

**ESOA (EMEA Satellite Operators Association) response to the European Commission consultations on Directive 2010/13/EU on audiovisual media services (AVMSD)**

*A media framework for the 21<sup>st</sup> century*

**Questionnaire**

**General information on respondents**

I'm responding as:

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

What is your nationality?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania

- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

What is your name? Click here to enter text. [Cécil Ameil, Chair ESOA REG WG on behalf of ESOA](#)

Please your email: Click here to enter text. [cecil.ameil@ses.com](mailto:cecil.ameil@ses.com); [ania.helseth@esoa.net](mailto:ania.helseth@esoa.net)

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

- Yes
- No

Please indicate your organisation's registration number in the Transparency Register.  
Click here to enter text. [93226026703-84](#)

Please register in the [Transparency Register](#) before answering this questionnaire. If your organisation/institution responds without being registered, the Commission will consider its input as that of an individual and as such, will publish it separately.

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

- National administration
- National regulator
- Regional authority
- Public service broadcasters

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

My institution/organisation/business operates in:

- Austria
- Belgium
- Bulgaria
- Czech Republic
- Croatia
- Cyprus
- Denmark
- Estonia
- France
- Finland
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg

- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Spain
- Slovenia
- Slovakia
- Sweden
- United Kingdom
- Other – EMEA region

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

Click here to enter text. \_\_\_\_\_ [ESOA asbl](#) \_\_\_\_\_

Please enter your address, telephone and email.

Click here to enter text. \_\_\_\_\_ [Bastion Tower, 5 pl. du Champ de Mars, 1050 Bruxelles](#) \_\_\_\_\_

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

[Brussels, Belgium](#)

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### ***Background and objectives***

The Audiovisual Media Services Directive (AVMSD<sup>1</sup>) has paved the way towards a single European market for audiovisual media services. It has harmonised the audiovisual rules of the Member States and facilitated the provision of audiovisual media services across the EU on the basis of the country of origin principle.

Since its adoption in 2007, the audiovisual media landscape has changed significantly due to media convergence<sup>2</sup>. The review of the AVMSD is featured in the Commission Work Programme for 2015, as part of the Regulatory Fitness and Performance Programme (REFIT). In its Communication on a Digital Single Market Strategy for Europe<sup>3</sup>, the Commission announced that the AVMSD would be revised in 2016. Another REFIT exercise is being carried out, in parallel, in the field of telecoms with a view to come forward with proposals in 2016. Some of the issues treated in the current public consultation may have an impact on this parallel exercise and *vice versa*.

In 2013, the Commission adopted a Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values"<sup>4</sup> inviting stakeholders to share their views on the changing media landscape and its implications for the AVMSD.

On the basis of the outcome of this public consultation, the Commission has identified the following issues to be considered in the evaluation and review of the AVMSD: [respond 1, 4 & 5 only]

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

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

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

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

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

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

#### QUESTIONS

##### *1. Ensuring a level playing field*

###### Services to which the AVMSD applies

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

These platforms and intermediaries are regulated primarily by the e-Commerce Directive<sup>7</sup>, which exempts them from liability for the content they transmit, store or host, under certain conditions.

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

#### ***SET OF QUESTIONS 1.1***

**Are the provisions on the services to which the Directive applies (television broadcasting and on-demand services) still relevant<sup>8</sup>, effective<sup>9</sup> and fair<sup>10</sup>?**

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

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

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

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

**COMMENTS:**

The AVMS Directive (previously the “TV Without Frontiers” Directive) has since 1989 established a clear framework for the free circulation of TV programmes and (now also) audiovisual services that are TV-like within an increasing number of European countries (today 28 EU countries as opposed to 12 only back in 1989).

Television (whether linear or non-linear) is a category of info-entertainment services that remains essential to Europe’s culture and values, given its importance and continued growth. .

Thanks to the application of the Single Market principles, the European audiovisual industry has flourished and is providing a plurality of services to citizens. # 11,000 TV services and # 3,000 VOD services have already enjoyed the freedom of circulation for audiovisual services in Europe.

“At the end 2013 about 23% of TV channels established in the EU targeted foreign markets (either EU or extra EU).” (Oettinger, 22 June - [ec.europa.eu/commission/2014-2019/oettinger/announcements/speech-dw-global-media-forum-role-traditional-and-new-media-digital-age-eu-view\\_en](http://ec.europa.eu/commission/2014-2019/oettinger/announcements/speech-dw-global-media-forum-role-traditional-and-new-media-digital-age-eu-view_en))).

