



The revision of the AVMS Directive

Fredrikstad, 20. august 2019, 14.15-15.45
Medietilsynet, Desken

Maja Cappello

Head of Department for legal information
European Audiovisual Observatory



Overview

- 1. The regulatory frameworks of the audiovisual sector in Europe**
- 2. Provisions applicable to AVMS**
- 3. Provisions applicable to video-sharing platforms**
- 4. The regulatory environment**
- 5. Next steps**

Overview

- 1. The regulatory frameworks of the audiovisual sector in Europe**
2. Provisions applicable to AVMS
3. Provisions applicable to video-sharing platforms
4. The regulatory environment
5. Next steps

1.

The regulatory frameworks of the audiovisual sector in Europe

1.1.

The European regulatory framework

Portability regulation

Copyright Directive

Sat-Cab Directive

Sat-Cab regulation
proposal

AVMS Directive

e-commerce Directive

General Data Protection Regulation

Geoblocking regulation proposal

Regulation on Privacy and Electronic
communications proposal

1.

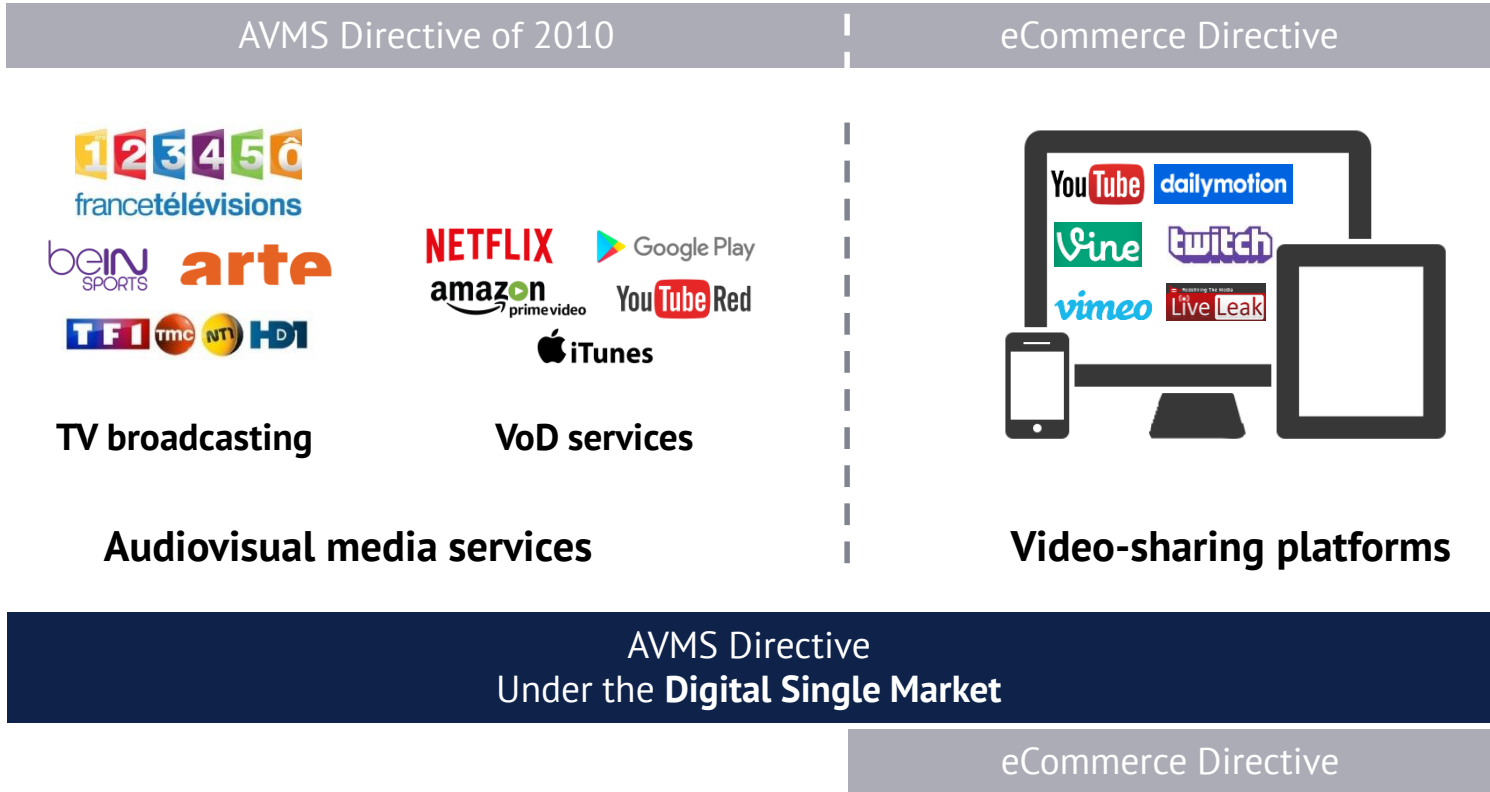
The regulatory frameworks of the audiovisual sector in Europe

1.2.

