



# Mapping of licensing systems for audiovisual media services in EU-28

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# **Mapping of licensing systems for audiovisual media services in EU-28**



# Foreword

Most areas of the media sector are well explored when it comes to national legal frameworks, and many of them are also well covered by comparative research. This is the case of various topics, ranging from the protection of minors and consumers, the fight against hate speech, and the promotion of European works, to media concentration and media pluralism, the independence of regulators and cooperation between them. However, in the case of the licensing practices of audiovisual media services, it is not easy to find work on the subject.

The European Audiovisual Observatory gladly accepted the challenge when the European Commission proposed to carry out a mapping in this field. We worked for a year with national experts in order to draft complete overview factsheets for each EU member state and a comparative cross-country analysis. This has allowed us to identify trends, gaps, and loopholes, but also best practices and good examples of what has been put in place by each member state with regard to spelling out the procedural rules to be followed by audiovisual media services providers wanting to offer their services in a given country.

What became immediately apparent from the start of our research, is that the lack of EU harmonisation of the rules on access to the audiovisual market has led to a wide variety of national models. It was impossible to even detect significant similarities between countries that in principle share geography, language or history. The diversity in the rules is also reflected in the variety of institutional solutions, where ministries and media regulators appear in different constellations, with different sets of tasks and responsibilities. This scattered picture made the exploration extremely interesting.

It has been very enriching to come to understand in concrete terms how strong the legislative heritage for each country is. In other terms, the way each national market was set up in post-war times has also become a determining factor for its evolution: even today, those countries where geography has led to the development of certain technologies tend to remain shaped for terrestrial, cable or satellite services, dependent on their history; In other circumstances, where the legislative evolution has developed more randomly, with layers of laws and bylaws adopted without repealing previously existing legislation, pieces of legislative frameworks also happen to be outdated and to conflict with each other; And what has also been interesting to detect, is that certain technologies and services have somehow been set aside in a number of countries, with the consequence of unfortunate transpositions of the rules made for linear services directly to the non-linear context.

And lastly, there is the supranational dimension. Audiovisual media services are becoming ever more cross-border, and the means by which to assess jurisdiction and ensure monitoring over the channels available in each country are sometimes quite difficult to identify: just think of different linguistic versions of the same channels, advertising and programming windows targeting other countries than the one of establishment, or adaptations to on-demand catalogues for different audiences. We have

discovered cases of double licensing across countries, but also vast cemeteries of channels that are no longer operational, and services that no country is formally aware of. This indicates that in both cases they have, to a certain extent, been forgotten by the system.

This extremely fascinating journey would not have been possible without a safety-net of controllers. This kind of research is very risky, considering the complexity of the rules, which is why, on top of the work of our national experts, the national factsheets have been checked by a network of correspondents working for the national media regulators within the European Platform of Regulatory Authorities (EPRA), to whom I extend my thanks. I would also like to thank the representatives of the governments within the Contact Committee set up by the Audiovisual media services directive, who gave the whole report a global read, and helped sort out some final inaccuracies.

This exchange with the public institutions currently working on licensing issues has been extremely valuable, and has allowed the Observatory to enhance its research with the eyes of the practitioners.

And last, but not least, a warm thank you to Jean-François Furnémont, partner at Wagner-Hatfield, for his thorough and patient work with us during the whole project.

Strasbourg, July 2018

**Maja Cappello**

Head of the Department for Legal Information  
European Audiovisual Observatory

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The report and the national factsheets were authored by Jean-François Furnémont, Founding Partner of Wagner-Hatfield.

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# 1. Executive summary

## 1.1. Project Objective

The objective of this research is to provide both a mapping and a description of licensing and related systems for audiovisual media services (hereinafter AVMS) in the European Union as well as to realise a comparative analysis on the functioning of these various systems.

The different systems that have been put in place by the member states for the licensing and registration/notification of AVMS, both linear and non-linear, usually provide important information to determine which member state holds jurisdiction over AVMS and to avoid/resolve negative or positive conflicts of competence in case of unclear connection criteria for determining jurisdiction. Even though recital 20 of the AVMS Directive provides that *“no provision of this Directive should require or encourage Member States to impose new systems of licensing or administrative authorisation on any type of audiovisual media service”*, these systems often provide regulatory authorities with detailed information regarding market actors and market conditions in the audiovisual media sector, which is essential to monitor and ensure compliance with the Directive provisions.

Furthermore, a proper understanding of how these systems work in practice is particularly important in order to ensure a consistent classification of the various AVMS within the MAVISE database on linear and non-linear AVMS and companies in Europe.<sup>1</sup> The research therefore also includes an analysis which shall serve to determine the feasibility of introducing potential upgrades to the MAVISE database in light of the current revision process of the AVMS Directive.

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<sup>1</sup> <http://mavise.obs.coe.int/welcome>.



## 1.2. Key Findings

### 1.2.1. An evident lack of research

There is usually an abundance of research in the audiovisual sector on the various issues which are dealt with by the European and/or the national regulatory frameworks, such as the protection of minors, the protection of consumers, the fight against hate speech, the promotion of European works, media concentration and media pluralism, the independence of regulators and cooperation between them, etc.

However, when it comes to the way AVMS providers obtain access to the market, there is an almost complete lack of research. EPRA (European Platform of Regulatory Authorities) which brings together the public bodies usually in charge of granting licences to AVMS providers and/or acknowledging receipt of their registration/notification, has until recently only rarely dealt with this issue since its establishment more than 20 years ago. For instance, the specific issue of DTT licensing was the topic of a plenary session at the 32<sup>nd</sup> EPRA meeting in Belgrade in October 2010,<sup>2</sup> However, it was only in 2017 that the issue appeared in EPRA's annual work programme with a working group at the 45<sup>th</sup> meeting in Edinburgh in May 2017 (whose goal was to identify and discuss best practices as well as the practical difficulties encountered by regulatory authorities in the field of licensing linear AVMS)<sup>3</sup> and another one at the 46<sup>th</sup> EPRA meeting in Vienna in October 2017 (which focused on the concrete challenges of notifying and registering non-linear AVMS, as well as on the challenges of a widened regulatory scope and of reinforced cooperation between regulators, giving the Observatory the opportunity to present the first preliminary findings of this mapping).<sup>4</sup> Desk research was also fruitless, and this has of course influenced the methodology described in the following chapter.

### 1.2.2. A significant variety of systems

Almost thirty years after the adoption of the Television Without Frontiers Directive (Directive 89/552/EEC, now replaced by Directive 2010/13/EC – Audiovisual Media Service Directive), the issue of access to the market remains non harmonised and this explains why, contrary to the practice for other coordinated issues, there are no wide similarities between national legislations.

As a first conclusion of the mapping, this lack of harmonisation has led to a wide diversity of models. Furthermore, we note that differences can be found even between countries which have geography and/or language and/or history in common, such as, for example, France and Belgium, Germany and Austria, Croatia and Slovenia, Sweden and

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<sup>2</sup> <https://www.epra.org/attachments/belgrade-plenary2-dtt-comparative-background-paper>.

<sup>3</sup> <https://www.epra.org/meetings/edinburgh-45th-epra-meeting>.

<sup>4</sup> <https://www.epra.org/meetings/vienna-46th-epra-meeting>.



Finland or the Baltic States. Some frameworks do indeed share common features, but all of them have their specific aspects.

### 1.2.3. An important variety in the role of regulators

The lack of harmonisation in terms of licensing or related systems contributes to considerable variety also in the role of regulatory authorities. This can be explained also by the lack of harmonisation in the AVMS Directive in terms of the remit of national regulatory bodies.

This role can be very limited in some countries such as Luxembourg or Spain (at least at national level), whereas in other countries, the regulators enjoy full jurisdiction over this matter, which includes, in some cases, the mission to licence the AVMS of the public service media, as is the case in Latvia or Slovenia, or the capacity to significantly influence the perimeter of activities of the public service media, as in Hungary.

### 1.2.4. The important influence of the historical context

When looking more in depth at all the details of the licensing and registration/notification procedures and at all their variations depending on the type of AVMS or the distribution platform, it appears that in a significant number of cases, these procedures are less characterised by a comprehensive approach of licensing and registration/notification than by the way history has progressively shaped each domestic market. In other words, each national system is unique and is the result of specific domestic (cultural and/or technological) circumstances which shaped the legal framework through successive layers of legislative modifications and cumulative (and sometimes conflicting) laws and bylaws, without any common trends or approaches between countries and without obvious rationality. This can be illustrated for example by the following:

- some frameworks still remain shaped for terrestrial broadcasting and do not take other platforms and their main specificities into consideration, especially the fact that there is no scarcity of resources on these platforms; this is, for example, the case in Cyprus and Estonia, where the beauty contest system used for terrestrial broadcasting is also applied to licensing on other platforms where resources are not scarce;
- some frameworks appear to leave the IPTV platform developed by the incumbent telecom operator out of the regulatory radar; this is, for example, the case in Greece;
- some frameworks are applied in the same way to access a platform where resources are most scarce (DTT) and platforms where resources are least scarce (satellite and OTT), as is the case in Cyprus;
- some frameworks have simply applied the linear system into the non-linear environment, as in Croatia;



- on the contrary, ten years after the adoption of the AVMSD, some frameworks still do not appear to have any consideration at all (or very little) for the non-linear environment, like in Ireland.

### 1.2.5. Several outdated and sometimes conflicting frameworks

The last key finding, which has made the elaboration of this mapping more difficult than expected, is the lack of consolidation of the legal framework in several cases. This has led us to encounter situations such as:

- the presence, in some cases, of several outdated laws which should have been abolished but which are still part of the legal system (Greece and Slovakia);
- the presence, in some cases, of several conflicting laws providing for different licensing systems for the same types of AVMS (Greece);
- the presence, in some cases, of analogue licensing procedures and/or valid analogue licenses, even though the European Commission recommended the date of 1 January 2012 as the switch-off date<sup>5</sup> and the Geneva agreement fixed the final deadline at 17 June 2015<sup>6</sup> (Romania and Ireland).

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<sup>5</sup> <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32009H0848>.

<sup>6</sup> <https://www.itu.int/pub/R-ACT-RRC.14-2006>.



## 2. Methodology

### 2.1.1. Collection and verification of data

In the absence of research on this issue, the methodology has been developed around one foundation, which is the collection of legal information about the systems in place in each member state and of practical information on the way they are implemented.

The methodology adopted by the Observatory can be summed up as follows:

- the choice of an international expert to provide assistance throughout the mapping;
- the choice of a pool of national experts; these national experts have been deliberately selected outside the national regulators (mainly academics and independent researchers and consultants) in order to allow the cross-checking of the gathered information by those who are in charge of implementing the respective regulatory authorities' regulations;
- the elaboration of a standardised questionnaire to be filled in by each national expert; one questionnaire per country was completed, with the exception of Belgium, where a questionnaire was completed for both the French and the Flemish Communities.

The questionnaire aimed at identifying:

- the existing systems and the authorities in charge of licensing or related systems (section 1);
- the attribution procedure itself (section 2);
- the rules governing the different licensed AVMS (section 3);
- the management of the licence by AVMS providers (section 4);
- any future amendments foreseen to the current frameworks (section 5).

On this foundation, the Observatory, with the assistance of the international experts, has elaborated a national factsheet for each member state (two for Belgium). These factsheets have been checked by the national experts; in order to avoid any discrepancies between theory and practice, they have also been cross-checked by the national regulators.

