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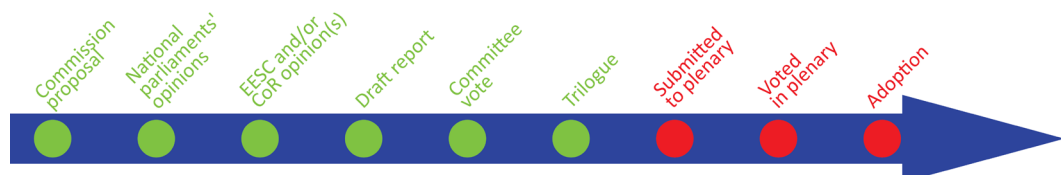
# The Audiovisual Media Services Directive

On 6 June 2018, European Parliament negotiators and the Bulgarian Presidency of the Council agreed on an updated EU Audiovisual Media Services Directive, based on the proposal presented by the Commission on 25 May 2016. The overarching goal of the proposal is to bring about a balance between competitiveness and consumer protection. It therefore aims to introduce flexibility when restrictions only applicable to TV are no longer justified, promote European films, protect minors and tackle hate speech more efficiently. The proposal also reflects a new approach to online platforms. Following the informal agreement, the text is expected to be put to the vote in plenary in autumn 2018.

**Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities**

COM(2016) 287 final 25.5.2016, 2016/0151(COD), Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')

|                        |  |
|------------------------|--|
| Committee responsible: | Culture and Education (CULT)   |
| Co-rapporteurs:        | Petra Kammerevert (S&D, Germany)<br>Sabine Verheyen (EPP, Germany)   |
| Shadow rapporteurs:    | Angel Dzhambazki (ECR, Bulgaria)<br>Yana Toom (ALDE, Estonia)<br>Curzio Maltese (GUE/NGL, Italy)<br>Helga Trüpel (Greens/EFA, Germany)<br>Isabella Adinolfi (EFDD, Italy)<br>Dominique Bilde (ENF, France) |
| Next steps expected:   | First-reading vote in plenary  |



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The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.





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## Introduction

The first framework of minimum common rules for EU-wide television broadcast regulation was provided by the Television without Frontiers (TVWF) [Directive](#) in 1989. In 2010, the TVWF directive and its subsequent [1997](#) and [2007](#) amendments were incorporated into a single text, the [Audiovisual Media Services Directive](#) (AVMSD), which is at present the cornerstone of media regulation in the EU.

Nevertheless, in the past ten years the market has rapidly evolved, leading to the gradual [convergence](#) of audiovisual media (i.e. the blending of the media, telecommunications and computer industries). This has gone hand in hand with a [shift in TV and video consumption](#), particularly by younger generations. While the conventional TV screen remains a widely used device to share audiovisual experiences, many viewers increasingly access on-demand content via smaller screens (smartphones or tablets). The number of internet-based, video-on-demand (VOD) and over-the-top<sup>1</sup> TV providers targeting EU viewers has rapidly [increased](#) to reach over 2 500 in 2014, and the revenues from on-demand services in the EU-28 countries rose 272 % between 2010 and 2014, attaining €2.5 billion.

Data [show](#) that video viewing is one of the earliest internet activities favoured by young children. This shift in TV and video consumption faces regulators with complex dilemmas, such as protecting minors from harmful content and banning incitement to hatred, while still ensuring freedom of speech.

The evolution of the audiovisual market is also challenging to traditional players, who have to adapt to the ongoing transformation in order to secure their market positions. Broadcasters are therefore extending their activities online and new players offering audiovisual content via the internet (e.g. VOD providers and video-sharing platforms) are stepping up competition for the same audiences. Yet, TV broadcasting, VOD and user-generated content (UGC)<sup>2</sup> are currently subject to different rules and varying levels of consumer protection.

To address these discrepancies, achieve a level playing field and reflect on market, consumption and technological changes as part of its [Digital Single Market strategy](#), the European Commission presented an [update](#) of EU audiovisual rules on 25 May 2016. The overarching goal of the proposal is to bring about a balance between competitiveness and consumer protection. It therefore aims to introduce future-proof and more flexible rules when restrictions only applicable to TV are no longer justified, promote European films, protect minors and tackle hate speech more efficiently. The scope of the directive is also extended to include online platforms for the first time.

