

## CONSULTATION

on Directive 2010/13/EU on audio-visual 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.

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? EDiMA\_\_\_\_\_

Please your email: info@edima-eu.org\_\_\_\_\_

I'm responding as:

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

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.  
**53905947933-43**\_\_\_\_\_

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

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

EDiMA\_\_\_\_\_

Please enter your address, telephone and email.

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

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UNITED KINGDOM

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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 audio-visual media services. It has harmonised the audio-visual rules of the Member States and facilitated the provision of audio-visual media services across the EU on the basis of the country of origin principle.

Since its adoption in 2007, the audio-visual 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 Audio-visual 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:

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

***You are asked to answer a number of questions revolving around these issues. Please reason your answers and possibly illustrate them with concrete examples and substantiate them with data. The policy options identified are not necessarily mutually exclusive, but may sometimes be combined.***

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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 audio-visual 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>)

*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>?**

Relevant?  YES –  NO –  NO OPINION

<sup>5</sup> Recital 24 of the AVMSD: "It is characteristic of on-demand audio-visual 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 Audio-visual Media Services Directive applies only to services that qualify as audio-visual media services as defined in Article 1(1)(a). An audio-visual 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 audio-visual 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')

<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?

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

EDiMA<sup>11</sup> supports the view that the Audio-visual Media Services Directive (AVMSD) has been and continues to be a solid basis for existing and new companies to provide audio-visual content both across the EU and globally. As the European Commission confirms, the audio-visual sector in Europe has “substantial cultural, social and economic significance and shapes identities, projects values and can be a driver of European integration by contributing to our shared European identity.”<sup>12</sup> Despite obstacles such as complex and cumbersome licensing requirements, digital media and services are already driving growth in the creativity sector to a large extent.<sup>13</sup>

In assessing whether the regulatory framework is fit for purposes, two factors should be considered:

- To what degree the current AVMSD (and its articulation with the e-commerce Directive) has allowed digital innovation to drive the growth of the European creative sector and to empower consumers?
- To what degree extending the AVMS framework to other areas would harm the Internet, digital innovation and in turn the European creative sector?

Digital is the engine driving Europe’s booming creative sector. Creative industries in Europe are growing and generating more and more revenue for creators, more opportunities for consumers and more diversity (see “Technology is Culture” (2014)).<sup>14</sup>

Most of the growth in the EU’s creative industries comes from digital. Creative sector revenues in the EU grew by €22 billion between 2003 and 2013, with new digital revenues of €35 billion offsetting the loss of revenue in non-digital. Overall, creative industry revenues in the EU-27 grew 12% between 2003 and 2013, from €176.2 billion in 2003 to €197.7 billion in 2013.<sup>15</sup>

Contrary to some myths, instead of creating a culture of free, the Internet has helped increase consumer spend on cultural products. In 2013, European consumers spent more on cultural products than ever before. Consumer spend increased 23% between 2003 and 2013.

The European film and television sector have been consistently growing in Europe for the past 10 years. TV Subscription revenues have grown by nearly €17 billion since 2003, almost doubling their size. Pay revenue per usage hour have increased by 25% for film and television between 2003 and 2013 and pay revenues in the TV sector have grown at 4% annually over the same period.<sup>16</sup>

Fueled by the Internet, connected devices and digital services, consumer media usage in Europe continues to grow at a 4% annual rate. Of the approximately seven hours per day the average

<sup>11</sup> EDiMA is the European trade association representing online platforms whose members include Airbnb, Allegro Group, Amazon EU, Apple, eBay, Expedia, facebook, Google, King, LinkedIn, Microsoft, Netflix, PayPal, Twitter, Yahoo! Europe and Yelp.

<sup>12</sup> Communication: [European film in the digital era, Bridging cultural diversity and competitiveness](#). (May 2014)

<sup>13</sup> From 2001 to 2011, all growth in the creative sector has been digital (€30bn) (Booz & Co 2013).