The factsheets are structured along 13 sections:

- section 1 provides a brief summary, allowing an overview of the different systems in place and the actors involved;



- section 2 details the overall functioning of the applicable systems (which systems are applied and in what ways; which authorities are involved for each system and in what ways; what happens in cases where access to the market is not granted);
- sections 3 to 6 go deeper into the details of the procedures for the 4 categories of AVMS providers, respectively: public, private (commercial), regional/local and community (non-profit). The reader will find in these sections relevant information about the different steps in the procedure; the applicable deadlines; the content of the application; the criteria used to choose between applicants (for example, in the case of a beauty contest); the deadline to provide the service, etc.
- section 7 deals with the issue of the licence fee, if any: the amount; how this amount is calculated and paid; which institution is the beneficiary; what the fee covers; what the exemptions are, etc.
- section 8 gives information about the ways in which media ownership and concentration issues are taken into consideration during the licensing or related processes;
- section 9 addresses issues related to the management of the licence: its duration; how it can be renewed; how it can be suspended or revoked; how it can be modified; what it becomes in case of termination of the service, etc. This section also deals with important issues regarding the management of the MAVISE database, these being situations whereby different linguistic versions of an AVMS exist; different advertising or programming windows are inserted in a linear AVMS; and also where there are adjustments to the catalogue with new or different titles of a non-linear AVMS.
- section 10 provides information, if any, regarding potential future amendments to the regulatory framework which are currently being discussed or debated in each country;
- section 11 provides information, if any, regarding the extension of the scope of the AVMS Directive to video-sharing platforms and the potential application of licensing or related systems to these types of platforms and/or to services hosted on these platforms but which are not defined as AVMS (such as user-generated content, vlogs, etc.);
- section 12 provides all the links to the relevant primary and secondary legislation, in the national language and, where available, in English. When provided, the English translations shall not be considered as official translations.

## 2.1.2. Comparative analysis

As already mentioned, one of the key findings of this mapping is the extreme variety of ways in which AVMS providers are granted access to the market depending on the member state concerned.

The main challenge of the comparative analysis was therefore to strike a balance between reflecting this diversity of approaches and allowing for comprehensive comparisons. Therefore, in several cases, the national system which had been described by the national expert has been interpreted in order to fit it into a limited series of



categories. In any event, the combination between the comparative analysis and the national factsheet will allow the reader to have an overall view of the existing systems throughout the European Union, and to also have access to more detailed and refined information in the respective national factsheets.

On preparing the comparative analysis, the Observatory suggested to the national experts in the questionnaire submitted to them that they classify the various systems into four categories, which were, in this first stage, defined as follows:

- “Licensing” was considered as any system in which the competent authority (government, regulatory authority - hereinafter RA, etc.) has the opportunity to decide to grant or to refuse to grant a licence to the natural or legal person who applies for a licence. This opportunity is usually based on content criteria (such as commitments in terms of programming or investment, the amount proposed for the auction, etc.). This would cover, for example, situations usually described as tender, beauty contest, auction, licence, individual authorisation, etc.
- “Registration” was considered as any system in which the competent authority (government, regulatory authority, etc.) does not have the opportunity to refuse access to the market to the natural or legal person who files for registration as long as basic formal criteria are met. This would therefore include situations in which the registration could potentially be refused, but based exclusively on formal criteria (such as providing the requested information about the person, being established in the country, having the appropriate legal status, etc.). This would cover, for example, situations usually described as registration, notification, general authorisation, first-come-first-served, etc.
- “Open” was considered as any system in which AVMS providers can have access to the market with no obligation of any kind to signal to the competent authority (government, regulatory authority, etc.) that it has launched an AVMS. In such cases, the full burden of detecting and identifying the AVMS providers would be borne by the competent authority.
- “Another system” was considered as any system not falling under the three previous categories.

This categorisation has resisted the collection of data but has led the Observatory to adapt it on some aspects in order to better the aforementioned variety:

- the “licensing” system has been refined and divided into four categories:
  - beauty contest;
  - auction;
  - individual licence;
  - formal licence;
- the “another system” has been renamed as “public service”, considering the fact that all the situations which were considered as not falling under the “licensing”, “registration” and “open” system were indeed related to public service media; it has also been refined and divided into four categories:



- law;
- law & statute;
- law & contract;
- other agreements;
- some elements of the initial definitions have been modified in order to reflect this amended categorisation as well as to reflect practices put in place by regulatory bodies.

The detailed definitions used for the comparative analysis are provided in the next chapter.



## 3. Comparative analysis

### 3.1. Applicable systems

The process of collecting and verifying data set up for this research on AVMS licensing and related systems in the EU-28 has led to the conclusion that, for the purpose of this mapping, access to the market by AVMS providers can be provided according to four main systems and ten categories which can be defined as follows:

- **licensing** is any system whereby the competent authority (that is to say, either the government or the regulatory authority) has the opportunity to decide to grant or to refuse to grant a licence to the natural or legal person who applies for it, and where such access to the market is granted for a limited term. Four categories have been identified:
  - beauty contest, where a licence is granted to an applicant after a competition with other applicants in the framework of a public tender and where the choice between the applicants is made on the basis of the commitments they make (usually in terms of programming and their contribution to pluralism and the diversity of the offer) in reply to the public tender. This usually implies the privilege of using a scarce resource such as DTT frequencies;
  - auction, where a licence is granted to an applicant after a competition with other applicants in the framework of a public tender, and where the choice between the applications is made on the basis of the amount of money they commit to paying for being awarded a licence. This also usually implies the privilege of using a scarce resource such as DTT frequencies;
  - individual licence, where an applicant is not in a competition with other applicants but is judged on the merits of its own application (usually in terms of programming and its contribution to pluralism and the diversity of the offer), without being compared with other potential applicants since it does not imply the privilege of using a scarce resource;
  - formal licence, where an applicant is granted a licence automatically upon the fulfilment of basic formal conditions (such as providing the requested legal information about the applicant, being established in the country, having the appropriate legal status, etc.). This is almost a notification system, except that refusing to grant a licence remains possible (even if usually theoretical) and that the licence remains granted for a limited term (contrary to the notification, which is unlimited).



- **registration/notification** is any system whereby the competent authority does not have the opportunity to refuse access to the market to the natural or legal person who files for registration as long as basic formal criteria are met. This would therefore include situations in which the registration can potentially be refused, but exclusively on very specific formal criteria (such as providing the requested legal information about the person, being established in the country, having the appropriate legal status, etc.). The main difference with formal licences lies in the fact that such a registration/notification has no limited term since no licence is delivered; the registration/notification is simply acknowledged by the competent authority. Registration and notification are the terms which are the most commonly used and, for the purpose of this mapping, no theoretical difference is made between them and we will simply use the term “notification”;
- **public service** is any system whereby a specific law adopted by parliament has initially created the public service media and where, in application of this law, a specific contract might also be concluded between the government and the public service media provider in order to detail the obligations of both parties and to frame the various linear and/or non-linear offers of the public service media to the viewers. Four categories have been identified:
  - law, where there is no framework other than the one established by law;
  - law & statute, where the law is supplemented by a self-regulatory system;
  - law & contract, where the law is supplemented by an additional regulatory layer, that is to say, a contract (or any other similar document) concluded between the public service media and the government;
  - other agreements, where any other system has been set up (usually with more than two regulatory layers in place or with governmental licences, such as in France and in the United Kingdom);
- **open system** is any system whereby the AVMS provider can launch an AVMS with no obligation of any kind to signal its existence to the competent authority. In such cases, the burden to detect and identify the AVMS and its provider would be fully borne by the competent authority; however, the competent authority can set up specific tools, such as a self-logging platform, in order to facilitate the identification of the players present on the market.

**Table 1. Summary of the applicable systems and categories**

System	Category
Licensing	Beauty contest
	Auction
	Individual licence
	Formal licence
Notification	N/A
Public service	Law
	Law & statute



	Law & contract
	Other agreements
Open system	N/A

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

In its four various forms, a licensing system is present in almost every member state (28 cases out of 29), the only exception being Hungary, where public service media is subject to a specific system (public service system) and where all private, regional/local and community/non-profit AVMS have access to the market via a notification system.

Notification is present in the vast majority of member states (24 cases out of 29), the five exceptions being:

- Cyprus and Croatia, where all non-public linear and non-linear AVMS have to be licensed;
- Germany and Ireland,<sup>7</sup> where all non-public linear AVMS have to be licensed and all non-public non-linear AVMS benefit from an open system;
- Greece, where non-public linear and non-linear AVMS either have to be licensed or benefit from an open system.

In its various forms, public service is also present in the vast majority of member states (23 cases out of 29), the six exceptions being:

- Bulgaria, Latvia, Romania, Slovenia and Slovakia, where public service AVMS have to be licensed by or notified to the regulatory authority;
- Luxembourg, where there is no public service media.

Open system is not present in two thirds of the member states (20 cases out of 29). Such a system is only present in:

- Belgium – Flemish Community, where it is applicable only to community AVMS;
- Germany, Denmark and Ireland<sup>8</sup>, where it is applicable to non-public non-linear AVMS;
- France, Greece and Italy, where it is applicable to specific categories of linear and non-linear AVMS;
- Malta, where it is applicable to certain non-linear AVMS;
- Poland, where it is applicable to public and non-public non-linear AVMS.

**Table 2. Systems applied in the member states**

	Licensing	Notification	Public service	Open system
AT	■	■	■	
BE FR	■	■	■	

<sup>7</sup> Regarding Ireland, see the uncertain situation explained in section 4.17.1.

<sup>8</sup> Regarding Ireland, see the uncertain situation explained in section 4.17.1.



BE NL	■	■	■	■
BG	■	■		
CY	■		■	
CZ	■	■	■	
DE	■		■	■
DK	■	■	■	■
EE	■	■	■	
ES	■	■	■	
FI	■	■	■	
FR	■	■	■	■
GB	■	■	■	
GR	■		■	■
HR	■		■	
HU		■	■	
IE	■		■	■
IT	■	■	■	■
LT	■	■	■	
LU	■	■		
LV	■	■		
MT	■	■	■	■
NL	■	■	■	
PL	■	■	■	■
PT	■	■	■	
RO	■	■		
SE	■	■	■	
SI	■	■		
SK	■	■		

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

## 3.2. Functioning of the applicable systems

### 3.2.1. The types of systems

#### 3.2.1.1. Licensing

Licensing remains the system most frequently used by the member states. It is present in all member states but Hungary.

The breakdown in usage of the categories of licensing systems is the following:

- beauty contest: 18 cases out of 28;
- auction: 2 cases out of 28;
- individual licence: 14 cases out of 28;
- formal licence: 10 cases out of 28.



The beauty contest system is almost exclusively used for AVMS distributed via DTT. The main exception is Cyprus, where it applies to all AVMS. The auction system is very rare: it is present only in Greece and partly in Poland (combined with a beauty contest, and only in a potential second phase of the licensing procedure). The individual licence and formal licence systems are used rather frequently, and usually for AVMS distributed via means other than DTT (cable, IPTV, satellite, OTT), as well as for AVMS distributed via DTT when access to the DTT platform is not granted by the state but by the network operator. The mapping does not allow us to identify the reasons (or even broad common trends) that motivate a member state to choose between a procedure consisting in granting an individual licence and a procedure of formal licensing.

Licensing almost exclusively applies to private linear AVMS. The two types of exceptions to this general rule are:

- private non-linear AVMS: Cyprus (where non-linear AVMS also have to be licensed) and Croatia and Romania (where non-linear AVMS distributed via DTT also have to be licensed);
- public AVMS: Bulgaria, Latvia, Romania, Slovenia and Slovakia, where public AVMS have to be licensed by (usually for linear) or notified to (usually for non-linear) the regulatory authority, depending on the applicable system.

**Table 3. Categories of licensing system applied in the member states**

	Beauty contest	Auction	Individual licence	Formal licence
AT				■
BE FR				■
BE NL				■
BG	■		■	
CY	■			
CZ				■
DE			■	
DK	■			
EE	■		■	
ES	■			
FI	■			■
FR	■		■	
GB	■		■	
GR		■	■	
HR	■			■
HU				
IE	■		■	
IT				■
LT	■		■	
LU	■			
LV	■		■	
MT			■	
NL				■



PL	■	■	■	
PT	■		■	
RO	■		■	
SE	■			
SI	■			■
SK			■	■

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

### 3.2.1.2. Notification

Notification is also a system frequently used by the member states. It is present in all member states, except for Cyprus, Germany, Greece, Croatia and Ireland.

