

The Audiovisual Media Services Directive: state of play

SUMMARY

The EU's audiovisual sector comprises over 100 000 companies and employs more than 760 000 people. Audiovisual media services however outrun market considerations by playing a central role in modern democratic societies, which accounts for the application of specific rules across the European Union (EU).

Current transmission capacities have come a long way from the first linear broadcasts. The Internet, together with media convergence, is changing the way people use media. Although television is still the most popular medium in the EU and globally, internet comes close behind. This shift in media consumption holds both promises and challenges. The advent of internet-enabled TV faces regulators with complex dilemmas, such as protecting young people from harmful content and banning incitement to hatred, while still ensuring freedom of speech.

The Audiovisual Media Services (AVMS) Directive covers all services with audiovisual content, including 'on-demand', and audiovisual advertising. However, it takes into account the degree of user control over the service and therefore on-demand services are subject to lighter regulation. Member States are encouraged to use co-regulation and/or self-regulation as complementary approaches to the Directive's provisions, in particular in relation to commercial communications and the protection of minors. The Commission's 2012 report on the implementation of the AVMS Directive concluded that in general, the EU regulatory framework performed well. The Commission is currently processing the results from a public consultation on the functioning of the Directive and is expected to present a proposal for a review by the end of 2015.



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Background

The [audiovisual sector](#) of the European Union (EU) comprises over 100 000 companies and employs more than 760 000 people. Yet, audiovisual media services are as much economic services as they are cultural ones. They encompass particular values that often go beyond economic considerations and play a central role in modern societies, informing citizens, and shaping public opinions. Their growing importance for democracy, education and culture accounts for the application of specific rules across the EU.

The first common set of minimum rules for EU-wide television broadcast regulation was provided by the Television without Frontiers (TVWF) [Directive](#). This was initiated in the 1980s when television (TV) was primarily 'linear' in nature. In other words, broadcasters transmitted signals containing scheduled sets of programmes to anyone equipped with a TV set to receive the signal. Hence, it was fairly easy to regulate the content and scheduling of TV programmes reaching citizens.

However, as transmission capabilities developed with the use of satellite and cable technology, companies were able to reach more and more households. Audiovisual [media convergence](#) (i.e. the blending of the media, telecommunications and computer industries) introduced new players such as Apple, Netflix, Facebook, and Microsoft. The advent of internet-enabled TV faces regulators with complex dilemmas, such as protecting young people from harmful content and banning incitement to hatred, while still ensuring freedom of speech. This shift in paradigm in the audiovisual market is also challenging to traditional players, who have to adapt to the ongoing transformation in order to secure their market positions.

[Experts](#) argue that as audiovisual content moves towards the internet, the traditional TV set loses its significance in consumption patterns. In other words, users increasingly rely on smaller screens (smart phones or tablets) allowing for content consumption at an individual pace. This growing trend is known as [multi-screening](#) and accounts for [new types of behaviour](#).

Media regulation in the EU

There are two main objectives of media regulation in the EU: the right of establishment ([Article 49](#) of the Treaty on the Functioning of the EU (TFEU)), and the free movement of services. The former guarantees the right to set up agencies, branches, and subsidiaries of businesses in other Member States, and to receive the same national treatment as that enjoyed by nationals of those states. It is particularly relevant to the broadcasting industry, since audiovisual signals do not stop at physical borders. The latter prohibits restrictions of the freedom to provide services across the EU ([Article 56](#) TFEU).

Television is still the most popular medium in the EU and globally

According to a Eurobarometer [report](#) on media use in the EU, released in 2014, 94% of Europeans from the 28 Member States watch television at least once a week on a traditional TV set, whereas only 20% among the same respondents watch television on the internet. When looking closer, however, some fundamental differences appear among generations. Only 72% of 15 to 24-year-olds claim to watch traditional television at least once a week, whereas 40% of the same age group watch TV on the internet. By contrast, 93% of those 55 years and over watch traditional TV at least once a week and only 8% of the same age group declare they do so on the internet.

This [shift in media consumption](#) is also confirmed on a global scale. In 2015, people around the world will spend an average of 492 minutes a day consuming media. Television remains by far the most popular of all media globally, even though the share of overall TV consumption fell from 42.4% to 37.9% between 2010 and 2014 – with [daily viewing time](#) standing at 3.13 hours – and is projected to shrink further to 34.7% by 2017. Internet comes second and is expected to increase by 10% this year. At the same time, the rapid rise of smartphone and tablet penetration pushes up video consumption projected to grow by 43.9% in 2015 and 34.8% in 2016.

