

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

A media framework for the 21st century

Fields marked with * are mandatory.

Consultation on Directive 2010/13/EU on audiovisual media services (AVMSD) **A media framework for the 21st century**

Description

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

Targeted respondents

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

Duration

6 July 2015 - 30 September 2015

Comments received after the closing date will not be considered.

General information on respondents

* *I am responding as:*

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

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

- Yes
- No

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

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

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

My institution/organisation/business operates in:

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

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

Institute of Alcohol Studies, UK

* Please enter your address, telephone and email

Alliance House, 12 Caxton Street, London SW1H 0QS, United Kingdom

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

London

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

- Yes, I agree to my response being published under the name I indicate (name of your organisation/company/public authority or your name if your reply as an individual)
- No, I do not want my response to be published

Background and objectives

The Audiovisual Media Services Directive (AVMSD[1]) has paved the way towards a single European market for audiovisual media services. It has harmonised the audiovisual rules of the Member States and facilitated the provision of audiovisual media services across the EU on the basis of the country of origin principle. Since its adoption in 2007, the audiovisual media landscape has changed significantly due to media convergence[2]. The review of the AVMSD is featured in the Commission Work Programme for 2015, as part of the Regulatory Fitness and Performance Programme (REFIT). In its Communication on a Digital Single Market Strategy for Europe[3], the Commission announced that the AVMSD would be revised in 2016. Another REFIT exercise is being carried out, in parallel, in the field of telecoms with a view to come forward with proposals in 2016. Some of the issues treated in the current public consultation may have an impact on this parallel exercise and vice versa. In 2013, the Commission adopted a Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values"[4] inviting stakeholders to share their views on the changing media landscape and its implications for the AVMSD. On the basis of the outcome of this public consultation, the Commission has identified the following issues to be considered in the evaluation and review of the AVMSD:

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

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

Questions

1. Ensuring a level playing field

Services to which the AVMSD applies

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

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

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

Set of questions 1.1

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

Relevant

- Yes
- No
- No opinion

Effective

- Yes
- No
- No opinion

Fair

- Yes
- No
- No opinion

Comments:

The context for a European directive for audiovisual services has seen major changes since the process of a European Directive first started in 1989 with the Television Without Frontiers Directive. Both the media reality (new technology and providers) and the health agenda (the development of the Non Communicable Disease agenda) has emerged as important features, and the current AVMSD fails to address these important issues sufficiently . There is still a need to have a EU Directive for audio visual services, however, the complex reality of providers and an emerging policy awareness of commercial communication and risk factors for health are important to point out as a challenge for the effectiveness of the current directive.

Ref:

Bartlett and Garde (2013) Time to Seize the (Red) Bull by the Horns, European Law Review Issue 4, 2013

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

- Yes (if yes, please explain below)
 No

Comments:

The new media reality with online streaming of audiovisual services that are not sufficiently reflected in the AVMSD. Adequate restriction for commercial communications of alcohol products needs to include these services (more details in section 2). In addition to the lack of including new services, the lack of including broadcasters from abroad is important to mention. This will be addressed in the following question (1.2).

Furthermore, there are weaknesses within the existing AVMSD, especially on the insufficient approach to commercial communication of alcohol products. This will be further addressed in section 2.

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:

We believe alternative D should be explored further and include more range of providers to the AVMSD, e.g addressing content on online platforms such as YouTube. This would provide a level playing field and hence be more effective enabling the AVMSD to meet its aims.

Geographical scope of AVMSD

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

Set of questions 1.2

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

Relevant?

- Yes
- No
- No opinion

Effective

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

We would like to stress that the AVMSD must have an 'end viewers' perspective. This would mean that it is the audience and what the audience see that are important, and not where the broadcaster is legally registered. All audiovisual services should be required to comply with the same set of requirements, and therefore the directive should also include services that are broadcasted from outside the EU. Today there is a mixture of broadcasters, some have to apply to the AVMSD others don't. This is not a level playing field and needs to be addressed to ensure that the spirit of the AVMSD is applied to all services.

