

June 2016

Audiovisual Media Services Directive

This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is likely to be amended or reviewed, as foreseen in the European Commission's Annual Work Programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date - drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.

EP committee responsible at time of adoption of the EU legislation¹:

- Committee on Legal Affairs (JURI)

Date of adoption of original legislation in plenary:

- 20 October 2009 (Directive [2010/13](#))²
- 24 May 1989 (Council Directive 89/552)

Deadline for transposition of legislation:

- 3 October 1991 (Article 25(1), Council Directive 89/552)

Planned date for review of legislation:

- Not later than the end of the fifth year after the date of adoption of Directive 89/552 and every two years thereafter, the Commission shall submit to the European Parliament, the Council, and the Economic and Social Committee a report on the application of this Directive and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting (Article 26, Council Directive 89/552).
- Not later than 19 December 2011, and every 3 years thereafter, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of Directive 2010/13. (Article 33, Directive 2010/13).

Timeline for new amending legislation:

- In [Annex I](#) of its Work Programme for the year 2016 (CWP 2016), the European Commission announced its intention to review the Audiovisual Media Services Directive as part of the REFIT programme.³ On 25 May 2015, the Commission adopted the [proposal](#) for the amending legislation.

1. Background

Since the early 1980s, there have been various steps in the setting up of the EU audiovisual policy. After the publication of the 1984 [Green Paper](#) on the establishment of a common market in broadcasting,⁴ 1989 saw the adoption of the [Television without Frontiers Directive](#) (Council Directive 89/552). This established the first set of rules for television broadcasting in the EU. The Directive was substantively amended several times and in 2010 it was repealed by a new [Audiovisual Media Services Directive](#) 2010/13 (AVMSD) that codified the audiovisual regulatory framework. In its May 2015 [Communication](#) on a Digital Single Market

¹ For the new proposal amending the existing legislation the Committee on Education and Culture (CULT) has the lead.

² In 2010, the Audiovisual Media Services Directive 2010/13 (AVMSD) codified Directive 89/552 and its amendments in one document. The AVMSD as such does not include other deadlines for transposition than Directive 89/552.

³ Although it is part of Annex I of CWP 2016, it is a REFIT item.

⁴ COM (84) 300 final.

Strategy for Europe,⁵ the European Commission anticipated the creation of a 'media framework for the 21st century'⁶ and announced that it will review the AVMSD, 'with a focus on its scope and on the nature of the rules applicable to all market players, in particular measures for the promotion of European works and the rules on protection of minors and advertising rules'.⁷

The AVMSD opened the way towards a single European market for audiovisual media services by providing EU-wide coordination of Member States' national audiovisual legislation in areas such as incitement to hatred, accessibility for people with disabilities, principles of jurisdiction, major events, promotion and distribution of European works, commercial communications and protection of minors and aiming to create 'an area without internal frontiers for audiovisual media services'.⁸ The AVMSD provisions apply only to media service providers, based on **the concept of editorial responsibility**,⁹ which means that they exercise effective control over the selection and organisation of programmes. It covers television broadcasts and on-demand audiovisual media services¹⁰ and it is based on the **country of origin principle**.¹¹ The Directive provides for a basic set of coordinated rules that apply to all audiovisual media services.¹² In specific fields, such as commercial communications, the protection of minors, the promotion of European works, the right to information and the right of reply, linear and non-linear services are treated differently, with a lighter touch regulation for on-demand services and stricter rules for television broadcasting. The AVMSD **does not apply** to private websites or to 'services consisting of the provision or distribution of audiovisual content generated by private users for the purpose of sharing and exchange within communities of interest',¹³ private correspondence, on-line games and search engines and to content delivered over the internet by providers established outside the EU, which might pose serious problems to the jurisdictional rules.¹⁴ The legal framework established by the AVMSD is complemented by additional measures such as co-regulation and self-regulation.¹⁵ This approach should enable decision-making in a context closer to the regulated sector so that stakeholders from that sector are directly involved.

The gradual merging of traditional broadcast services and the Internet throughout this period has had impacts on *inter alia* consumption patterns, viewing habits and behaviour, on advertising practices and on audiovisual media content. The technological changes provided consumers with wider choices regarding content and devices and easier access to audiovisual media services. This had a direct impact on audience behaviour which has also changed, from the 'armchair viewer' sitting in front of a traditional TV to more active participation and interaction on other devices.

According to a 2015 note by the [European Audiovisual Observatory](#),¹⁶ although television viewing time has been constant since 2012, it still remains significant despite considerable differences across the EU Member States. It ranges from 2h 33min per day in Sweden to 5h 42min in Romania.¹⁷ However, on average, young people watch less TV - around half of the time spent by an average viewer.¹⁸ The difference between the time spent by the general viewer and by the young viewer has slightly increased during the last years.

⁵ COM (2015) 192 final.

⁶ Point 3.2 of the Strategy.

⁷ Strategy, p. 11, highlighted.

⁸ Directive 2010/13, Recital 104.