The audiovisual media services directive: areas of coordination

In 2010, the TVWF directive and its subsequent [1997](#) and [2007](#) amendments were incorporated into a single text, the [Audiovisual Media Services \(AVMS\) Directive](#) which is at present the cornerstone of media regulation in the EU.

General principles

The AVMS Directive covers all services with audiovisual content – such as television broadcasts, content selected by viewers 'on-demand', and audiovisual advertising – irrespective of the technology used to deliver the content, be it TV, the internet, cable or a mobile device (principle of '**technological neutrality**'). However, the Directive takes into account the degree of user control over the service and therefore treats linear (television broadcasts) and non-linear (on-demand) services differently ('**graduated approach**'). On-demand services are thus subject to somewhat lighter regulation that matches the relative impact they have on society as a whole contrary to TV broadcasts.

Audiovisual service providers need to comply with the rules of the EU country where they are established ('**country of origin**' principle). To avoid cases of double jurisdiction or absence of jurisdiction, each provider comes under the jurisdiction of only one EU country. This will depend mainly on where their central administration is located and where management decisions are taken on programming or selection of content (Article 2). Further criteria include the location of the workforce and any satellite uplink, and the use of a country's satellite capacity. **Free circulation** and **freedom of expression** find practical application in the country of origin principle. If any EU country adopts national rules that are stricter than the Directive, they can only be applied to providers in that jurisdiction and have to respect free circulation, the freedom of expression, and the general principles of EU law.

Audiovisual commercial communications

Sponsorship¹ (Article 10) must be clearly identified as such in an appropriate way at the beginning, during and/or the end of the programmes. Pharmaceutical companies may sponsor broadcasts but will still not be able to promote specific medicines or medical treatments. Sponsorship of programmes by companies whose main activity is manufacture or sales of tobacco products is prohibited. News and current affairs programmes may not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.

Paid product placement² (Article 11) is only allowed in certain kinds of programmes (e.g. films). It is prohibited in children's programmes. However, when provided for free, it is allowed in all programmes including children's programmes. Member States are able to adopt stricter rules. Programmes featuring product placement should comply with a set of criteria (e.g. editorial independence of the media service provider, no undue prominence given to the product or service referred to, etc.). Viewers must be clearly informed about the existence of product placement. Product placement of tobacco products and medicinal products for prescription is prohibited under any circumstances. These rules only apply to programmes produced after 19 December 2009.

Advertising and teleshopping (Articles 19-26) must be easily recognisable and distinguished as such by auditory and visual means. They should, where possible, not be isolated and are not permitted for prescription medication and tobacco products. Communication about alcoholic drinks must comply with specific restrictions. The duration of advertising and teleshopping spots may not take up more than 20% of any given hour of broadcasting time, i.e. 12 minutes. They should preferably be inserted between programmes. It is also possible to insert them during children's programmes, films and news programmes, but only once in each scheduled period of at least 30 minutes.

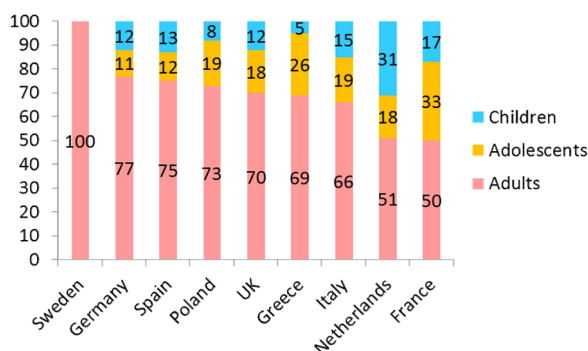
The impact of advertising on children

[Research](#) shows that in the EU children watch an average of 29 advertisements per day between 2 p.m. and 6 p.m. Sixty per cent of those advertisements are for food, snacks and soft drinks, and 20% are for toys. In some EU countries, commercials targeted specifically at children and adolescents make up between 23% and 50% of all TV commercials (see Figure 1). There is however [little evidence](#) of a direct link between obesity levels and advertising. Rather, TV advertising tends to be one of the many sources of influence on children's food choices, partly due to the sedentary nature of TV viewing associated with frequent snacking, and/or fast food consumption. There is a general consensus among researchers and experts that childhood obesity is due to multiple causes, including individual, social, environmental and cultural factors, all of which interact in ways not yet fully understood.