<sup>14</sup> Available at [http://www.europeandigitalmediaassociation.org/pdfs/EDiMA-CCIA\\_Technology%20is%20Culture.pdf](http://www.europeandigitalmediaassociation.org/pdfs/EDiMA-CCIA_Technology%20is%20Culture.pdf)

<sup>15</sup> Acker, Gröne, Kropiunigg, Lefort, ‘The digital future of creative Europe’, (2015) available at <http://www.strategyand.pwc.com/media/file/The-digital-future-of-creative-Europe-2015.pdf>

<sup>16</sup> ‘The digital future of creative Europe’

European consumer has available for activities other than work, meals, sleep and household chores, more than 60% are spent consuming creative industry products (including TV, newspapers, etc.).<sup>17</sup>

Online media is valued highly by European consumers. 40-60% of the perceived value that consumers get from media is derived from online media; consumer surplus for online media ranges from €1,557 per consumer in Sweden to €842 in Ireland.<sup>18</sup> Convenient access to a wide choice of diverse content has never been so strong - for instance Google's Play store offers thousands of movies in 102 countries, 30 million songs across 58 countries, 5 million e-books across 65 countries and works with 48,000 publishers, while Netflix subscribers watch over 100 million hours of films and TV shows per day.

Audio-visual services being able to move freely across the EU and the number of new market entrants are some of the most visible signs of a successful approach to a Single Market and should be supported as a good example of how to increase the access to different types of content in the Digital Single Market.

Furthermore, the AVMSD should not apply to intermediaries and content sharing sites as the e-commerce Directive and the AVMSD are complementary and operate at different levels. Using one to encroach on the other would invariably lead to inconsistencies and unwanted consequences. Also, it is important to note that a content provider who offers an AVMS on its own platform would be subject to the AVMSD, like any other AVMS provider. The layered structure of EU regulation, as conceived by EU legislators, remains relevant and continues to show great foresight. These different layers include network infrastructure (physical layer), services such as social networks, hosting or sharing sites or the application layer and the content layer occupied by services such as the BBC or Arte. Each layer plays a fundamentally different role and this is reflected in different EU regulatory tools - such as the AVMSD (content layer) and the e-commerce Directive (applications layers). Content providers such as the BBC, Arte, Le Monde or RAI exercise editorial control over the content shown on their websites, on their apps built for iOS, Android or Windows, on video sites such as DailyMotion, ClipFish or YouTube.

Online services and intermediaries provide more capacity and lower barriers to market entry for AVMS providers. Anyone can use those services to access online content. They allow creators and traditional creative industries to reach a global audience, on multiple devices, at little or no cost. New creators and entrepreneurs compete with traditional or legacy players, as they avail themselves of those opportunities. This also generates competition for instance between broadcasters and news publishers, between new creators and established creative industries. There are many examples of how this level playing field has allowed established players to reach new audiences and new European creators to emerge.

In the UK, Jamal Edwards built his successful "SBTV" business using YouTube.<sup>19</sup> Yam112003, an Italy-based developer of online video and related services, through social media, web magazines, and the like, reached 1 billion video views in 2014. Broadcasters such as the BBC, Arte or RTL also take advantage of those opportunities to compete on this new level playing field – and they have the advantage of solid brands and reputations. Arte makes its programmes available online, on apps and on Apple TV; the BBC has a strong audience for its iPlayer as well as generating new revenues from

<sup>17</sup> [The digital future of creative Europe](#)

<sup>18</sup> BCG, 'Follow the Surplus' (2013), available at [https://www.bcgperspectives.com/content/articles/media\\_entertainment\\_digital\\_economy\\_follow\\_surplus\\_european\\_consumers\\_embrace\\_online\\_media/](https://www.bcgperspectives.com/content/articles/media_entertainment_digital_economy_follow_surplus_european_consumers_embrace_online_media/)

<sup>19</sup> Jamal Edwards, 'How to Become a successful entrepreneur', The Telegraph, 31st December 2014, available at <http://www.telegraph.co.uk/men/the-filter/virals/10765955/How-to-become-a-YouTube-entrepreneur.html>



its productions by making them available via Netflix outside of the UK and exporting content across the globe.