Notification is usually used for non-linear AVMS (22 cases) but it can also apply to linear AVMS (13 cases), mainly in the following circumstances:

- for AVMS distributed via DTT when access to the platform is not granted by the state but by the network operator;
- for AVMS distributed via other means than DTT, and especially for AVMS distributed via OTT.

Notification applies to all non-public AVMS (private, regional/local and community) in only one case, that is to say, in Hungary.

The main specificity of a notification system is that notifications, contrary to licences, have no limited term. There is, however, one exception to this: in Italy, where notifications have a limited term of 12 years.

**Table 4. Application of a notification system in the member states**

	For linear services	For non-linear services
AT	■	■
BE FR	■	■
BE NL	■	■
BG	■	■
CY	Licensing	Licensing
CZ	Licensing	■
DE	Licensing	Open system
DK	■	Open system
EE	Licensing	■
ES	■	■
FI	■	■
FR	Licensing	■
GB	Licensing	■
GR	Licensing or open system	Open system
HR	Licensing	Licensing
HU	■	■



IE	Licensing	Open system
IT	Licensing or open system	■
LT	■	■
LU	■	■
LV	Licensing	■
MT	Licensing	■
NL	Licensing	■
PL	■	Open system
PT	■	■
RO	Licensing	■
SE	■	■
SI	Licensing	■
SK	Licensing	■

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

### 3.2.1.3. Public service

Public service is the system most frequently used by the member states to grant public service media providers access to the market. It is present (exclusively or partly) in 23 cases out of 29 with 6 exceptions: Bulgaria, Latvia, Romania, Slovenia and Slovakia, where all public service AVMS have to be licensed by or notified to the regulatory authority; and Luxembourg, where there is no public service media.

The breakdown in the usage of the four categories identified is the following:

- law: 12 cases out of 23;
- law & contract: 6 cases out of 23;
- law and statute: 1 case out of 23;
- other agreements: 4 cases out of 23 .

The other agreements mainly consist in the following situations, which have in common a greater role played by the government:

- licences granted by the government for each AVMS (Malta and partly – only for linear AVMS – Sweden);
- several regulatory layers where both the government and the regulatory authority play specific roles, including the granting of a general licence by the government (France – where law is also involved but not significantly – and the United Kingdom).

Public service is usually combined with some form of legal pre-emption for the presence of public AVMS on the DTT platform, which is granted either by the government and/or the regulatory authority and/or the telecommunications authority. The only exceptions to this are Austria and Germany, but, in practice, this lack of legal pre-emption does not make any difference as regards the privileged distribution of public AVMS on the DTT platform.



**Table 5. Categories of public service systems applied in the member states**

	Law	Law and contract	Law and statute	Other agreements
AT	■			
BE FR		■		
BE NL		■		
BG	Licensing by or notification to the RA			
CY	■			
CZ	■			
DE			■	
DK		■		
EE	■			
ES	■			
FI	■			
FR				■
GB				■
GR	■			
HR	■			
HU	■			
IE	■			
IT		■		
LT	■			
LU	No public service media			
LV	Licensing by the RA			
MT				■
NL		■		
PL	■			
PT		■		
RO	Licensing by or notification to the RA			
SE				■
SI	Licensing by or notification to the RA			
SK	Licensing by or notification to the RA			

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

#### 3.2.1.4. Open system

The open system is by far the least used system. It is only present in the following nine cases:

- Belgium – Flemish Community, where it is only applicable to community media;
- Germany, Denmark and Ireland<sup>9</sup>, where it is applicable to non-public non-linear AVMS;
- France, Greece and Italy, where it is applicable to specific categories of linear and non-linear AVMS;

<sup>9</sup> Regarding Ireland, see the uncertain situation explained in section 4.17.1.



- Malta, where it is applicable to certain non-linear AVMS;
- Poland, where it is applicable to public and non-public non-linear AVMS.

This system implies that an AVMS provider can launch an AVMS with no obligation of any kind to signal its existence to the competent authority; in such cases, the burden of detecting and identifying the AVMS and its provider is therefore fully borne by the competent authority.

Yet, it is worth mentioning the specific situation in Poland, where non-linear AVMS providers, once they have launched their activity, are obliged to submit annual reports to the KRRiT on compliance with their legal obligations. In order to facilitate the fulfilment of this obligation, the KRRiT has developed a self-logging platform for these providers.<sup>10</sup>

### 3.2.2. The authorities in charge

If we exclude public AVMS whose specific situation was detailed earlier (see section 3.2.1.3), in the vast majority of cases (23 out of 29) the competent authority for granting non-public AVMS access to the market is exclusively the national regulatory authority. In six cases, a specific division of competencies applies:

- Belgium (French and Flemish Communities), where the regulatory authority and the government share the competence depending on the type of AVMS;
- Spain, where the national government and the competent regional authorities (regional government or regional regulatory authority) share the competence depending on the national or regional character of the AVMS;
- Finland, where the licensing procedure shall be transferred from the regulatory authority to the government in certain circumstances, and where AVMS shall also be notified to KAVI, the institute in charge of monitoring the compliance with rules regarding the protection of minors;
- Italy, where the regulatory authority and the government share the competence depending on the means used to distribute the AVMS;
- Luxembourg, where the competence lies fully in the hands of the government.

With regard to compliance, regulatory authorities are competent in all cases. The only partial exception is Spain, where the competence regarding compliance lies in the hands of the regional government in the Autonomous Communities, where there is no regional regulatory authority.

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<sup>10</sup> <https://www.krrit.gov.pl/dla-nadawcow-i-operatorow/audiowizualne-uslugi-medialne-na-zadanie/platforma-do-logowania-dla-dostawcow-uslug-na-zadanie/>.



**Table 6. Competent authority for granting access to the market to non-public AVMS and for ensuring compliance with their obligations**

	Granting access	Ensuring compliance
AT	RA	RA
BE FR	RA (private and community AVMS) Government (regional/local AVMS)	RA
BE NL	RA (private and community AVMS) Government (regional/local AVMS)	RA
BG	RA	RA
CY	RA	RA
CZ	RA	RA
DE	RA	RA
DK	RA	RA
EE	RA	RA
ES	Government (national AVMS) Competent regional authority (regional AVMS)	RA (national AVMS) Competent regional authority (regional AVMS)
FI	RA Government (if scarcity or significant effect)	RA (and KAVI)
FR	RA	RA
GB	RA	RA
GR	RA	RA
HR	RA	RA
HU	RA	RA
IE	RA	RA
IT	Government (linear AVMS via DTT and cable) RA (all other services)	RA
LT	RA	RA
LU	Government	RA
LV	RA	RA
MT	RA	RA
NL	RA	RA
PL	RA	RA
PT	RA	RA
RO	RA	RA
SE	RA	RA
SI	RA	RA
SK	RA	RA

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

### 3.2.3. Summary table

The following table provides a summary by mentioning the most frequent systems, as well as, in brackets, the most frequent alternative. However, this table should be read



with the caveat that the wide variety of licensing and related systems as well as the diversity in which they are implemented by the competent authorities makes it difficult to summarise all the information in a comprehensive table.

For the two different types of AVMS (linear and non-linear) and the five different types of distribution means (DTT, cable, IPTV, satellite and OTT), the table provides the most frequently used system; the competent authority in terms of the management of the licensing and related systems; and the competent authority in terms of the compliance with the licence and related conditions and obligations. It also gives an overview of the differences between public, private, regional and community media.

**Table 7. Summary of the most frequent licensing and related systems**

Type of AVMS	Type of distribution mean										Competent authority	Compliance	
	Linear					Non-linear							
	DTT	CA B	IPT V	SA T	OTT	DT T	CA B	IPT V	SA T	OTT			
<b>Public</b>	<i>Mainly public service (or individual or formal licence)</i>										<i>Mainly GOV (or RA)</i>	<i>Mainly RA (or self-regulation)</i>	
<b>Private</b>	<i>Mainly beauty contest (or individual or formal licence)</i>	<i>Mainly individual licence or formal licence (or notification)</i>					<i>Mainly notification (or open system)</i>					<i>Mainly RA (or GOV)</i>	<i>RA</i>
<b>Regional</b>													
<b>Community</b>													

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

### 3.3. Application to public audiovisual media service providers

Public service is the system most frequently used by member states to grant public service media providers access to the market. It is present in 23 out of 28 member states (there is no public service media in Luxembourg), with the following breakdown in the usage of the identified categories:

- law (12 cases): Austria, Cyprus, the Czech Republic, Estonia, Spain, Finland, Greece, Croatia, Hungary, Ireland, Lithuania and Poland;
- law & contract (6 cases): Belgium (French Community and Flemish Community), Denmark, Italy, the Netherlands and Portugal;



- law and statute (1 case): Germany;
- other agreements (4 cases): France, the United Kingdom, Malta, Sweden.

The other agreements consist mainly in the following situations:

- licences granted by the government for each AVMS: Malta and (partly – only for linear AVMS) Sweden;
- several regulatory layers, where both the government and the regulatory authority play specific roles, including the granting of a general licence by the government:
  - France, where public service media are subject to a specific licensing system combining a legal licence (from parliament), an administrative licence (from the regulatory authority) and a mission statement (from the government);
  - The United Kingdom, where the public service media is subject to a Royal Charter (with the government), an agreement (with the government) and an operating licence (from the regulatory authority).

Furthermore, the following specific situations should be highlighted:

- in the Czech Republic, the public service system only applies to linear AVMS; non-linear AVMS have to be notified to the regulatory authority;
- in Finland, law is supplemented by the obligation to notify the services to KAVI, the institute in charge of monitoring the compliance with rules regarding the protection of minors;
- in Croatia, the public service system only applies to AVMS distributed via DTT; for all other public AVMS not using frequencies (that is to say, for all services which are different from the ones distributed via DTT), the formal licensing system applicable to non-public AVMS is in force;
- in Hungary, law is also supplemented by the obligation to notify the services to the regulatory authority: the public service media has indeed a certain degree of autonomy in launching its services, but the regulatory authority has the power to terminate or to change these services via its yearly control of the remit of the public service media;
- in Ireland, law is supplemented by a system according to which the public service media “may vary the number of television or sound broadcasting channels it operates”, but this has to be done “with the consent of the Minister” and after the minister has consulted the regulatory authority “as to the sectoral impact of a proposal”;
- in the Netherlands, the public service system only applies to the national public service media; regional and local public AVMS providers are assigned for five years by the regulatory authority’s decision to perform the public remit at regional and local level respectively, upon the advice of the provincial executive or the municipal executive respectively;
- in Poland, the public service system applies to linear services distributed via DTT, cable, IPTV and satellite; linear services distributed via OTT have to be notified to the regulatory authority and non-linear services benefit from the open system.



In five member states, all public service AVMS have to be licensed by or notified to the regulatory authority: Bulgaria, Latvia, Romania, Slovenia and Slovakia. This is only partly the case in the Czech Republic and Croatia (see above). In these five cases, there are variations depending on the type of service or the distribution means and these usually mirror the variations also applied to non-public AVMS. One common exception to this is the fact that, whereas a beauty contest is organised for non-public linear AVMS distributed via DTT, in the case of public linear AVMS, it is replaced by an individual licence (Bulgaria and Latvia) or a formal licence (Slovenia and Slovakia).

In Luxembourg, there is no public service media. An agreement between the government and RTL Group gives this AVMS provider the task of fulfilling certain public service missions, such as broadcasting a daily news and current affairs programme in Luxembourgish (with French translation) of a duration of at least thirty minutes; weekly hour-long cultural and sports magazines; coverage of special events contained in a list provided by the government (for instance annual addresses by the heads of state and government); and free airtime for political parties during election campaigns.

The following table summarises the applicable licensing or related system (by category) depending on the type of service (linear or non-linear) and on the distribution means (DTT, cable, IPTV, satellite, OTT). It also gives information about the competent authority for managing these licensing and related systems. The competent authority should not be confused with the authority in charge of compliance. It should be noted that when public service media are created by law, this does not mean that compliance with their obligation is ensured by parliament. This competence usually lies in the hands of the regulatory authority and/or the government.