1 The term refers to the delivery of film and TV content via the internet, without requiring users to subscribe to a traditional cable or satellite pay-TV service.

2 User-generated content, also called user-created content, [comprises](#) blogs, wikis, discussion forums, posts, chats, tweets, podcasts, digital images, video, audio files, advertisements and other forms of media, created by users of an online system or service, often made available via social media websites.

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## Existing situation

### General overview

The AVMSD brings about a minimum harmonisation of certain aspects of national legislation facilitating the circulation of such services in the EU market on the basis of the '**country of origin principle**'. EU countries are free to apply stricter rules, as long as those rules are consistent with the general principles of EU law. Concretely, AVMS providers need to respect only the rules of the host country, but can operate all over the EU. However, a receiving Member State with stricter rules than those set by the directive cannot restrict the reception of services from another Member State on the basis of those stricter rules, except in specific circumstances defined in the directive.

The directive covers all services with audiovisual content – such as TV broadcasts, VOD services, 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, only VOD services falling under the editorial responsibility of an AVMS provider qualify as audiovisual media services.<sup>3</sup>

In addition, it sets a basic tier of rules preserving key societal values and applying to all AVMS (for instance, the prohibition of incitement to hatred, the accessibility of services to people with disabilities). In specific fields, it takes into account the degree of user control over the service and therefore treats linear (TV broadcasts) and non-linear (on-demand) services differently ('**two-tier**' or '**graduated approach**').

On-demand services are thus subject to somewhat lighter regulation reflecting the users' higher degree of choice and control over the content and the time of viewing, contrary to TV broadcasts. The two-tier approach applies to the fields of commercial communications, protection of minors, promotion of European works, right to information (short news reports and events of major importance for society) and right of reply.

The AVMSD does not apply to private websites or to audiovisual material uploaded by internet platforms, by the users (user-generated content, UGC) or by advertisers. This type of audiovisual content falls outside the scope of the AVMSD because it is not editorial (for UGC) or because, despite being editorial, it is offered by a platform whose principal purpose is not to provide audiovisual services. The directive does not cover online games, search engines, and content delivered over the internet by providers established outside the EU.

### National implementation of the Directive and remaining concerns

Member States were required to transpose the AVMSD in national legislation by 2009. While all EU countries have notified transposition measures, issues of implementation are still ongoing in some countries. The Commission acknowledged that 16 EU countries have fully and correctly [transposed](#) the

<sup>3</sup> If this were not the case, the service is likely to fall under the e-Commerce Directive. The question of which regulatory framework applies is essential, since where the AVMSD foresees an objective responsibility for any content made available in a catalogue, also by third parties, the e-Commerce Directive entails a liability exemption and the provider has to intervene only when asked to do so. Falling under the scope of the AVMSD also brings a set of obligations that the e-Commerce Directive does not entail.



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AVMSD. Infringement procedures have been launched against seven Member States, of which four have been closed.

The first European Commission [report](#) (2012) on the implementation of the AVMSD concluded that, by and large, the EU regulatory framework 'has served citizens and businesses well'. Nevertheless, it pointed out that several issues in the field of audiovisual commercial communications should be further assessed in order to strengthen the effectiveness of the rules, especially with respect to the protection of minors across different audiovisual media environments. It also referred to the need to adapt the legislative framework to the changing context of the audiovisual sector, while preserving the original policy goals.

The second implementation report (2016)<sup>4</sup> was again positive overall and concluded that the legal framework was effective in enabling the development and free circulation of AVMS in the EU. However, various issues, detailed in the following sections, called for attention.

### Country of origin, free circulation, and freedom of expression

In April 2015, the Lithuanian national audiovisual regulator decided to suspend the rebroadcasting of Russian-language channel *RTR Planeta*, on the basis of alleged incitement to hatred, for a period of three months. The channel is retransmitted via cable and satellite, seemingly using a satellite uplink in Sweden. This has raised the issue of drawing a line between hate speech and propaganda, in the perspective of national security and public order, and of the capacity of the current provisions of the directive to deal with emergency situations. In July 2015, The Commission [confirmed](#) the compatibility with EU law of the Lithuanian measures.