Online services provide a dynamic and competitive space, offering a wealth of choice to content providers and users alike.

While the objective of the AVMSD was to create a level playing field for broadcasters of a new AVMS, it was never intended to overlap with Information society services, which could potentially occur and be detrimental to online innovation.

Regulating platforms, online and sharing services, with concepts designed for TV, simply ignores the nature of the Internet and would instead turn it into a “TV like” service. Not only would the exercise of additional editorial responsibility at the applications or services (hosting, sharing) layer entail considerable costs, it would re-engineer those services, through regulation, into content services forced to exercise editorial control. In other words, there can be no such thing as a UGC platform, social media, micro-blogging platform which exercises editorial responsibility: that is a different service. One which is likely to create new bottlenecks and gatekeepers, making it both harder for new competitors to enter the market, and for users to share content (whether for social, economic, political or other motives) online. Users, in effect, would be subject to a first cut of editorial control.

At the same time, it is important to both lessen the burden for non-linear audiovisual media services that are subject to regulation under the AVMSD, as well as to strengthen legislation when necessary. AVMSD service providers should remain in a position where they can freely innovate and develop their services without being constrained by unnecessary burdens that apply to them.

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

YES –  NO (If yes, please explain below)

COMMENTS:

Furthermore, it should be recognised that there may be less of a need for regulation in this area over time.

One of the major benefits of the AVMSD has been the clarity of its application to services, and this clarity should be improved, rather than adding in further potential confusion about which services would be covered, and how effectively that could be implemented.

***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 audio-visual content which does not qualify as "TV-like" or to providers hosting user-generated content.*

e)  *Other option (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

## Geographical scope of AVMSD

The AVMSD applies to operators established in the EU. Operators established outside the EU but targeting EU audiences with their audio-visual media services (via, for instance, terrestrial broadcasting satellite broadcasting the Internet or other means) do not fall under the scope of the Directive<sup>20</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:

#### **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:

Extra-territorial EU rules would be difficult to enforce (especially where they conflict with other rules) and this would undermine the overall effectiveness of the Directive.

Changing the geographical scope would negatively impact the availability of content in the EU - including potentially content not available in the EU, niche content etc., and choice of different services for users.

It would harm media pluralism - socially valuable content such as news, provided from a different country and culture, would be less available in the EU.

It would harm innovation and the development of new products - products or services that even partly fall into the material scope of AVMSD would become subject to new regulatory rules applicable only in the EU. This would subject companies to the multiple, potentially conflicting, requirements and slow the roll out of such products in the EU.

The issue is not limited to AVMSD - for instance in the GDPR approval process recently, the Council clarified that the mere accessibility of a website in the EU or of an email address or the use of a language generally used in a country where a controller is established are insufficient to ascertain the applicability of law and jurisdiction. EDiMA therefore supports the current the geographical scope of the AVMSD.

***Preferred policy option:***

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<sup>20</sup> Article 2(1) AVMSD – "Each Member State shall ensure that all audio-visual media services transmitted by media service providers **under its jurisdiction** comply with the rules of the system of law applicable to audio-visual media services intended for the public in that Member State." (emphasis added)

a)  *Maintaining the status quo*

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

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

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

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

d)  *Other option (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

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

The AVMSD is based on a so-called "graduated regulatory approach". The AVMSD acknowledges that a core set of societal values should apply to all audio-visual 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>21</sup>, the AVMSD sets out certain rules, which apply to all audio-visual media services and regulate, for example, the use of sponsorship and product placement. They also set limits to commercial communications for alcohol and tobacco.

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

### **SET OF QUESTIONS 2.1**

<sup>21</sup> "Audio-visual 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 audio-visual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement. See Article 1(1)(h) AVMSD.

**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:

**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

It should be noted that there are a number of boundary issues around broadcast and non-broadcast advertising. This does not imply that the ads are not regulated at all and an efficient and successful self-regulation system for digital advertising is already in place and supported by the European Commission.