**Table 8. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law: AT, CY, CZ, EE, ES, FI, GR, HR, HU, IE, LT, PL	Parliament
	Law & contract: BE FR, BE NL, DK, IT, NL, PT	Parliament & Government
	Law & statute : DE	Parliament & internal supervisory body
	Other agreements (1): MT, SE	Government
	Other agreements (2): FR, GB	Government & RA
	Individual licence: BG, LV, RO	RA
	Formal licence: SI, SK	RA
<i>Via cable</i>	Law: AT, CY, CZ, EE, ES, FI, GR, HU, IE, LT, PL	Parliament
	Law & contract: BE FR, BE NL, DK, IT, NL, PT	Parliament & Government
	Law & statute : DE	Parliament & internal supervisory body
	Other agreements (1): MT, SE	Government
	Other agreements (2): FR, GB	Government & RA
	Individual licence: LV, RO	RA



	Formal licence: HR, SI, SK Notification: BG	RA RA
<i>Via IPTV</i>	Law: AT, CY, CZ, EE, ES, FI, GR, HU, IE, LT, PL Law & contract: BE FR, BE NL, DK, IT, NL, PT Law & statute : DE Other agreements (1): MT, SE Other agreements (2): FR, GB Individual licence: LV, RO Formal licence: HR, SI, SK Notification: BG	Parliament Parliament & Government Parliament & internal supervisory body Government Government & RA RA RA RA
<i>Via satellite</i>	Law: AT, CY, CZ, EE, ES, FI, GR, HU, IE, LT, PL Law & contract: BE FR, BE NL, DK, IT, NL, PT Law & statute : DE Other agreements (1): MT, SE Other agreements (2): FR, GB Individual licence: LV, RO Formal licence: HR, SI, SK Notification: BG	Parliament Parliament & Government Parliament & internal supervisory body Government Government & RA RA RA RA
<i>Via OTT</i>	Law: AT, CY, CZ, EE, ES, FI, GR, HU, IE, LT Law & contract: BE FR, BE NL, DK, IT, NL, PT Law & statute : DE Other agreements (1): MT, SE Other agreements (2): FR, GB Individual licence: LV, RO Formal licence: HR, SI, SK Notification: BG, PL	Parliament Parliament & Government Parliament & internal supervisory body Government Government & RA RA RA RA
<b>Non-linear</b>		
<i>Via DTT</i>	Law: AT, CY, EE, ES, FI, GR, HU, IE, LT Law & contract: BE FR, BE NL, DK, IT, NL, PT Law & statute : DE Other agreements (1): MT, SE Other agreements (2): FR, GB Individual licence: LV, RO Formal licence: HR Notification: BG, CZ, SI, SK Open system: PL	Parliament Parliament & Government Parliament & internal supervisory body Government Government & RA RA RA RA None
<i>Via cable</i>	Law: AT, CY, EE, ES, FI, GR, HU, IE, LT	Parliament



	<p>Law &amp; contract: BE FR, BE NL, DK, IT, NL, PT</p> <p>Law &amp; statute : DE</p> <p>Other agreements (1): MT, SE</p> <p>Other agreements (2): FR, GB</p> <p>Individual licence: LV, RO</p> <p>Formal licence: HR</p> <p>Notification: BG, CZ, SI, SK</p> <p>Open system: PL</p>	<p>Parliament &amp; Government</p> <p>Parliament &amp; internal supervisory body</p> <p>Government</p> <p>Government &amp; RA</p> <p>RA</p> <p>RA</p> <p>RA</p> <p>None</p>
<i>Via IPTV</i>	<p>Law: AT, CY, EE, ES, FI, GR, HU, IE, LT</p> <p>Law &amp; contract: BE FR, BE NL, DK, IT, NL, PT</p> <p>Law &amp; statute : DE</p> <p>Other agreements (1): MT, SE</p> <p>Other agreements (2): FR, GB</p> <p>Individual licence: LV, RO</p> <p>Formal licence: HR</p> <p>Notification: BG, CZ, SI, SK</p> <p>Open system: PL</p>	<p>Parliament</p> <p>Parliament &amp; Government</p> <p>Parliament &amp; internal supervisory body</p> <p>Government</p> <p>Government &amp; RA</p> <p>RA</p> <p>RA</p> <p>RA</p> <p>None</p>
<i>Via satellite</i>	<p>Law: AT, CY, EE, ES, FI, GR, HU, IE, L</p> <p>Law &amp; contract: BE FR, BE NL, DK, IT, NL, PT</p> <p>Law &amp; statute : DE</p> <p>Other agreements (1): MT, SE</p> <p>Other agreements (2): FR, GB</p> <p>Individual licence: LV, RO</p> <p>Formal licence: HR</p> <p>Notification: BG, CZ, SI, SK</p> <p>Open system: PL</p>	<p>Parliament</p> <p>Parliament &amp; Government</p> <p>Parliament &amp; internal supervisory body</p> <p>Government</p> <p>Government &amp; RA</p> <p>RA</p> <p>RA</p> <p>RA</p> <p>None</p>
<i>Via OTT</i>	<p>Law: AT, CY, EE, ES, FI, GR, HU, IE, LT</p> <p>Law &amp; contract: BE FR, BE NL, DK, IT, NL, PT</p> <p>Law &amp; statute : DE</p> <p>Other agreements (1): MT, SE</p> <p>Other agreements (2): FR, GB</p> <p>Individual licence: LV, RO</p> <p>Formal licence: HR</p> <p>Notification: BG, CZ, SI, SK</p> <p>Open system: PL</p>	<p>Parliament</p> <p>Parliament &amp; Government</p> <p>Parliament &amp; internal supervisory body</p> <p>Government</p> <p>Government &amp; RA</p> <p>RA</p> <p>RA</p> <p>RA</p> <p>None</p>

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire



### **3.4. Application to private (commercial) audiovisual media service providers**

#### Linear AVMS

Licensing is the system most frequently used by the member states to grant private linear AVMS access to the market. The most frequently used category depends on the distribution platform:

- The beauty contest system is the dominant attribution method/procedure for distribution via DTT (16 cases out of 29),
- While an individual licence (between 9 and 12 cases out of 29 depending on the distribution platform) and notification (between 10 and 14 cases out of 29 also depending on the distribution platform) are the dominant attribution methods/procedures for distribution via means other than DTT.

As already mentioned, the auction system is rarely used (2 cases), and exclusively for linear AVMS distributed via DTT.

#### Non-linear AVMS

Notification is the system most frequently used by the member states to grant private non-linear AVMS access to the market: it is used in 21 cases out of 29 for distribution via DTT and in 22 cases out of 29 for distribution via means other than DTT. The next most frequently used system is the open system (8 cases out of 29). The licensing system is used in only 3 cases out of 29 (Cyprus, Croatia and, under specific circumstances, France).

There is almost no variation in the category applied depending on the distribution means, except for distribution via DTT, where in the aforementioned three cases a beauty contest applies (at least in theory).

#### Competent authority

The competent authority is, in most cases, the regulatory authority, with the exception of:

- Estonia, where non-linear AVMS have to be notified to the government (Ministry of Economic Affairs and Communications);
- Spain (at national level) and Luxemburg, where national linear AVMS have to be licensed by and non-linear AVMS have to be notified to the government (Ministry of Industry, Tourism and Digital Agenda in Spain and Minister responsible for the Media in Luxemburg);
- Finland, where linear services distributed via DTT have, in some cases, to be licensed by the government;
- Italy, where linear services distributed via DTT and cable have to be licensed by the government (Ministry of Economic Development).



In Finland, the licensing and notification systems are supplemented by the obligation to notify the services to KAVI, the institute in charge of monitoring the compliance with rules regarding the protection of minors.

### Summary

The following table summarises the applicable licensing or related system (by category) depending on the type of service (linear or non-linear) and on the distribution means (DTT, cable, IPTV, satellite, OTT). It also gives information about the competent authority for managing these licensing and related systems. The competent authority should not be confused with the authority in charge of compliance. Information regarding compliance is provided in section 3.2.2 above.

Some countries are mentioned two, three or even four times, since the application of one category or another does not only depend on the type of service (linear or non-linear) and on the distribution means (DTT, cable, IPTV, satellite, OTT), but also on other criteria such as:

- free or conditional access to the AVMS (Estonia);
- whether or not DTT frequencies are scarce (for the beauty contest system in Finland);
- the amount of the annual turnover of the AVMS (France and Italy);
- the content of the AVMS (France);
- the country of origin of the AVMS (for distribution via satellite in Luxembourg);
- the possibility of awarding a licence to more than one applicant (for the beauty contest system in Poland);
- the fact of being distributed exclusively on one platform (for IPTV in Poland).

**Table 9. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest: BG, CY, DK, EE, ES, FI, FR, HR, LT, LU, LV, PL, PT, RO, SE, SI	RA or Government
	Auction: GR, PL	RA
	Individual licence: DE, EE, GB, IE, MT	RA or Government
	Formal licence: AT, CZ, FI, IT, NL, SK	RA
	Notification: BE FR, BE NL, ES, HU	RA
<i>Via cable</i>	Beauty contest: CY, EE, LU	RA or Government
	Individual licence: DE, EE, FR, GB, GR, IE, LT, LV, MT, PL, PT, RO, SK	RA or Government
	Formal licence: CZ, HR, IT, NL, SI, SK	RA
	Notification: AT, BE FR, BE NL, BG, DK, ES, FI, FR, HU, SE	RA
	Open system: FR	None



<i>Via IPTV</i>	<p>Beauty contest: CY, EE</p> <p>Individual licence: DE, EE, FR, GB, GR, IE, LT, LV, MT, PT, RO, SK</p> <p>Formal licence: CZ, HR, IT, NL, SI, SK</p> <p>Notification: AT, BE FR, BE NL, BG, DK, ES, FI, FR, HU, LU, PL, SE</p> <p>Open system: FR, IT</p>	<p>RA</p> <p>RA</p> <p>RA</p> <p>RA or Government</p> <p>None</p>
<i>Via satellite</i>	<p>Beauty contest: CY, FR, LU</p> <p>Individual licence: DE, EE, FR, GB, GR, IE, LT, LV, MT, PL, PT, RO, SK</p> <p>Formal licence: AT, CZ, HR, IT, NL, SI, SK</p> <p>Notification: BE FR, BE NL, BG, DK, ES, FI, FR, HU, LU, SE</p> <p>Open system: FR</p>	<p>RA or Government</p> <p>RA</p> <p>RA</p> <p>RA or Government</p> <p>None</p>
<i>Via OTT</i>	<p>Beauty contest: CY, EE</p> <p>Individual licence: DE, EE, FR, GB, IE, LV, MT, RO, SK</p> <p>Formal licence: CZ, HR, IT, NL, SI, SK</p> <p>Notification: AT, BE FR, BE NL, BG, DK, ES, FI, FR, HU, LT, LU, PL, PT, SE</p> <p>Open system: FR, GR, IT</p>	<p>RA</p> <p>RA</p> <p>RA</p> <p>RA or Government</p> <p>None</p>
<b>Non-linear</b>		
<i>Via DTT</i>	<p>Beauty contest: CY, FR, HR</p> <p>Notification: AT, BE FR, BE NL, BG, CZ, EE, ES, FI, GB, HU, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK</p> <p>Open system: DE, DK, FR, GR, IE, IT, MT, PL</p>	<p>RA</p> <p>RA or Government</p> <p>None</p>
<i>Via cable</i>	<p>Beauty contest: CY</p> <p>Formal licence: HR</p> <p>Notification: AT, BE FR, BE NL, BG, CZ, EE, ES, FI, FR, GB, HU, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK</p> <p>Open system: DE, DK, FR, GR, IE, IT, MT, PL</p>	<p>RA</p> <p>RA</p> <p>RA or Government</p> <p>None</p>
<i>Via IPTV</i>	<p>Beauty contest: CY</p> <p>Formal licence: HR</p> <p>Notification: AT, BE FR, BE NL, BG, CZ, EE, ES, FI, FR, GB, HU, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK</p> <p>Open system: DE, DK, FR, GR, IE, IT, MT, PL</p>	<p>RA</p> <p>RA</p> <p>RA or Government</p> <p>None</p>
<i>Via satellite</i>	<p>Beauty contest: CY</p> <p>Formal licence: HR</p> <p>Notification: AT, BE FR, BE NL, BG, CZ, EE, ES, FI, FR, GB, HU, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK</p> <p>Open system: DE, DK, FR, GR, IE, IT, MT, PL</p>	<p>RA</p> <p>RA</p> <p>RA or Government</p> <p>None</p>



Via OTT	Beauty contest: CY	RA
	Formal licence: HR	RA
	Notification: AT, BE FR, BE NL, BG, CZ, EE, ES, FI, FR, GB, HU, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK	RA or Government
	Open system: DE, DK, FR, GR, IE, IT, MT, PL	None

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

### 3.5. Application to regional/local service providers

In almost all cases (26 out of 29), the legal framework which is applicable to private (commercial) AVMS is also applicable to regional or local AVMS, even when the law makes a difference between national and regional/local broadcasting.

