

**Context.** The European commercial TV sector is a major success story. We entertain and inform hundreds of millions of EU citizens each week. We are a high growth sector which delivers substantial value to EU citizens, for instance delivering plurality in news provision across the EU. The media ecosystem has changed enormously since the last AVMSD review and will undoubtedly change further before the Directive is reviewed again in the 2020s. Powerful new global online competitors for revenue and for audience attention are making their presence felt. It is essential there is a long-term perspective to the revision of the AVMS Directive which should ensure significantly less detailed but equal level of regulation for all players offering AV services.

**In a highly globalised world it is vital that the EU considers how best to sustain a thriving, dynamic and creative European content industry, where EU consumers are able to continue to enjoy a wide choice of high-quality European content including the plurality of news. Deregulation, rather than extending the scope or level of regulation, is key to ensuring that established and trusted broadcasters have the flexibility to invest and unlock new revenue streams to sustain content investment.**

**The current proposals for reform need to acknowledge four realities.**

1. If original content investment is to be sustained, a more level commercial playing field is vital. Commercial broadcasters invest in original European content (€7.4bn in 2013). Many other players do not contribute investment but yet attract a big share of advertising spend. The European Audiovisual Observatory reports that these same players are competing more intensively for advertising revenue against content rich AVMSD services.
2. Focus should be on the risks to minors, and balanced regulation, not on where it is easiest to regulate those that are already regulated under existing structures. According to the Commission's own figures, young EU viewers watch about half as much linear TV as the average viewer. This difference has accelerated since 2013 as young people spend more and more time online viewing content from non-AVMSD services that offer less protection. AVMSD services are already highly regulated, with strong protection, levels of trust and effective and proven approaches for protecting minors. Therefore, the real challenge facing the EU is how to protect minors from harmful content, regardless of the means by which it is accessed.
3. The Country of Origin Principle will continue to be a key facilitator of cross border distribution.
4. The promotion of European content, including non-national European content, should be market driven rather than quota based. European content is at the heart of scheduled and on-demand services of ACT members for one reason: viewer demand. Mature viewers need not be guided by the legislator. This in no way impedes the Commission and national governments from investing in public initiatives to further promote European content (e.g. MEDIA programme, Lux Prize...).

**ACT believes 6 guiding principles should underpin proposals for reform:**

**Less prescriptive rules on commercial communications will boost investment in original European content regardless of distribution means**

Detailed and inflexible AVMS rules on commercial communication impact TV players' ability to compete and fund original European content in competition with non-AVMSD services which do not invest in such content. As the European Audiovisual Observatory states, "*players on social network ad market are also targeting TV advertising budgets [...] brands and advertisers will invest increasingly in social network advertisement*". We call on the European Commission to liberalise advertising rules such as single spots, cross-promotion, hourly limits, sponsorship, and product placement to free up EU TV players to invest, innovate and compete more effectively creating more of a level playing field with those advertising platforms not covered by AVMSD rules. Product placement, for example, is so constrained that the opportunity has rarely been taken up in the EU; with advertisers investing in US content instead. This explains why the US market for product placement is 5% of total TV ad spend whereas in a large proportion of EU countries market size is between 0.1 and 1%. For both product placement and

sponsorship the regime should simply require transparency, clear identification, editorial independence and no banned products.

**Consumer demand drives EU content production, not quotas**

Outside of the Public broadcasting system, investment in original European TV content is not driven by quotas but by viewer demand and the freedom of businesses to meet that demand. This business imperative fuels the European creative industries and sustains plurality. In the DSM, European players face fierce competition from global tech and multimedia corporations: the new framework should acknowledge the important contribution of integrated broadcasters to the production of European works, not only via the financing provided to independent producers but also because of the scale and scope of their own productions and creative output. There is therefore no justification for content quotas in the on-demand environment.

**Current AVMS regime applied to TV services is highly successful in protecting minors**

The European TV industry is committed to retaining all the key editorial requirements of the current AVMS regime, particularly those designed to protect minors. AVMSD services are already held to high standards in the provision of those services. AVMS Directive specifies detailed rules for the protection of children in relation to editorial content and advertising, as well as requiring editorial independence, right of reply, privacy, transparency of commercial messaging, prohibiting surreptitious advertising, banning hate speech etc. Whereas the regulatory regime for AVMSD services is effective and widely trusted, there are mounting concerns about safeguarding minors from other content online. The solution to address those concerns does not require more regulation of AVMSD services. TV is trusted by a majority of Europeans whereas only 36% of Europeans trust the Internet (Source: Eurobarometer, Media use in the European Union, Report 82, Autumn 2014).

**Country of Origin Principle is a vital cornerstone of the Directive**

The Country of Origin (COO) principle as set out in the AVMSD provides considerable benefits for the completion of the single market. COO allows broadcasters to deliver services across borders and invest in other European markets, whilst retaining contractual freedom to maximise investment in content. Overall, COO provides legal and investment certainty and has delivered choice for European audiences. It should remain at the heart of the Directive to ensure legal certainty. Where COO is used to circumvent national rules, ACT members support enhanced cooperation between Member States but only where such measures are not a means to achieve a protectionist agenda.

**Accessibility requirements should be demand led**

Commercial broadcasters have improved accessibility of digital services over time both in linear and on-demand services as the current Directive envisages. However, such developments have been deliverable only where they were in step with increasing audience demand, technical deliverability and the underlying economics of particular services – all of which vary across Member States. There should not be a one size fits all regulatory requirement for access services across the EU since different services have different audiences and different economics.

**Member States should decide which content deserves prominence**

Priority access to, and prominence on, platforms raises issues of definition and of equal treatment. A more equitable, transparent and future-proof approach would be to leave this to the discretion of Member States since the regimes for the delivery of public value by broadcasters vary significantly across the EU according to cultural and historical traditions.

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