[Practitioners](#) argue that until the age of eight, most children do not have the cognitive capacity to understand the commercial purpose of TV advertising. Younger children [experience](#) difficulties distinguishing between TV programmes and commercials. Interestingly, there is [little evidence](#) that children are more affected by advertising than adolescents or even adults. [Experts](#) observe that there is no 'magic age' at which children can resist persuasion, both because there is no universal relation between understanding and age and because persuasion occurs across the age range.

So far, the development of media literacy skills among children, parents and teachers has been advocated as a means to counter, at least to some extent, the impact of advertising. However, [academic arguments](#) point that recognition of the persuasive intent of advertising does not necessarily protect children (or indeed adolescents or adults) from its effects. Nonetheless, this does not challenge the need to develop media and advertising literacy skills.

Figure 1 – TV commercials target range in selected Member States, in %



Data source: Marina D'Amato, [La pubblicità e i comportamenti alimentari dei ragazzi](#), 2007.

Promotion of European works

Both linear and on-demand audiovisual media services are required to reserve the majority proportion of their transmission time – excluding the time dedicated to news, sports events, games, advertising, teletext services and teleshopping – to European works, as defined in the Directive (Article 1 and Article 16). Also, broadcasters have to dedicate at least 10% of their transmission time or their programme budget to European works produced by independent producers (Article 17). Such promotion could take the form of financial contributions to the production and rights acquisition of European works or a share and/or prominence of European works in the catalogue of programmes (Article 13).

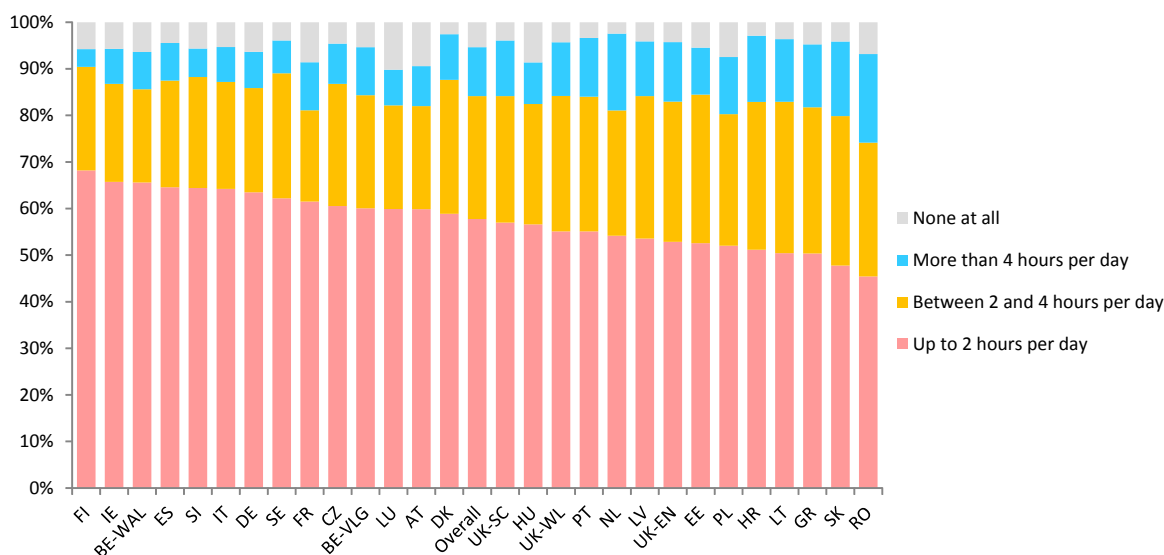
In the case of video on demand services, Member States have a wider discretion on how to promote European works. Therefore, the approaches differ substantially, ranging from extensive and detailed measures to mere reference to the general obligation to promote European works in their national legislation. In 2014 the European Commission published a [document](#) presenting a summary of those approaches.

