

Source. The Association of Commercial Television in Europe represents the interests of leading commercial broadcasters in 37 European countries. ACT member companies finance, produce, promote and distribute world class content and services on a range of platforms benefiting millions of Europeans.

Context. On 2 December 2015 the European Commission (“EC”) proposed a Directive for a “European Accessibility Act” (“the Proposal” or “EAA”) with the aim of setting common accessibility requirements for certain products and services, including in the audiovisual (AV) field.

ACT SUGGESTED APPROACH

Accessibility of AV services and consumer related equipment should be dealt within the AVMS-D REFIT exercise.

ACT considers that the “gradual” approach adopted under the AVMS directive strikes the right balance between commercial broadcasters’ long standing commitment to helping and supporting disabled customers and the on-going economic viability of AV digital services.

As such, and with the current review of the AVMS-D allowing, we call for provisions on AV service providers to be tackled via Article 7 of the AVMS-D to keep a coherent legislative approach and factor in the specificities of the sector.

The Proposal’s scope should therefore take out AV services. As such, ACT calls for the deletion of any reference to AV services and consumer related equipment from the EAA. This includes deleting Art. 1.2.(b), Art. 11 and Annex I section IV. For coherence, we call for a recital in the EAA that makes explicit that for the purposes of AV services and consumer related equipment the AVMS-D is the right instrument.

The above suggestions are based on a number of core principles and realities outlined below.

ACT PRINCIPLES

A sector specific instrument is the only way accessible audiovisual media services will be delivered in a proportionate and effective way; as demonstrated by the positive progress already made.

- A Market-led approach will best deliver for all consumers. Such an approach will ensure that access services are provided more and more widely as services launch and become commercially viable whilst at the same time ensuring that those who don’t use such services have as broad a choice of services as possible. The key point is that high upfront costs for access services (see Annex III) will imperil the economics of new and innovative services at the outset. Striking the right balance will ensure that ACT members are constantly able to innovate by both developing new services and, over time, delivering access services on linear and non-linear to broaden the use of such services. The result of this approach historically is a commercial broadcasting sector that is both innovative and delivers access services beyond existing national targets (see Annex II).
- Member states are not starting from scratch. A variety of schemes (see Annex I&II) already exist in the EU ensuring the delivery of signing, subtitling, and audio description services. EU legislators need to take stock of these achievements.
- Current minimum harmonisation sets the benchmark and allows for innovation whereas blanket rules would on the other hand ignore the diversity of Europe’s AV service landscape.
- National level progress indicators, rather than at provider level, may be far more useful in the field of AV services where viewers have a plethora of providers to choose from.

The Commission already promotes AV service accessibility through existing mechanisms. The EAA will create extremely detrimental market conditions for AV service providers that risk undoing a number of positive outcomes from the gradual approach.

The EAA:

- Focuses on total accessibility, losing perspective on where people would most benefit from access services given the high cost and low return on investment (ROI) of accessibility provisions;
- Encourages a regulatory tick-box approach where broadcasters are incentivised only to meet the regulatory requirements, not to find the most appropriate access services for their customers;
- Undermines momentum by incentivising providers of AV services to only focus on complying with the EAA, rather than develop accessible services under the umbrella of Art 7 of the AVMS-D, which the Commission is proposing to repeal, long before the EAA enters into effect in 2024.

Effective legislation on Accessibility in the AV sector needs to recognise a number of realities

1. Scalability in services: AV services cannot simply be altered to a universal technical specification with costs spread across several geographies. This is particularly the case in the AV sphere where natural barriers (e.g. language) and rapidly evolving service offerings (e.g. on-demand) make it impossible to scale costs. Mandating accessibility services across all AV services irrespective of service type, genre, viewership or cost would be unrealistic and to the detriment of the wider audience. A balance is required between the needs of the general viewership, users of accessibility services and Media Service Providers. The EAA does not address this necessary balance nor the realities and specific concerns of the AV sector.
2. Financing and competitiveness: commercial broadcasters currently finance accessibility services with their own funds. Any policy action should ensure competition is preserved, notably between players providing TV like services that do not fall under accessibility requirements and/or between publicly and privately funded players. Commercial broadcasters should have the commercial freedom to decide the form and availability of accessibility services; particularly concerning programmes where ROI is currently low. This means recognising or directly supporting successful schemes and product developments identified by our customers as achieving high satisfaction levels. Any impingement on this commercial freedom should therefore be avoided. Notwithstanding, should such a route be taken, we would call on the legislator to ensure public funds are earmarked to compensate for the costs without any prejudice to our members' editorial freedom (e.g. by not imposing the type of accessible service to be used such as imposing sign language for linear services during prime time).
3. Technical feasibility in linear and non-linear services: on-demand services are based in emerging and fast changing technologies using multiple standards. For broadcasters operating across multiple non-linear platforms (VOD, SVOD, catch-up) it is inherently more difficult and costly to provide accessibility services for these services due to the many forms and configurations available (by some accounts close to 100 different types operating today). For other broadcasters, online means can be a cost effective way of providing accessible services. For example, by using sign language and audio description online only (as the linear option would require extra linear channel/frequency space). Broadcasters should be free to fulfil the requirements by placing the access services in the form, type and in the medium where they are most effective.
4. Audience share and proportionality: linear broadcasting remains the primary viewing experience for most European consumers with a trend for younger audiences to migrate towards OTT services (including on-demand) in certain markets. Keeping with the principle of catering to the widest audience, several leading broadcasters have put the onus of their accessibility efforts on linear resulting in a very developed offer. Providing accessibility services has been more challenging for small channels and niche non-linear services (below 2% audience) as they face a disproportionate cost burden.