***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:

The current set of rules provided for in the e-commerce and AVMS Directive constitutes a solid framework which offers the appropriate protection of viewers/users, minors, people with disabilities and prohibiting hate speech and discrimination in the media world. It is important to maintain a broad European framework to allow stakeholders, who know the market well and who develop technologies, to implement this European guidance with flexibility so as to remain close to their users' and consumers' requests. Service providers do not need additional restrictions which may not work with their technologies.

Furthermore, service providers work closely with a variety of key stakeholders, such as online safety organisations, civil society groups, governments, law enforcement bodies and consumers to implement adequate restrictions, policies and safety protections, as technologies and content develop, to respond to issues concerning the protection of viewers/users, minors, people with disabilities and prohibiting hate speech and discrimination in the media world.

Online services have developed a wide structure of ecosystem governance, in compliance with the e-commerce Directive. This structure includes industry codes of conduct, self/co-regulation and the development of industry best practices.

The current regulatory framework, as provided for in the e-Commerce and AVMS Directives, are robust and effective and therefore, we do not believe that there is a need for extra rules to be added. Any new challenge or major evolution of viewing/consumption pattern requiring new policy approaches would be best served by co- or self-regulatory approaches.

**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:

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

YES –  NO –  NO OPINION

COMMENTS:

The current rules offer a solid and robust framework that appropriately address the protection of minors in the media world. The Internet has led to the development of a wide effective ecosystem, backed by the e-commerce Directive, which offers a strong and flexible legal framework. These include industry codes of conduct, self/co-regulation and the development of industry best practices. These approaches have proven successful to ensuring a stable, well-regulated market:

- VOD service providers, for example, have built a variety of means to ensure that parents can protect their children from inappropriate content.<sup>22</sup> Varying from age rating information to specific children's sections and PIN protection measures, VOD service providers aim to create an environment that is safe for minors and that give parents suitable options to find appropriate content for younger children.
- User generated content websites, YouTube, Facebook, Twitter and others have developed Community Guidelines that clearly describe the type of content and behaviour that is and is not allowed on the site. Community flagging systems and efficient reporting mechanisms have been developed and are used to help identify content that violates these guidelines. Certain tools have also been developed to empower users to have a safer online experience, control the content they view and the users they interact with and to fulfil their responsibilities regarding the content they make available. For example, tools have been designed which allow users to hide and/or block objectionable comments.

<sup>22</sup> For example, Apple (<https://support.apple.com/en-us/HT201659>); Amazon (<http://www.amazon.com/gp/help/customer/display.html?nodeId=201423070>); Google Play (<https://support.google.com/googleplay/answer/1075738?hl=en> (<http://www.amazon.com/gp/help/customer/display.html?nodeId=201423070>); Google Play (<https://support.google.com/googleplay/answer/1075738?hl=en>); and Netflix (<https://help.netflix.com/en/node/264>) to name a few.

- The Internet industry has signed a number of codes of conduct and charters in various European countries and in Brussels that commit them to aggressive action to protect minors online and to prevent the spread of child sexual exploitation imagery online. For example, these include the Better Internet for Kids<sup>23</sup> strategy and agenda and The ICT Coalition.<sup>24</sup> Companies also offer advice and guidance on their websites to parents and teachers about staying safe on the platforms and online and work with third party experts and NGOs to solicit their views on policies, tools and reporting procedures.

In order to allow VOD service providers to scale and serve users in multiple Member States, EDiMA supports the development of flexible self-rating tools. Such tools should respect local cultures and initiatives while allowing companies to rate new content quickly without having to submit to a rating board in Member States of the EU, where they exist.

**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:

Should there require a need for changes, provisions regarding self- and co-regulations could be developed for AVMS as they are currently defined. If the scope were to be extended, for example, the AVMSD would risk undermining currently established, as well as developing, schemes created to meet the specific natures and scale of information society services. As well, new schemes designed for video-on-demand would also not function.

Measures for further harmonisation could be encouraged, but as participants have experienced within the CEO Coalition for a Better Internet for Kids, there are a number of difficult issues that need to be addressed to create greater harmonisation.