Protection of minors

Children and TV

[Research](#) shows that over the course of childhood, children spend less time in school than in front of a TV set. Worryingly, the average seven year-old will have already watched screen media for more than one full year. Consequently, by age 18 the average young European will have spent a full four years in front of a screen. Although there are potential benefits from watching television, time dedicated to various media may displace other more active or meaningful activities, such as reading, exercising, or playing. According to the [American Academy of Paediatrics](#), young people are especially in jeopardy of the negative effects of television because 'children cannot discriminate between what they see and what is real.' What is more, children are most vulnerable to negative influences which may, in turn affect their long-term attitudes or behaviour. On the other hand, [evidence](#) also indicates that watching TV can have a beneficial effect as well. Seeing people acting in a positive way can influence how children respond in similar situations. Data shows that around 58% of children aged 11-15 in the EU watch TV up to two hours per day (see Figure 2). The average [values for the US](#) stand at 3.3 hours per day (for children aged 6-11) whereas average [viewing time in Japan](#) (for children aged 2-6) is 1.45 hours per day.

Figure 2 – Average daily TV viewing time among children aged 11-15 during weekdays, in %



Data source: EPRS calculation of raw data provided on request by the World Health Organization, based on [Health behaviour in school-aged children](#): international report from the 2009-2010 survey.

Protection from harmful content

The question of protecting minors in audiovisual and online services has been addressed at various levels of the EU legal order, from the primary legislation in the [Treaty on the EU](#), to secondary legislation, through various directives and recommendations. The underlying premise regarding the protection of minors resides in the assumption that it should go hand in hand with parental responsibility. [Experts](#) warn however that if the protection of children is grounded solely in their parents' media literacy and involvement, this can lead to a so-called 'protection divide'. In other words, children with well-educated, technology-oriented parents, able to access, understand and critically evaluate media content, might be better protected than those with less prepared parents. A [study](#) from 2011 found that 28% of the EU's population have a basic level of critical understanding, 41% a medium level and 31% an advanced level. Technology can undoubtedly help parents in controlling what content their children are viewing, but it is not a panacea. Practitioners³ stress that 'technical solutions will

only have a significant impact where media literacy measures, awareness campaigns and parent-oriented support will be provided in parallel'.

What is harmful content?

The EU has been a forerunner in the fight against harmful content since [1996](#). The concept has been defined in a variety of ways, including by the [Council](#) – '[...] content that is legal, but liable to harm minors by impairing their physical, mental or moral development' - and by the [Commission](#) - '[...] content which adults responsible for children (parents or teachers) consider to be harmful to those children'. Media content that may be labelled 'harmful' includes sexually explicit material, political opinions, religious beliefs, and views on racial matters. It has been argued that when tackling harmful content public authorities should create an environment that allows individuals to decide for themselves (or for their children) what content they consider appropriate (a concept known as [user-empowerment](#), i.e. that individuals and parents are best situated to make decisions about what content to access). However, it should be noted that in the [Handyside](#) and [Castells](#) cases, the European Court of Human Rights confirmed that freedom of expression extends not only to content considered as appropriate but also to information that might offend, shock, or disturb.

As far as **TV broadcasts** are concerned, Article 27 of the AVMS directive prohibits programmes which 'might seriously impair' the development of minors, notably pornography or gratuitous violence. Those which might be 'harmful' to minors can only be transmitted when it is ensured – by selecting the time of the broadcast (e.g. watersheds)⁴ or by any technical measure (e.g. encryption) – that minors will not normally hear or see them. In addition to that, when such programmes are not encrypted, they must be preceded by an acoustic warning or made clearly identifiable throughout their duration by means of a visual symbol. Under Article 12, programmes which '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. This could be done by the use of personal identification numbers or other, more sophisticated age verification systems. There are no restrictions for programmes which might be 'harmful'.

Prohibition of incitement to hatred

The competent authorities within each Member State must ensure that audiovisual media services do not disseminate any incitement to hatred based on race, sex, religion or nationality (Article 6). In addition, they are entitled to act against [hate speech](#) channels using an uplink or a satellite capacity in an EU country. This requirement, however, has to be balanced against the democratic right to freedom of speech. EU authorities have only limited powers to act against satellite channels situated outside the EU. The [European Commission](#) asserts that it regularly raises the issue in its political dialogue with the countries concerned, particularly those where the broadcasters are based. In spite of its insistence that Member States should [criminalise hate speech](#) through the [framework decision on racism and xenophobia](#) and enforce it including to politicians, a recent [Eurobarometer](#) shows that 50% of Europeans believe discrimination based on religion is still widespread, up from 39% in 2012.