### Protection of minors

TV broadcasters in most EU countries use watershed-based restrictions (i.e. the time at which the content is transmitted). Such measures are accompanied by visual means (e.g. on-screen icons, content rating and special warnings) or technical means including parental control measures to restrict access to harmful content. As regards on-demand services, most EU countries require the use of technical measures such as PIN access codes and separate catalogues with parental control systems. The national audiovisual regulatory bodies monitor and enforce these rules in linear services in most EU countries. However, this is not the case for non-linear services, where only some countries monitor the respect of rules through selected checks or on the basis of complaints.

### Commercial communications

In 2012, the application of the 12-minute rule (i.e. requiring that the duration of advertising and teleshopping spots may not take up more than 20 % of any given hour of broadcasting time) 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. However, the second implementation report indicated that in all ten EU countries monitored by the Commission, the 12-minute limitation of advertising spots had been exceeded and that the qualification and inclusion of these communications in the limitation is

4 Published as Annex 7 to the Staff Working Document [\(2016\) 170](#) final under the REFIT evaluation.

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disputed by most Member States. Similarly, monitoring also revealed a number of issues, in particular with the interpretation of such concepts as 'sponsorship',<sup>5</sup> 'self-promotion',<sup>6</sup> and 'product placement'.<sup>7</sup>

The analysis of the qualitative provisions on alcohol advertising, gender discrimination and advertising targeting minors revealed that a significant proportion of the monitored 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. Nevertheless, it does appear that specific techniques geared towards minors are frequently used in TV advertising.

### European works

The latest results show that the average share of European works broadcast in the EU was 64.1 % both in 2011 and 2012, with a very minor increase compared to 2009 (63.8 %), thus meeting the directive's target requiring that broadcasters reserve a majority proportion of their transmission time to such works. Similarly, the share of European independent works was well above the 10 % target, with an EU-average proportion of 33.1 % in 2011 and 34.1 % in 2012. When compared to the previous reporting period, the overall level stayed stable (34.1 % in both 2009 and 2012). However, the report notes that monitoring methods vary greatly among EU countries. Also, not all of them have put in place verification systems with respect to the data provided by broadcasters.

### Accessibility for people with disabilities

Almost 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.

### Self-regulatory initiatives

Article 4(7) of the AVMSD 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.

However, with respect to audiovisual commercial communications on food and beverages high in fat, salt and sugars targeted at children, the second implementation report revealed that most EU countries neither updated the current codes of conduct nor developed new ones. Without naming them, the report indicates that there are still a number of countries where no adequate measures are in place.

5 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'.

6 Recital 96 defines self-promotion as 'a particular form of advertising in which the broadcaster promotes its own products, services, programmes or channels'.

7 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.



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Self-regulatory practices have also been promoted at EU level through the EU [Platform for Action on Diet, Physical Activity and Health](#) which 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.

Worryingly, most national regulatory bodies do not monitor the implementation of the codes of conduct, except where co-regulatory systems are in place and rely instead on self-regulatory bodies, few of which report to the regulator in cases of non-compliance.

### Latest developments

Publishers of online newspapers and magazines increasingly offer clips on their websites as a supplement to written articles. However, the distinction between press products and audiovisual media services is crucial, as different legal requirements apply. Indeed, publishers of newspapers, in printed form or online, are subject to a much lighter set of rules. In its [conclusions](#) reached on 21 October 2015, the European Court of Justice clarified how the classification of services should be carried out and asserted that newspapers providing access on their website to videos with no direct link to online articles should be considered as AVMS providers.

## Parliament's starting position

In its resolution on the [Digital Single Market Act](#) (2015), the European Parliament called on the Commission to align linear and non-linear services, as well as to set out minimum common standards at EU level for all AVMS during the next revision of the directive. It also highlighted the need to reduce regulation and strengthen co- and self-regulation through a horizontal and cross-media regulatory approach. On the issue of online platforms, the Parliament urged the Commission to examine whether potential issues could be resolved by proper and full implementation of existing legislation, thus echoing an earlier recommendation expressed in its resolution on [Connected TV](#) (2013).

As part of a series of observations voiced in a resolution on [Preparing for a fully converged audiovisual world](#) (2014), Members pressed the Commission to ensure that the provisions on advertising for linear audiovisual content can be accomplished more successfully by increasing flexibility and strengthening co- and self-regulation. The text also referred the idea that EU countries should step up the promotion of European works through on-demand AVMS.