EDiMA would support the levelling down approach concerning the current distinction between the rules covering television broadcasting services and on-demand AVMS, which would impose on television broadcasting services the same level of protection as on-demand services. This does not

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<sup>23</sup> Where 26 leading companies have come together to form a new Coalition to make a better and safer internet for children. Priority actions include making it easier to report harmful content, ensuring privacy settings are age-appropriate, and offering wider options for parental control, reflecting the needs of a generation that is going online at an increasingly young age

<sup>24</sup> The ICT Coalition for Children Online aims to help younger internet users across Europe to make the most of the online world and deal with any potential challenges and risks. With the internet now one of the most important sources of information, education and entertainment for many people, it is vital that industry, government, schools and other relevant organisations work together to help children and young people use the internet in a safe and responsible way.



mean less protection for minors, but rather that the protections that exist are more appropriate to the medium.

***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 audio-visual 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 audio-visual user-generated content or audio-visual content in social media), including non-audio-visual 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 audio-visual media services.

f)  *Other option (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

#### 4. *Promoting European audio-visual 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>25</sup> and independent productions<sup>26</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:

Digital and online services continue to serve as key actors in broadening the promotion and distribution of European creations throughout the EU and the world. For example, European shows and feature films can be exported and viewed by a global audience allowing for more viewers than when a show would be restricted to a national broadcaster, or VOD service.

EDiMA supports the aim to promote the visibility and discoverability of European works and the stimulation of the European audio-visual sectors. However, views the initiatives presented within the AVMSD to better promote the access to and promotion of European works using quotas and prominence<sup>27</sup> as detrimental to the sustainability of existing and new business models and personalisation of services that allow European consumers the ability to access a wide variety of European and international content. New ways of promoting the distribution and consumption of European content should be explored which function in the changing world of viewing patterns and choice.

<sup>25</sup> For European works: a majority proportion of broadcasters' transmission time.

<sup>26</sup> For European works created by producers who are independent of broadcasters: 10% of broadcasters' transmission time.

<sup>27</sup> Article 13 'Member States shall ensure that on-demand audio-visual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audio-visual media service.'

Internet services allow the dissemination, discovery and monetisation of content at little or no cost and on a potentially global scale. Cultures from all over the world are at the fingertips of Internet users.

This means more diversity on the supply side and on the demand side, as consumers access more diverse content. In music, the number of releases by independent labels in the US now exceeds releases by major labels by a factor of two. There are more artists achieving success; the number of different artists per year featured in the Billboard Top 200 has increased from about 600 in 1999 to 1000 artists in 2010, a 67% increase.<sup>28</sup> In news, according to the Reuters Digital News Report 2015,<sup>29</sup> online news users use more sources of news than offline users: in the UK, offline news consumers consult 2.8 different news sources in a typical week, as opposed to 4.28 sources a week for online news consumers.

European content is achieving global reach online - allowing for more viewers than when a show would be restricted to a national broadcast or VOD service. On YouTube, in 2015 alone, there have been over 60 billion views of European videos by consumers from around the world. A quarter of the global watch-time is attributable to content uploaded in Europe.

Tobias Moller of the Berlin Philharmoniker oversees digital to bring classical music for his institution to new audiences - in his own words: "Our viewers come from all over the world — from Brazil to Taiwan — and many of them would never be able to come to Berlin to enjoy a concert live. Technology has allowed us to find fans we never knew existed."

European film production (including documentaries) and the share of European films in the European box office are at a record historical high: 1603 European films were produced in 2014 (up from 1499 in 2010) and their share of box office (theatrical released) reached 33.6% (up from 25.4% in 2010).<sup>30</sup> Between 2005 and 2009, four European countries were amongst the top 20 film producers in the world (France, Germany, Spain, Italy), and the number of films produced in all those countries increased.<sup>31</sup>

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

- a) the right amount;
- b) too much;
- c) too little

<sup>28</sup> (Waldfoegel, "And the Bands Played On: Digital Disintermediation and the Quality of New Recorded Music" (2012).