Accessibility for people with disabilities

Sight- and hearing-impaired persons as well as elderly people are entitled to have access to audiovisual media services (Article 7). Therefore, EU governments must encourage media companies under their jurisdiction to facilitate this access, notably through sign language, subtitling (in the language of the programme, e.g. French for a French-language programme, often referred to as captioning), audio-description, or easily understandable menu navigation. These requirements apply to public and commercial audiovisual media service providers alike. Member States had to transpose this obligation by 2009 (see section on national implementation). The Commission supports [standardisation work on accessibility to television](#) through the European standardisation organisations.

Major events

The Directive tasks Member States to ensure that events of major importance for society (such as the Olympic Games, the Football World Cup, or an important cultural event) are not broadcast on an exclusive basis, thus preventing a substantial proportion of the public to follow them (Article 14). To this end, Member States are expected to draw up a [list](#) of such events. In virtue of the principle of mutual recognition, they must also ensure that broadcasters under their jurisdiction respect the lists notified to the Commission by other Member States. The Court of Justice has also developed comprehensive [case law](#) concerning the interpretation of the AVMS Directive.

The choice of regulatory mechanism

Article 4(7) of the AVMS directive encourages Member States to use co-regulation and/or self-regulation as complementary approaches to legal provisions, in particular in relation to commercial communications and the protection of minors.

Self-regulation vs. co-regulation

Media regulation is usually represented as a point on a spectrum between no regulation and state regulation (see Figure 3). However, [experts](#) claim that the practical application and implementation of the various instruments – mainly self-regulation and co-regulation – continue to cause difficulties, since the associated regulatory mechanisms are not harmonised.

Figure 3 – Types of regulatory mechanisms

No regulation	Self-regulation	Co-regulation	State regulation
No explicit controls on an organisation	Regulations are specified, administered and enforced by the regulated organisation(s)	Regulations are specified, administered and enforced by a combination of the State and the regulated organisation(s)	Regulations are specified, administered and enforced by the State

Source: I. Bartle, P. Vaas, [Self-regulation and the regulatory state](#), Centre for the study of regulated industries, Bath, 2005.

The AVMS Directive defines '**self-regulation**' as a type of voluntary initiative which enables economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves. It generally refers to protective measures relating to content that is legal, but can possibly be harmful to children and young people. Means of self-regulation include dispute resolution procedures, codes of conduct, technical measures such as encryption, and personal identification numbers that regulate children's access. Self-regulation is often [seen](#) as more attractive than state regulation because it is cheaper (being funded predominantly or entirely by industry) and more flexible in responding to change. This is a considerable advantage in a digital environment where change is a constant, in that it allows self-regulatory bodies to extend their remit without the need for legislative change. Finally, it provides an alternative to state and political interference in media content.

On the other hand, self-regulation is often [criticised](#) for similar reasons: because it is overly flexible, i.e. lacks effective enforcement, transparency and strict sanctions, and it is too close to the media industry to offer genuine protection of the public interest. Often, measures perceived as self-regulation are in practice closer to co-regulation because of state involvement, either in developing rules and standards or in guaranteeing their enforcement.

On the other hand, '**co-regulation**' is defined by the Directive as creating, in its minimal form, a legal link between self-regulation and the national legislator in accordance with the legal traditions of the Member States. [Experts](#) claim that co-regulation is an ambiguous term which contains elements of both self-regulation and state regulation. Consequently, it is unclear where self-regulation ends and co-regulation starts, to the extent that some [authors](#) consider co-regulation as a form of self-regulation. It has been [argued](#) that the main asset of co-regulation lies in the combination of the advantages of self-regulation (flexibility, prompt adaptability to change, etc.) and state regulation (legal certainty, efficient enforcement).

However, the [criticism](#) is made that, if co-regulation involves some sort of joint regulation, it is still unclear who fulfils the role of primary regulator. Furthermore, the exact combination of state and non-state elements [need](#) to be structured carefully to address concerns about freedom of expression, transparency and accountability.

According to [specialists](#), the current trend in media regulation consists of shifting from traditional state regulation to more decentralised forms of regulation, i.e. co- and self-regulation and an increased concern for user-empowerment. This has been welcomed by [practitioners](#) as 'breaking with the long tradition of paternalism and belittlement of the media user'.

Technological solutions

Technology is often an integral part of an alternative regulatory strategy. The use of filtering tools (to prevent or block access to specified types of content) is an example of the shift away from state control. Filtering technologies are [viewed](#) as a way of transferring control of harmful content from governments, to end users, mainly parents. However, filtering technologies have been [criticised](#) for their possible over- or under-inclusiveness and their ease of circumvention. [Practitioners](#) recommend that governments promote rather than enforce the use of filters to safeguard the freedom of expression. Similarly, users are [expected](#) to apply these on a voluntary basis.