Overview of the history of the AVMS EU law

- 1984** Green Paper on the establishment of a Common market in broadcasting
- 1989** Television without Frontiers (TVWF) Directive adopted
CoE's Convention on transfrontier television adopted
- 1997** Revision of the TVWF Directive
- 1998** Protocol amending the CoE convention transfrontier television
- 2007** 2nd Revision of the TVWF Directive
- 2010** Audiovisual Media Services Directive (AVMSD)

1.
1.3. The regulatory frameworks of the audiovisual sector in Europe
The revision of the AVMS Directive



1.

The regulatory frameworks of the audiovisual sector in Europe

1.4.

Timeline of the AVMSD revision

06 July-30 Sept. 2015

Public consultation on AVMS Directive

25 May 2016

Commission proposal

10 May 2017

EU Parliament plenary – 1st reading

23 May 2017

The Council of the EU's general approach

January-June 2018

Inter-institutional trilogue negotiations

6 June 2018

Informal interinstitutional agreement

2 October 2018

Adoption by the EU Parliament

6 November 2018

Adoption by the Council of the EU

28 November 2018

Publication in the Official Journal of the EU

19 December 2018

New Directive entered into force

Overview

1. The regulatory frameworks of the audiovisual sector in Europe
2. **Provisions applicable to AVMS**
 - 2.1. **The Country of origin under the new Directive**
 - 2.2. Obligations of AVMS
3. Provisions applicable to video-sharing platforms
4. The regulatory environment
5. Next steps

2. Provisions applicable to AVMS

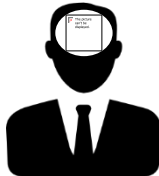
Establishment of AVMS

An AVMS is under the jurisdiction of the Member State where it is:

- effectively **established** on its territory, **Art. 2(2)**, or
- deemed to be established, following the criteria outlined under **Art. 2(3)**:



Head office



Editorial decisions

Defined in the revision



workforce involved in
programme-related
activity

Added in the
revision

No agreement → European Commission may ask ERGA to provide an opinion.

2. Provisions applicable to AVMS

Jurisdiction over an AVMS



AVMS shall inform regulators of changes potentially affecting the determination of jurisdiction, **Art. 2(5a)**.

Member States shall keep an **updated list** of AVMS providers established on their territory, **Art. 2(5b)**.



AVMS Providers have to **make accessible the information** on the Member State of jurisdiction and regulatory authorities/supervisory bodies, **Art. 5**.

Right to lay down stricter or detailed rules

Member States may lay down detailed or stricter rules **Art. 4(1) for AVMS** and **Art. 28b(6) for VSPs**.

For AVMS, measures can be taken against the provider of the targeting AVMS established in another MS in order to circumvent the stricter or detailed rules, if **Art. 4(4)**:



Measures were notified to Commission and Member State where the AVMS is established



AVMS provider's right of defence were respected



Measure assessed as compatible with EU law by Commission and ERGA

Added in the revision

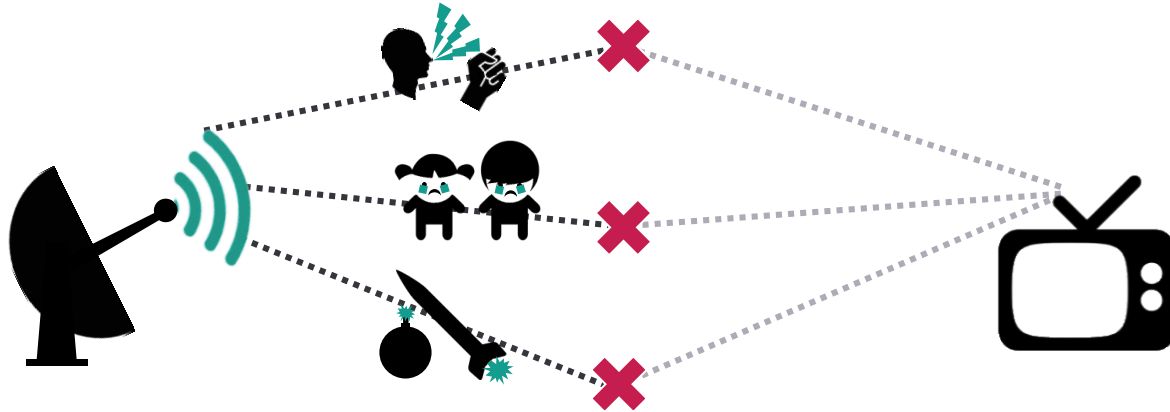
If needed, Commission may request further information within 1 month

2. Provisions applicable to AVMS

Derogation from the general provisions

Freedom of retransmission **Art. 3(1)**.