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

- Yes (if yes, please explain)
- No

If yes, please explain:

Currently the AVMSD provides no solution to the problem of EU citizens being targeted by alcohol marketing being broadcast from outside the EU, and as argued above, the AVMSD should have an 'end-viewer' approach, and this approach should be prioritised before the geographical origin of the provider.

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:

2. Providing for an optimal level of consumer protection

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

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

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

Set of questions 2.1

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

Relevant?

- Yes
- No
- No opinion

Effective

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

At its second plenary meeting on 16th April 2008, the European Alcohol and Health Forum decided that the Forum's Science Group should "look in more depth at the diverging points of view on the relationship between marketing and volume of consumption (especially by young persons)". The report concludes: "The overall description of the studies found consistent evidence to demonstrate an impact of alcohol advertising on the uptake of drinking among non-drinking young people, and increased consumption among their drinking peers" .

There is strong and consistent evidence to show a link between exposure to alcohol marketing and increased alcohol consumption amongst young people: a number of systematic reviews have concluded exposure to alcohol advertising increases the likelihood that young people start drinking at an earlier age, and to drink more if they already use alcohol . The impact of commercial communication on young people, both regarding age for starting drinking and the amount consumed at each drinking occasion, are important to understand when discussing protection of minors and commercial communication as part of the AVMSD.

Regulating commercial communication of alcoholic products is one of the policy recommendations in the WHO Global strategy to reduce harmful use of alcohol (2010) . Furthermore, OECD concluded in their recent report 'Tackling Harmful Alcohol Use' that "...limits on alcohol advertisement are an underused policy to reduce the damage from heavy drinking". The same report further concludes that restricting alcohol advertising and

promotion, along with other policies to reduce alcohol related harm, are cost effective measures to implement.

Consumer protection and commercial communication is a key concern for the AVMSD. The spirit of the AVMSD aims to protect European consumers and minors. However, the current directive does not respond sufficiently to the challenge of commercial communication of alcohol products. Commercial communication, as the current AVMSD importantly defines as different from television advertisement, is not about static adverts but a wide range of marketing techniques. It is therefore important to have a wide understanding of commercial communication when seeking to regulate alcohol advertising and promotion, and not limit this to television advertisements or teleshopping, but include all advertising techniques, which the current AVMSD has failed to do. As various European Commission funded and commissioned studies have shown, children are currently being exposed to alcohol advertising .

We would like to point out the failure to address alcohol commercial communication satisfactorily as part of article 9 (commercial communication). Alcohol marketing and advertisement is attempted to be covered by article 22, television advertisement and teleshopping, however, this fails to cover all the other aspects of commercial communication practices as described in the AVMSD. The two articles are neither specific enough nor strong enough to protect children from alcohol marketing practices. Today, commercial communications that appeal strongly to minors can still be aired without being in conflict with the AVMSD .

We would like to propose amendments to the AVMSD (article 9) to make the directive meet its aim on both creating a level playing field for commercial communication and better consumer protection. By expanding article 9, the AVMSD would be in better condition to protect consumers and young people since article 9 would address commercial communication in general, as opposed to article 22, which only relates to television advertisement and teleshopping. Please see more details on this below.