National implementation of the Directive and remaining concerns

The European Commission's 2012 [report](#) on the implementation of the AVMS Directive concluded that, by and large, the EU regulatory framework 'has served citizens and businesses well'. As regards the transposition of the Directive, by 2011 notifications had been received from 23 Member States, 20 of which amounted to full transpositions. Three Member States – [Poland](#), [Belgium](#), and [the United Kingdom](#) – still need to make some changes to their legislation in order to comply with the Directive.

Country of origin, free circulation, and freedom of expression

The Media Act adopted in Hungary in 2011 raised specific [concerns](#) regarding the respect of the 'country of origin' principle, since its provisions appeared to apply also to media firms established in other Member States. Moreover, the provision requiring ensuring balanced information applied to a broad area, from broadcasting – where such rules are fairly common – to on-demand audiovisual media services, or online bloggers. More importantly, beside these specific questions, the new Media Act raised broader political questions concerning freedom of expression. Some [modifications](#) were therefore agreed between the Commission and the Hungarian authorities to ensure that the new act complies with EU law.

Commercial communications and protection of minors

The report revealed a need to clarify the rules governing the various forms of commercial communications. The application of the 12-minute rule was clarified in the wake of a ruling by the EU Court of Justice defining an 'advertising spot' as any type of TV advertising broadcast between programmes or during breaks.

For the first time, the Commission monitored the implementation of the qualitative provisions on alcohol advertising, gender discrimination and advertising targeting minors. As regards the application of the relevant provisions to alcohol advertising, very few cases of clear infringements have been found. However, more than 50% of the spots contained elements which might be linked to some of the characteristics banned by the Directive, but which fell short of constituting a clear cut infringement. Similarly, the Directive's provisions on advertising targeting minors were seldom infringed. Nevertheless, it does appear that specific techniques geared towards minors are frequently used in TV advertising. Additionally, six Member States⁵ prohibit [advertising in children's programmes](#). Five EU countries⁶ impose a partial ban or other restrictions on advertising in children's programmes, and seven Member States⁷ prohibit the showing of sponsorship logos in children's programmes. Finally, an analysis of sex discrimination and gender stereotypes in advertising spots revealed stereotyped representation of gender roles in 21% to 36% of the spots.

Methodological differences in national approaches

The [absence of a clear definition](#) of certain key concepts in the Directive such as 'impairing', 'seriously impairing', and content 'likely to impair' the development of minors has resulted in different definitions at national level and to distinct levels of protection. Similarly, [the concepts 'minor' and 'child'](#) are not precisely defined in most EU countries, which, in turn is reflected in the content age rating applied for [TV watersheds across the EU](#), ranging from 'all public' to 6/7/9/10/12/14/15/16/18 years.

As shown by [comparative EU-wide research](#) on the protection tools available in case of content that is unsuitable for minors, although certain countries have opted for a homogeneous approach across services, this is still the exception, and the majority of countries (20 out of 28) have preferred a graduated approach with lighter obligations for on-demand services.

European works

The Commission has to report regularly on the application of these provisions. The latest [results](#) show that the average share of European works broadcast in the EU continued to increase to achieve 64.3% in 2010, thus meeting the Directive's target. Similarly, the share of European independent works was well above the 10% target with 33.8% but register a steady downward trend from 34.1% in 2009. Some Member States, such as [Spain](#), have even included stricter or additional rules in their [national legislation](#), requiring a higher proportion of European works in an official language of the country. This obligation was challenged, but the [European Court of Justice](#) confirmed that Member States may adopt measures to promote one or several official languages as part of their cultural policy. Concerning on-demand services, based on information provided by 14 Member States, it appears that they also reserved a high share of their programmes, ranging from almost 37% to 100% to European works.

Hate speech

Based on the provisions of the Directive, the French regulator ordered a [halt to retransmission](#) in Europe of *Al Aqsa TV*, which had repeatedly broadcast material inciting anti-Semitic hatred.

Accessibility for people with disabilities

All EU countries have introduced [rules](#) to this effect. The implementation of these rules, however, follows different paths. While some Member States have detailed self-regulatory rules, others have only very general provisions, or limit the accessibility obligation to the services of public service broadcasters (Denmark, Luxembourg, Malta, and Slovenia).