⁹ Article 1, (c) and (d).

¹⁰ Traditional television broadcasting is a 'linear' service as it follows a predetermined schedule set in advance by a broadcaster, whilst on-demand services are 'non-linear' since it is up to the users to decide when to watch those programmes, by making their choice from a catalogue of programmes, set up by the service provider.

¹¹ According to the country of origin principle, the service provided has to comply with the rules of the country where the provider is located.

¹² Directive 2010/13, Recital 11.

¹³ Recital 21.

¹⁴ See also, [Audio-visual media: what regulation for a new landscape?](#), CERRE, November 2014.

¹⁵ *Self-regulation* is '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', Recital 44, AVMSD.

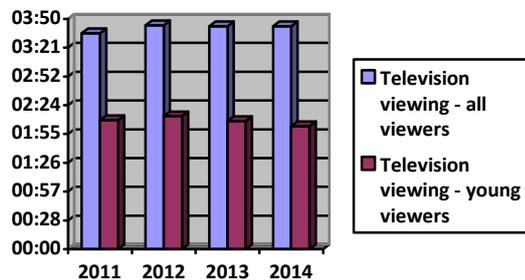
¹⁶ [European Audiovisual Observatory](#) is a public service organisation that as a part of the Council of Europe collects and disseminates information about the audiovisual industries in Europe.

¹⁷ However, this measurement might also cover time-shifted viewing, not only live viewing time.

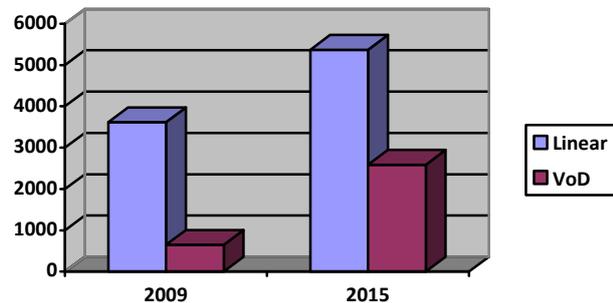
¹⁸ Yearbook 2015 Key trends, European Audiovisual Observatory, p. 26.

According to the latest Eurobarometer [report](#) (2015), 95% of Europeans watch TV on a traditional TV set at least once per week, while 21 % watch it on internet.¹⁹

Television viewing



Number of linear media services and of VoD



Source: Based on [European Audiovisual Observatory Note](#) Source: Based on [Yearbook 2015](#) and MAVISE database

The number of Video-on-Demand services (VoD) has been increasing in the last years, as has the offer of such services, but the market is largely dominated by a reduced number of players.²⁰ By the end of 2015, the countries with the highest number of available VoD services were France (219), United Kingdom (183) and Germany (151).²¹ The time spent on VoD is around 30 minutes per day.

[Proposal amending AVMS Directive 2010/13 \(25 May 2016\)](#)²²

Through this proposal, the Commission aims to react to the 'ever-increasing convergence between television and services distributed via internet' and to market, consumption and technological changes, such as different methods of consumption among young consumers or the emergence of new business models (e.g. VoD providers or video-sharing platforms). With regard to these changes, the proposal intends to provide a 'modernised, flexible and forward planning framework'. Apart from a direct change to the AVMSD, the proposal complements other pieces of European legislation including the e-Commerce [Directive 2000/31](#) and [Directive 2003/33](#) on advertising and sponsorship of tobacco products.

The proposal aims to simplify the existing rules, such as the application of the country-of-origin principle or commercial communication rules. However, it also introduces new rules, particularly those linked to video-sharing platform services (e.g. Youtube). The Member States should ensure that, with regard to such services, appropriate measures are adopted in order to protect minors from harmful content and to protect all citizens from incitement to violence or hatred.²³ The proposal also amends the rules on product placement and sponsorship and it introduces a daily limit of 20% of advertising during the period between 7:00 and 23:00. It also sets an obligation for the on-demand services to reserve at least a 20% share for European works and to ensure their prominence.²⁴ In connection with the protection of minors, the proposal aligns the standards of protection of minors for both TV broadcasting and on-demand services. In various fields, the proposal recommends an increased use of co- and self-regulation (e.g. with regard to the protection of minors, hate speech and commercial communications).²⁵

The proposal is complemented by a European Commission [impact assessment](#).²⁶ The impact assessment notes that the AVMSD objectives are still relevant, though some of its provisions can be simplified while

¹⁹ Standard Eurobarometer 84, Media use in the European Union, Autumn 2015, p. 4.

²⁰ Yearbook 2015 Key trends, p. 32.

²¹ Yearbook 2015 Key trends, p.33

²² COM (2016) 287 final.

²³ Explanatory memorandum, p. 13.

²⁴ Explanatory memorandum, p. 12.

²⁵ Explanatory memorandum, p. 5.