In its resolution on the [implementation of the AVMSD](#) (2013) the assembly 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. The resolution voiced concern that that the 12-minutes per hour limitation on advertising is 'regularly breached' in some EU countries, and emphasised 'the need to monitor commercial formats devised to circumvent this restriction, especially surreptitious advertising, which can confuse consumers'. 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.



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## Council starting position

In 2015, the Council [confirmed](#) the validity of the AVMSD, but highlighted the need for adaptation to technological change, in particular, with respect to the distinction between linear and non-linear services. While acknowledging the importance of the 'country of origin principle', it referred to the need to foresee some exceptions in cases where fundamental values, freedoms and democracy are seriously threatened. The Council notably underlined that the rules for blocking unacceptable content emanating from extra-EU services licensed in an EU country should be simplified.

In its [conclusions](#) on the European audiovisual policy in the digital era (2014), the Council outlined certain areas to which particular attention must be paid, including, the relevance of the distinction between linear and non-linear services; the functioning of the 'country of origin principle' for digital services; the creation of an effective level playing field between all actors; the functioning of current advertising rules; the provision of a high level of protection of minors; and the effectiveness of measures for the promotion of European works and possible alternatives.

In 2013, Ministers of Culture and Education invited EU countries to ensure the independence of audiovisual regulatory bodies and asked the Commission to strengthen cooperation between national audiovisual regulators.<sup>8</sup>

<sup>8</sup> As a follow-up, in 2014 the Commission set up the European Regulator's Group for Audiovisual Media Services (ERGA). This expert group is composed of the heads (or nominated high level representatives) of the national regulatory bodies. ERGA's tasks consist in advising and assisting the Commission in the implementation of the AVMSD and other related fields. In this respect, ERGA adopted three reports feeding into the AVMSD review process: on the independence of national regulatory authorities ([2016](#)), on the protection of minors ([2015](#)) and on material jurisdiction ([2015](#)).



## Proposal

### Preparation of the proposal

A [public consultation](#) on the AVMSD took place between July and September 2015,<sup>9</sup> some 434 replies were received. The [Commission analysis](#) of the main elements suggests that a convergence of views across stakeholders exists regarding the need for change in the scope of the directive, as well as the rules governing the independence of national regulators. Regarding the 'country of origin principle', accessibility for persons with disabilities, and major events, stakeholders support the status quo. However, no clear consensus emerged on commercial communications, protection of minors and promotion of European works.

Unsurprisingly, the analysis of trends conveys a mixed picture. A substantial part of the broadcasting sector calls on the Commission to ensure a level playing field by regulating new services and granting more flexibility to existing rules. At the same time, consumer organisations urge the Commission to strengthen the AVMS rules aimed at protecting viewers, particularly vulnerable ones. For their part, the internet, telecom and ICT industries press the executive to refrain from new regulation to preserve innovation. Finally, the content industry calls for stronger rules aimed at promoting European works, across all AVMS.

The proposal is also supported by a Commission Impact assessment<sup>10</sup> (2015), the conclusions of which were fed into a Commission ex-post evaluation carried out in parallel.

The [ex-post evaluation](#) (2016) under the Regulatory Fitness and Performance Programme (REFIT) of the Commission<sup>11</sup> covers the period from December 2007 to December 2015 and draws on a variety of sources including public consultations, implementation reports, studies,<sup>12</sup> and questionnaires. It confirmed that the directive's objectives are still valid. However, with consumers and notably young viewers increasingly watching audiovisual content on-demand and online, their protection seems no longer adequately ensured. Indeed, video-sharing platforms and on-demand service providers are either not regulated or subject to lighter regimes, which in turn puts broadcasters at a competitive disadvantage.

On a more positive note, the functioning of the 'country of origin principle' has been perceived as effective. This is also the case with cultural diversity. However, the evaluation found that, there is scope for enhancing support for the promotion, visibility and distribution of European works in on-demand services as compared to broadcasting services. In contrast, the evaluation noted that the very diverse regulatory structures of national regulators may have hampered the effective application of the AVMSD and have a negative impact on pluralism, media freedom and the level playing field.

9 Two other public consultations took place previously, on the independence of the audiovisual regulatory bodies (2013) and on the 'Green Paper Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values (2013). Their results were fed into and reflected in the Commission ex-post evaluation (2016).

