



CONSULTATION

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

A media framework for the 21st century

Questionnaire

Response from the EFADs - European Film Agency Directors Association (aisbl)

(official response sent by email and answers sent also directly to the online 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.](#)_____

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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.

The EFADs' registration number in the Transparency Register is: 430805515370-85

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.

Click here to enter text. [EFADs – European Film Agency Directors Association \(aisbl\)](#)

Please enter your address, telephone and email.

[EFADs – European Film Agency Directors Association \(aisbl\)](#), 44, blvd Léopold II, Brussels 1080, Belgium ; tel.: +32-(0)2-4132077 ; +32-(0)492-316920, e-mail: iveta.dimova@efads.eu

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

Existing since 2001 as a network, the EFADs - European Film Agency Directors become in December 2014 an Association (aisbl), based in Brussels under Belgian law. The EFADs Association brings together the Directors of the European Film Agencies from 31 countries in Europe (EU, Iceland, Norway and Switzerland). The President of the EFADs Association is Peter Dinges, CEO of the German Federal Film Board (FFA) and the Vice-President is Guy Daleiden, Director of the Film Fund Luxembourg. Its General Secretary is Iveta Dimova.

Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the

contribution may be published in anonymous form. Otherwise the contribution will not be published nor will, in principle, its content be taken into account. Any objections in this regard should be sent to the service responsible for the consultation

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About EFADs:

The Association of the European Film Agency Directors brings together the Directors of European Film Agencies in 31 countries in Europe (EU, Iceland, Norway and Switzerland). We represent government, or government associated bodies, in charge of national funding for the audiovisual sector and with the responsibility to advise on all aspects of national and European audiovisual policies.

Our aim is to help nurture the creation of high quality works to the benefit of European and global audiences reflecting the diversity of European heritage, cultural identities and artistic outlook within the audiovisual field in line with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

In total, the EFADs members and their Governments distribute an estimated 3 billion euros every year¹ with a view to fostering the creation, production, promotion, distribution and exhibition of European audio-visual and cinematographic works.

The EFADs have already expressed views in relation with the DSM, namely in Position papers, respectively on: the potential reform of copyright (March 2015): <http://www.efads.eu/pdf/EFADs-resolution-copyright-032015.pdf> and on the creation of a Digital Single Market for the audiovisual industry in Europe (May 2015): <http://www.efads.eu/pdf/efads-pp-dsm-may2015.pdf> , both consultable at: www.efads.eu

More information about the EFADs at: www.efads.eu

The EFADs welcome the Public Consultation on AVMSD and thank the European Commission for the opportunity to contribute our views.

The European Film Agency Directors (EFADs) mission is to ensure the existence of an environment conducive to the development of a European policy that supports audiovisual and cinematographic creativity in Europe and which guarantees the effective distribution of European works both in Europe and worldwide. We have a particular focus on the cultural and economic opportunities afforded by digital change and therefore our answers concern only the questions that are of relevance for the EFADs and in relation to these opportunities, namely on:

- The scope of the Directive,

¹ See footnote 1 of the Cinema Communication: «EUR 2,1 billion of support is provided annually by European film funds (<http://www.obs.coe.int/about/oea/pr/fundingreport2011.html>). According to the study into the economic and cultural impact of territorial conditions in film support schemes, a further, estimated EUR 1 billion is provided annually by Member States through film tax incentives (http://ec.europa.eu/avpolicy/info_centre/library/studies/index_en.htm#territorialisation).”

- The promotion of European works,
- The level playing field, and the strengthening of the single market

Main findings:

- The European legal framework in the audiovisual sector, laid down in the AVMSD is essential for achieving the key objectives of a level playing field for all operators, the promotion of cultural diversity to the benefit of audiences across the EU and a sustainable audiovisual industry.
- The EFADs wish to see a review of definition of services which fall under the **scope** of AVMSD to ensure that it remains fit for purpose in a fully digital age.
- To ensure a level play field, in relation to the **geographical scope**, Member States should have the discretion to require that services established outside the EU which target a Member State (for example, demonstrated by having a certain level of market share in that country or earning a certain amount of revenue from that Member State) must be established in one of the Member States of the EU and comply with AVMSD.
- We would like a reinforcement of the **promotion** of European works by non-linear services. This is not just a question of quantitative measures (quotas) but also importantly of qualitative ones (prominence, editorial, marketing of European content).
- As regards to the **country of origin principle**, the EFADs stress the importance of finding ways to ensure a level playing field between operators in **domestic markets** without undermining the potential of the Digital Single Market.

Background and objectives

The Audiovisual Media Services Directive (AVMSD²) 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 convergence³. 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 Europe⁴, 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

² 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".

³ <https://ec.europa.eu/digital-agenda/en/media-convergence>

⁴ 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.