²⁶ Commission impact assessment, SWD(2016) 168 final. For additional information on the impact assessment, please see the forthcoming briefing by the EPRS Ex-Ante Impact Assessment Unit.

others need to be adapted so that they reflect the latest technical developments. As main problems of the existing AVMSD the impact assessment identifies (1) the insufficient protection of minors and consumers in video-sharing platforms, (2) the lack of a level playing field and internal market weaknesses such as complex rules on the country-of-origin principle and that (3) the rules on commercial communications are not fit for purpose anymore.²⁷ The impact assessment identifies three main general objectives that should be achieved when dealing with the existing problems. These include enhancement of consumer and minors' protection; ensuring a level playing field, preserving the integrity of the internal market and enhancing legal certainty; and simplifying the legislative framework.²⁸

2. EU-level reports, evaluations and studies

Report on the application of the AVMS Directive (2012)²⁹

In May 2012, the European Commission submitted its first report on the application of the AVMSD, although, according to Article 33 of the Directive, the report should have been submitted already in December 2011. The delay was justified by the lack of evidence on the actual implementation of the Directive since the majority of the Member States had not transposed it on time.³⁰ The report concluded that the existing regulatory framework had served both citizens and business. However, it pointed out that it might need to be further adapted in order to become responsive to the changing context of the audiovisual sector, while considering policy goals such as consumers and users' protection and media literacy. The second report on the implementation was supposed to be presented not later than 19 December 2014, but the Commission decided to subsume it under the REFIT exercise and it was published as Annex 7 to the [SWD \(2016\)170 final](#).³¹ The Commission concluded that the AVMSD regulatory framework has been effective in enabling the development and free circulation of audiovisual media services in the EU. Among the positive developments, the report stresses the increase in the proportion of audiovisual media services that are available to people with disabilities and the adoption of new self- and co-regulation arrangements.³² However, it points out several aspects that need to be further examined especially regarding the diversity of Member States' approaches when promoting European works on VoD³³ and how they interpret various concepts related to the areas of sponsorship, self-promotion and product placement.³⁴

European Commission [Green paper](#): Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values (2013)³⁵

Given the rapidly changing landscape of audiovisual media, the Commission published this Green Paper³⁶ in order to foster a public discussion on the consequences of the convergent audiovisual world³⁷ on growth, innovation and values. In particular, the paper looked at the implications of convergence for European values (freedom of expression and media pluralism, protection of minors, commercial communications, accessibility for persons with disabilities), the necessary economic conditions to make EU businesses competitive on the international arena, and the impact on the regulatory framework. A synthesis of the responses to the public consultation is provided in Section 7 of this briefing.

²⁷ Commission impact assessment, pp. 6 - 12.

²⁸ Commission impact assessment, p. 14.

²⁹ COM(2012) 203 final.

³⁰ [SWD\(2013\) 401 final](#), p. 23.

³¹ Although published in May 2016, it covers the period 2011-2013 and updates are not always provided.

³² An assessment of such mechanisms shows the existing limitations when evaluating their effectiveness especially because of issues related to inappropriate design, lack of monitoring and evaluation mechanisms, and legislative backstop.

³³ The second report on the application of Articles 16 and 17 for the period 2011-2012 is annexed to the [SWD \(2016\)170 final](#).

³⁴ See p.212.

³⁵ COM(2013) 231 final.

³⁶ The scope of the Green Paper does not cover copyright and intellectual property and data protection related aspects.

³⁷ Audiovisual media convergence means 'the progressive merger of traditional broadcast services and the internet', Green Paper, p. 3.

[Inception Impact Assessment](#) REFIT Evaluation and Impact Assessment of the EU Audiovisual Media Services Directive 2010/13 (2015)

The Commission's inception impact assessment³⁸ examines the following aspects of the AVMSD: its scope (material and geographical), consumer and user protection, the application of the country of origin principle, the promotion of European works and incitement to hatred, accessibility of content, media freedom and pluralism (the question of regulatory independence).³⁹ According to the inception impact assessment, the REFIT evaluation of the AVMSD has three objectives:

1. to provide the evidence to be used for reporting purposes by the Commission;
2. to assess the Directive against the following criteria: relevance vis a vis a changing context and evolving needs; effectiveness and efficiency (to what extent objectives have been met and at what costs); European added value; coherence and complementarity with other initiatives and activities relevant to audiovisual media services; assessment of the implementation process, and
3. to provide, if appropriate, input for the impact assessment on policy options for a revised AVMSD.

European Commission [Ex-post REFIT evaluation](#) of the Audiovisual Media Services Directive 2010/13 (2016)⁴⁰

Drawing on a variety of sources, the ex-post REFIT evaluation concludes that:

- the rules on the **geographical scope** are still relevant and effective and they are coherent with other EU initiatives and activities⁴¹, whereas the rules on the **material scope** need to be updated in light of the market development and viewing habits;⁴²
- the **country of origin principle** remains relevant and it provides the necessary legal certainty but its application should be improved through simplified and clear rules;⁴³
- the provisions on the **protection of minors** are no longer relevant given the changed audiovisual context and the increased exposure of minors to content delivered online and their effectiveness has been hindered for on-demand services;⁴⁴
- quantitative rules for **advertising** have not been effective and their use has not been efficient;
- the rules on the **promotion of European works** have been effective for the European audiovisual industry but less so for on-demand services;
- the use of **self and co-regulatory** initiatives⁴⁵ is still relevant but it is difficult to assess their effectiveness and efficiency as they depend on various factors;
- broadcasters might have a competitive disadvantage compared to on-demand services as the latter are subject to less stricter rules, especially regarding **commercial communications** and the **promotion of European works**;⁴⁶
- current rules on the *independence of regulators* are not relevant since they do not include clear requirements.⁴⁷

Studies about promotion of European works on Video on Demand

The promotion of European works is covered by the AVMSD in Articles 16 and 17 (for linear services) and Article 13 (for non-linear services). The graduated approach⁴⁸ is applied with more flexibility for VoD

³⁸ The [Better Regulation Guidelines](#) (SWD (2015) 111 final) describe an 'inception impact assessment' as a roadmap for initiatives subject to an impact assessment. It sets out in greater detail the description of the problem, issues related to subsidiarity, the policy objectives and options as well as the likely impacts of each option.

³⁹ [Inception impact assessment](#), p. 5.

⁴⁰ SWD(2016) 170 final.

⁴¹ *Ibid.*, p. 23-24.

⁴² *Ibid.*, p. 21.

⁴³ *Ibid.*, p. 25-26.

⁴⁴ *Ibid.*, p. 29.

⁴⁵ These are mainly used for regulating commercial communications (regarding alcohol and foods high in fat, salt and sugar (HFSS)), as well as in children's programmes.

⁴⁶ *Ibid.*, p. 57.

⁴⁷ *Ibid.*, p. 41.

⁴⁸ Broadcasters are required to allocate the majority of their transmission time to European productions, Article 16, AVMSD.

services for which the promotion should be done 'where practicable and by appropriate means', leaving space to service providers regarding its implementation. The Directive mentions some criteria, such as share in the catalogue, prominence and financial contribution. The European Commission [report on the promotion of European works in practice](#) provides an overview of the way in which various Member States have implemented the provisions of Article 13 AVMSD. While in some Member States there is an obligation for VoD providers to include a share⁴⁹ of European works in their programme catalogues, many stakeholders question the effectiveness of such requirement, by pointing to the lack of correlation with the actual consumption of the programmes. According to a [note](#) by the Council of Europe's European Audiovisual Observatory, EU films in catalogues account for less than 30%, whereas national films account for an average of 8%.⁵⁰ The use of promotion tools (prominence criterion) reaches consensus among stakeholders who see it as an efficient way to influence actual consumption.⁵¹ Regarding the financial contribution, there are mixed views. Some stakeholders argue that it is an efficient way of ensuring investments in the production of European works while others see it as a real burden for operators.

Studies about independence of regulatory authorities⁵²

The Audiovisual Media Services Regulatory Authorities' [study](#),⁵³ *InDependence And Efficiency Review (AVMS-RADAR)*, which builds on the previous [INDIREG analysis](#), provides an updated detailed description and analysis of the legal, institutional and regulatory framework governing the regulatory bodies from the audiovisual media services in several countries.⁵⁴ In particular, the study looks at (a) the independence of regulatory authorities (legal status and resources, governance rules and funding and decision making), (b) their effective functioning (range of powers, cooperation between regulatory authorities) and (c) their accountability (formal accountability, transparency and judicial review). It concludes that, in general, the regulatory authorities from the audiovisual sector are sufficiently independent and function efficiently. The main conclusions of the study point out that:

- all regulatory authorities, are separate legal entities whose independence is explicitly or implicitly recognized (except Estonia);
- incompatibility rules are in place to mitigate conflicts of interest during the terms in office of the members of the Board in all countries (except for Denmark);
- regulatory bodies are mainly or exclusively financed by the State and in more than two thirds of the countries, the final decision over the regulatory body's annual budget lies with the Parliament;
- all bodies are entrusted with policy implementing powers while less than half have also policy setting powers;
- the vast majority of the regulatory authorities conduct systematic monitoring (except for Iceland and Sweden) and have ad-hoc monitoring powers (except for Spain) and may impose warnings and fines (except for Denmark, Sweden and Finland); and
- the requirements regarding formal accountability and transparency have increased whereas no substantial change has been identified regarding the rules of judicial review of regulators' decisions.⁵⁵

In January 2013, the [Report](#) of the High Level Group on Freedom and Media Pluralism recommended⁵⁶ the creation of a network of national audio-visual regulatory authorities to share common good practices and

⁴⁹ The share varies considerably among the Member States in a range between 10% to 60%, p. 3.

⁵⁰ Observatory Note 4, p. 20.

⁵¹ For more analysis, please see J. Metzdorf, [Article](#) on implementation of the AVMSD by national regulatory authorities, University of Luxembourg.

⁵² See, also the CERRE study on [Independence, accountability and perceived quality of regulators](#) (2012).

⁵³ The study was outsourced by the European Commission and carried out in 2013 by the University of Luxembourg and the Institute of European Media Law.