May be restricted by derogation in case of infringement of the obligations under Articles 6 and 6a, or prejudices public health or public security, **Art. 3(2) and (3)**.



2. Provisions applicable to AVMS

To sum it up ...

- The Country of Origin principle is maintained.
- Assessment criteria for the determination of the Member State of establishment are clarified.
- Measures for transparency and follow-up over the question of jurisdiction are introduced.
- Assessment process of Member States' restrictive measures by the Commission is detailed.

Overview

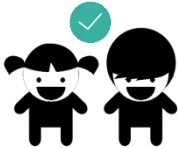
1. The regulatory frameworks of the audiovisual sector in Europe
2. **Provisions applicable to AVMS**
 - 2.1. The Country of origin under the new Directive
 - 2.2. **Obligations of AVMS**
3. Provisions applicable to video-sharing platforms
4. The regulatory environment
5. Next steps

Obligations of AVMS – Protection and accessibility



Protection of the public – Art. 6

- Scope extended beyond “race, sex, religion and nationality”, with regards to tackling hate & violence
- Provocation to commit a terrorist offence



Protection of minors – Art. 6a

Previously Articles 27 (linear) & 12 (non-linear)

- Processed personal data not to be used for commercial communication
- Describe harmful nature of content
- Self- and co-regulation through codes of conduct and exchange of best practices



Accessibility – Art. 7

- Regular reporting to regulators
- Communicate action plan to regulators
- Accessible online information and complaint mechanism

2. Provisions applicable to AVMS

The current findings of the EAO about the protection of minors

2010 Directive

Protection of minors

Degree of implementation

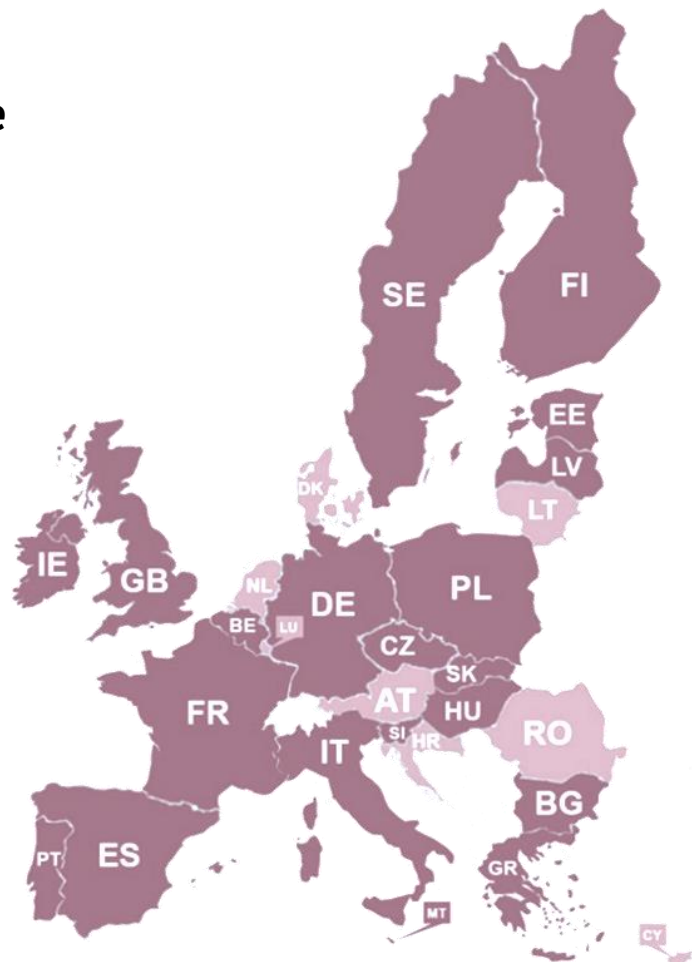


More detailed

Detailed restriction, hours, age categories, type of content (trailers, promotion), criteria of assessing suitability of programs



Neutral



Obligations of AVMS – rules on commercial communication

Programmes shouldn't be overlaid or altered for commercial purposes without explicit consent of AVMS providers, [Art. 7b](#).