10 For a detailed analysis on the impact assessment, see the forthcoming Initial Appraisal Briefing by EPRS.

11 REFIT is the Commission's programme for ensuring that EU legislation remains fit for purpose and delivers the results intended by EU law makers.

12 For a detailed discussion on studies, see the Implementation Appraisal Briefing by EPRS (2016).





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Within the REFIT context, the evaluation identified scope for simplification and deregulation, notably of the procedures supporting the application of the 'country of origin principle' and some of the rules on commercial communications. It also flagged up the lack of an effective system for monitoring the application of the directive and recommended that such a system should be put in place in the future.

## The changes the proposal would bring

By and large, the Commission has attempted to produce a balance of interests after an extensive review process, and the updated [proposal](#) reflects earlier calls expressed both by the European Parliament and Council. It uses various regulatory techniques such as minimum harmonisation, cooperation mechanisms, co-regulation and self-regulation to achieve more effective enforcement. The proposal also complements other pieces of European legislation including the e-Commerce [Directive](#) and the [Directive](#) on advertising and sponsorship of tobacco products.

### Country of origin

The key element of the directive – the 'country of origin principle' – will be maintained and facilitated. The principle of freedom of re-transmission is restated but the possibility to derogate is extended to all AVMS, rather than only to broadcasting as is currently the case. The rules determining the country having jurisdiction over a provider are simplified. It becomes mandatory for EU countries to keep an up-to-date list of the providers under their jurisdiction and to make available information about them. In addition, the proposal clarifies the cooperation procedures between EU countries wishing to impose a limitation to the 'country of origin principle'.

### Commercial communications

The Commission proposes to deregulate commercial communications. Concretely, the hourly limit becomes daily (between 7 am and 11 pm). However, it maintains the 20 % limit on advertising time, while offering more flexibility as to when spots can be shown. Rules on product placement and sponsorship are also set to be eased, but at the same time the Commission encourages the adoption of self- and co-regulation for the existing rules seeking to protect the most vulnerable (alcohol advertising, fatty food, minors, etc.).

### Protection of minors

The two-tier approach is replaced by common rules valid for all AVMS providers without distinction concerning content that 'may impair'. The most harmful content will be subject to the strictest measures, such as PIN codes and encryption. This will also apply to on-demand services. In addition, EU countries have to ensure that AVMS providers give sufficient information to viewers about harmful content to minors.

### Prohibition of hate speech

The grounds for prohibiting hate speech will be aligned to those of the [Framework Decision](#) on combating certain forms and expressions of racism and xenophobia which prohibits incitement to violence and hatred directed against a group of persons or a member of such a group defined by reference to sex, race, colour, religion, descent or national or ethnic origin.



## Promotion of European works

The provision that drew most attention in the press was the one imposing a European quota requirement on on-demand service providers. At least 20 % of their catalogue offer must give prominence to European works. The obligation of 'prominence' is however not defined. Low-turnover companies, thematic services and small and micro-enterprises will be exempt from these requirements. In addition, EU countries will be allowed to impose financial contributions to providers of on-demand services established in other Member States (but only on the turnover generated in the imposing country).

## Extension of material scope: video-sharing platforms (VSPs)

The proposal specifies that the AVMSD should cover only 'those services the principal purpose of which is the provision of programmes to inform, entertain or educate', which excludes very little. The definition of VSP services makes the cumulative nature of the conditions clear, but also clarifies that the organisational features are illustrative rather than exclusive. Undoubtedly, the workability of the definition, and notably its boundaries, will draw much debate. The concept of 'editorial responsibility' seems to be declining in relevance. Indeed, the Commission considers that a substantial share of the content stored on VSPs is not under the editorial responsibility of the VSP provider, but, at the same time it acknowledges that the intervention of these providers is not merely the result of automatic means or algorithms.

It is interesting to note also the centrality of the concept of 'programme' as a key element in determining the scope of the AVMSD. Indeed, the proposal removes the phrase 'and the form and content of which are comparable to the form and content of television broadcasting', suggesting a paradigm shift from traditional TV as the benchmark and towards a more open and arguably broader understanding of 'an individual item'. This definition is more in line with the recent ruling of the European Court of Justice confirming that videos under a subdomain of a newspaper website could fall under the definition of a 'programme', as can channels within VSPs. Radio however remains outside the scope of the AVMSD. VSPs will be covered by the directive only for the purpose of combatting hate speech and dissemination of harmful content to minors. Platforms which organise and tag a large quantity of videos will have to protect minors from harmful content and to protect all citizens from incitement to hatred. In line with the e-Commerce Directive, this approach builds on existing efforts by the industry and will be implemented by co-regulation.