⁵⁴ Including all Member States and candidate countries to the EU. Compared to the previous study, it does not cover potential candidate countries of the European Union, the EFTA countries as well as the four non-European countries (Australia, USA, Japan and Singapore).

⁵⁵ AVMS-RADAR Study, p. 110 - 120.

⁵⁶ 'A Free and Pluralistic Media to sustain European Democracy', recommendation 6, p. 22.

set quality standards. It stressed that all regulators should be independent, and appointed in a transparent manner. In 2014, the Commission adopted a [Decision](#) that set up the European Regulators' Group for Audiovisual Media Services (ERGA).⁵⁷

Studies about protection of minors

Articles 12 (for non-linear services) and 27 (for linear services) of the AVMSD cover protection of minors in audiovisual media services. The provisions for non-linear services are less restrictive than for television broadcasts. The responsibility for protection of minors lies with both media service providers and parents, therefore the support to media literacy features as one of the essential undertakings.⁵⁸ The 2015 [analysis](#) by the European Audiovisual Observatory **of the implementation of the provisions contained in the AVMSD concerning the protection of minors** shows differences among the EU Member States regarding the interpretation and application of several relevant areas for the protection of minors, such as the number of age groups per country, the watershed systems,⁵⁹ the definitions of 'likely to impair' and 'might seriously impair'.⁶⁰ The fact that the Directive does not provide clear guidance leaves the Member States free to choose their own interpretation. In order to address some of the implementation discrepancies, the [Report](#) of the European Regulators' Group for Audiovisual Media Services on the Protection of Minors in a Converged Environment (2015) recommends (1) to revise the regulatory distinction that currently applies to linear and non-linear content as it is no longer relevant, (2) to harmonise approaches regarding the definitions of key concepts⁶¹ and (3) to enhance protection measures and technical controls and have a better link between the severity of the content and the levels of access control.

3. Council

In November 2014, the [Council Conclusions](#) adopted under the Italian Presidency of the EU invited the Commission to 'urgently complete the exercise of the review of the AVMSD' by taking into account the 'rapid technological and market changes resulting from the digital shift'. According to the Council, the Commission should take into account the following aspects when undertaking the review: the relevance of the distinction between linear and non-linear services, the implementation of the 'country of origin principle', the effectiveness of the way in which the promotion of European works has been implemented, how the advertising rules function and ensuring appropriate protection of minors. In May 2015, the Council⁶² meeting [concluded](#) that although the AVMSD remains valid, it should be further adapted to reflect the digital shift.⁶³ It acknowledged the importance of the country of origin principle, but it asked for the inclusion of some exceptions,⁶⁴ and recalled the need to ensure public interest objectives of security and stability.

⁵⁷ It is composed of heads or high level representatives of national independent regulatory bodies in the field of audiovisual media services and its main tasks are to provide advice and support to the Commission in the implementation of the AVMSD.

⁵⁸ [Report](#) on the Protection of Minors in a Converged Environment, ERGA (2015)13.

⁵⁹ The term 'watershed' refers to a point in time of a day after which programmes that are likely to impair minors cannot be broadcasted. Its duration and timing vary across the countries. Analysis, p. 17 - 19. See also, [Comparative tables on the protection of minors in audiovisual media services](#), Council of Europe (2015).

⁶⁰ To the extent that 'it is likely that content which is considered as 'might seriously impair' minors in one country could be considered as 'likely to impair' minors in another country, and vice-versa', p. 37.

⁶¹ Such as: 'minor' - in some countries a minor is under the age of 18 while in others under 16; 'likely to impair' and 'might seriously impair' - differently defined in the various Member States; the Directive does not provide a definition or explanation

⁶² Education, Youth, Culture and Sport Council meeting, 18-19 May 2015.

⁶³ Especially regarding the distinction it makes between linear and non-linear audiovisual media services.

⁶⁴ Especially when there are threats for fundamental values, freedoms and democracy.

4. European Parliament position / MEP questions

4.1 Resolutions of the European Parliament

European Parliament [resolution](#) of 22 May 2013 on the implementation of the Audiovisual Media Services Directive⁶⁵

The Parliament noted the delay with which the European Commission fulfilled its reporting obligations which had been only partially carried out. It stressed that the AVMSD remained the appropriate instrument to govern the EU-wide coordination of national legislation and that the country of origin principle provided the broadcasters with the necessary clarity and certainty. Parliament identified a number of issues that required more attention from the Commission, as detailed in the table below:

<i>Main issues linked with AVMSD</i>	<i>Actions proposed/requested by Parliament</i>
Diversity in implementation of the AVMSD in Member States	Encourage a more consistent and full implementation of the AVMSD in the Member States; examine to what extent uncertainties or inaccuracies in the definitions led to implementation difficulties in the Member States (para. 8 - 11).
Dual nature of the audiovisual media services	Continue to ensure that audiovisual media services remain excluded from any trade liberalisation agreement (para. 13).
Accessibility	Address the issue of accessibility through an assessment of the measures taken, (para. 14 - 16); reword Article 7, AVMSD to make services available to people with disabilities (para. 25).
Promotion of European audiovisual works	Ensure, together with the Member States, the effective implementation of Article 13, and address the lack of detailed reporting under it (para. 34- 35).
Protection of minors	Give a greater role to co- and self-regulation in the area of protection of minors in the event of a revision of the AVMSD, while ensuring respect to public authority supervision; consider an extension of the requirements applicable to non-linear services to other online content and services (para. 45 - 47).
Exclusive rights	Assess whether the implementation of this Directive by the Member States preserved the balance between safeguarding the principle of freedom of access to information and the protection of rights holders (para. 27).
Advertising	Analyse the effectiveness of the regulation and monitor compliance with the rules on advertising; clarify issues related to commercial communications (para. 56 - 57).
Media literacy	Promote media literacy for all EU citizens through initiatives and coordinated actions; Member States to integrate media literacy and e-skills in school curricula (para. 63 - 64).

The Commission came forward with a [follow-up](#) to this resolution in July 2013.⁶⁶ It informed the Parliament about the implementation of the AVMSD, particularly regarding the use of regular monitoring studies on the implementation of rules on commercial communications, exchanges and consultations with Member States regarding the measures taken on accessibility and on the implementation of Article 13 of the AVMSD. It also informed the Parliament about the launch of a [public consultation](#) on the [Green Paper](#) Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values.

European Parliament [resolution](#) of 4 July 2013 on connected TV⁶⁷

The resolution called on the Commission to assess to what extent it was necessary to revise the AVMSD regarding the rules on findability and non-discriminatory access to platforms (para. 1). In the context of a

⁶⁵ P7_TA(2013)0215.

⁶⁶ SP(2013)519.

⁶⁷ P7_TA(2013)0329.

possible revision of the directive the Commission was asked to give consideration to safeguarding press freedom (para. 5), fair competition among all content providers (para. 7) and retaining a graduated regulatory framework for media services based on the potential impact of a given media service (para. 10). The Commission was called upon to assess to what extent strengthening co- and self-regulatory approaches can enable the achievement of the objectives of the Directive (para. 21) and contribute to the advancement of media literacy of all EU citizens (para. 27). Furthermore, the Parliament noted that the Commission has 'to safeguard by law the integrity of linear and non-linear services on hybrid platforms' (para. 34) and to exclude audiovisual media services from international trade agreements (para. 41).

The European Commission did not react to this resolution in any special follow-up document.

European Parliament [resolution](#) of 12 March 2014 on preparing for a fully converged audiovisual world⁶⁸

The Resolution was adopted in reply to the Commission's 2013 [Green Paper](#). Parliament stressed the need for EU law to adapt to the new digital environment (recital 51). It called on the Commission to further analyse the relevance of the scope of the AVMSD through an impact assessment (para. 47) and the current differentiated approach between regulation on broadcasting and on-demand services (para. 48 - 49). Parliament also noted that the Green Paper lacks a specific reference to 'to the dual nature of audiovisual media as cultural and economic assets' (para. 33). In this regard, it called on the Commission to 'continue its efforts to safeguard press freedom' (para. 36), to enforce the provisions related to minors and consumer protection (para. 41) and to promote, together with the Member States, the production of European works and access to those works (para. 37).

The Commission adopted a [follow-up](#) by providing an overview of the measures implemented or to be taken on the basis of the analysis of the responses to the Green Paper consultation and announced its intention to launch a REFIT evaluation in 2015.⁶⁹

4.2 Written questions by MEPs

[Written question by Georgios Papanikolaou \(EPP - Greece\)](#), 17 May 2010

The Commission is asked about the availability of any figures showing how long children in their early years are exposed to television per day in the Member States as well as about the contribution of AVMSD to the effective protection of children in the area of audiovisual media services.

[Answer given by Ms Kroes on behalf of the Commission](#), 30 June 2010

The Commission explained that it was not aware of a comprehensive pan-European survey in the field. Regarding the second part of the question, it recalled that the EU legal framework contains only rules concerning the content of audiovisual media services and not on the duration of their consumption. In television broadcasting, programmes which 'might seriously impair' the development of minors are prohibited, while programmes which might simply be 'harmful to minors can only be transmitted on some specific conditions.

[Written Question by Marc Tarabella \(S&D - Belgium\)](#), 21 May 2013

The Commission is asked about its actions to ensure that those Member States that do not observe the limit of 12 minutes of advertising per hour correctly and swiftly implement the provisions of the Directive in this regard. It is also asked to explain the problems identified in commercial communications with regard to sponsorship, self-promotion and product placement.

[Answer given by Ms Kroes on behalf of the Commission](#), 1 July 2013

The Commission informed on its annual monitoring activities run in a number of Member States, on a rotating basis, in order to assess the implementation of the rules on audiovisual commercial communications. Regarding the problems identified in commercial communications, it referred to: infringements of the rules on sponsorship; the qualification of self-promotion as a programme as opposed to advertising practice; undue prominence to the product in cases of product placement and a programme failing to indicate that it contains product placement.