The institutional mechanisms have enabled the national regulators to pursue close cooperation, and the Directive is technology neutral overall.

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

YES –  NO (If yes, please explain below)

**COMMENTS:**

Today’s video market in Europe is characterized by a multiplicity of content providers (broadcasters) and a strong competition between delivery platforms (satellite, cable, terrestrial, IPTV, OTT).

It is also eloquent that several international broadcasters and service providers, including the most

<sup>8</sup> Relevance looks at the relationship between the needs and problems in society and the objectives of the intervention.

<sup>9</sup> Effectiveness analysis considers how successful EU action has been in achieving or progressing towards its objectives.

<sup>10</sup> How fairly are the different effects distributed across the different stakeholders?

popular ones (Netflix, NHK, CCTV, Discovery, Viasat, Zuku, etc), have decided to settle within the EU or to rely on a satellite uplink within the EU, in order to best benefit from the advantages of having a jurisdiction in the Internal Market (e.g. legal security, predictable business conditions, access to public funds).

***Preferred policy option:***

- a)  *Maintaining the status quo*
- b)  *Issuing European Commission's guidance clarifying the scope of the AVMSD. No other changes to Union law would be foreseen.*
- c)  *Amending law(s) other than the AVMSD, notably the e-Commerce Directive. This option could be complemented by self and co-regulatory initiatives.*
- d)  *Amending the AVMSD, namely by extending all or some of its provisions for instance to providers offering audiovisual content which does not qualify as "TV-like" or to providers hosting user-generated content.*
- e)  *Other option (please describe)*

**PLEASE EXPLAIN YOUR CHOICE:**

The existing text does not need substantial changes. Extending the scope to other businesses providing audiovisual services should be considered very carefully, as it could be either impractical (when neither the content generation activities nor the technical facilities are located in Europe), or disproportionate (e.g. for content generated by citizens). The e-Commerce Directive is still highly relevant to address the delivery of the so-called "Information Society" services (provided electronically, at a distance and at individual requests of the recipient).

Geographical scope of AVMSD

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

**SET OF QUESTIONS 1.2**

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

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

Establishing a specific and unified regime within the set of EU countries provides sound business conditions and legal certainty amongst more than 30 countries (given that Norway, Iceland & Lichtenstein also adopts the EU Single Market rules).

Even if the provision of audiovisual services from outside the EU could be perceived as unfair competition at the level of service provision, it should be reminded that all TV channels which are broadcasted in Europe using a satellite uplink located within the EU or a satellite capacity belonging to an EU country falls under the AVMSD (Article 2.4).

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

YES –  NO (If yes, please explain below)

COMMENTS:

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Extending the scope of application of the Directive to providers of audiovisual media services established outside the EU that are targeting EU audiences.*

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

*This could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.*

- c)  *Extending the scope of application of the Directive to audiovisual media services established outside the EU that are targeting EU audiences and whose presence in the EU is significant in terms of market share/turnover.*

*As for option b), this could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.*

- d)  *Other option (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

The AVMSD has guaranteed that the distribution of TV channels which signals are transmitted from the EU territory or/and transported by EU satellites respond to EU regulatory principles and standards. This covers a very wide scope of European and non-European channels which number is continuously increasing.

## **2. Providing for an optimal level of consumer protection**

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

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

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

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

***SET OF QUESTIONS 2.1***

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

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

**no comment on this set of questions**

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

YES – NO (If yes, please explain below)

COMMENTS

***Preferred policy option:***

a)  *Maintaining the status quo*

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

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

d)  Other options (please describe)

PLEASE EXPLAIN YOUR CHOICE:

### 3. *User protection and prohibition of hate speech and discrimination*

#### **General viewers' protection under the AVMSD**

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

#### **SET OF QUESTIONS 3.1**

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

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**no comment on this set of questions**

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

YES –  NO (If yes, please explain below)

COMMENTS:

#### Protection of minors

The system of graduated regulation applies also to the protection of minors: the less control a viewer has and the more harmful specific content is, the more restrictions apply. For television broadcasting

services, programmes that “might seriously impair” the development of minors are prohibited (i.e., pornography or gratuitous violence), while those programmes which might simply be "harmful" to minors can only be transmitted when it is ensured that minors will not normally hear or see them. For on-demand services, programmes that "might seriously impair" the development of minors are allowed in on-demand services, but they may only be made available in such a way that minors will not normally hear or see them. There are no restrictions for programmes which might simply be "harmful".