5. It is impossible to determine the most suitable technology for accessibility in 2024: the provisions on user interfaces for AV services and products in the EAA are the worst case of technological determinism. The current provisions are both unclear and over-prescriptive. Legislators should not ignore the R&D process that often results in accessibility functionalities that are new and not easily predictable. If resources are spent delivering the list of features set out in the EAA, potentially more useful innovative functionalities may be deprioritised.

6. Culture and innovation before compliance: ACT members currently invest in technological innovations and partnerships to make accessibility services available across their linear and non-linear service offerings. ACT members wish to build a culture of accessibility in partnership with local accessibility actors and viewers rather than a compliance check list. Providing access services should be encouraged by allowing providers to innovate with a range of technologies in an open and non-prescriptive way. For example, in order to help customers with visual impairments navigate an EPG, the best device may be an app on a smartphone that works with voiceover functionality – this is not allowed for by the EAA, which only focuses on user interfaces. Building that specific functionality into a set top box or television set as potentially required by the EAA would be extremely costly and may not be the best solution for customers. The risk is amplified considering that technology will have changed significantly by the time the requirements are actually implemented.

In light of the above, we set out in the Annexes overleaf examples of:

- current national regimes resulting from the transposition of Article 7 (Annex I);
- ACT members' (over)performance with regard to these regimes (Annex II); and
- current costs for accessible services (Annex III).

ANNEX I – AVMS-D transposition – Sample of current national accessibility requirements (Applicable law and topline implications for commercial broadcasters)

Czech Republic

Applicable law

- Act n°231/2001 of 17 May 2001 on Radio and Television Broadcasting

Implications for commercial broadcasters

- A nation-wide licensed television broadcaster shall provide hidden or open captions for the hearing impaired in at least 15% of the programme units it broadcasts, and make at least 2% of the programme units accessible to visually impaired persons. A nation-wide statutory television broadcaster shall provide hidden or open captions for the hearing impaired in at least 70% of the programme units it broadcasts, and produce at least 2% of the broadcast programme units in the Czech sign language or interpret them into the Czech sign language for the hearing impaired, and make at least 10% of the programme units accessible to visually impaired persons.

France

Applicable law

- Law n°86-1067 of 30 September 1986 on freedom of communication, modified by the law n°2005-102 of 11 February 2005 on equality of rights and opportunities, participation and citizenship of the disabled

Implications for commercial broadcasters

- All broadcasters with an annual average share of audience above 2.5% must make their programmes accessible to hearing and visually impaired people (except for advertisements and some specific programmes which obtained a derogation)
- All broadcasters with an annual average share of audience under 2.5% need to sign an accessibility agreement with the national regulator (CSA) to determine their share of accessible programmes
- All these accessibility services must be free for consumers

Germany

Applicable law

- 1991 Interstate Broadcasting Treaty ([Rundfunkstaatsvertrag](#) – RStV)

Implications for commercial broadcasters (bullets 1 and 2 taken from § 3 Interstate Broadcasting Treaty, “General provisions”)

- (1) [...] all providers of broadcasting services distributed nationally shall respect and protect human dignity in their offers; the moral and religious beliefs of the population must be respected. Offers should further the respect for life, freedom, and freedom from physical harm, for faith and the opinions of others. Further-reaching provisions under state law regarding the design of offers and Article 41 of this Inter-state Treaty remain unaffected.
- (2) The providers pursuant to (1) shall increase the range of barrier-free offers over and above their existing commitments as far as their technical and financial means permit”
- Every year, the German media authorities publish an annual report on accessibility, monitoring the progress and activities of private broadcasters in that issue. Furthermore, they also conduct studies on that topic e.g. “the media use of people with disabilities”