⁶⁸ P7_TA(2014)0232.

⁶⁹ SP(2014)457.

[Written Question by Ivan Jakovčić \(ALDE - Croatia\)](#), 4 February 2015

The Commission is asked about the measures it takes in order to address cyberbullying⁷⁰ as well as to explain the reasons why it has not insisted on the implementation of the provisions related to media literacy from the AVMS Directive.

[Answer given by Mr Oettinger on behalf of the Commission](#), 25 March 2015

The Commission explained that addressing problems related to safer Internet and better protection of children requires a joint effort, involving various tools (awareness-raising, education, self-regulation, technical tools as well as enforcement of relevant legal provisions). It recalled the existence of the Safer Internet Centres in all Member States (co-financed by the Commission), which can offer support to young people, parents, and teachers on any issue they face online. On the media literacy aspect, the Commission referred to the monitoring data included in the first report on the application of the directive, according to which 28% of the EU's population have a basic level of critical understanding, 41% a medium level and 31% an advanced level.⁷¹

5. Court of Justice of the European Union

On various occasions, the Court of Justice of European Union (CJEU) issued a preliminary ruling on the interpretation of the AVMSD.⁷² In the case New Media Online GmbH ([C-347/14](#)), the Court answered that the concept of 'programme' must be interpreted as 'including, under the subdomain of a website of a newspaper, the provision of videos of short duration consisting of local news bulletins, sports and entertainment clips' (para. 24). Regarding the 'principal purpose' of a service offered in the electronic version of a newspaper which makes videos available, the Court stated that the assessment should focus on whether that service is independent from the journalistic activity of the operator of the respective website (para. 37).

6. The European Economic and Social Committee and the Committee of the Regions

The [opinion](#) adopted by the European Economic and Social Committee (EESC) in September 2013 on the Green Paper welcomes the Commission initiative though it expresses regret with the proposals put forward, in particular with the lack of focus on freedom of expression, media pluralism, respect for human dignity and the rights and interests of public users (point 1.3). In particular, the EESC considers that the objective of the debate on audiovisual convergence is 'to promote European cultures and to safeguard the public interest and fundamental rights' (point 1.9). For a revised EU audiovisual policy, the EESC stresses the importance of addressing the **protection of minors**, by ensuring a balance and a fair trade-off between 'the fundamental right to freedom of expression and the public interest objective of protecting minors, irrespective of the medium used' (point 4.8.7.).

The [opinion](#) adopted by the Committee of the Regions (CoR) in October 2015 on the review of the Audiovisual Media Services Directive supports the revision of the AVMSD and stresses that a review should consider extending the **scope** of the AVMSD to cover all types of audiovisual content providers (point 12), to include content that does not qualify as 'television-like', to assess the relevance of the **country of origin principle** in the new landscape (point 25) and to clarify the concept of '**editorial responsibility**' of the service provider (point 16).

⁷⁰ 'Cyberbullying' is an act of harassment online, by sending or posting hurtful messages, usually anonymously, that occurs in a deliberate and often a repeated manner.

⁷¹ In this regard, see also other questions by MEPs regarding the protection of minors (for example, [E-014214/2015](#), [E-011328/2015](#), [E-001807/2015](#)) access to audiovisual media services to people with a visual or hearing disability ([E-004716/2014](#), [E-004683/2014](#), [E-6746/2010](#), [E-005656/2013](#)) or transposition of the Directive in the Member States ([E-015703/2015](#), [E-010054/2014](#), [E-008364/2014](#), [E-009893/2011](#), [E-005548/2011](#), [P-1868/2010](#)).

⁷² The Court also interpreted the provisions of the AVMSD with regard to sponsorship announcements and advertisements, see, for example, Sanoma Media Finland ([Case C-314/14](#)), Sky Italia Srl ([C-234/12](#)) and Sky Österreich GmbH ([Case C-283/11](#)).

7. European Commission public consultations

From March to June 2013, the European Commission launched a [public consultation](#) on the independence of the audiovisual regulatory bodies. The purpose of the consultation was to gather stakeholders' opinions on the issue of independence of regulatory bodies competent for audiovisual media services and on possible options for strengthening their independence.

In 2013, the Commission launched a [public consultation](#) on the '[Green Paper Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values](#)', which ran from April to September. Its main

objective was to collect stakeholders' views on the changing media landscape in a world that had undergone big transformations, becoming increasingly digital⁷³. 236 responses were synthesised in a publicly available [feedback paper](#) and [executive summary](#). Contributions were divergent in many of the areas and no overall consensual conclusions could be drawn. Regarding the **promotion of European works**, while many respondents among the Member States' authorities and regulatory authorities consider that the rules in place are sufficient, others question their relevance in a changing online world. For non-linear services, some consumer organisations drew the attention to the uneven application of the rules in the Member States and others stressed that flexibility is good. Regarding the appropriateness of the rules on **commercial communications**, many stakeholders from Member States authorities and regulatory authorities, as well as from the broadcasting sector, agree with the distinction between editorial and advertising content, but their opinions do not converge when quantitative rules come into play. While some Member States and regulatory authorities' respondents ask for more flexibility, some consumer organisations argue in favour of more stringent TV advertising rules, especially when minors are targeted.⁷⁴ The **protection of minors** is a recurrent theme which highlights the interest and attention of stakeholders for this key principle (see textbox). Many respondents agree that this area requires various changes, especially by abolishing the distinct rules applying to linear and non-linear content. Among the suggestions made, one can mention the introduction of more preventive measures,⁷⁵ self-regulation and sharing of best practices.

