

## CONSULTATION

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.](#) Mia Ahlgren

Please  your  email:  [Click here to enter text.](#) mia.ahlgren@hso.se

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.

[Click here to enter text.](#) 685709519041-15

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.

Click here to enter text. \_\_\_The Swedish Disability Federation\_\_\_\_\_

Please enter your address, telephone and email.

Click here to enter text. \_\_\_ Box , 172 27 Sundbyberg, Sweden Phone +46 8 546 40400  
mia.ahlgren@hso.se\_\_\_\_\_

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

Sweden

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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:

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')

<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?

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

People access media content through different platforms, and for many persons it is either via traditional broadcasting and a tv set or via an internet connection, (not both) so it is important to have a clear legal framework to operate in, and pursue the same goals and human rights values as the rest of the EU media ecosystem.

**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:

There is a rapid increase in overall video content. The proportion of accessible audiovisual content is extremely low and different in member states. There are barriers in technical infrastructure and lack of access services such as subtitles, audio subtitles and audio description in different platforms. It is crucial when it comes to emergency services, but persons with disabilities are excluded from content in so many areas relevant to comply with human rights touching for example right to education, political participation etc.

***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) X*

PLEASE EXPLAIN YOUR CHOICE: Some provisions would need amendments, but not all, to comply with human rights, such as freedom of speech and the UN Convention on the rights of persons with disabilities (CRPD), in particular general comment no 2, articles 9, 21, 30 and part of 8. The U.S. 21<sup>st</sup> Century Communications and Video Accessibility Act (CVAA), signed in October 2010 is an example of scope and implementation that has led to

gradual improvements in several areas. See also question 6.3

### 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:

In a globalised media world, regulations, standards and requirements need to go in the same direction and compliant with UN conventions. Even within Europe they are different depending on the jurisdiction.

##### **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:

In EU member states where subtitles (interlingual subtitles) are used for translating audio, there is a need for Audio (spoken) subtitles. But as some broadcasters are under UK jurisdiction even though they address audiences outside the UK, the OfCom regulations for non-domestic services fail to meet the user requirements. It is important that EU regulators are addressing actual user needs.

##### ***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.*

*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*

<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)

*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:

We recognize the challenge to find a solution with full respect for human rights. If the target audience is clear, the principle ought to be that the requirements for media service providers outside EU should not be set below the requirement on domestic providers where the target audience is. If it concerns accessibility, audio subtitles should be included for countries that use subtitles for translation.

## **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.

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>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.

**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

***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: It is not covering discrimination and harassment based on disability. A reference should be inserted in article 3.4.a.(i) and article 6 in order to explicitly prohibit discrimination and incitement to hatred based on disability.

**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:

When the Equal rights commission in the UK made investigations about disability related hate crimes and harassment the title of the report was Hidden in plain sight <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-disability-related-harassment>

They have recently launched a project together with OfCom to improve media portrayal <http://www.equalityhumanrights.com/commission-announces-new-project-increase-diversity-television-sector>.

The fact that the AVMS directive does not mention this area, can endanger inclusion in society. Especially portrayals of persons with intellectual and psychosocial disabilities can be offensive portrayal, misleading and have a negative impact on mental health.

The AVMSD should ensure that persons with disabilities are shown with dignity regardless of their impairment or the place where they live. It might be important to review the complaint mechanisms to facilitate reporting violations, as well as to raise awareness of those.

### 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:

**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

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<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.

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:

**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:

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

YES –  NO –  NO OPINION

COMMENTS: YES

**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

**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: Spreading European culture, knowledge of languages. The term “cultural diversity” is often used, but diversity in a broader sense, could contribute to anti-discrimination and cohesion.

**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:**

Sharing translated subtitles of European works could cut cost for both language translation, minority languages and for accessibility. In some countries state mandatory requirements for subtitles are connected to public funding for films / European works. These text files in the original language could then be used for translation to different languages and distributed via a European database platform. This would cut costs for both accessibility and for spreading European works. It could also be extended to audio subtitles and maybe audio description files, thus contributing to learning of European languages.