The three exceptions are the French and Flemish Communities of Belgium, and, for AVMS distributed via DTT, the United Kingdom:

- In the French Community of Belgium, pursuant to the Coordinated Act on Audiovisual Media Service,<sup>11</sup> local AVMS have to be licensed by the French Community Government, upon the advice of the CSA.<sup>12</sup> Although they conduct commercial activities like a “traditional” private AVMS provider, they have to be non-profit organisations. Pursuant to Article 66 of the Act, within a given coverage area<sup>13</sup>, only one licence can be granted by the government, although the reception area can be broader than the coverage area. Also, these non-profit organisations cannot be granted more than one licence. Although, in theory, this procedure could be considered as a beauty contest, in practice, and for the purpose of this mapping, it should be considered as a formal licence: the government has adapted itself to a reality which has been shaped over the years and has always renewed the licence of the existing AVMS in each coverage area upon the always positive (and collective) advice of the CSA.
- In the Flemish Community of Belgium, pursuant to the Radio and Television Broadcasting Act,<sup>14</sup> regional AVMS have to be licensed by the Flemish Government. Although they conduct commercial activities like a “traditional” private AVMS provider, they have to be non-profit organisations. Within a given

<sup>11</sup> <http://www.csa.be/documents/1440> (in French).

<sup>12</sup> <http://csa.be/>.

<sup>13</sup> The Act defines the coverage area as “*the geographical space in which the local television fulfils its mission*” (Article 66). The coverage area differs from the reception area, since some programmes of these AVMS are available worldwide via the Internet, and some of them are also distributed via cable beyond their coverage area.

<sup>14</sup> [http://www.vlaamseregulatormedia.be/sites/default/files/geconsolideerde\\_tekst\\_van\\_het\\_mediadecreet\\_van\\_27\\_maart\\_2009\\_-\\_bijgewerkt\\_tot\\_3\\_februari\\_2017.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/geconsolideerde_tekst_van_het_mediadecreet_van_27_maart_2009_-_bijgewerkt_tot_3_februari_2017.pdf) (in Dutch).

[http://www.vlaamseregulatormedia.be/sites/default/files/act\\_on\\_radio\\_and\\_television\\_broadcasting.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/act_on_radio_and_television_broadcasting.pdf) (in English).



service area<sup>15</sup>, only one licence can be granted by the government. Furthermore, these organisations cannot be granted more than one licence. Although, in theory, this procedure could be considered as a beauty contest, in practice, and for the purpose of this mapping, it should be considered as a formal licence: the government has never launched a competition and has always renewed the licence of the existing AVMS in each service area.

- In the United Kingdom, a specific licensing procedure applies<sup>16</sup> for local AVMS distributed via DTT. Local AVMS wishing to be distributed via DTT must apply for a Local Digital Television Programme Service (L-DTPS) licence when Ofcom opens a call for application in the location concerned. The procedure takes the form of a beauty contest. The applicants must describe their local programming output in Programming Commitments; this will form part of the licence commitments if the applicant is granted the licence. The licence application form invites applicants to specifically consider what programming they should propose in order to facilitate civic understanding and fair and well-informed debate through the coverage of local news and current affairs. Ofcom also takes into consideration the business and especially the capacity of the applicant to maintain the proposed service. Ofcom also licenses the local multiplex operator, and the AVMS licence and the multiplex licences are interdependent: the multiplex operator is required to make capacity available in the relevant location for the L-DTPS licensee (must-carry), and an L-DTPS licensee is required to make its service available to the local multiplex operator (must-offer).

Besides these three exceptions, the specific situations of Germany and Spain have to be highlighted, since in these countries, a specific framework has been developed in order to take into consideration the institutional setting of the state and to strike a complex balance between powers exercised at national level and those exercised at regional level. These specific situations are fully detailed in sections 4.7 (Germany) and 4.10 (Spain).

Finally, since they are public service media, the regional and local AVMS of the Netherlands have been dealt with in the section dedicated to public AVMS providers.

### 3.6. Application to community/non-profit service providers

In almost all cases (26 out of 29), the legal framework which is applicable to private (commercial) AVMS is also applicable to community/non-profit AVMS, even when the law makes a difference between commercial and community/non-profit broadcasting.

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<sup>15</sup> The Act does not provide the definition of a service area. The service area should not be understood to be the reception area (some programmes of these AVMS are available worldwide via the Internet), but as the area in which they fulfil their mission. The Act states that « *at least eighty percent of the broadcasting programme of the regional television broadcaster is related to one's own regional service area* » (Article 168 section 8).

<sup>16</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/54236/local-tv-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/54236/local-tv-statement.pdf).



The three exceptions are the Flemish Community of Belgium, Denmark and, to a certain extent, Cyprus:

- in the Flemish Community of Belgium, non-commercial broadcasters benefit from an open system. Pursuant to Article 2 25° and 26° of the Radio and Television Broadcasting Act,<sup>17</sup> it is considered in the Flemish Community of Belgium that non-commercial broadcasting activities cannot be classified as broadcasting services and therefore are not subject to a licensing or a notification system, pursuant to Articles 37 and 38 of the Act.
- In Denmark, the licensing procedure is ruled by the Executive Order of the RTB concerning non-commercial local TV.<sup>18</sup> Licences are awarded based on the following criteria:
  - versatility: the highest-weighted criterion is that the overall programme activities in the region are versatile;
  - beauty:
    - local content in addition to the minimum requirement;
    - the applicant's documented professionalism, skills, experience, etc. in the field of television and the like;
    - the applicant's facilitation of public access, that is, whether, and if so, how licence holders offer other citizens access to produce and broadcast programmes on the television station;
    - whether the applicant airs the programmes in live streaming or makes them available on demand;
    - the applicant holds activities to increase the number of viewers, including viewers in younger sections of the population, the use of social media, etc.
- in Cyprus, the Radio and Television Broadcasters Law does not recognise this type of AVMS.

Besides these three exceptions, a specific situation in Germany has to be highlighted: the case of "Open Channels" that are designed to broadcast content produced by individuals or community groups. Open Channels were introduced in the 1980s with a view to increasing media competence and diversity by providing an opportunity for the general public to create their own content without requiring a broadcasting licence. The respective rules regarding these channels may vary depending on the applicable state media law. Access to an Open Channel is regulated by statutes established by the State media authority; it is restricted to individuals; and is granted free of charge based on an individual agreement between the respective user and the State media authority. This

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<sup>17</sup>[http://www.vlaamseregulatormedia.be/sites/default/files/geconsolideerde\\_tekst\\_van\\_het\\_mediadecreet\\_van\\_27\\_maart\\_2009\\_-\\_bijgewerkt\\_tot\\_3\\_februari\\_2017.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/geconsolideerde_tekst_van_het_mediadecreet_van_27_maart_2009_-_bijgewerkt_tot_3_februari_2017.pdf) (in Dutch).

[http://www.vlaamseregulatormedia.be/sites/default/files/act\\_on\\_radio\\_and\\_television\\_broadcasting.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/act_on_radio_and_television_broadcasting.pdf) (in English).

<sup>18</sup> <https://www.retsinformation.dk/Forms/R0710.aspx?id=186887> (in Danish).



agreement sets forth provisions on airtime as well as on the equipment and training provided by the Authority. Each broadcast must previously be notified to the State media authority and each user remains fully liable for the content of the broadcast.

Although such a notification cannot be compared to any other notification to a regulatory authority, it should also be highlighted that in Finland, notification to KAVI is not applicable, considering that, pursuant to Article 4 section 1 of the Act on Audiovisual Programmes,<sup>19</sup> *“the notification must be submitted if programmes are provided for economic purposes and on a regular basis.”*

### 3.7. Licence fee

A licence or notification fee is due in most countries (in 22 cases out of 29) and might be required by the Ministry of Culture or the regulator on a case-by-case basis in one case (Denmark). The amount can vary considerably, from almost symbolic amounts of a few hundred euros (as in Estonia or Slovakia) to rather significant amounts which are sometimes in excess of EUR 100 000 (as is the case for a nationwide licence in Germany and Slovenia or for the public service media in Finland).

Some countries also impose a notification fee on AVMS providers who do not need a licence (in 6 cases out of 29). The amount is usually very low, between EUR 10 and EUR 500.

Besides the licence or notification fee, some countries also impose additional fees (for example, up to three different fees in Lithuania and Portugal and four in Bulgaria) such as:

- an application fee, which is usually meant to support the administrative costs incurred by the licensing process;
- an annual state or municipal fee, which is usually meant to support:
  - either the administrative costs incurred for supervising the compliance of the AVMS with their obligations
  - or the use of the spectrum;
- a fee for changing the licence conditions.

The beneficiary is either the regulatory authority and/or the state budget. Some different situations also exist, such as in Finland (the beneficiary is also the protection of minors body KAVI), Hungary (the beneficiary is an audiovisual fund) and Lithuania (the beneficiary is the journalism ethics body).

The way in which the amounts are calculated varies considerably from one country to another and sometimes involves very complex calculation formulas, mixing several criteria (as in Slovenia) or dividing the sum between a fixed part and a variable

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<sup>19</sup> <http://www.finlex.fi/fi/laki/ajantasa/2011/20110710> (in Finnish).  
<http://www.finlex.fi/fi/laki/kaannokset/2011/en20110710.pdf> (in English).



part (as in Croatia). The identified criteria which are used to determine the level of the licence fee are the following:

- broadcast technology (analogue or digital);
- the competitive environment;
- the daily hours of broadcast;
- the economic value of the licence;
- the distribution platform;
- equal treatment between AVMS providers;
- the importance of the AVMS for the development of broadcasting;
- the promotion of competition and of the provision of new AVMS;
- proportionality with administrative costs incurred;
- meeting the needs of the public for quality AVMS;
- the nature and content of the AVMS;
- the territory in which the AVMS is to be broadcast and/or the number of inhabitants in that territory;
- the turnover of the AVMS.
- the volume of advertising and the broadcast time of advertisement broadcasts.