***SET OF QUESTIONS 3.2***

**In relation to the protection of minors, is the distinction between broadcasting and on-demand content provision still relevant, effective and fair?**

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

[no comment on this set of questions](#)

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

YES – NO – NO OPINION

COMMENTS:

**What are the costs related to implementing such requirements?**

Costs:

COMMENTS:

**What are the benefits related to implementing such requirements?**

Benefits:

COMMENTS:

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

YES –  NO (If yes, please explain below)

COMMENTS:

***Preferred policy option:***

a)  *Maintaining the status quo*

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

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

c)  *Introducing further harmonisation*

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

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

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

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

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

f)  *Other option (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

#### **4. Promoting European audiovisual content**

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

#### **SET OF QUESTIONS 4**

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

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

ESOA can only report on the ongoing flourishing in number and variety of TV and radio broadcasts that are made available within the EU, largely due to the distribution by satellite. Satellite operators today enable broadcasters to deliver over 46,000 TV and radio channels to global audiences (1.8 billion HHs worldwide) including 9,000 in Europe (322 million HHs from all countries). More than

<sup>13</sup> For European works: a majority proportion of broadcasters' transmission time.

<sup>14</sup> For European works created by producers who are independent of broadcasters: 10% of broadcasters' transmission time.

8,000 TV channels are now globally available in high definition (HD), Europe receiving 16% (1/6) of them. There was a 13.6% growth in the number of satellite TV channels between 2010 and 2014.

These data demonstrate the impact of satellite on allowing media pluralism and cultural diversity, and wide audiences for content. The remarkable deployment and plurality of broadcast content in all EU countries, whether it is for content produced in Europe or not, is in itself the proof of a healthy industry that becomes more and more global, and a guarantee of diversity - including from outside the EU.

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

a) the right amount;

b) too much;

c) too little

d) no opinion

COMMENTS:

[no comment on this question](#)

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

YES – NO – NO OPINION

COMMENTS:

[no comment on this question](#)

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

YES – NO (If yes, please explain below)

COMMENTS

[no comment on this question](#)

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

Benefits:

COMMENTS:

**no comment on this question**

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

Costs:

COMMENTS:

**no comment on this question**

***Preferred policy option:***

**no preference**

a)  *Maintaining the status quo*

b)  *Repealing AVMSD obligations for broadcast and/or for on-demand services regarding the promotion of European works. This would entail the removal of EU-level harmonisation on the promotion of European works, which would then be subject to national rules only.*

c)  *Introducing more flexibility for the providers' in their choice or implementation of the measures on the promotion of European works.*

This could imply, for example, leaving more choice both to TV broadcasters and video-on-demand providers as to the method of promoting European works.

d)  *Reinforcing the existing rules.*

For television broadcasting services this could be done, for example, by introducing additional quotas for non-national European works and/or for European quality programming (e.g. for fiction films,

documentaries and TV series) or for co-productions; or by setting a clear percentage to be reserved to Recent Independent Productions<sup>15</sup> (instead of "an adequate proportion"). For on-demand services, further harmonisation could be envisaged: by introducing one compulsory method (among e.g. the use of prominence tools, an obligatory share of European works in the catalogue or a financial contribution – as an investment obligation or as a levy) or a combination of these methods.

e)  Other options (please describe)

*PLEASE EXPLAIN YOUR CHOICE:*

## 5. *Strengthening the single market*

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

### **SET OF QUESTIONS 5**

#### **Is the current approach still relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

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<sup>15</sup> Works transmitted within 5 years of their production.

**COMMENTS:**

The core “country-of-origin” principle has directly enabled audiovisual platforms to transmit programming across national borders, and created a remarkable European broadcasting ecosystem that today positions Europe as a leader in the sector. As the company RAND put it very clearly in their impact assessment in 2005 (Contribution to Impact Assessment of the revision of the Television Without Frontiers Directive - Section 4.3.1.2, page 39):<sup>16</sup>

“The loss of the country-of-origin principle means that pan-European broadcasters will be forced to negotiate with the country of reception even when located in a ‘regulatory entrepot’, a Member State with relatively liberal rules. This will be a return to the situation prior to 1989, when different national laws allowed commercial channels to operate in an entrepreneurial but potentially expensive environment. The main impact is likely, as before, to be on transmissions on local languages into neighbouring countries, where reciprocal regulatory ties are strong and enforcement and negotiation therefore possible. In the case of pan-European services, the compliance costs may become insurmountable for all but the largest players.”