Commercial communications – Art. 9

- Restrictions on tobacco extended to e-cigarettes (incl. sponsorship & product placement)
- Codes of conduct for alcohol commercial communication

Sponsorship – Art. 10

- States may prohibit sponsorship of children's programmes

Product placement – Art. 11

- Product placement is allowed except in news and current affairs, consumer affairs, religious and children's programmes
- VoD catalogues to be protected from influence of product placement

Obligations of AVMS – rules on commercial communication



- Between 6:00 and 18:00
- Between 18:00 and 24:00

Under the previous Directive of 2010

The proportion of television advertising spots and teleshopping spots **within a given clock hour** shall not exceed 20 %.




2. Provisions applicable to AVMS

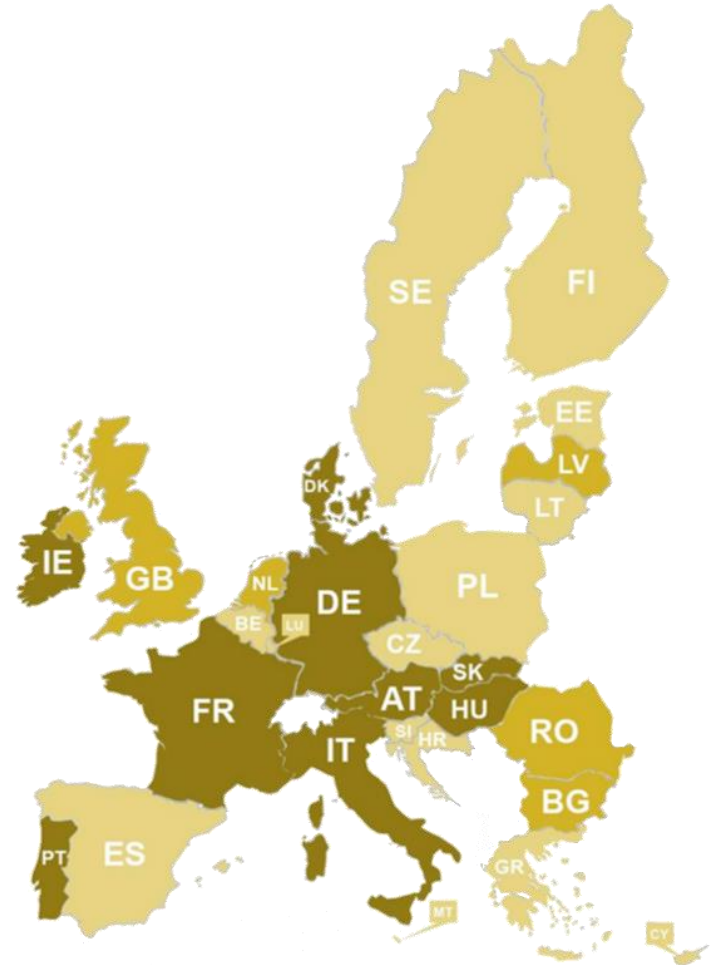
The current findings of the EAO about commercial communications

2010 Directive

Proportion of advertising and teleshopping spots

Degree of implementation

-  **Stricter**
Stricter rules include either or both a smaller hourly or daily proportion, restriction during certain days and hours
-  **Stricter in PSB**
-  **Neutral**



2. Provisions applicable to AVMS

The current findings of the EAO about commercial communications

2010 Directive Sponsorship

Degree of implementation



Prohibited

Stricter rules include either or both a smaller hourly or daily proportion, restriction during certain days/hours



Admitted



Admitted

More detailed rules on sponsorship of news and current affairs programmes



European Audiovisual Observatory's elaboration

2. Provisions applicable to AVMS

The current findings of the EAO about commercial communications

2010 Directive

Product placement

Degree of implementation



Admissible in all 28

- in cinematographic works, films and series, sports programmes and light entertainment programmes
- where there is only the provision of goods or services free of charge (production props and prizes)



2. Provisions applicable to AVMS

Promotion of European works – Linear services (Art. 16-17)

Obligations of broadcasters remain unchanged from the old Directive.



**of transmission time
to European works**



**of transmission
time/programming budget to
independent European works**

2.

Provisions applicable to AVMS

Minimum proportion of broadcasting time of European audiovisual works

 >50% (as in AVMSD)



 60%



2.

Provisions applicable to AVMS

Quota of broadcasting time for independent European works




-  Mandatory
-  Optional
-  No obligation



2.