There is also an extension of the geographical scope, since, as already mentioned, the proposal allows the imposition of financial contributions on on-demand services established in other EU countries.

## Accessibility

The provisions on accessibility are deleted with reference to the proposed [European Accessibility Act](#) which sets accessibility requirements for a wide range of products and services including AVMS.

## Audiovisual Regulators

The independence of audiovisual regulators will be strengthened by ensuring that they are legally distinct and functionally independent from the industry and government, operate in a transparent and accountable manner which is set out in law and have sufficient powers. With a non-exhaustive list, the proposal specifies the remit of such regulators: media pluralism, cultural diversity, consumer protection, internal market



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and the promotion of fair competition. A right of appeal for viewers must be provided. Significantly, this requirement applies across all AVMS providers, including VSPs.

#### European Regulators Group for Audiovisual Media Services (ERGA)

The proposal also formalises the European Regulators Group for Audiovisual Media Services (ERGA) in response to a perceived need for greater senior level cooperation in European audiovisual policy developments. The Group will have a stronger role in shaping and preserving the internal market, for example in assessing EU co-regulatory codes, and will take part in the procedures imposing a limitation to the 'country of origin principle'.



## Views

### Advisory committees

While broadly welcoming the European Commission proposal, the Committee of the Regions' [opinion](#) by Jácint Horváth (PES, Hungary), adopted on 7 December 2016, highlighted the need to ensure complete independence of national regulatory authorities from public authorities, audiovisual actors and political parties, in order to guarantee diversity of information. The Committee therefore supports a stronger role for ERGA. Similarly, the opinion underscores the role of local and regional media service providers in enhancing European cultural identities and local creative innovation. Lastly, the Committee welcomes the introduction of quotas to support European works, but considers that the 20 % minimum requirement does not go far enough.

Similarly, while recognising the need to update the directive, the [opinion](#) of the European Economic and Social Committee (EESC) (rapporteur: Raymond Hencks, Workers – Group II / Luxembourg), adopted on 19 October 2016, proposes that the minimum 20 % quota imposed on VOD providers be increased to 50 %, in line with the minimum quota set for television broadcasting. On the other hand, the EESC clearly opposes the financial contributions required from VOD providers in the form of direct investments in works or levies allocated to national film funds, as well as the increased flexibility offered to advertisers, to the detriment of consumers.

### Stakeholders' views<sup>13</sup>

#### Association of Commercial Televisions in Europe (ACT)

ACT [acknowledged](#) a 'step in the right direction', but expressed concern over the fact that the proposed revision does not go far enough and fails to sufficiently reflect the changing media landscape, characterised by a widening range of online, on-demand platforms. Regarding quota rules for non-linear services, ACT believes that investment in European works should be demand-driven.

#### Cable Europe

Cable Europe [endorsed](#) in particular the safeguarding of the 'country of origin principle', the encouragement for platforms to invest in viewer-protection technologies through co- and self-regulatory regimes, and the increased flexibility in advertisements, product placement and sponsorship rules. However, the Association does not share 'the prescriptive, quota-driven approaches'.

<sup>13</sup> This section aims to give a sense of the debate on the issues surrounding the legislative file and cannot provide an exhaustive account of all the different views expressed. For an institutional perspective on stakeholder participation, see the section on advisory committees. Additional information can also be found in related briefings listed under EP supporting analysis below.



### European Group of Television Advertising (EGTA)

Taking a similar line, EGTA [welcomed](#) the positive move towards a more balanced set of rules for all audiovisual stakeholders, especially with respect to the flexibility granted to rules on commercial communications. Nevertheless, it lamented the fact that too many specific rules continue to apply only to linear broadcasters.

### European Film Agency Directors (EFADs)

The EFADs [greeted](#) the Commission's proposal to extend the scope of the directive to new digital players such as VSPs and to introduce rules on the promotion of European works for on-demand services. It also urged EU institutions to go further and introduce a data transparency obligation to encourage the development of new business models and ensure agreements between different market players are clear.