Already a world’s leading video platform, satellite TV revenues are expected to further increase in line with the number of channels and subsequently satellite capacity growth, be it in Europe or in other regions.

Overall, significant competition within the Central & Eastern European region has driven up channel counts exceptionally quickly, with video distribution seeing a more or less tripling of SD channels and an increase in HD from single digits in 2005 to over 200 today. This has driven up satellite capacity requirements for video distribution in the region and has greatly contributed to citizen access to desired programming and integration of the European market.

Satellite is pioneering Ultra-HD especially in Europe, with an expected annual growth rate in the number of 3D and Ultra-HD satellite TV channels of more than 20% for the next years.

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

YES –  NO (If yes describe and explain their magnitude)

**COMMENTS**

Satellite operators are overall satisfied with the AVMSD and consider the single market principles are essential and future proof, but some ESOA members consider its implementation may require some

<sup>16</sup> [www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=6&ved=0CDsQFjAFahUKEwj4nqPhr-XHAhXFfhoKHWSFCHc&url=http%3A%2F%2Fbookshop.europa.eu%2Fen%2Fcontribution-to-impact-assessment-of-the-revision-of-the-television-without-frontiers-directive-pbKK0114469%2Fdownloads%2FFKK-01-14-469-EN-N%2FFKK0114469ENN\\_002.pdf%3Bpgid%3DIq1Ekni0.1SR00OK4MycO9B0000FaNu6DIQ%3Bsid%3DyvtDCMLp6t5DCJa5fybdr6DMh5hdesU6zCg%3D%3FFilename%3DKK0114469ENN\\_002.pdf%26SKU%3DKK0114469ENN\\_PDF%26CatalogueNumber%3DKK-01-14-469-EN-N&usg=AFQjCNEuJdKeJpfHtCf-oGgc7X9sPJ4icA](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=6&ved=0CDsQFjAFahUKEwj4nqPhr-XHAhXFfhoKHWSFCHc&url=http%3A%2F%2Fbookshop.europa.eu%2Fen%2Fcontribution-to-impact-assessment-of-the-revision-of-the-television-without-frontiers-directive-pbKK0114469%2Fdownloads%2FFKK-01-14-469-EN-N%2FFKK0114469ENN_002.pdf%3Bpgid%3DIq1Ekni0.1SR00OK4MycO9B0000FaNu6DIQ%3Bsid%3DyvtDCMLp6t5DCJa5fybdr6DMh5hdesU6zCg%3D%3FFilename%3DKK0114469ENN_002.pdf%26SKU%3DKK0114469ENN_PDF%26CatalogueNumber%3DKK-01-14-469-EN-N&usg=AFQjCNEuJdKeJpfHtCf-oGgc7X9sPJ4icA)

clarification.

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

YES –  NO

Estimate of costs:

Estimate of benefits:

COMMENTS:

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Strengthening existing cooperation practices*

c)  *Revising the rules on cooperation and derogation mechanisms, for example by means of provisions aimed at enhancing their effective functioning*

d)  *Simplifying the criteria to determine the jurisdiction to which a provider is subject, for example by focusing on where the editorial decisions on an audiovisual media service are taken.*

e)  *Moving to a different approach whereby providers would have to comply with some of the rules (for example on promotion of European works) of the countries where they deliver their services.*

f)  *Other options (please describe)*

**PLEASE EXPLAIN YOUR CHOICE:**

The country-of-origin is a well-proven EU Internal Market principle. The effective and fair implementation of this principle and of the Directive increasingly depends on dialogue & cooperation amongst national regulators. It is important to strengthen this cooperation to provide the best guarantee

of addressing all issues of the Directive in a fair and consistent manner. The Contact Committee, the ERGA or other bodies (e.g. EPRA) already provide good discussion fora to this end, but their role and power could be better defined; and their activities could be more transparent to businesses and citizens.