Ref:

http://ec.europa.eu/health/alcohol/forum/science_group/index_en.htm

Anderson et al (2009) 'Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use', Alcohol & Alcoholism 44:3

Smith & Foxcroft (2009) 'The effect of alcohol advertising, marketing and portrayal of drinking behavior in young people' BMC Public Health, 9(1)51

Meier et al (2008) 'Independent review of the effects of alcohol pricing and promotion', Sheffield, 2008

Bartlett and Garde (2013) Time to Seize the (Red) Bull by the Horns, European Law Review Issue 4, 2013

WHO (2010) Global Strategy to Reduce Harmful Use of Alcohol
http://www.who.int/substance_abuse/activities/gsrhua/en/

OECD (2015) Tackling Harmful Alcohol Use
http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/tackling-harmful-alcohol-use_9789264181069-en#page1

De Bruijn et al 2012: <http://eucam.info/2012/10/16/de-bruijn-2012/>

AMMIE project 2010:
<http://eucam.info/eucam-reports/ammie/monitoring-of-alcohol-marketing-in-five-european-countries/>

RAND EUROPE 2012:
http://ec.europa.eu/health/alcohol/docs/alcohol_rand_youth_exposure_marketing_en.pdf

Ecorys 2015 - to be published autumn 2015

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

- Yes (if yes, please explain)
- No

Yes, please explain

Building on the comments above, we would like to provide examples of where the AVMSD is not including commercial communication of alcohol sufficiently, and thus failing to meet its aim about consumer protection and protection of minors.

Research analysing the volume of alcohol marketing during the 2014 FIFA World Cup shows that viewers of an entire programme were exposed to an alcohol reference for each minute of football playing time, and ten alcohol commercials if the programme was broadcast on a commercial channel. Furthermore, the same research shows that large numbers of children and young people were part of the viewing audience.

Another relevant study is the alcohol brand frequency analysis conducted during the F1 Monaco Grand Prix 2014. This study shows there were on average 11 promotional references to alcohol per minute. All references during the race were for spirits and vermouths, predominately Johnnie Walker and Martini - placed strategically at locations with relatively lengthy camera exposure. In other words - the worldwide audience of 500 million people were exposed to an alcohol brand on average every five seconds for almost two hours. Furthermore, an analysis of F1 teams' websites identified three teams with alcohol company sponsorship agreements: William Martini Racing (Martini), Force India (Smirnoff and Kingfisher) and McLaren Honda (Johnnie Walker). In each of the three teams the sponsor's alcohol brand is highly visible on the uniforms for drivers and crew and on the team cars. The mix of both team sponsorships and alcohol advertisement during the race leads to a massive exposure of alcohol advertisement to all audiences, including minors, linked to driving and sport, without being affected by the current directive.

The exposure to minors of alcohol advertisement and the link to driving and sport go clearly against the spirit of the AVMSD. However, these practices are permitted under the current AVMSD because alcohol advertisement is not addressed sufficiently in the current directive.

Ref:

Alcohol Marketing at the World Cup 2014 (Alcohol Concern 2014)
http://www.alcoholconcern.org.uk/wp-content/uploads/woocommerce_uploads/2014/10/Alcohol-Marketing-at-the-FIFA-World-Cup-2014_pdf.pdf

Alcohol Advertising and Sponsorship in Formula One: A Dangerous Cocktail (Eurocare 2015)
http://www.eurocare.org/resources/eurocare_papers_and_publications

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:

As mentioned above, we believe article 9 is insufficiently covering alcohol products, and see strengthening this article as the key for the AVMSD to achieve its aim about consumer protection and protection of minors. Article 22 is trying to address the details in regards of television advertisement, but this is problematic for two reasons: (A) commercial communication goes beyond television advertisement (for example, sport sponsorship etc.) and (B) the measures included in 22 are not effective and thus the AVMSD fails in its objectives. We therefore recommend that the scope of the AVMSD is extended to all audio-visual media (including online services) produced by or distributed by commercial organisations, and that alcohol advertising is understood as a wide mix of advertising techniques, such as sponsorship of sport or other large audience events, product placement etc, and not limited to television advertisement alone.

We would like to suggest France's regulation for commercial communication of alcohol, the 'Loi Evin' , as a best practice framework for restrictions of commercial communication of alcoholic beverages. The Loi Evin limits commercial communication of alcohol to basic factual information, specifying what may be included and prohibiting everything else, which is clearer to monitor and enforce.