**Table 10. Summary of licence fee regimes by member state**

	License fee	Notification fee	Amounts	Beneficiary	Other fees
AT	NO	NO	N/A	N/A	NO
BE FR	NO	NO	N/A	N/A	NO
BE NL	NO	NO	N/A	N/A	NO
BG	YES	YES	Licence 3 000 BGN Notification 2 250 BGN	RA	Application fee Supervision fee Change in licence conditions fee
CY	YES	NO	Between EUR 3 417 and EUR 8 543	RA	Annual fee
CZ	YES	NO	Between 20 000 CZK and 90 000 CZK	State	NO
DE	YES	NO	Between EUR 300 and EUR 100 000	RA	NO
DK	Possible	NO	Determined in public call for tender	RA	Annual spectrum fee
EE	YES	NO	Between EUR 510 and EUR 960	State	NO
ES	NO	NO	N/A	N/A	Annual spectrum tax



<b>FI</b>	YES <sup>20</sup>	YES <sup>21</sup>	Between EUR 800 and EUR 165 000	RA and KAVI	NO
<b>FR</b>	NO	NO	N/A	N/A	NO
<b>GB</b>	YES	NO	Percentage of the turnover	RA	Application fee
<b>GR</b>	YES <sup>22</sup>	NO	Amount of the auction	RA and State	NO
<b>HR</b>	YES	NO	Percentage of the turnover	State	NO
<b>HU</b>	YES	NO	Between 50 000 HUF and 800 000 HUF	Audiovisual fund managed by RA	NO
<b>IE</b>	YES	NO	EUR 2 000 per year	RA	Application fee
<b>IT</b>	YES	YES	Between EUR 500 and EUR 7 000	Licensing body (RA or State)	NO
<b>LT</b>	YES	NO	Between EUR 7.60 and EUR 5 700	Association of Ethics in the Provision of Information to the Public	Annual income fee Annual state fee
<b>LU</b>	YES	NO	1% of remuneration of high civil servant	RA	NO
<b>LV</b>	YES	NO	Between EUR 71 and EUR 2 845	State	NO
<b>MT</b>	YES	NO	Between EUR 3 550 and EUR 13 976	RA	Application fee
<b>NL</b>	YES	YES	Between EUR 200 and EUR 25 600	RA	NO
<b>PL</b>	YES	YES	Between 2 093 PLN and 27 089 562 PLN <sup>23</sup>	RA	NO
<b>PT</b>	YES	YES	Between EUR 15 096 and EUR 57 324 <sup>24</sup>	RA	Annual spectrum fee Municipal fee
<b>RO</b>	NO	NO	N/A	N/A	NO
<b>SE</b>	YES	NO	Maximum 35 000 SEK	RA	NO
<b>SI</b>	YES	NO	Between EUR 43 and	RA	NO

<sup>20</sup> The fee is called a supervision fee but for the purpose of this report we will assimilate it with a licence/notification fee.

<sup>21</sup> The fee is called a supervision fee but for the purpose of this report we will assimilate it with a licence/notification fee.

<sup>22</sup> There is no licence fee as such but for the purpose of this report we will assimilate the auction with a licence fee.

<sup>23</sup> For licences.

<sup>24</sup> For licences.



			EUR 210 000		
SK	YES	NO	Between EUR 66 and EUR 663	State	NO

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

### 3.8. Media ownership and concentration

One of the objectives of the mapping was to identify if, during the licensing or notification procedures:

- the transparency of the ownership structure of the AVMS was ensured via the obligation to provide the relevant data when applying for a licence or notifying;
- in order to ensure or preserve media diversity and pluralism, media concentration issues were taken into account.

In a large majority of cases, these public policy objectives are indeed taken into consideration.

Transparency of ownership is ensured by media law in 23 cases out of 29, the exceptions being Denmark, Estonia, Finland, Malta, the Netherlands and Slovenia. Yet, in five of these latter cases (Estonia, Spain, Finland, Malta and the Netherlands), transparency is nevertheless ensured in practice via means other than media legislation, such as requesting the relevant data in the application form or making the relevant data publicly available once the licence has been granted.

Transparency of ownership is however not necessarily applied to all AVMS providers. This is the case:

- in Bulgaria, Greece and Poland, where transparency is ensured only when applying for a licence, but not when notifying;
- in all countries where there is an open system (see section 3.24. above), since in this case, the burden to detect and identify the AVMS and its provider is fully borne by the competent authority.

Media concentration is taken into account in 22 cases out of 29, the exceptions being Belgium (French Community and Flemish Community), Denmark, Lithuania, Luxembourg, the Netherlands and Slovenia. This public policy objective is ensured by the following measures:

- audience thresholds (Germany, Spain, France, Hungary, Romania);
- banning ownership by certain types of persons (the United Kingdom);
- considering the ownership structure of the applicant (Sweden);
- cross-media ownership rules (Austria, Germany, France, the United Kingdom, Croatia, Italy, Slovakia);
- issues related to plurality in terms of content (Finland, Ireland, Portugal);
- population coverage thresholds (Austria, the Czech Republic, Slovakia);
- the presence of AVMS owned by a platform in its offer (Hungary);



- limiting ownership to a certain number of licences (Cyprus, the Czech Republic, France, Malta);
- limiting the ownership of licences that allow for the broadcasting of more than a certain percentage of the total AVMS than can be broadcast on the DTT platform (Italy) or in a certain coverage zone (Portugal);
- limiting (totally or partially) ownership in a certain number of (or at a certain level in) AVMS providers (Cyprus, the Czech Republic, Spain, France, Croatia);
- referring to a dominant position and/or anti-trust/competition rules (Bulgaria, Estonia, France, Greece, Latvia, Poland).

The fact that these issues are not taken into account during the licensing or related process does not necessary mean that such rules are not present in the legal framework. They might be ensured after the AVMS has entered the market. Furthermore, the legal framework can sometimes grant a monopoly to certain AVMS, as is the case with local AVMS in Belgium; however, this is of course out of the scope of the present mapping.

**Table 11. Application of transparency of media ownership and media concentration rules in the member states**

	Transparency of media ownership		Media concentration	
	Linear	Non-linear	Linear	Non-linear
AT	■	■	■	■
BE FR	■	■		
BE NL	■	■		
BG	■		■	■
CY	■	■	■	■
CZ	■	■	■	■
DE	■		■	■
DK				
EE			■	■
ES	■	■	■	■
FI			■	■
FR	■	■	■	■
GB	■	■	■	■
GR	■		■	■
HR	■	■	■	■
HU	■	■	■	■
IE	■		■	■
IT	■	■	■	■
LT	■	■		
LU	■	■		
LV	■	■	■	■
MT			■	■
NL				
PL	■		■	■
PT	■	■	■	■



RO			■	■
SE	■	■	■	■
SI				
SK	■	■	■	■

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

## 3.9. Management of the licence and notification

### 3.9.1. Licence duration

One of the two main specificities of a licence compared to a notification is that it is possible to refuse to grant a licence on non-formal grounds (even if theoretical in the case of a formal licence). The other is that a licence is usually granted for a limited term (contrary to the notification, which is unlimited).

However, in some countries, licences have no limited term. This is the case:

- for all licences in Lithuania and Slovenia;
- for certain licences in Germany (depending on the applicable state law), in the United Kingdom (non-public and non-local licences), in Greece (licences delivered on the basis of one of the three applicable laws, namely Law 3592/2007) and in Slovakia (digital licences).

On the other hand, in one country (Italy), notifications have a limited term of 12 years.

The duration of the licence usually varies from 5 to 15 years, with the exception of Denmark, where the duration is much shorter and is fixed at between one and four years on a case-by-case basis. Variations can depend on the following factors:

- the power of the authority granting the licence to fix a shorter term than the maximum one (the Czech Republic, Finland, Malta);
- the possibility for AVMS providers to apply for a certain duration (Ireland);
- the coverage zone of the AVMS (Croatia);
- the distribution platform of the AVMS (France, Greece, Italy, Croatia, Ireland);
- free or conditional access to the AVMS (Estonia).

**Table 12. Duration of the licence in the member states**

	Duration
AT	10 years
BE FR	9 years
BE NL	9 years
BG	15 years
CY	10 years
CZ	12 years maximum



DE	7 to 10 years or unlimited (depending on state law)
DK	1 to 4 years, on a case-by-case basis
EE	5 or 10 years
ES	15 years
FI	10 years maximum
FR	5 or 10 years
GB	12 years or unlimited
GR	5 to 10 years or unlimited
HR	10 to 15 years
HU	N/A
IE	10 years maximum
IT	6 or 12 years
LT	Unlimited
LU	On a case-by-case basis
LV	10 years
MT	8 years maximum
NL	5 years
PL	10 years
PT	15 years
RO	9 years
SE	6 years (or shorter in certain circumstances)
SI	Unlimited
SK	12 years or unlimited

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire

### 3.9.2. Licence renewal

The mapping did not lead to the identification of specific issues regarding the renewal of a licence.

The renewal procedure is, in some cases, the same as the licensing procedure, while in other cases, a specific procedure applies, usually made simpler in order to make the renewal almost automatic upon the request of the licensee, except in cases where the AVMS has committed serious breaches in the past which justify the non-renewal of the licence. This specific procedure can be launched either by the licensee or, in a few cases, by the licensing authority.

### 3.9.3. Licence suspension or revocation

The suspension and the revocation of a licence are among the administrative sanctions that can be decided by the licensing authority, except in Spain and Poland, where suspension is not foreseen by the regulatory framework.



In all member states, proportionality is ensured by the fact that sanctions must be imposed following a gradual approach. In several member states, the law details the specific circumstances in which a licence can be suspended or revoked.

The procedure to follow in case of sanctions is usually detailed in the media law, but in some member states it is the general administrative procedure that applies.

### 3.9.4. Termination of an AVMS

In case of the termination of an AVMS, the provider usually has to notify such a situation to the licensing authority; in some cases, this shall be a prior notification. However, several regulatory frameworks do not mention any procedure regarding the termination of an AVMS.

### 3.9.5. Modification of licence conditions

AVMS providers usually have the opportunity to apply to the licensing authority to have their licence conditions modified. If such a procedure is not foreseen by the regulatory framework, this does not necessarily mean that no modification can be made; but rather an ad-hoc procedure is followed or, in case of significant modifications, it is considered that a new licence is necessary.

### 3.9.6. Targeting of different audiences

The mapping sought to identify the practices of the competent authority when the content of an AVMS is modified in order to target several different countries or regions, and on which legal framework these practices are based. This can cover the four following situations:

- different linguistic versions of a linear AVMS;
- different advertising windows inserted in a linear AVMS;
- different programming windows inserted in a linear AVMS;
- different catalogues of a non-linear AVMS (for example, the different national versions of I-tunes or Netflix).

No specific legal provisions have been identified regarding these four situations. The information given in this section is therefore based on the practice of the competent authority in interpreting the legal framework and setting up its own practice. It should also be highlighted that in practice, this can cover a great variety of situations to which the competent authority might provide an answer on a case-by-case basis. Therefore, the information provided in the table below should not be considered as legal information or firmly established practice, but rather as reflecting the current state of play in each



member state. It should also be stressed that in most of the member states several of these situations remain purely theoretical.

The following table identifies the member states in which it would be considered by the competent authority that, in case of modifications of the service in order to target different audiences: 1) different linguistic versions of a linear AVMS constitute different AVMS, 2) different advertising windows of a linear AVMS constitute different AVMS, 3) different programming windows of a linear constitute different AVMS, 4) different catalogues of a non-linear constitute different AVMS, and should therefore need several licenses granted by (or several notifications acknowledged by) the competent authority.

**Table 13. Practice of the member states regarding AVMS targeting different audiences**

	Different linguistic versions	Different advertising windows	Different programming windows	Different catalogues
AT	■	■		
BE FR	Assessed on a case-by-case basis			
BE NL				
BG				
CY				
CZ	Modifications shall be included in the licence			
DE	Modifications shall be included in the licence			
DK				
EE				
ES				
FI				
FR	■	■	■	■
GB	Assessed on a case-by-case basis			
GR				
HR				
HU				
IE				
IT		■	■	■
LT	■	■	■	
LU		■	■	
LV	Different versions shall be included in the licence			
MT				
NL	■	■	■	
PL				
PT				
RO				
SE				
SI	■	■	■	
SK			■	

Source: Analysis of the responses to European Audiovisual Observatory standardised questionnaire



### 3.10. Future amendments to the regulatory framework

The mapping's objective was also to identify whether any modifications to the current licensing and related system were foreseen in the member states and if, in the context of the future extension of the scope of the AVMS Directive to video-sharing platforms, a licensing or related system was already applied to this type of platform and/or to services hosted on these platforms but which are not considered as audiovisual media services (user-generated content, vlogs, etc.).

The mapping did not lead to the identification of essential information in this regard, and certainly did not lead to the gathering of information which could be processed in a comparative analysis.