<sup>29</sup> See Reuters Institute for the Study of Journalism, University of Oxford, 'Reuters Institute Digital News Report 2015' (2015), available at [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Reuters%20Institute%20Digital%20News%20Report%202015\\_Full%20Report.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Reuters%20Institute%20Digital%20News%20Report%202015_Full%20Report.pdf)

<sup>30</sup> European Audio-visual Observatory, 'Box office up in the European Union in 2014 as European films break market share record', May 2015, available at [http://www.obs.coe.int/en/-/pr-cannes-2015-film-market-trends-2014?redirect=http%3A%2F%2Fwww.obs.coe.int%2Fpress%2Findividual-press-releases%2F2015%3Fp\\_p\\_id%3D101\\_INSTANCE\\_AboWabb2yPCC%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_pos%3D2%26p\\_p\\_col\\_count%3D3](http://www.obs.coe.int/en/-/pr-cannes-2015-film-market-trends-2014?redirect=http%3A%2F%2Fwww.obs.coe.int%2Fpress%2Findividual-press-releases%2F2015%3Fp_p_id%3D101_INSTANCE_AboWabb2yPCC%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D2%26p_p_col_count%3D3)

<sup>31</sup> UNESCO, 'From International Blockbusters to national hits: Analysis of the 2012 UIS Survey on feature film statistics', available at <http://www.uis.unesco.org/FactSheets/Documents/ib8-analysis-cinema-production-2012-en2.pdf>

d) no opinion

COMMENTS:

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

YES –  NO –  NO OPINION

COMMENTS:

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

YES –  NO (If yes, please explain below)

COMMENTS

EDiMA supports the aim to promote the visibility and discoverability of European works, but views the initiatives presented within the AVMSD as detrimental to the sustainability of existing and new business models, as well as to the personalisation of services. Both numerical quotas as well as strict rules on prominence bring risks.

There are three key issues that should be highlighted relating to the promotion of EU works:

1. Digital and online services require local content to continue to be successful within Europe;
2. there is not an issue with the availability of outlets for European content, rather the limited supply of quality European content;
3. the focus should be on incentivising the greater production of European content and not imposing quotas on broadcasters who currently struggle to meet the supply.

Rigid numerical quotas risk suffocating the market for on-demand audio-visual media services. An obligation to carry content to meet a numerical quota may cause new players to struggle to achieve a sustainable business model, causing distortions as such players may have to spend resources on content in excess of its economic return. For example, hours-based or titles-based numerical quotas risk creating a perverse incentive for VOD service providers to license more of the least expensive European titles and fewer premier European titles. This undermines what should be the goal of promoting European works: ensuring that European content producers that succeed in Europe and internationally are rewarded for their success, creating a positive feedback cycle for high-quality and internationally competitive European content production.

Also, there is no real need for the imposition of strict numerical quotas to ensure the promotion of European works by on-demand audio-visual media services. These services, not being constrained by the limited “shelf space” of programming hours, inherently offer opportunities for the promotion of European works. It is also essential to bear in mind that VOD catalogues are built to provide customers with what they want to watch. In the EU, culture, tastes and languages differ, so to be successful it is important to offer an attractive selection of exclusive movies and series across all genres, languages and countries of origin.

Finally, VOD service providers provide a mix of licensed and original European content, contributing to the promotion of European works not only within Europe, but also internationally. For example, Netflix has produced in association with NRK1 the series “Lilyhammer”, while Amazon stepped in to help finance the continued production of the BBC series “Ripper Street”.

**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:

When watching content via a VOD service, for example, subscribers already control their own viewing experience and the titles surfaced to them are highly personalised. There is, therefore, no need of any regulatory measures that would interfere with a VOD company’s “personalised” approach to providing their services.

The consumer personalisation approach taken by many VOD services allows for more European works to be available to consumers in Europe, and helps those members find those European works -in effect, promoting them.

Domestic content producers are best positioned to benefit from the increased consumer choice enabled by VOD services’ large catalogue of titles. Content producers working in the same linguistic, cultural, and artistic context as potential consumers have an inherent advantage in producing works that attract those consumers, but the limited “shelf space” of linear TV has diminished the value of that advantage.