We also recommend that the AVMSD be revised to include time restrictions when children are likely to be watching or listening (e.g. a restriction between 7am and 10pm as applies in Finland).

Ref:

Craplet and Rigaud (2004) The Loi Evin: A French exception:
http://btg.ias.org.uk/pdfs/btg-conference-2004/papers/rigaud_craplet.pdf

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 protection of minors is clearly one of the important principles of the AVMSD, and should continue to be so. This would also include the protection from marketing practices for alcoholic beverages, as described in the previous sections.

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

- Yes (please explain)
- No

Yes - please explain

Despite the intention of the current AVMSD, minors are still exposed to alcohol advertisements and the directive needs to be strengthened to protect consumers adequately.

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:

Protection of minors should be equal for all services, both broadcasting, on-demand and other audiovisual services should be included in the AVMSD - as addressed in section 1.

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

- Yes
- No
- No opinion

Comments:

It is likely that the AVMSD has had an impact in some cases, however, given that evidence suggests minors are still exposed for alcohol marketing practices, the AVMSD has not met its aim about consumer protection. See question 2.1 for more details and policy recommendations.

What are the costs related to implementing such requirements?

Comments:

What are the benefits related to implementing such requirements?

Comments:

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

- Yes (please explain)
- No

Comments:

Preferred policy option:

- a) *Maintaining the status quo*
- b) *Complementing the current AVMSD provisions via self- and co-regulation* The status quo would be complemented with self-/co-regulatory measures and other actions (media literacy, awareness-raising).
- c) *Introducing further harmonisation* This could include, for example, more harmonisation of technical requirements, coordination and certification of technical protection measures.
- d) *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.*
- e) *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).
- f) *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.
- g) *Other option (please describe)*

Please explain your choice:

We believe it is important to both ensure a harmonization together with extending the scope of the AVMSD, and have therefore ticked both option "c" and "e". Further harmonization is needed to ensure the functioning of the internal market and also to ensure a high standard of consumer protection in all Member States. At the same time, we believe it is important to extend the scope of the AVMSD, and add new services, described in detail in section 1.

4. Promoting European audiovisual content

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

Set of questions 4

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

Relevant?

- Yes
- No
- No opinion

Effective

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

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

Comments:

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

- Yes
- No
- No opinion

Comments:

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

- Yes (please explain)
- No

Comments:

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

Comments:

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

Comments:

Preferred policy option:

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

Please explain your choice:

5. Strengthening the single market

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

Set of questions 5

Is the current approach still relevant, effective and fair?

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

In other questions above we have argued for the failure of the AVMSD to meet its aims when it comes to consumer protection. In this section, we will argue that the AVMSD has also failed to meet its aim when it comes to the internal market, and in practice the AVMSD ends up in a lose-lose situation for both consumer protection and the single market.

REF:

Garde (2014) The European Union's failure to regulate alcohol marketing in the best interest of the child, presentation at the 6th European Alcohol Policy Conference, 2014:

http://www.eurocare.org/media_centre/previous_eurocare_events/6th_european_alcohol_policy_conference_27_28_11_2014_brussels/friday_28_november_2014_presentations_and_videos

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

- Yes (please describe)
- No

If yes describe and explain their magnitude

The legal landscape for commercial communication of alcoholic beverages is very fragmented and diverse in Europe. The AVMSD defines certain aspects as a minimum standard, and in some countries these have been taken as the law and complimented with self regulatory schemes from the industry, while in other countries there are additional regulations beyond the AVMSD. Some are addressing content, others address time and place. Commercial communication of alcoholic beverages is a highly cross-border issue. The differences among Member States are likely to impede movement between MS of the products and thus distort competition and impede the functioning of the internal market.