Provisions applicable to AVMS

Financial investment by PSB in independent European works





-  **Mandatory**
-  **Optional (or quota)**
-  **Optional (or levy)**
-  **No obligation**

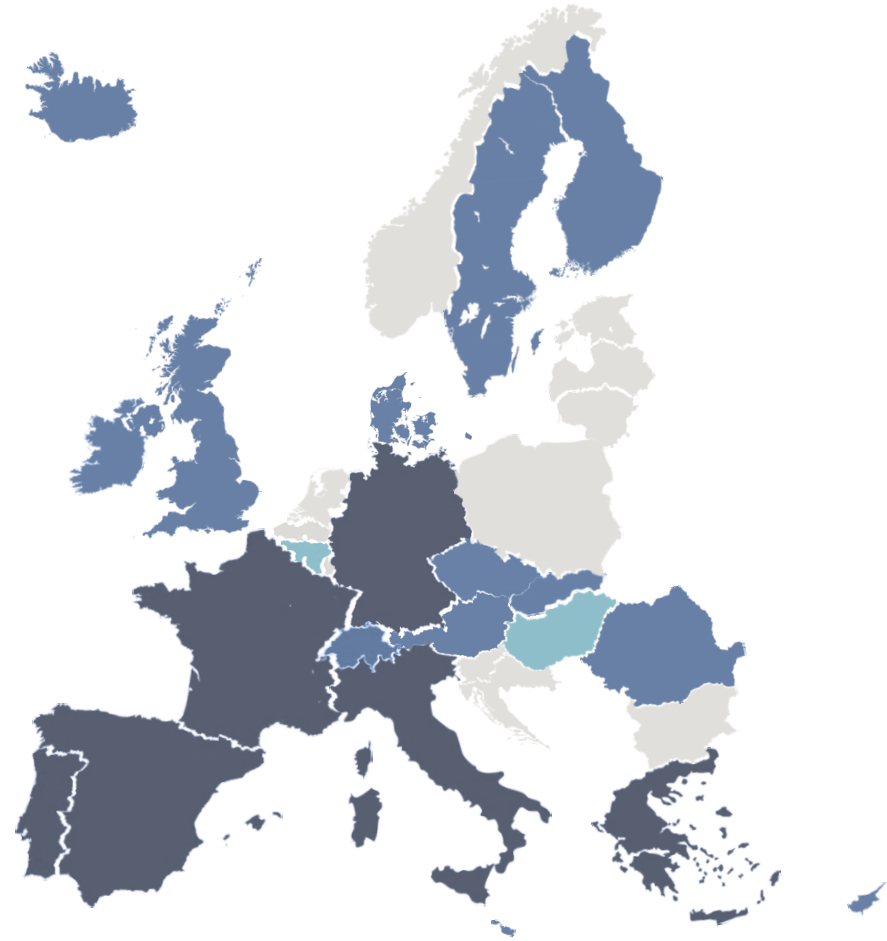


2.

Provisions applicable to AVMS

Financial investment by private broadcasters in independent European works

-  **Mandatory**
-  **Optional (or quota)**
-  **Optional (or levy)**
-  **No obligation**



2.

Provisions applicable to AVMS

Levies on public broadcasters

 **Mandatory**

 **Optional**

 **No obligation**



2.

Provisions applicable to AVMS

Levies on private broadcasters

 **Mandatory**

 **Optional**

 **No obligation**



Promotion of European works – VoD (Art. 13)



Minimum
share in
catalogues



Financial contribution:

- Production
- Direct investments
- National funds

Including targeting services

Under the previous Directive of 2010

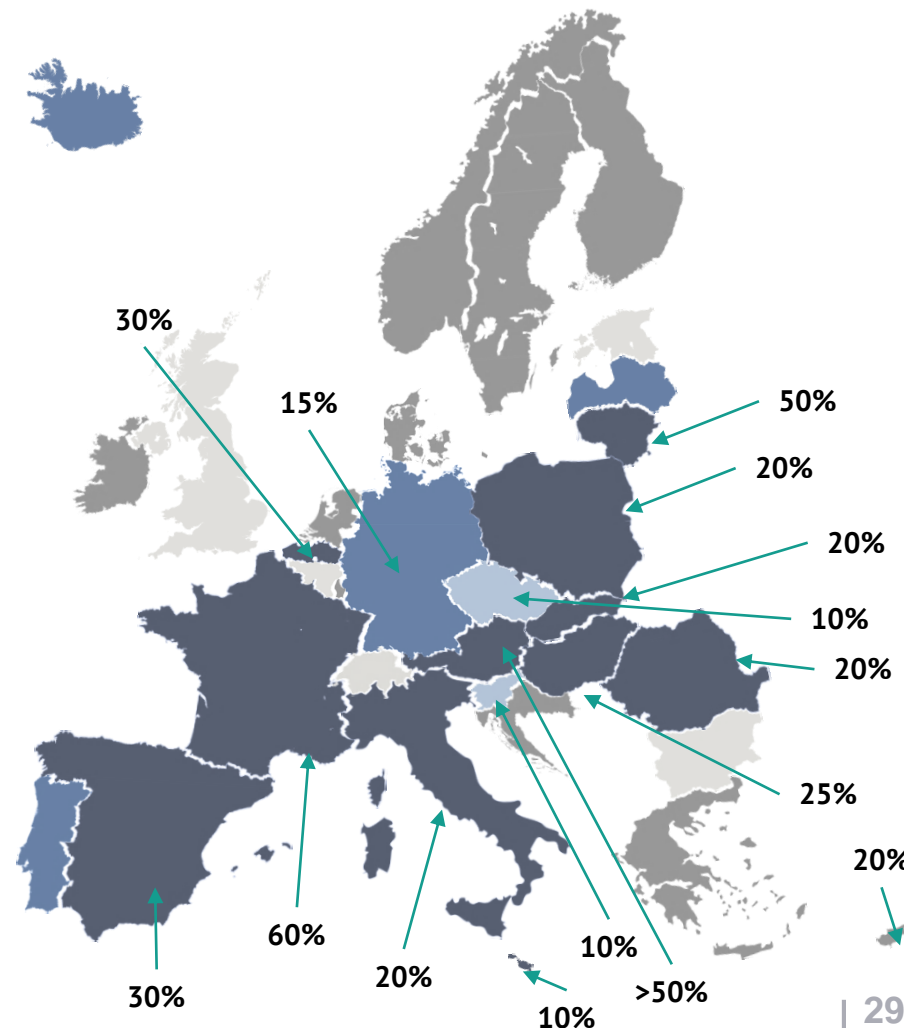
- Financial contribution to production/rights acquisition in European works
- Share of European works in VOD catalogues
- Prominence obligation

2.

Provisions applicable to AVMS

Quota obligation on VOD services

- Mandatory with a specified quota**
- Mand. without a specified quota**
- Optional (or investment)**
- General obligation**
- No obligation**



2.

Provisions applicable to AVMS

Level of financial investment by public VOD services in European works

Direct contribution to production or acquisition of rights

- Mandatory Investment**
- Optional (or quota)**
- General obligation**
- No obligation**



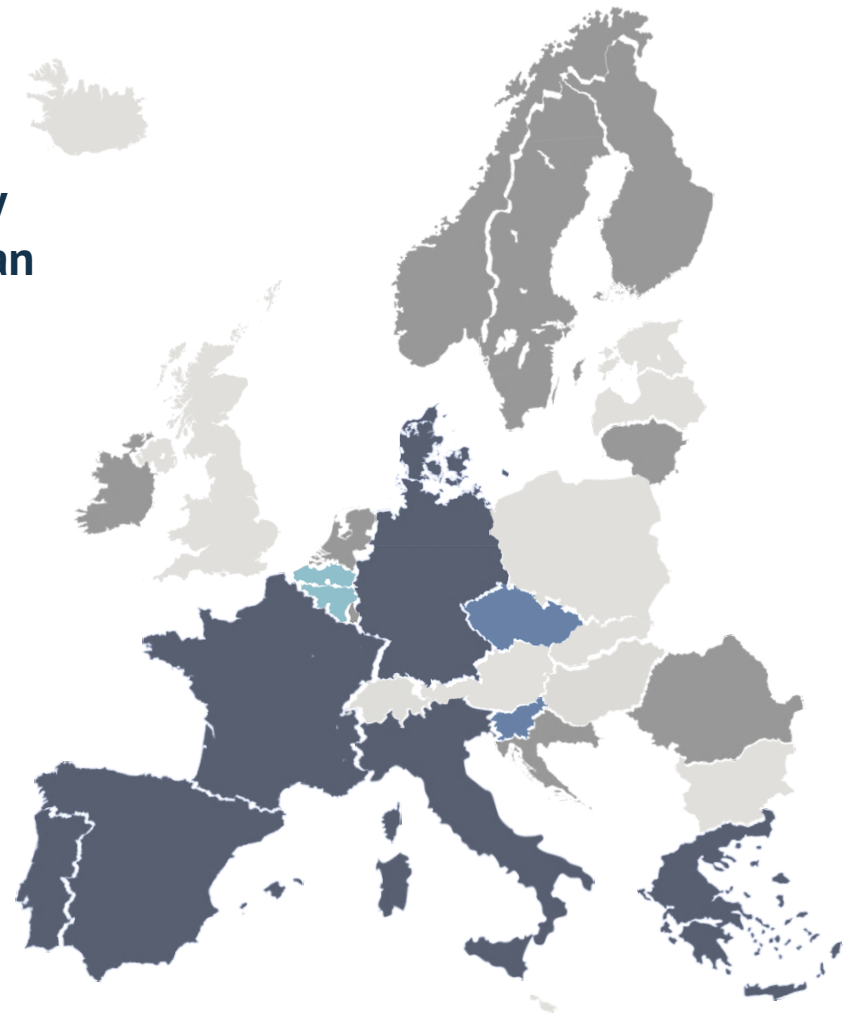
2.