This mixture of global and local content is driven by a desire to entertain European consumers and by competition from a number of different distributors including other Internet-delivered services, public and private broadcasters and other pay-tv operators. This is not driven by regulation; it is driven by competition to deliver the best service possible. In a world of increasing choice, the services best positioned to respond to consumer demand will continue to distribute a certain amount of local content.

**As an audio-visual 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:

*Preferred policy option:*

a)  *Maintaining the status quo*

- b)  *Repealing AVMSD obligations for broadcast and/or for on-demand services regarding the promotion of European works. This would entail the removal of EU-level harmonisation on the promotion of European works, which would then be subject to national rules only.*
- c)  *Introducing more flexibility for the providers' in their choice or implementation of the measures on the promotion of European works.*

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

- d)  *Reinforcing the existing rules.*

For television broadcasting services this could be done, for example, by introducing additional quotas for non-national European works and/or for European quality programming (e.g. for fiction films, documentaries and TV series) or for co-productions; or by setting a clear percentage to be reserved to Recent Independent Productions<sup>32</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, audio-visual 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

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<sup>32</sup> Works transmitted within 5 years of their production.

stricter rules in specific Member States. In these cases the Member States have to follow specific cooperation procedures.

### ***SET OF QUESTIONS 5***

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

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

AVMSD does set clear minimum standards for linear and non-linear broadcasters. In order to maintain those clear standards, the country of origin principle and, as a result, the mutual recognition of jurisdiction among Member States must remain at the core of the AVMSD. It is the country of origin principle that underpins the successful functioning of the fields coordinated by the AVMSD, such as advertising, the protection of minors and the promotion of European works. The country of origin principle has been a cornerstone in developing innovative, cross-border services which will be critical to maintain in order to support the Digital Single Market.

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

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

COMMENTS

There are some problems with regulators being able to work effectively together to deal with the few problems which have arisen.

Legal certainty should be maintained and the country of origin principle should be further clarified and not be “chipped away” by carving out certain issues or exceptions (such as levies,<sup>33</sup> or local rules on financing or prominence) for a different approach, particularly where the promotion of EU works is involved.

#### **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

<sup>33</sup> Levies posed on external VOD providers/services are contradictory to aim of AVMS Directive to simplify cross-border AVMS by introduction of the country of origin principle (as evident in recital 34, art. 2, art. 3, art. 4) “one Member State should have jurisdiction over an audio-visual media service provider” (34th recital), namely the Member State, in which the provider is established (Art. 2 AVMS Directive). Those Member States, in which the service can merely be accessed, but in which the provider is not established, may not prevent the further distribution of the services (Art. 3). The Member States can principally only impose stricter regulations than envisaged in the Directive upon domestic providers (Art. 4).”

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 audio-visual media service are taken.*

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

f)  *Other options (please describe)*

***PLEASE EXPLAIN YOUR CHOICE:***

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

Independence of regulators

Free and pluralistic media are among the EU's most essential democratic values. It is important to consider the role that independent audio-visual regulatory bodies can play in safeguarding those values within the scope of the AVMSD. Article 30 AVMSD states that independent audio-visual 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 audio-visual regulators relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**Are you aware of problems regarding the independence of audio-visual 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:***

In the context of the regulatory framework applicable to the telecoms operators, under the Universal Service Directive<sup>34</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>35</sup>, Member States can also set rules on the inclusion of radio and TV services in electronic programme guides (EPGs)<sup>36</sup> and on presentational aspects of EPGs such as the channel listing. Most recent market and technological developments (new distribution channels, the proliferation of audio-visual 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:

In terms of consumer experience and consumer viewing patterns, linear broadcasting continues to elicit strong consumer interest.