Some examples of national experience with the protection of minors and AVMSD

[United Kingdom](#)

In May 2015, the UK appointed a [Minister for Internet Safety and Security](#) whose responsibility is also to make the internet safer for children. Since 2010, the UK Government has been working with the UK [Council for Child Internet Safety](#) in order to raise awareness, organise information campaigns and feed into technological developments. Important progress has been achieved regarding the use of parental controls as 90% of UK consumers can easily activate them for the four major providers of services.

[The Netherlands](#)

Age recommendations and information about the nature of the content are important tools for protection of minors in the Netherlands. The Netherlands Institute for the Classification of Audi-visual Media ([NICAM](#)) manages the cross-media classification and information system which applies to audiovisual media services. It provides warnings regarding the harmfulness of a film or television programme, but it does not assess the suitability of such a programme as final responsibility rests with parents.

As part of the REFIT evaluation, a [public consultation on the AVMSD](#), entitled *A media framework for the 21st century*, ran from July to September 2015. The consultation focused on the six areas identified in the above-mentioned inception impact assessment and covered the following aspects: scope of the AVMSD, consumer protection, user protection and prohibition of hate speech and discrimination, promotion of European audiovisual content, strengthening the single market, media freedom and pluralism, access to information and accessibility to content for people with disabilities. 434 replies were received. The [report on the contributions](#)⁷⁶ concludes that stakeholders agree on the need to possibly change the rules on the scope of application of the directive, that they support the current rules on the country of origin principle,

⁷³ The questions were grouped under six categories: access to content and platforms; financial contributions to audiovisual production; interoperability; infrastructure and spectrum; effects of convergence for the Directive; protection of minors and accessibility.

⁷⁴ Such as, for example, no interruptive advertising when there are broadcasts for children, banning advertising for unhealthy food.

⁷⁵ For example: wider use of content classification and parental controls (see, in particular contribution from EU Kids Online and from UK).

⁷⁶ Published as Annex 2 to the SWD

must-carry/findability, accessibility for persons with disabilities, major events for society, short news reports and right of reply.⁷⁷ The majority of respondents affirmed that the ‘TV-like’ criterion was no longer relevant and called for a reinforcement of the rules regarding the independence of the regulatory bodies. There is no clear convergence of opinions on some important topics, such as commercial communications, protection of minors and promotion of European works⁷⁸. Stakeholders' consultations showed that opinions on the way forward are very mixed, not only among the different categories of respondents but also within the same category.

8. Conclusions

Since its entry into force, the regulatory framework established by the Audiovisual Media Services Directive has proved to be rather effective in achieving its goal of enabling the development and free circulation of audiovisual media services in the European Union. However, given the technological evolutions that have led to a convergent audiovisual environment, it needs to be further adapted in order to better respond to market developments and new viewing patterns and habits.

The European Parliament, the Council, the European Economic and Social Committee and the European Committee of the Regions have asked for adaptations of the current regulatory framework in order to better reflect the implications of the new convergent media context. In particular, they called on the Commission to assess the current distinction of the regulatory framework between linear and non-linear services, to enforce the provisions related to minors and consumer protection, to ensure the respect of the freedom of media, to enforce the promotion of European works and to assess the implementation of self- and co-regulation arrangements. Implementation reports, evaluations and studies have confirmed the need to address AVMSD related issues at EU level and pointed out that some of the rules are no longer fit for purpose in a changed digital context.

The new proposal, adopted by the Commission in May 2016, addresses several concerns raised by the Parliament including protection of minors, promotion of European audiovisual works and commercial communications.

9. Other sources of reference

- I. Katsarova, [Briefing](#), The Audiovisual Media Services Directive: state of play, EPRS, November 2015.
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- P. Larouche, [Audio-visual media : what regulation for a new landscape?](#), Introductory Discussion Paper, CERRE Executive Seminar 2014.
- J. Metzdorf, [The Implementation of the Audiovisual Media Services Directive by National Regulatory Authorities](#), 5 (2014) JIPITEC 88.
- Various [reports](#) of the European Audiovisual Observatory
- European Regulators’ Group for Audiovisual Media Services
- [Media Pluralism Monitor](#)

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⁷⁷ It should be noted that the number of responses has been considerably lower for the sections on events of major importance for society, short news reports and right of reply.

⁷⁸ Annex 2, p.64-73.