Provisions applicable to AVMS

Level of financial investment by private VOD services in European works

Direct contribution to production or acquisition of rights

-  **Mandatory Investment**
-  **Optional (or quota)**
-  **Optional (or levy)**
-  **General obligation**
-  **No obligation**



Levies on VOD services

*Indirect contribution to production
or acquisition of rights*

- Mandatory (both public and private)**
- Optional (or investment for private)**
- No obligation**



2.

Provisions applicable to AVMS

Prominence obligation on VOD services

 Specific obligation

 General obligation

 No obligation



Overview

1. The regulatory frameworks of the audiovisual sector in Europe
2. Provisions applicable to AVMS
- 3. Provisions applicable to video-sharing platforms**
4. The regulatory environment
5. Next steps

3. Provisions applicable to video-sharing platforms

Definition – what is a **video-sharing platform**?

- Content **created by users**
- **VSP** provider has **no editorial responsibility**
- the **organisation of the stored content** is determined by the provider of the service
- by **automatic means** or **algorithms**
- Including by **displaying, tagging** and **sequencing**



Video-sharing platforms

3. Provisions applicable to video-sharing platforms

Establishment of and jurisdiction over VSPs

A VSP is under the jurisdiction of the Member State where it is:



- effectively **established** on its territory, **Art. 28a(1)**, or
- deemed to be established, by having a **parent** or a **subsidiary** undertaking or **part of a group with an undertaking established** on its territory, **Art. 28a(2)**.

Member States shall keep a list of VSP providers established on their territory, **Art. 28a (6)**.

3. Provisions applicable to video-sharing platforms

Obligations of video sharing platforms (1/5)

VSP shall take appropriate measures for the protection of:



Minors – Art. 28b(1)(a)

- Content which may impair their physical, mental or moral development



The public – Art. 28b(1)(b)-(c)

- Content inciting to violence or hatred
- Content which constitutes a criminal offence under EU law

3. Provisions applicable to video-sharing platforms

Obligations of video sharing platforms (2/5)



VSPs and commercial communications – Art. 28b(2)

Commercial communications marketed, sold or arranged:

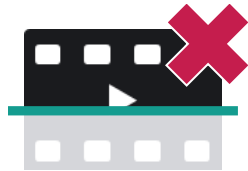
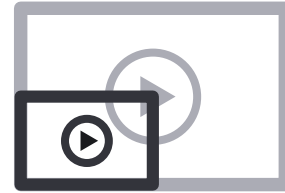
- by VSP providers → take appropriate measures to comply with Article 9(1)
- by users → take appropriate measures considering VSPs **limited control** over content

Fulfilling these obligation should be accomplished by using “appropriate measures”.

3. Provisions applicable to video-sharing platforms

VSPs limited liability

Such measures shall take into account the **size** of the VSP and the **nature** of the service, and ...



... “shall not lead to any **ex-ante control** measures or **upload-filtering** of content”...

... in accordance with Art. 15 of the **ecommerce Directive**.

3. Provisions applicable to video-sharing platforms

Appropriate measures to be implemented by VSPs include:



Terms and conditions



Indication of commercial communications in UGC



Reporting or flagging content



Feedback and transparency



Age-verification systems



Content rating



Parental control



Complaint resolution



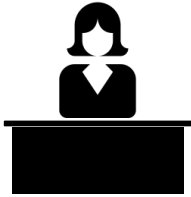
Media literacy



Protection of minors' data

3. Provisions applicable to video-sharing platforms

Dispute settlement



Out-of-court redress mechanisms for dispute settlement between users and VSPs.