Hungary

Applicable law

- Act CLXXXV of 2010 on Media Services and on the Mass Media

Implications for commercial broadcasters

- Providers of audiovisual media services shall strive to ensure that their services are gradually made accessible to the hearing impaired
- Public linear media service providers and SPI* linear media service providers shall be required to ensure that a variety of programme types (including cinematographic works, game shows and programmes specified for public service functions) are accessible with Hungarian subtitles (for example through teletext) or with sign language interpretation
- Without prejudice to the integrity of the program, the media service provider shall be required to provide subtitles or sign language interpretation throughout the entire duration of a programme that commenced with subtitles or with sign language interpretation, including any program series connected for reasons of dramaturgy
- In media services, before programmes with subtitles it shall be indicated that the programme is available also in the form aforementioned on the related teletext services. Subtitles of programmes must be accurate/ synchronised (including for live broadcasts)
- Broadcasters shall transmit the teletext services and other subtitles provided by the audiovisual media service provider, synchronized with images and sounds, on each and every transmission systems, networks and broadcast transmission platforms.
- The Media Council shall monitor compliance with the obligations prescribed for SPI* media service

* SPI media service provider shall mean any linear audiovisual media service provider and linear radio media service provider with an average annual audience share of at least 15%, provided that the average annual audience share of at least one media service they provide reaches 3%.

Italy

Applicable law

- The only statutory provisions regarding accessibility, i.e. Decreto legislativo 31 luglio 2005, n. 177 Testo unico dei servizi di media audiovisivi e radiofonici, exclusively bind public service broadcasters and, therefore, do not apply to commercial broadcasters

Implications for commercial broadcasters

- All initiatives from commercial broadcasters are self-regulatory based and follow general principle requirements enshrined in non-binding codes and declarations

United Kingdom

Applicable law

- UK Communications Act (2013)

Implications for commercial broadcasters

- All public service and commercial TV broadcasters* are required to deliver, within 10 years of launch, a certain proportion of their programmes with subtitles, sign language and audio description. These proportions are 80% for subtitling, 5% for sign language and 10% for audio description.

- UK regulator Ofcom sets interim targets within the 10-year period, and may also vary the overall target. For example, after 5 years, it requires channels to provide a minimum of 60% of subtitling, and the maximum 10% target for audio-description.
- Some public service channels are required to meet higher targets for subtitling – 90% in the case of ITV and Channel 4. The targets for the BBC are to subtitle 100% of their programme content, audio describe 10% of their programme content (except in the case of BBC News), and sign 5% of their content.
- No broadcaster has to spend more than 1% of their relevant turnover. As of 2014, certain non-domestic channels licensed by Ofcom have also been required to provide access services.
- Since January 2014, Ofcom-licensed channels made available in Member States outside the UK are required to provide access services if they meet the qualifying audience share threshold and affordability tests. In 2016, 22 Ofcom-licensed channels broadcasting into Europe are required to provide access services.
- Subtitling in a local EU language (to make a UK programme understandable for local viewers) may count towards subtitling targets

* Only those channels with an audience share of 0.05% or more are required to provide access services.

ANNEX II – ACT Members are innovators in creating and distributing accessible services and products (Sample of initiatives)



Hearing impaired subtitling (2015)

CANAL+ Canal+: 8,000 hours of subtitled programmes, namely 100%.

8 D8: 5,516 hours of subtitled programmes (except night programmes), namely 100%.

PLANETE + Planète+: 3,300 hours of subtitled programmes, namely 45.7%.

CINE + HD PREMIER Ciné+ Premier: 5,609 hours of subtitled programmes, namely 64.9%.

télétoon + Télétoon+: 5,314 hours of subtitled programmes, namely 65%.

i-TELE i-Télé: 254 hours and 49 minutes of subtitles on news programmes broadcast between 9PM and midnight.

GOLF + Golf+: 50 hours of subtitled programmes.

Audio description (2015)

CANAL+ Canal+: 154 films in first airing (on a quota of 70), an average of 13 per month.

8 D8: 17 films in first run (on a quota of 17), 33 airings in total (including reruns).

Sign language (2015)

i-TELE i-Télé: Sign language news accounted for a total of 49 hours and 48 minutes in 2015.

Piwi + Piwi+: 70 hours of programmes broadcast in sign language.