One example of today's challenge to the internal market is the Swedish case, where Swedish channels (Swedish language, Swedish programmes, Swedish marketing clearly targeting Swedish audience) are broadcasting from London. The channel claims they have to follow UK regulation, with the result of undermining the Member State's (Sweden) authorities to protect its citizens from alcohol marketing. We recommend in Question 2.1 to adopt a common approach to commercial communication of alcohol, which would resolve this issue. Another option is to look at exposure in the relevant country rather than physical location of the broadcaster, as would be the case with broadcaster established outside the EU (the end user perspective, addressed in section 1.2).

Comments

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

- Yes
- No

Comments:

Preferred policy option:

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

Please explain your choice:

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

Independence of regulators

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

Set of questions 6.1

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

Independence of the regulators and transparency of potential conflict of interests are highly relevant and important to address in the AVMSD. In many countries stakeholder committees manage the regulation of broadcast media. In many cases, representatives of commercial institutions predominantly staff these committees. These committees have been subject to criticism for being lenient to alcohol producers and broadcasters when complaints are made about alcohol advertisements. Regulatory bodies that are independent of the alcohol industry would protect against conflicts of interest in regulatory decisions.

The alcohol industry has launched several self-regulatory initiatives, where they express their commitments to regulate alcohol advertising to a certain standard. It is important in the REFIT process to point out that first of all, self regulatory measures seldom go beyond what is existing law and regulations, and the added value of these measures are therefore minimum. Furthermore, the way self-regulation is set up enables the industry to advertise and promote their products to new consumers. The industry has had sufficient time to prove their added value of self-regulatory measures, but has failed in doing so. We therefore call for a stricter approach in relation to commercial communication of alcoholic beverages.

In addition to independent regulatory bodies, we would also recommend greater scrutiny of advertisements pre-broadcast, as opposed to the current complaint-led process. The complaint-led process allows consumers to be exposed prior to regulatory action. Assessing and verifying advertisements before airing the advertisement would have avoided this situation.

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

- Yes (please explain)
- No

Comments:

Preferred policy option:

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

Please explain your choice

Must Carry/Findability

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

Set of questions 6.2

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

- Yes
- No
- No opinion

Comments:

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

- Yes (please explain)
- No

Comments:

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

- Yes
- No

Comments:

Preferred policy option:

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

Please explain your choice:

Accessibility for people with disabilities

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

Set of questions 6.3

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

- Yes
- No
- No opinion

Comments:

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

- Yes (please describe)
- No

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

- Yes
- No

Comments:

Preferred policy option:

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

Please explain your choice

Events of major importance for society

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

Set of questions 6.4

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

As pointed out in section 2.1, events with a large audience, such as FIFA World Cup, Formula 1, Eurovision song contest etc, should not be able to show alcohol advertisements, which today is possible since alcohol advertisement is not dealt with sufficiently in article 9, (commercial communication). Allowing exposure of alcohol advertisement in these occasions contradicts the intention of the AVMSD in protecting minors and public health, since alcohol advertisement can be broadcasted to an extremely wide audience in all age groups at any time of the day.

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

- Yes (please explain)
- No

Comments:

Preferred policy option:

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

Please explain your choice

Set of questions 6.5

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

- Yes
- No

Comments:

Preferred policy option:

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

Please explain your choice

Right of reply

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

Set of questions 6.6

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

Relevant?

- Yes
- No
- No opinion

Effective?

- Yes
- No
- No opinion

Fair?

- Yes
- No
- No opinion

Comments:

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

- Yes (please explain)
- No

Preferred policy option:

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

Conclusions and next steps

This public consultation will be closed on 30 September 2015

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

Additional information

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

- [a5a98871-cf41-407e-9414-9300d7d03a6b/ALCOHOL ADVERTISING AND SPONSORSHIP IN FORMULA ONE - A DANGEROUS COCKTAIL, MAY 2015-3.pdf](#)

Footnotes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[15] Works transmitted within 5 years of their production

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

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

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

Useful links

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

Contact

✉ Suzanne.Vanderzande@ec.europa.eu