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

Independence of regulators

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

***SET OF QUESTIONS 6.1***

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

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

**no comment on this set of questions**

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

YES – NO (If yes, please explain below)

COMMENTS:

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Laying down in the AVMSD a mandate for the independence of regulatory authorities, for example by introducing an explicit requirement for the Member States to guarantee the independence of national regulatory bodies and ensure that they exercise their powers impartially and transparently.*

c)  *Laying down minimum mandatory requirements for regulatory authorities, for example detailed features that national regulatory bodies would need to have in order to ensure their independence.*

Such features could relate to transparent decision-making processes; accountability to relevant stakeholders; open and transparent procedures for the nomination, appointment and removal of Board Members; knowledge and expertise of human resources; financial, operational and decision making autonomy; effective enforcement powers, etc.

d)  *Other options (please describe).*

**PLEASE EXPLAIN YOUR CHOICE:**

### Must Carry/Findability

In the context of the regulatory framework applicable to the telecoms operators, under the Universal Service Directive<sup>17</sup>, Member States can in certain circumstances oblige providers of electronic communications networks to transmit specific TV and radio channels ("must-carry" rules). Under the Access Directive<sup>18</sup>, Member States can also set rules on the inclusion of radio and TV services in

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

<sup>18</sup> Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), as amended by Directive 2009/140/EC

electronic programme guides (EPGs)<sup>19</sup> and on presentational aspects of EPGs such as the channel listing. Most recent market and technological developments (new distribution channels, the proliferation of audiovisual content, etc.) have highlighted the need to reflect on the validity of the must-carry rules and on whether updated rules would be required to facilitate or ensure access to public interest content (to be defined at Member State level), for instance by giving this content a certain prominence (i.e. ensuring findability/discoverability).

#### **SET OF QUESTIONS 6.2**

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

Effective?  YES –  NO –  NO OPINION

COMMENTS:

[no comment on this set of questions](#)

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

YES –  NO (If yes, please explain below)

COMMENTS:

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

YES –  NO (If yes, please explain below)

COMMENTS:

***Preferred policy option:***

a)  *Maintaining the status quo, i.e. keeping in place the current EU rules on must carry/ EPG related provisions (i.e. no extension of the right of EU Member States to cover services other than broadcast).*

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<sup>19</sup> Electronic programme guides (EPGs) are menu-based systems that provide users of television, radio and other media applications with continuously updated menus displaying broadcast programming or scheduling information for current and upcoming programming.

b)  Removing 'must carry' /EPG related obligations at national level/at EU level.

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

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

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

f)  Other options (please describe).

**PLEASE EXPLAIN YOUR CHOICE:**

#### Accessibility for people with disabilities

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

#### **SET OF QUESTIONS 6.3**

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

Effective? YES – NO – NO OPINION

COMMENTS:

[no comment on this set of questions](#)

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

YES –  NO (If yes, please explain below)

COMMENTS

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

YES –  NO

Cost:

COMMENTS:

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Strengthening EU-level harmonisation of these rules.*

Instead of encouraging it, the EU Member States would be obliged to ensure gradual accessibility of audiovisual works for people with visual and hearing impairments. This obligation could be implemented by the EU Member States through legislation or co-regulation.

c)  *Introducing self and co-regulatory measures*

This could include measures related to subtitling or sign language and audio-description.

d)  *Other option (please describe).*

PLEASE EXPLAIN YOUR CHOICE

Events of major importance for society

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

***SET OF QUESTIONS 6.4***

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

Relevant? YES – NO – NO OPINION

Effective? YES – NO – NO OPINION

Fair? YES – NO – NO OPINION

COMMENTS:

[no comment on this set of questions](#)

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

YES – NO (If yes, please explain below)

COMMENTS

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE

Short news reports

The AVMSD requires Member States to ensure that broadcasters established in the Union have access, on a fair, reasonable and non-discriminatory basis, to events of high interest to the public for the purposes of short news reports.

***SET OF QUESTIONS 6.5***

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

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**no comment on this set of questions**

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

YES –  NO (If yes, please explain below)

COMMENTS

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE

Right of reply

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

***SET OF QUESTIONS 6.6***

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

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**no comment on this set of questions**

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

YES –  NO (If yes, please explain below)

COMMENTS

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE

***Conclusions and next steps***

This public consultation will be closed on 30 September 2015

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