In the vast majority of member states (22 cases out of 29), no significant modifications to the regulatory framework were foreseen. In seven countries, the following discussions/amendments are pending/foreseen:

- Germany, where discussions are currently being held with respect to user-generated channels streaming live broadcasts over the Internet; the question is whether those services should require a licence (and therefore qualify as regulated linear services), or whether a softer regulatory framework should apply in these cases (for example a mere notification requirement as is already the case for internet radio).
- Spain, where two Autonomous Communities (Valencia and the Balearic Islands) have established by law their respective regulatory authority (but these bodies are still in the process of being effectively installed).
- Finland, where changes in supervision fees are foreseen. The fee for the public service media Yleisradio would be increased, while the fee for commercial broadcasters would be decreased. Moreover, the conditions for granting and revoking licences would become more detailed: licences would not be granted if there were justified reasons to suspect that an applicant had violated the provisions concerning the marketing of gaming activities/gambling in the Lotteries Act or those concerning the transmission time for programmes detrimental to children in the Act on Audiovisual Programmes, or if there were justified reasons to suspect that the applicant would commit a punishable act of incitement to hatred. The authority would also be granted the power to revoke licences in case the licensee repeatedly violates the provisions concerning the marketing of gaming activities/gambling in the Lotteries Act or those concerning the transmission time for programmes detrimental to children in the Act on Audiovisual Programmes.
- Ireland, where:
  - Changes are foreseen regarding the levy paid by some AVMS providers. Besides the licensing fees mentioned in section 4.17.4 below, some AVMS providers (but not those who seek a content provision contract), pursuant to Article 33 of the Broadcasting Act, also pay a levy which funds the regulatory authority. An amendment to the Broadcasting Act has recently been proposed by the government, the aim of which is to make provision for the BAI to also apply the levy to content provision contract holders. If



enacted, it would ensure that AVMS providers who relocate to Ireland (and who would probably seek a content provision contract) would also be submitted to this levy, depending on their means and the regulation required. The amendment states that *“given the likelihood that some UK-based broadcasters will look to establish a base in Ireland following Brexit, the Head aims to allow the BAI to ensure that each service it regulates can make a fair and proportionate contribution to the BAI levy. Broadcasters seeking to establish a base in Ireland are likely to seek a ‘content provision contract’ under section 71, which, under existing legislation, would mean they are exempt from paying the levy, irrespective of their size or the amount of work involved in regulating them. The proposal aims to strike a balance which allows the Authority to determine that those who have the means and require a significant level of regulation will make a contribution, while continuing to permit exemptions for those who do not.”*<sup>25</sup>

- In the same bill, another proposed amendment clarifies the specific situation of TV3 (holder of a TV programme service contract) with a view to ensuring that any new AVMS launched by TV3 would require additional licenses.
- Moreover, the regulatory authority is currently in the process of reviewing its Broadcasting Services Strategy (BSS)<sup>26</sup> in the framework of its Strategy Statement for 2017-2019.<sup>27</sup> This is likely to have an influence on its licensing plans (types of services to be licensed over a given time period), but these proactive plans almost exclusively cover radio services.
- Lithuania, where several amendments to the Law on the Provision of Information to the Public are pending. One draft law *inter alia* proposes:
  - to expand the definition of the “Service of dissemination of television and/or radio programmes via the Internet” so that more subjects would be covered by the regulation (this should provide a level playing field for all subjects that disseminate television and/or individual programmes via the Internet);
  - to make stricter the conditions in which the regulatory authority could suspend a licence for a maximum of 3 months (by shortening the period in which the licensee has repeatedly infringed the law and/or the basic terms and conditions of the licence from 12 months to 6 months);
  - to provide the regulatory authority with the possibility of issuing binding instructions to internet intermediaries to remove or disable access to information or services when the AVMS provider has failed to fulfil its obligation to notify its activity;
  - to increase the Income fee from 0.6 % to 0.8 % of the income from audiovisual commercial communications, advertising, subscription fees and other activities related to the broadcasting and re-broadcasting of

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<sup>25</sup><https://www.oireachtas.ie/parliament/media/committees/communicationsclimatechangenaturalresources/publicservicebroadcasting/gsbroadcastingamendmentbill2017/GS-Broadcasting--Amendment--Bill-2017.pdf>.

<sup>26</sup> Available at <http://www.bai.ie/en/broadcasting/licensing-2/television/#al-block-1>.

<sup>27</sup> Available at <http://www.bai.ie/en/about-us/our-strategic-goals/>.



television programmes, the dissemination of television programmes and/or individual programmes via the Internet and/or the provision of on-demand audiovisual media services.<sup>28</sup>

- another draft law proposes that television programmes broadcast in an EU language (but not in the Lithuanian language) must be translated into Lithuanian or shown with Lithuanian subtitles, and television programmes broadcast in a non-EU language must only be translated into Lithuanian, except for educational, occasional, special, music and re-broadcast foreign television programmes or parts of programmes, as well as programmes produced by broadcasters of television programmes intended for the ethnic minorities of Lithuania.<sup>29</sup>
- Latvia, where:
  - a prospective review of the Press Law will raise the issue of the licensing or registration of internet media which are currently not obliged to register as media and are thus not bound by the same rules on the protection of minors or commercial communications as are the traditional electronic media;
  - the bill to amend the Law on the Prevention of Money Laundering and Terrorism Financing envisages public access to information on the beneficial owners of all legal persons including AVMS providers;<sup>30</sup>
  - a draft Public Service Media Law envisages a new and legally distinct Public Service Media Council that would take over the relevant administrative functions currently undertaken by the regulatory authority; if this law is adopted, any licensing, registration, notification or approval issues concerning the public service media would be dealt with by the new body;<sup>31</sup>
- Poland, where the government is working on legislation concerning the de-concentration of Polish media which would deal with the issue of the foreign ownership of media outlets; the government was planning to submit the proposed new legislation to parliament (Sejm) in autumn 2017, but according to recent information, the work on this legislation has been suspended.<sup>32</sup>

Regarding the extension of the scope of media regulation to video-sharing platforms, no relevant information was identified until the process of collecting data had ended, namely, the end of November 2017.

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<sup>28</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/38671910476111e7b465dc41e35792b9?positionInSearchResults=4&searchModelUUID=8506fcce-0d4d-4ceb-93e1-b257b20ec6b5> (in Lithuanian).

<sup>29</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/06f8c3208be411e7a5e2b345b086d377?jfwid=a82o51ydf> (in Lithuanian).

<sup>30</sup> The bill passed its second reading on 5 October 2017.

<sup>31</sup> The bill passed its first reading on 5 October 2017.

<sup>32</sup> <https://www.wprost.pl/kraj/10082794/pis-ma-problem-z-dekoncentracja-mediow-ustawa-na-razie-odlozona.html> (in Polish).





## 4. National summaries

### 4.1. AT – Austria – National Summary<sup>33</sup>

#### 4.1.1. Summary

In Austria, access to the market is granted exclusively by the regulatory authority (Kommunikationsbehörde Austria, hereinafter KommAustria)<sup>34</sup>, except for the public service media, which was created by law.

KommAustria is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Three systems are used:

- Licensing, which is applicable to non-public service linear AVMS distributed via DTT and satellite and which is organised in the form of a formal licence.
- Notification, which is applicable to non-public service linear AVMS distributed via cable, IPTV and OTT and to non-public service non-linear AVMS.
- Public service, which is applicable to the public service media ORF. The missions of the ORF are prescribed in a specific law. The regulatory framework does not directly grant pre-emption for public service television channels, although, in practice, the two main television channels of the ORF are available on one multiplex.

**Table 14. Applicable systems**

System	Category
Licensing	Formal licence
Notification	N/A
Public service	Law

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

<sup>33</sup> The factsheet on Austria incorporates the feedback received from members of the *Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)* during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>34</sup> <https://www.rtr.at/de/rtr/OrganeKommAustria>.



## 4.1.2. Functioning of the applicable systems

According to the Audiovisual Media Services Act,<sup>35</sup> linear AVMS distributed via DTT and satellite have to be licensed by and all other linear and non-linear AVMS have to be registered with KommAustria.

Licences are granted for ten years and notifications of non-linear AVMS have no limited term. If the notification is not acknowledged, the applicant has the opportunity to lodge an appeal with the Federal Administrative Court (Bundesverwaltungsgericht)<sup>36</sup> within four weeks of receipt of the decision. It is a full jurisdiction review: the Federal Administrative Court can replace the decision of KommAustria with its own. A decision by the Federal Administrative Court can then be appealed – but only on points of law of substantial relevance – to the Supreme Administrative Court<sup>37</sup> within six weeks of the decision by the Federal Administrative Court.

The public service media ORF<sup>38</sup> is out of the scope of the licensing and notification systems. The ORF was created by the ORF Act.<sup>39</sup> The pre-emption of frequencies is only granted to the ORF for its radio services, not for its television services. However, in practice, public service is available on one multiplex, since when licensing DTT networks operators, KommAustria has to ensure that the digital channels and additional services are broadcast under fair, equal and non-discriminatory conditions, and that the two main nationwide television channels of the ORF are included.

**Table 15. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Formal licence	KommAustria	Application to be sent to KommAustria, who grants the licence if formal criteria are met
Notification	N/A	KommAustria	Notification to send prior to the launch of the service to KommAustria, who enters the AVMS in the appropriate register
Public service	Law	Parliament	The public service media ORF was created by law

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

<sup>35</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412> (in German).

[https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_2001\\_1\\_84/ERV\\_2001\\_1\\_84.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_84/ERV_2001_1_84.html) (in English).

<sup>36</sup> <http://www.bverwg.de/>.

<sup>37</sup> <https://www.vwgh.gv.at/>.

<sup>38</sup> <http://www.orf.at/>.

<sup>39</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785> (in German)

[https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1984\\_379/ERV\\_1984\\_379.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1984_379/ERV_1984_379.html) (in English).

### 4.1.3. Application to public audiovisual media service providers

The missions of the ORF are prescribed in the ORF Act.

There is no limited term to the activities of the ORF.

For new services, a specific procedure applies, compliant with the Communication from the European Commission on the application of State aid rules to public service broadcasting and, in particular, with the decision of the European Commission of 28 October 2009 on the financing of ORF. These services have to be approved by KommAustria.

**Table 16. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament
<i>Non-linear</i>		
<i>Via DTT</i>	Law	Parliament
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament

*Source: Austrian response to European Audiovisual Observatory standardised questionnaire*

*For new services, the approval of Komm Austria is also necessary*

### 4.1.4. Application to private (commercial) audiovisual media service providers

Licences are granted to linear AVMS distributed via DTT and satellite in the form of a formal licence.

Applications can be submitted anytime to KommAustria. Pursuant to section 3 (2) and (3) of the Audiovisual Media Services Act, they “*shall prove compliance with the requirements according to section 10 and section 11*” and “*shall establish in credible form, together with providing evidence for complying with the licensing requirements according to*



paragraph 2, that the applicant satisfies the requirements for the regular provision and dissemination of the planned channel regarding the professional, financial and organizational aspects, and that the programme will correspond to the requirements of Parts 7 and 9” (that is to say, the traditional content requirement imposed on broadcasters in application of the AVMS Directive). They shall also contain the following information (section 4 (4)):

- “1. the articles of incorporation or the partnership agreement in the case of legal persons or partnerships;*
- 2. a presentation of the membership and ownership relations to prove compliance with the requirements mentioned in section 10 and section 11;*
- 3. information about the type of channel, the channel schedule, the proportion of self-produced programmes, as well as whether the programme is to be disseminated as a window channel on a specific framework channel;*
- 4. a description of the programming principles with explanations of the applicant’s own programming concepts;*
- 5. a presentation of the transmission modes provided for the dissemination of the channel:*
  - a) in the case of terrestrial television and mobile terrestrial television: especially evidence of the availability of agreements regarding the use of transmission capacities of a multiplex operator in the event that a license is granted, or information about the area covered and about the planned dissemination in cable or other electronic communications networks,*
  - b) in the case of satellite television: information as to which satellite (transponder) and which earth-satellite transmitting stations will be used to disseminate the channel, information about the area covered, as well as information about arrangements that the applicant has already reached with the satellite operator on the use of this satellite in the event that a license is granted;*
- 6. information about establishment according to section 3, especially whether decisions on the channels offered, the transmission staff as well as the broadcasting operations are taken in Austria or in another state;*
- 7. the planned editorial agreement.”*

Section 10 provides for the obligation for the applicant be an Austrian citizen or a legal person domiciled in Austria (EEA citizens and legal persons domiciled in the EEA have equal status) and forbids certain types of applications (from legal persons under public law, political parties, the ORF and other public service media, as well as from legal entities in which the aforementioned actors hold a direct share).