INFOSPORT + Infosport+: Sign language news accounted for a total of 78 hours (13 minutes every day).



- Exceeds Ofcom quotas for subtitling, audio description and signing; measures year-on-year against total transmission hours
- Working in partnership with RNIB, Action on Hearing Loss and our own in-house signing service, ITV SignPost, more than 85% of ITV content is subtitled across ITV, ITV2, ITV3, ITV4 and CITV, and 20% or more of content across ITV, ITV2, ITV3, ITV4 and CITV is audio described
- In 2016, ITV will continue to increase accessibility of their products and services, with a focus on content across Video On-Demand platforms, a growing area of the business
- On the ITV Player website, usually 100% of pre-recorded content is available with subtitles, as well as some of the most popular live shows.
- On the ITV Player app for Android, audio description was launched in 2015.
- ITV and UTV are the only ATVOD regulated broadcasters to offer on-demand programmes with visual signing. All of the signed programmes that ITV broadcasts on TV are also available on each on-demand platform.



MEDIALAAN

- Medialaan offers subtitles for 90% of all news segments as well as non-fiction and fiction programmes that are difficult to understand or in dialect



- Mediaset's Canale 5 carries a full-fledged subtitling service for prime time news. Films, drama and series are almost all entirely subtitled (over 90.5% for prime-time TV drama on Canale 5).
- In 2015, Mediaset's three flagship channels (Canale 5, Italia 1 and Retequattro) and two of the most popular digital-native channels (Iris and Top crime) provided continuous subtitling for 22% of their programming; i.e., 9693 hours
- Information on subtitling is available on major newspapers, TV guides and EPG
- As for online VOD, Premium Play and Infinity provide subtitles in both Italian and English for most titles in the catalogue
- Mediaset's websites will be shortly accessible to customers with visual impairments through text-to-speech technologies compatible with W3C standards



- RTL Group channels provide 35,119.5 hours of subtitled, signed and audio described programmes for disabled people
- The above figure does not include 27,683 hours provided by Atresmedia in which RTL Group has a minority shareholding
- In addition, RTL Klub in Hungary provides subtitles for all programmes as required by Hungarian law and this is also not included in the figure set out in the first bullet point



- Exceeds quotas for linear content on the Sky+HD box and launching subtitles for on-demand programming in the autumn
- Over 90% of content is subtitled across 26 Sky channels, 24 of which are regulated (whereas the obligation varies between 70 and 80%)
- 27% of content is audio described across 23 Sky channels (whereas the obligation is 10%), 22 of which are regulated

- Sky is launching subtitles on on-demand programming from September with working towards a target of at least 80 per cent
- For signing, Sky is the largest contributor to the British Sign Language Broadcasting Trust (BSLBT), with a contribution across 23 channels to fund signed presented programmes; providing live subtitles during sporting events
- For audio descriptions, Sky has its own transcribing booths on site and 16 voice ‘talents’ work for Sky and get matched to the programmes for their voice and their area of expertise. They use children voices for children programmes, and keep the same talent across different seasons.
- Sky also offers an accessibility TV remote upon request, free of charge and the Sky+ TV guide has many accessibility features such as changing the contrast and the font size

TV4-GRUPPEN



- Launched web site “TV4 Tolken” (TV4 Interpreter) in 2012 on which a wide variety of popular programmes with audio description and sign language are published
- TV4 Interpreter is compatible with braille board, and can be accessed via a telephone app
- Works in close collaboration with Enable media, one of Sweden’s largest and foremost experts on audio description and sign language interpretations
- Offers sub texting for 100 % of Swedish pre-recorded programmes in linear
- Offers live sub texting for 45 % of Swedish live programmes and live events in linear
- In 2013, TV4 received the award “Ögonstenen” (the apple of my eye) for its accessibility work and an award from “Unga Synskadade” (an organisation for blind and partially sighted young people)

ANNEX III – Average costs for subtitles, sign language and audio description (Member States sample)

Member State	Subtitles (EUR/h)	Sign language (EUR/h)	Audio description (EUR/hour)
Czech Republic	480	1000	+840
France¹	390-960	1050-7500	4000*
Hungary	75-160	490	+500
Italy	220	-	-
Portugal	250	485	440
Spain	450	650	600
United Kingdom² (in £)	254/314 (pre- recorded/live)	443	537

NB: where not indicated, data is from ACT members.

*Per programme

¹ CSA Accessibility report 2015

² 2009 Ofcom information request to broadcasters, figure 1, *Average per hour cost of access service provision over time*