***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.*
- 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

COMMENTS:

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

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

COMMENTS

#### **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:**

## ***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:

**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>15</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>16</sup>, Member States can also set rules on the inclusion of radio and TV services in electronic programme guides (EPGs)<sup>17</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

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<sup>15</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>16</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>17</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.

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:

Must carry obligations today are described in article 31 of User Service directive 2009/135/EC Mandatory must carry obligations for access services are used in other parts of the world, and are needed in Europe. There is also a problem with interoperability. But the more demands and requirements the closer we come to solutions, for example the need to agree on a crossplatform format for subtitles. Findability is also important to improve.

**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: Technology to distribute audio description and audio subtitles is different in Sweden compared to many other countries. For Audio subtitles the consumer needs two set top boxes, and it is so complicated that there are hardly nobody using the service. The explanation we get is that there are so many households about 1 million, still using analogue distribution via cable, so the broadcasters and distributors have not implemented DVB subtitles and audio functionality in TV and boxes. This also leads to lack of personalizing subtitles still distributed via teletext, as well as many being without access to Electronic Program Guides.

There are limited ways to find out if a program is accessible, with audio description or sign language in advance, or even for video on demand. Some broadcasters use NGO:s to inform members of accessible content. It is good that they spread information to NGO:s but it is important that the broadcasters are obliged to actively spread the information in their own regular channels and in program guides etc

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

YES –  NO (If yes, please explain below)

COMMENTS:

Including finding out if the content is accessible.

***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 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:***

Must carry obligations should include access services (even if amended in the User service directive) on all platforms. This would speed up development of common format for example for subtitles and cut costs. Finding accessible content of public interest and also especially emergency information is of course important.

**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:

As members of the European Disability Forum we have contributed to their reply and stand behind it with the emphasis on the UN convention on the rights of persons with disabilities. Adding to the information from EDF we would like to stress that most data is based on quantity of services, that is sometimes useless. In Sweden public service broadcaster has offered a service for Audio subtitles since 2004, where the user needs to buy two set top boxes, and it is so complicated that there are hardly no users. So it is important that regulators should be able to get independent user research on the quality of services from a relevant group of users.

Problems also include lack of information of accessible programs, complaints mechanisms, availability of access services on different platforms “either web or broadcast” not both – but many in the audiences have either a television set or web only, quality of services, usability.

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

YES –  NO

Cost:

COMMENTS:

We are not broadcasters but we have worked with standardisation and projects on access services for more than a decade and we know that costs also depend on organisation of work and processes. If a broadcaster buys the right to show a film and negotiate that audio description (already existing) should be included in the prize, then the cost for the broadcaster is nothing. In a similar way subtitles for translation could be negotiated.

Portugal is one of the leading countries in the world when it comes to providing sign language interpretation. Subtitles for local news are available in many countries like Croatia but not in Sweden, and again with an explanation about technical barriers for distribution. Sharp requirements will make countries and stakeholders cooperate and find solutions.

The 21<sup>st</sup> Century Communication Video Accessibility Act in the US, was signed in 2010. It has succeeded in increasing accessibility to private on demand services and even to online learning.

<https://www.youtube.com/watch?v=FDSd2NYKXxU&index=1&list=PL780AA29100CA4F63>

***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

We refer once again to the reply from the European Disability Forum and would like to add the following.

Standards need to be coordinated on an international level.

Important to encourage involvement of users in the monitoring of the directive and development of accessibility standards.

Encourage regulators to use independent research to evaluate quality of services, based on a variety of user feedback, avoiding relying only on self-assessment from providers. For example speed of subtitles should take into account that there are many persons that for different reasons are never included in user research, for example persons with cognitive impairments.

#### 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.