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"⁵ 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-like⁶ and for which providers have editorial responsibility⁷. The AVMSD does not apply to content hosted by online video-sharing platforms and intermediaries.

⁵ Hereinafter, "The Green Paper" (<https://ec.europa.eu/digital-agenda/node/51287#green-paper---preparing-for-a-fully-converged-audi>)

⁶ 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."

⁷ 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

These platforms and intermediaries are regulated primarily by the e-Commerce Directive⁸, 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 relevant⁹, effective¹⁰ and fair¹¹?

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

The existing legislation is still needed but the scope needs review to ensure it is still fair.

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) YES

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.

⁸ 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')

⁹ Relevance looks at the relationship between the needs and problems in society and the objectives of the intervention.

¹⁰ Effectiveness analysis considers how successful EU action has been in achieving or progressing towards its objectives.

¹¹ How fairly are the different effects distributed across the different stakeholders?

COMMENTS:

Please see text below.

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:

The key issue for the EFADs is editorial responsibility. We think that we should keep the existing definition but explore the need for a more comprehensive definition of the scope of the Directive which potentially would include all services to the extent that they create or distribute professionally made audiovisual content. Services dedicated to User Generated Content (UGC) should remain excluded from the scope.

However, because of the very fast development of the technologies and of the market, on this point we like to ensure space for a relatively flexible evaluation of any revised scope by individual Member States.

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 Directive¹².

¹² 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)

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 – NO (If yes, please explain below)

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 geographical scope of the current AVMS Directive is limited to those services which are established in a Member State of the EU. According to the European Audiovisual Observatory (EAO), around 250 audiovisual services targeting the EU (mostly on demand ones) are based outside the EU.

In the future, Member States should have the discretion, within certain determined parameters, to insist that services established outside the EU which target a particular Member State (for example, demonstrated by having a certain level of market share in that country or earning a certain amount of revenue from that Member State) must be established in one of the Member States of the EU and comply with the AVMSD, in which the Country of Origin is determined as the Member State which they are targeting.

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 communications¹³, 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

¹³ "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.

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 – NO (If yes, please explain below)

COMMENTS

Preferred policy option:

a) *Maintaining the status quo*

b) *Rendering the rules on commercial communications more flexible, notably those setting quantitative limits on advertising and on the number of interruptions.*

c) *Tightening certain rules on advertising that aim to protect vulnerable viewers, notably the rules on alcohol advertising or advertising of products high in fat, salt and sugars.*

d) *Other options (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

3. User protection and prohibition of hate speech and discrimination

General viewers' protection under the AVMSD

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

SET OF QUESTIONS 3.1

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

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

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

YES – 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:

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

YES – NO – NO OPINION

COMMENTS:

What are the costs related to implementing such requirements?

Costs:

COMMENTS:

What are the benefits related to implementing such requirements?

Benefits:

COMMENTS:

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

YES – NO (If yes, please explain below)

COMMENTS:

Preferred policy option:

a) *Maintaining the status quo*

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

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

c) *Introducing further harmonisation*

This could include, for example, more harmonisation of technical requirements, coordination and certification of technical protection measures. Other possibilities could be the coordination of labelling and classification systems or common definitions of key concepts such as minors, pornography, gratuitous violence, impairing and seriously impairing media content.

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

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

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

One option could be that these services would be subject to the same rules on protection of minors as on-demand audiovisual media services.

f) *Other option (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

4. Promoting European audiovisual content

The AVMSD aims to promote European works and as such cultural diversity in the EU. For television broadcasting services, the EU Member States shall ensure, where applicable and by appropriate means, a share of EU works¹⁴ and independent productions¹⁵. 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

¹⁴ For European works: a majority proportion of broadcasters' transmission time.

¹⁵ For European works created by producers who are independent of broadcasters: 10% of broadcasters' transmission time.

COMMENTS:

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:

There is a lack of precise data to assess the situation as regards the share of European works in linear and non-linear services.

We consider that the catalogues offered by audiovisual media service providers contain too few European works. According to the implementation report of the AVMSD produced by the European Commission in 2012, a big majority of quotas are filled with national content and only 8% of European works broadcasted are non-national ones.

As regards non-linear services, according to the latest survey of the EAO, video on demand services dedicate a minority share of their catalogues to European works.

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

YES – NO – NO OPINION YES

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

We explain this below.

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: These requirements help to ensure improved circulation of works within the EU to the benefit of both audiences and industry. This, in turn, helps to ensure that the public money invested in such works delivers maximum economic and cultural benefit.

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) for co-productions; or by setting a clear percentage to be reserved to Recent Independent Productions¹⁶ (instead of "an adequate proportion"). For on-demand services, further harmonisation could be envisaged: by introducing certain compulsory methods (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:

Promoting increased cultural diversity is an important objective for the EFADs and the European Commission. The regulatory framework should create the conditions for culturally diverse content to flourish and ensure its circulation and visibility.

