If yes, please explain below)

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*

²² 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.

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 – NO (If yes, please explain below)

COMMENTS

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

YES – NO

Cost:

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 – NO (If yes, please explain below)

COMMENTS

Preferred policy option:

a) *Maintaining the status quo*

b) *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE

Short news reports

The AVMSD requires Member States to ensure that broadcasters established in the Union have access, on a fair, reasonable and non-discriminatory basis, to events of high interest to the public for the purposes of short news reports.

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 (If yes, please explain below)

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 – NO (If yes, please explain below)

COMMENTS

Preferred policy option:

a) Maintaining the status quo

b) Other options (please describe).

PLEASE EXPLAIN YOUR CHOICE

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.