### European Magazine Media Association (EMMA)/European Newspaper Publishers' Association (ENPA)

EMMA and ENPA [welcomed](#) the fact that the scope of the directive remains limited to services whose principal purpose is the provision of audiovisual programmes. However, both stakeholders question the reference in the proposal to stand-alone parts of online newspapers featuring audiovisual programmes or user-generated videos where those parts can be considered dissociable from their main activity. An additional concern is the proposal to replace the current quantitative limitation of 12 minutes per hour in TV advertising by a 20 % daily limit. EMMA and ENPA fear that the Commission's proposal will offer more advertising opportunities during TV primetime, which, in turn, may make the financing of newspapers and magazines more difficult.

### Society of Audiovisual Authors (SAA)

The SAA [acknowledged](#) the rules preventing regulatory forum shopping (i.e. when some distributors establish headquarters in countries with weaker audiovisual regulation) and the requirement for VOD services to include European works in their catalogues and ensure their visibility with satisfaction. However, it urges the Parliament and Council to set higher quotas, arguing that while broadcasters are required to have 50 % European content, according to a recent study by the European Audiovisual Observatory, VOD platform catalogues already offer 30 % of European works. Finally, SAA opposes the possibility of interrupting films every 20 minutes.



Discussions in the Culture and Education Committee  
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## Legislative process

### Discussions in the Culture and Education Committee

The European Commission proposal was [referred](#) to the European Parliament's Committee on Culture and Education (CULT) on 9 June 2016.

The [draft report](#) was presented on 26 September 2016. Overall, the two co-rapporteurs Petra Kammerevert (S&D, Germany) and Sabine Verheyen (EPP, Germany), support the principle of a more level playing field for traditional broadcasting services and VoD services. They proposed however a variety of amendments reflecting their meetings with over 90 stakeholders.

In addition, they suggested that the quota for European content be raised from 20 % to 30 %, given that the current average among EU countries stands at 27 %. The two co-rapporteurs also proposed to enhance the provisions on advertising by way of a stricter application of the 20 % daily quota during the main listening hours (8.00 p.m. to 11.00 p.m.). Likewise, they backed the restrictions on advertising for alcoholic drinks, tobacco and prescription medicines, but consider that advertising on nutrition should be regulated by professional codes of conduct. Finally, the draft report suggests applying the directive notification and withdrawal principle on e-commerce in cases where videos can be harmful to minors.

The measure which drew most criticism from the co-rapporteurs was that on decision-making. Petra Kammerevert and Sabine Verheyen asserted that the contact committee – chaired by the Commission and composed of representatives of the authorities of the EU Member States – should have an exclusive decision-making role, on the basis of opinions provided by ERGA.

On 21 November 2016, the two co-rapporteurs shared their preliminary thoughts on the 950 amendments tabled to the Commission proposal. In particular, they:

- > welcomed the support from Members to restructure the directive in order to create a genuine level playing field and to achieve a higher degree of alignment between linear and non-linear services as regards incitement to violence or hatred, discrimination, protection of minors from harmful content, audiovisual commercial communications, sponsoring and product placement, protection of cinematographic works and co- and self-regulation
- > underlined the necessary clarifications on their initial amendments on the independence of national regulators and ERGA
- > highlighted that some of their proposals on video-sharing platforms (VSP) did not aim to establish an obligation on service providers to perform an ex-ante control on content.

The subsequent debate showed a certain degree of convergence (e.g. on the need to ensure the promotion of European audiovisual works through quotas). However, it also made apparent a wide variety of positions including on the need to: guarantee the independence of ERGA and that of national regulators, respect the primacy of the e-commerce directive as regards the liability of VSPs, find the best solution to guarantee the protection of minors online, further reflect on quantitative rules for advertising on linear services (most



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Members suggesting to keep the current 20 % hourly limit), consider whether the scope of the directive should be extended to social media, such as Facebook.

Some 1 400 amendments were tabled altogether, on the draft report by CULT as well as in the four committees – ENVI, IMCO, JURI, and LIBE – providing opinions.

Following the vote on compromise amendments on 25 April 2017, MEPs agreed on imposing a maximum 20 % daily quota for TV advertising. However, to avoid that viewers are showered with advertisements in the evening, the compromise amendments suggest allowing national authorities to define a prime-time window, not longer than four consecutive hours. MEPs also propose to ban advertising and product placement for tobacco, electronic cigarettes and alcohol in children’s TV programmes and VSPs.