Self-regulatory initiatives

With the exception of Latvia, Lithuania, Malta, and Slovakia where only encouragement provisions have been included in the media legislation, all Member States have introduced [self- or co-regulatory schemes](#). For the advertising and marketing of food to children, self-regulatory practices have also been promoted at EU level through the EU [Platform for Action on Diet, Physical Activity and Health](#). The Platform has obtained over 300 stakeholder commitments to responsible commercial communications. However, while an evaluation [report](#) from 2010 concludes that it is too early to judge the actual health impact of commitments, it appears that the impact of the Platform on national policies on nutrition and physical activity was very limited. According to the European Advertising Standards Alliance – a non-profit organisation bringing together national advertising self-regulatory organisations – of the over 65 000 complaints received by the Alliance in 2013, 3 145 (slightly less than 5%) related to commercials perceived as 'inappropriate for children' under the categories 'taste and decency' and 'social responsibility'.

European Parliament report on the application of the AVMS directive

In its [report](#) (2013) on the application of the AVMS directive (Piotr Borys, EPP, Poland) the Committee on Culture and Education acknowledged the self-regulatory initiatives of the Commission designed to limit minors' exposure to food advertising and marketing (such as the Platform for Action on Diet, Physical Activity and Health), but stressed that they could not replace legally binding instruments. In addition, Parliament requested a reflection on the extension of the basic requirements of the Directive to online content and services which are currently out of its scope. The Committee also urges the Commission to closely monitor the development of [Connected TV](#) in the EU.

New technological developments and regulatory challenges

The convergence between traditional forms of media and new connected services and devices (such as smart TV – also called hybrid or connected TV – allowing for TV programmes to be viewed on the same screen as on-demand or other internet-based services) increasingly blurs the boundaries between commercial communication and editorial content, thus raising new challenges such as control over advertising and content,⁸ impact on the effectiveness of measures promoting European works, [intellectual property rights issues](#), [protection of minors](#), data protection and media literacy of vulnerable groups.

Convergence also confronts governments with the challenge of reconciling previously distinct regulatory frameworks. In the past, each type of content had a dedicated network. However, the arrival of new systems challenges regulatory frameworks based on traditional distinctions. According to the [World Bank](#), as of 2007, 22% of countries worldwide had adopted new policies to address the convergence of telecommunications, information technologies, and broadcasting, while 50% were planning to do so in the future.

Viewers have [high expectations](#) of media content regulation. [Research](#) however indicates that consumers face various issues, especially due to problems with accessing the content, unclear or missing information, and low quality content.

The forthcoming review of the Directive and other recent developments

Commission-led initiatives

Commission's Work Programme 2015

The [Work Programme](#) specifically schedules a review of the AVMS Directive for 2015. This will notably be carried out in the framework of the Commission's Regulatory Fitness and Performance Programme ([REFIT](#)). The idea with this mapping exercise covering the entire EU legislation is 'to identify burdens, gaps and inefficient or ineffective measures including possibilities for simplification or repeal'. Since not all Member States transposed the AVMS

Directive in time, this has led to a lack of evidence on its application. Detailed analysis of the Directive's functioning is therefore a precondition for further simplification. [Annex 3](#) to the Work Programme indicates that two studies are ongoing with the aim to assess whether rules on audiovisual commercial communication for alcoholic drinks have provided minors the level of protection required, and to analyse the extent to which co- and self-regulation can reduce regulatory complexity. Results are expected in 2015.

Public consultation on the independence of regulatory bodies

In March 2013, the Commission launched a [consultation](#) whose purpose was to collect views on possible options for strengthening their independence. The AVMS Directive recognises the role of the independent regulatory authorities which, in most Member States are responsible for the enforcement of the national measures transposing the rules of the Directive. The majority of respondents indicated that cooperation between regulatory bodies is crucial in a converging digital environment. They also supported the legally mandated gathering of these authorities at EU level. In 2014, the Commission set up a [European Regulators Group for AVMS](#) bringing together heads or high level representatives of national regulatory bodies in the field of audiovisual services, to provide advice on the implementation of the Directive.