The Directive contains provisions in relation with the promotion of European works. The EFADs support these provisions that are important in terms of production, promotion and better visibility of European works. The main objective is the promotion of the cultural diversity and support for the European works and the competitiveness of the audiovisual sector.

- For linear services, the EFADs are interested in exploring ways to promote more actively non-national European works in the Member States and foster the development and broadcasting of co-productions.
- For non-linear services, the EFADs are in favour of a reinforcement of the promotion of European works, while pointing out that here is not only a question of quantitative measures (quotas) but importantly also of qualitative ones (prominence, editorial, marketing of European content).

The EFADs also consider that ambitious actions at national and European level in the area of media literacy and film education (cultural, critical and creative) are crucial to raise awareness and appetite for European works. In this regard information, raising awareness and appetite for European works (especially among children and young people – our future audiences), plays a valuable role and the Directive's requirements with regard to Member States producing reports on media literacy should be continued and enforced.

¹⁶ Works transmitted within 5 years of their production.

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 – NO (If yes describe and explain their magnitude)

COMMENTS

In some countries, the current approach has had detrimental effect on the sector. For example, in the 1990s Canal+ Polska was co-financing substantially Polish films under an agreement with the Polish government, investing in nearly every second Polish feature film. This continued until HBO started to broadcast to Poland from Hungary targeting Polish audiences but without any contribution to Polish cinema. This resulted in an unfair competition and as a consequence Canal+ Polska ceased to invest in Polish film altogether. In the past decade Canal+ Polska resumed investing in Polish films, but on a very limited scale, as does HBO. At present both broadcasters should be subjected to the levy imposed

on all players by the Cinema Act of 2005, but only Canal+ complies - HBO does not as it broadcasts from abroad and hides behind the country of origin rule.

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 Directive and the country of origin principle have helped to facilitate the cross border provision and circulation of audio-visual programmes within the EU. The EFADs acknowledge that this is an important achievement.

Nevertheless, a future EU legal framework should be targeted at creating a level playing field between all European and global market players. In Europe, "level playing field" means an equal commitment from all market players in the creation of local content and respect for national rules and common European values e.g. when it comes to advertising and the protection of minors. A level playing field should mean that all operators should have the ability to succeed in a market which in cultural, artistic and economic terms is rich but is also fragmented.

EFADs believe that the current design of the country of origin principle in the AVMS-directive provides regulatory clarity, but might not be entirely fit-for-purpose in an Internet-based digital economy. We need to have the flexibility to integrate the new digital services into the different financing models around Europe without undermining the freedom of establishment. In this respect the review of the AVMS-directive should analyse ways to establish equal treatment of all stakeholders in the national and European market place as

well as seeking to guarantee cultural diversity and to promote the competitiveness of all European operators. To that end, we need to find the right balance between, on the one hand, a level playing field (between national and non-national operators) and on the other hand unlock the potential of the digital single market.

At this stage, the EFADs cannot provide a clear roadmap about the way to achieve those objectives and look forward to the results of the REFIT process and consultation.

Nevertheless, a number of EFADs members believe that an adjustment of the country of origin principle would be necessary. The adjustment would be intended to allow Member States to apply the rules related to the promotion of European works (financial contribution, share requirements, prominence of European works, investment obligations) of the host country to an operator that is established in one Member State but offering a service specifically targeting the audience of another Member State.

This solution will allow operators who broadcast services to several territories without targeting specifically the audience of a foreign market (e. g.: RAI or ZDF in Belgium or in France) to continue to apply all the rules of the country of establishment.

The EFADs stand ready to discuss the precise definition of “specifically targeting” in order to clarify when the adjustment of the country of origin applies and when it doesn’t.

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 Directive¹⁷, 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 Directive¹⁸, Member States can also set rules on the inclusion of radio

¹⁷ Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, as amended by Directive 2009/136/EC

¹⁸ 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

and TV services in electronic programme guides (EPGs)¹⁹ 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.*

¹⁹ 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.

c) Extending existing "must-carry" rules to on-demand services/and or further services currently not covered by the AVMSD.

d) Amending the AVMSD to include rules related to the "discoverability" of public interest content (for instance rules relating to the prominence of "public interest" content on distribution platforms for on-demand audiovisual media services).

e) Addressing potential issues only in the context of the comprehensive assessment related to the role of online platforms and intermediaries to be launched at the end of 2015 as announced in the Digital Single Market Strategy for Europe.

f) Other options (please describe).

PLEASE EXPLAIN YOUR CHOICE:

Accessibility for people with disabilities

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

SET OF QUESTIONS 6.3

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

Effective? YES – NO – NO OPINION

COMMENTS:

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

YES – 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.