Shall not deprive users of the legal protection granted by national law and their **right to bring their case before a court.**

Overview

1. The regulatory frameworks of the audiovisual sector in Europe
2. Provisions applicable to AVMS
3. Provisions applicable to video-sharing platforms
4. **The regulatory environment**
 - 4.1. **Rules regarding regulatory authorities**
 - 4.2. Self- and co-regulation
 - 4.3. ERGA and its missions
 - 4.4. Media literacy
5. Next steps

Regulatory authorities – Art. 30

- One or more regulatory authorities designated by MS with missions and functioning defined in law



Independence,
impartiality and
transparency



Adequate **resources** and
enforcement powers to
carry out missions



Effective **appeal**
mechanisms against
regulators' decisions

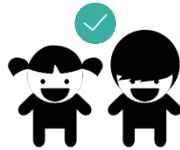
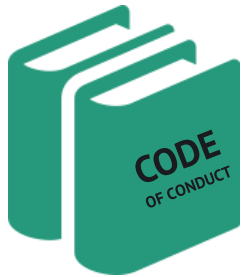
Responsibilities of regulatory authorities

- Exercise their powers in accordance with the Directive **Art. 30 (2)**
- Be entrusted with assessing the appropriateness of the measures set by VSPs to fulfil their obligations. **Art. 28b (5)**
- Communicate necessary information to other regulators and to the Commission for the application of rules on establishment, jurisdiction and retransmission. **Art. 30a**
- Contribute to the work of ERGA. **Art. 30 (4)**

Overview

1. The regulatory frameworks of the audiovisual sector in Europe
2. Provisions applicable to AVMS
3. Provisions applicable to video-sharing platforms
4. **The regulatory environment**
 - 4.1. Rules regarding regulatory authorities
 - 4.2. **Self- and co-regulation**
 - 4.3. ERGA and its missions
 - 4.4. Media literacy
5. Next steps

Self- and co-regulation – Art. 4a



Protection of
minors **Art. 6a**



Commercial
communications **Art. 9**



Responsibilities of VSPs
Art. 28b

Such codes should be accepted by main stakeholders, and:

- Set out clear objectives
- Provide for regular, transparent and independent monitoring and evaluation
- Effective enforcement including proportionate sanctions

Overview

1. The regulatory frameworks of the audiovisual sector in Europe
2. Provisions applicable to AVMS
3. Provisions applicable to video-sharing platforms
4. **The regulatory environment**
 - 4.1. Rules regarding regulatory authorities
 - 4.2. Self- and co-regulation
 - 4.3. **ERGA and its missions**
 - 4.4. Media literacy
5. Next steps

ERGA and its missions – Art. 30b

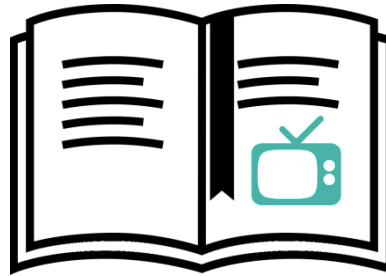


- provide technical expertise to the European Commission
- cooperate with MS for the application of the Directive
- provide an opinion, when consulted by the European Commission, on:
 - the jurisdiction of MS where MS fail to agree on the matter, for AVMS **Art. 2(5b)** and VSPs **Art. 28a(7)**.
 - the appropriateness of measures taken by MS against AVMS providers in case of repeated infringement of the Directive under Art. 3(2) and (3)
 - the appropriateness of measures taken by MS against AVMS providers in case of non-compliance with detailed or stricter rules laid down by MS under Art. 4(4)(c)
- help in the exchange of experiences and practices between regulators

Overview

1. The regulatory frameworks of the audiovisual sector in Europe
2. Provisions applicable to AVMS
3. Provisions applicable to video-sharing platforms
4. **The regulatory environment**
 - 4.1. Rules regarding regulatory authorities
 - 4.2. Self- and co-regulation
 - 4.3. ERGA and its missions
 - 4.4. **Media literacy**
5. Next steps

Media literacy – Art. 33a



- Member States shall promote and take measures for the development of media literacy skills.
- Report by 19 December 2022 and every 3 years.

Overview

1. The regulatory frameworks of the audiovisual sector in Europe
2. Provisions applicable to AVMS
3. Provisions applicable to video-sharing platforms
4. The regulatory environment
5. **Next steps**

Next steps

- **Implementation by 19 September 2020**
- **Reporting 2 years after the implementation and then every 3 years**
- **Evaluation 19 December 2026**

Thank you!

For any queries:
maja.cappello@coe.int