Green Paper on the convergence of media services

[Published](#) in April 2013, the paper sought feedback on areas such as the appropriateness of current rules, mechanisms to ensure parental awareness of existing tools, effective age verification measures, and user information and empowerment. The [replies](#) received indicate that according to some respondents the Directive's scope should be broadened to encompass services that fall outside of the current definition and/or are not included in its geographical scope. Others fear that broadening the scope would hinder innovation. Many respondents also raise the question of self- and co-regulation as a possible way forward. Similarly, various respondents support changes in the rules governing commercial communications, with the ideas going in both directions. Some favour the liberalisation of rules for linear services; others back stricter rules for non-linear services. Finally, while the distinction between linear and non-linear services is questioned by many, no clear proposals emerged from the replies.

Public consultation on the AVMS Directive

This [consultation](#), launched in July 2015, seeks feedback from stakeholders and viewers. It focuses, amongst others, on the scope of application of the Directive, the graduated approach, and the country of origin principle. For the first time respondents are offered a variety of options which, apart from answering the consultation questions, allow sending ideas for improved legislation, provide personal experience on the functioning of the Directive, or create polls. The Commission is currently analysing the results.

Self-initiatives from the industry

Following the launch of the 'Licences for Europe' dialogue in February 2013, stakeholders agreed on a [series of pledges](#) aiming to bring more content online. Cross-border service providers need to ensure that they have secured all the necessary rights in the Member State in which they wish to provide services. Distribution of content is therefore often limited to one or a few Member States (e.g. using [geo-blocking](#)), with online platforms or rights holders imposing cross-border sales restrictions. With respect to the cross-border portability of on-demand services, representatives of the audiovisual sector [indicated](#) their willingness to continue to work towards their further development, so that consumers increasingly have access to audiovisual content to which they have subscribed at home.

The EU's cultural exception, AVMS, and the Transatlantic Trade and Investment Partnership

[Estimations](#) put the global TV market at US\$354.4 billion in 2008. The cumulative shares of North America, Europe and Japan account for more than three-quarters of the market. The United States (US) and the EU are the two major global players: the US tops the exports of audiovisual content (US\$15 billion), followed by the EU (US\$9.9 billion) and is also the largest importer of such services.

In 2013, the EU started negotiations on a free trade agreement with the US – known as the Transatlantic Trade and Investment Partnership ([TTIP](#)). The debates over audiovisual services, and more generally over cultural goods reflected, nonetheless, the different economic, social, and cultural models in the EU and the US. The European concept of a 'cultural exception' resides in the assumption that cultural goods and services are not ordinary commodities and should be left out of international agreements, a view not shared by the US. In the EU, this may translate into protectionist measures including the regulated diffusion of non-EU artistic work via quotas or state aid.

The European Parliament supported this view in a [resolution](#) asking for cultural and audiovisual services to be excluded from the negotiating mandate. After intense [discussions](#), and opposition from 14 Member States led by [France](#), European trade ministers approved a [negotiating mandate](#) excluding audiovisual services. A possible extension of the mandate at a later stage is possible but will require unanimous agreement from the Member States.

It should be noted, however, that the broad range of measures to promote European works (e.g. through broadcasting quotas and financial contributions to European productions) as well as public funding granted to the TV and film sectors is perceived as a [trade barrier](#) by the World Trade Organization. Therefore, the EU's [greatest challenge](#) at the multilateral level will be to defend the 'exceptional' nature of audiovisual services in the context of the [General Agreement on Trade in Services](#). So far, the EU has failed to obtain recognition of the special nature of audiovisual services.

Endnotes

¹ Article 1(1)(k) defines sponsorship as 'any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products'.

² Article 1(1)(m) defines product placement as 'any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration'. It should be noted that product placement, in contrast to sponsorship messages, is built into the action of a programme, whereas sponsor references may be shown during the programme but are not part of the plot.

³ Dreyer S., User Empowerment in Child Protection by and through Technology, as quoted in [The protection of minors in a converged media environment](#), European Audiovisual Observatory, 2015.

⁴ That is a period of the evening when programmes not suitable for children may be shown – and/or the labelling of content according to suitability for various age groups.

⁵ Belgium, Germany, Lithuania (for public service broadcasting), Netherlands, Poland, and Sweden.

⁶ Austria, Italy, Portugal, Romania, and the United Kingdom.

⁷ Belgium (for public service broadcasting), Bulgaria, Italy, Malta, Germany, Greece, and Estonia.

⁸ New types of commercial communications, allowing for behavioural advertising (i.e. targeted commercials based on user-generated content) are not subject to any regulatory supervision, except under terms of service applied by internet service providers. Potentially harmful content from outside the EU, which can represent a source of harm for minors, raises the same questions.

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