To support the European film sector, MEPs called for a 30 % quota of European works in VOD catalogues, instead of the 20 % proposed by the Commission. This should include works in the languages of the countries in which they are distributed. The European Parliament’s CULT committee proposed that national authorities could ask VOD platforms to contribute financially to national funds or invest directly in their own productions. Contributions would be proportional to the revenues in the country concerned.

Finally, the compromise amendments impose obligations on VSP providers in the event that users flag any content as inciting violence, hatred or terrorism. To this end, VSPs would need to set up user-friendly mechanisms allowing users to report content and be informed of measures taken.

On the other hand, MEPs did not retain the Commission proposals that help identify the Member State responsible for a service provider that makes its editorial decisions in a different country from that in which its company headquarters is based.

The Committee also voted in favour of opening interinstitutional trilogue talks, in view of finalising the legislation on the basis of the committee amendments.

## Discussions in Council

On 23 May 2017, the Council reached a general approach on the basis of a compromise text presented by the Maltese Presidency, including the following elements:

- > The scope of the directive has been extended to include ‘social media’ services;
- > Jurisdiction rules have been streamlined, and cooperation procedures have been strengthened. The compromise text reduces the burden of proof: the country of destination will no longer have to prove that a broadcaster has the ‘intention’ of circumventing the rules, and will be able to refer to concrete situations in this connection. It will also be possible to take appropriate measures after a single infringement to public safety rules (instead of the current two offences). Furthermore, a two-month deadline has to be respected by national regulators if they receive a request from another Member State;



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- > he promotion of European works will also apply to on-demand service providers, through a requirement for a minimum 30 % quota in their catalogues and the possibility for EU countries to require a financial contribution from media service providers, including those established in another EU country, with exemptions for start-ups and small enterprises.

## Trilogue talks

The agreement in the Council paved the way for interinstitutional trilogue talks with Parliament as well as the Commission, with a view to adopting the directive. Nine such trilogue meetings were necessary for negotiators from Parliament and the Bulgarian Presidency to agree on new rules for audiovisual media services. The deal was struck on 6 June 2018.

In order to support the cultural diversity of the European audiovisual sector, MEPs suggested that 30 % of content, including in VOD service providers' catalogues, should be European.

VOD platforms are also required to contribute to the development of European audiovisual productions, either through direct investment in content or through contributions to national funds. The level of these contributions should be proportional to VOD service providers' revenues in the country in which they are established or in the country whose audience they mostly target.

The new rules on advertising impose a maximum 20 % daily quota between 06.00 and 18.00, allowing broadcasters to adjust their advertising periods. A prime-time window was also set between 18:00 and midnight, during which advertising will only be allowed to take up a maximum of 20 % of broadcasting time.

The new legislation includes strict rules on advertising and product placement in children's programmes and content available on VOD platforms. Broadcasters are required to put in place measures to effectively reduce children's exposure to publicity for unhealthy food and beverages. Product placement and teleshopping will be prohibited in children's programmes, while EU countries can decide individually whether they also wish to exclude sponsorship.

Additionally, European Parliament negotiators secured a personal data protection mechanism for children, imposing measures to ensure that data collected by audiovisual media providers are not processed for commercial use, including profiling and behaviourally targeted advertising.

MEPs also set up new rules proscribing content inciting violence, hatred and terrorism, while gratuitous violence and pornography will be subject to the strictest rules.

Co-regulation and self-regulation are still the rule. However, video-sharing platforms will now be responsible for reacting quickly when content is reported by users as harmful. At the request of the Parliament, platforms will need to create a transparent, easy-to-use and effective mechanism to allow users to report harmful content. Technical solutions to explain the nature of the content in the hosted videos and follow-up when a video has been flagged are also required.





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The integrity of the signal is guaranteed by a new set of rules. In concrete terms, in the case of smart TVs, service providers will not be allowed to add windows with content to the screen during a programme, without the consent of the broadcaster. Rules are also included to ensure that service providers continuously and progressively make audiovisual services more accessible to people with disabilities.

Coreper endorsed the text agreed in trilogue on behalf of the Council, on [13 June](#). After approval in the CULT committee, a vote in plenary to adopt the new rules is expected to take place in October or November 2018.



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