One key aspect of online offerings is that there is fundamentally more user control in online platforms, thus requiring fewer obligations than traditional TV broadcasting. As noted in section 3.1 of the Green Paper preparing for a fully converged audio-visual world (2013) *"the AVMSD makes a distinction between linear (television broadcasts) and non-linear (on-demand) services, based on the much higher degree of consumer control in on-demand services, justifying less stringent regulation in certain areas."* This observation is still valid as it was in recent years and in the most recent iteration of AVMS Directive, perhaps even more so now that audiences are well used to dealing with (and personalising, filtering, and controlling their viewing) online platforms and content.

Online services and the Internet in fact boost important social goals and policy objectives. As highlighted by UN Rapporteur,<sup>37</sup> through the open web citizens today have greater access to news and information than ever before. Discoverability of content has never been so easy, and put to such use.

<sup>34</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>35</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

<sup>36</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.

<sup>37</sup> UN Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue' (2011) available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

It has never been easier for AVMS providers to make their content discoverable and there exists a plethora of new tools, consumer personalisation technology and social recommendations. For example, many public service broadcasters have integrated these tools into their on-demand services, which has been driven largely in part as a result of market-driven technological innovations and not regulatory intervention.

Evidence and research show clearly that risks of a “filter bubble” or “new gatekeepers” have failed to materialise for “public interest” content such as news. In reality, the opposite is happening: (i) consumers access more diverse news sources online (ii) consumers use a broad variety of online tools to find, discover, access news and (iii) legacy brands remain strong and trusted.

1. Online services drive an increase in the diversity of news sources accessed:

- In the EU, online users access a broader diversity of news sources than offline users (Reuters Institute Digital News Report (2015)).
- French readers consume more news (especially local news) when their news portal service is relevant to their geographical location. French users also discover new media outlets and increase the variety of their news sources accessed.<sup>38</sup>
- A study found that Internet users in Germany and Italy visit new, smaller sites for their information, in addition to their usual sources. It found that services such as search engines were significant in allowing smaller, alternative sources to be discovered and gain traffic.<sup>39</sup>
- Roughly three quarters of social media, search and newsreader users say that they sometimes or frequently access new sources (sources they don’t normally consume) through such services (Reuters Institute Digital News Report 2015).

2. There are no new “gatekeepers” to public interest content such as news in the EU:

- Users use a broad mix of services to access news (UK, FR, IT, ES, DE, FI, DK), according to the Reuters News Institute (2014), close to 40% of news users directly access news via the website of a brand (including “navigational queries”: entering e.g. BBC or lemonade in a search window). However, social networks, twitter and email are also major drivers of viewers to news websites.

3. Consumers’ continued recourse to trusted brands also ensures they do not retreat into “information bubbles”:

- Traditional TV is still the main source of news in many countries.
- Incumbent news provider players have an advantage as a trusted brand is a key factor to accessing content: About 1/3 of platforms users cite trust as the main reason why they click on a piece of content (Reuters, 2015).
- Consumers still rank traditional media as the best in terms of speed, discovery, analysis and accuracy & reliability (Reuters, 2015).

Obligations for “must carry” or prominence would not make sense for online offerings, and could undermine the benefits of such services for consumers, who turn to these services to look for specific content. Interfering in this process with imposed “public interest” content may further render the latter less appreciated. “Must carry” obligations may also undermine the ability of new services to offer content in the way they think would be interesting for consumers, particularly if paired with quotas for European content.

<sup>38</sup> Athey, Mobius, The Impact of News Aggregators on Internet News Consumption: The Case of Localization (2012), available at <https://faculty-gsb.stanford.edu/athay/documents/localnews.pdf>

<sup>39</sup> Italian Institute for Policy and Data Valorisation, ‘The effects of search engines on pluralism of information’ (2014), available at <http://www.istitutoitalianoprivacy.it/Search-Engines-Pluralism-IIP-Study.pdf>

**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).*

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 audio-visual 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:**

The AVMSD sets out that the Member States need to show that they encourage audio-visual 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 audio-visual content to people with a visual or hearing disability?**

Effective?  YES –  NO –  NO OPINION

COMMENTS:

**Have you ever experienced problems regarding the accessibility of audio-visual 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 audio-visual 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:

**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:

**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:

**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.