Section 11 provides for limitations in terms of media concentration (detailed in section 4.1.8 below).

If the application is found to be deficient (for instance if the required documentation is not complete), the applicant is requested to submit the missing documents or rectify other formal deficiencies, usually within two weeks (no legal deadline is set). The regulatory authority may also request that the applicant provide additional information and, in particular, that it disclose ownership and potential legal relations to the state, the provinces or the municipalities/communities, to broadcasters and media companies (section 4 (5)). All applicants are required to disclose their owners



on every level of incorporation up to the ultimate beneficial owner, and KommAustria recommends that a chart of the ownership structure be included in the application.

Pursuant to section 5 (1), the licence “*shall be granted if the applicant has satisfied the requirements listed in section 4 (2) and (3)*”, which gives the licensing procedure the form of a formal licence: KommAustria has no discretion as to whether or not the licence is granted as long as the formal licensing requirements are met by the applicant (unless on concentration grounds as detailed in section 4.1.8. below).

There is no specific deadline obliging KommAustria to respond to an application (although under general administrative procedure it has to decide without undue delay and at the latest within six months) and no deadline imposed on an AVMS provider for the effective provision of its service.

All the other AVMS (linear AVMS distributed by cable, IPTV or OTT and non-linear AVMS) have to be notified to KommAustria no later than two weeks prior to the launch of the activity. The notification has to contain the name and address of the AVMS provider, information on the distribution and coverage zone of the AVMS, as well as documentation on compliance with the requirements of the aforementioned sections 10 and 11. The restrictions for state actors and political parties are not as strict as for terrestrial and satellite AVMS: state actors and political parties are allowed to provide TV programmes outside the scope of the Austrian Constitutional Act of 10 July 1974 on Guaranteeing the Independence of Broadcasting (basically pure weather camera-channels or similar) and on-demand audiovisual media services. In addition, state actors are also allowed to provide cable television channels with a duration of not more than 120 minutes per day (not counting the repetitions and broadcasts of general representative bodies). These provisions are meant to enable local programmes provided by communities.

In the case of linear AVMS, the notification also has to give information on the type of channel; the schedule; the proportion of self-produced programmes and whether the channel is a full-range channel; a special-interest channel; a window channel or a framework channel; as well as the maximum length of transmission time on a channel, and the number and length of time of window channels.

In the case of non-linear AVMS, the notification has to contain information on the catalogue of programmes, in particular on the scope of the service; the special interests covered; and the programmes offered.

If all requirements are met, there is no further formal decision and the AVMS is registered in the list of AVMS kept by KommAustria.<sup>40</sup> If, however, in the event that an AVMS provider is not established in Austria according to the Audiovisual Media Service Directive or if the notified service does not constitute an audiovisual media service, then the application is to be rejected by a decision of KommAustria (in the case of a provider not established in Austria, KommAustria has to hold a public hearing).

If the provider does not meet the requirements of the aforementioned sections 10 and 11, or if the notified service would violate section 30 (1) and (2), 39 or 42 (1) (respect for human dignity and the fundamental rights of others, no incitement to hatred, the

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<sup>40</sup> <https://www.rtr.at/de/m/Abrufdienste>.



protection of minors), KommAustria shall issue a decision prohibiting the launch of the activity (if the decision can only be taken after the AVMS has already launched its activity, KommAustria shall start interdiction proceedings).

**Table 17. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence	KommAustria
<i>Via cable</i>	Notification	KommAustria
<i>Via IPTV</i>	Notification	KommAustria
<i>Via satellite</i>	Formal licence	KommAustria
<i>Via OTT</i>	Notification	KommAustria
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	KommAustria
<i>Via cable</i>	Notification	KommAustria
<i>Via IPTV</i>	Notification	KommAustria
<i>Via satellite</i>	Notification	KommAustria
<i>Via OTT</i>	Notification	KommAustria

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

#### 4.1.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.1.4 above is applicable.

#### 4.1.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.1.4 above is applicable.

#### 4.1.7. Licence fee

There is no specific licence fee.

A general fee of EUR 6.50 is set by a federal regulation for all administrative decisions, and it applies for the delivery of a licence, but not for a notification.



The beneficiary is the State.

#### 4.1.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying.

Media concentration is avoided during the licensing process by section 11 of the Audiovisual Media Services Act according to which:

*“(1) A person or partnership may hold several licences for digital terrestrial television, as long as not more than three coverage areas included in the licences overlap.*

*(2) A media owner shall be precluded from providing television channels within the meaning of the Federal Constitutional Law Guaranteeing the Independence of Broadcasting, Federal Law Gazette No. 396/1974, according to this Federal Act if the media owner exceeds the following ranges or levels of coverage in one of the listed markets:*

- 1. terrestrial radio programmes (more than 30 per cent of a nationwide range),*
- 2. daily press (more than 30 per cent of a nationwide range of the daily press),*
- 3. weekly press (more than 30 per cent of a nationwide range of the weekly press),*
- 4. cable networks (more than a level of 30 per cent of coverage to the population by means of cable network on the national territory).*

*(3) A media owner shall be precluded from providing terrestrial television services if the media owner exceeds the below ranges or levels of coverage in the respective coverage areas in more than one of the listed markets:*

- 1. terrestrial radio programmes (more than a range of 30 per cent in the coverage area),*
- 2. daily press (more than a range of 30 per cent in the coverage area),*
- 3. weekly press (more than a range of 30 per cent of the coverage area),*
- 4. cable network (more than level of coverage of 30 per cent of the population by means of cable networks on the national territory).*

*(4) Except for any technically unavoidable overlapping (spill over), a media group may provide the same location in the national territory simultaneously with only one channel licensed under the Private Radio Broadcasting Act and a maximum of one third of the terrestrial television channels that can be received in that location. If no licensees as defined in the Private Radio Broadcasting Act belong to a media group, the media group may provide the same location in the national territory with not more than one third of the terrestrial television channels that can be received in that location.*

*(5) Those persons or partnerships are deemed to belong to a media group:*

- 1. who/which hold more than 25 per cent of the share capital or the voting rights of a media owner or exert a dominating influence or have one of the possibilities to exert an influence as defined in section 244 (2) in connection with paragraphs 4 and 5 of the Business Code;*



2. where one of the persons or partnerships listed in item 1 has more than 25 per cent of the share capital or voting rights or a dominating influence or one of the possibilities to exert an influence as defined in section 244 (2) in connection with paragraphs 4 and 5 of the Business Code;

3. where a media owner holds more than 25 per cent of the share capital or voting rights or exerts a dominating influence or has one of the possibilities to exert an influence as defined in section 244 (2) in connection with paragraphs 4 and 5 of the Business Code.

For the purposes of the present paragraph it shall be tantamount to a direct capital interest of more than 25 per cent if there are one or several interests and the interest on every level is more than 25 per cent. Interests by media owners, or persons associated with them according to the present paragraph, on the same level shall be added together when determining the limit of 25 per cent.

(6) The ranges and levels of coverage according to paragraphs 2 and 3 shall be determined by the regulatory authority or third parties commissioned by the latter, on the basis of scientific methods and analyses. The results of that determination shall be published in suitable form by 31 March of every year. In the event that the accuracy of the established ranges is contested, the regulatory authority shall issue a decree on the established ranges, upon application by the media owner concerned. In any event, the ranges and levels of coverage shall be established and published prior to any invitation to tender for a license under this Federal Act.”

**Table 18. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	Cross-media ownership and coverage of population thresholds

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

#### 4.1.9. Management of the licence and notification

Licences are granted for ten years and notifications have no limited term.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by KommAustria. Sanctions have to follow a gradual approach: in case of a serious or repeated violation of the law by a licensee, KommAustria shall instruct the AVMS provider by means of a formal decision to comply with the law and to take precautions to avoid future violations (which has the effect of a formal warning). Only in cases where the AVMS provider then again repeatedly or severely violates the law, can the licence be revoked.



In addition, a “repeated violation” is not deemed to have taken place when there is a period of at least three years between the established violations of a specific provision of the law; if the AVMS provider proves that the consequences of the violation have remained insignificant (and the AVMS provider showed regret during the proceedings and took appropriate measures to avoid future violations); or if the AVMS provider proves that the violations were based on a justifiable legal view at the time the violation was committed.

A licence can be revoked if the AVMS provider has not notified a change in ownership of more than 50% of the shares, or in case of serious or repeated violations of the law (after a formal warning has been issued). The licence ends when the licensee dies or loses his/her legal personality or in the case of the regulatory authority declaring (by means of decree, after holding a public hearing) that the AVMS provider is no longer deemed to be established in Austria.

There is no procedure regarding the termination of the service; however, the licence expires if the licensee does not distribute the programme for more than one year. For notified services, data on the services provided has to be updated by 31 December of each year, so there is an implicit obligation to notify on that occasion that a service is terminated.

A licensee shall notify to KommAustria in advance any major changes in the type of AVMS, the daily length of transmission time, and in the number and duration of window programmes. In addition, the planned retransmission of the channel via other satellites or further terrestrial multiplex platforms has to be notified; the notification has to contain documentation of agreements with a satellite operator or a multiplex operator. These changes have to be approved by KommAustria. Changes regarding notified AVMS shall be notified to KommAustria by 31 December each year.

In case of modifications to the service with a view to targeting different audiences, it would be considered by KommAustria that:

- different linguistic versions constitute different AVMS (which therefore have to be licensed or notified accordingly);
- different advertising windows constitute different AVMS (which therefore have to be licensed or notified accordingly);
- any changes regarding the number or the length of the programming windows (which are allowed for licensed services) need KommAustria’s prior approval.

**Table 19. Main procedural aspects regarding the management of the licence**

Issue	Description
Duration	10 years
Procedure to renew	Same as for licensing
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	No



Procedure in case of modifications in the licence conditions	Prior approval of KommAustria
Procedure in case of modifications to the service with a view to targeting different audiences	Different linguistic versions and advertising windows have to be licensed or notified accordingly

Source: Austrian response to European Audiovisual Observatory standardised questionnaire

#### 4.1.10. Future amendments to the regulatory framework

N/A.

#### 4.1.11. Video-sharing platforms

N/A.

#### 4.1.12. Applicable regulatory framework

■ Primary legislation:

- In German - Bundesgesetz über audiovisuelle Mediendienste / Audiovisuelle Mediendienste-Gesetz AMD-G (Audiovisual Media Services Act):  
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412>
- In German - Bundesgesetz über den Österreichischen Rundfunk / ORF-Gesetz ORF-G, (ORF Act):  
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000785>
- In English<sup>41</sup> - Audiovisual Media Services Act:  
[https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_2001\\_1\\_84/ERV\\_2001\\_1\\_84.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_84/ERV_2001_1_84.html)
- In English - ORF Act:  
[https://www.ris.bka.gv.at/Dokumente/ErV/ERV\\_1984\\_379/ERV\\_1984\\_379.html](https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1984_379/ERV_1984_379.html)

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<sup>41</sup> When provided, English translations shall not be considered as official translations.



### 4.1.13. Data compilation

This factsheet was produced based on data compiled by Hans Peter Lehofer, Prof. Dr., Vienna University of Economics and Business, Institute for Austrian and European Public Law.



## 4.2. BE – Belgium (French Community) – National Summary<sup>42</sup>

### 4.2.1. Summary

In the French Community of Belgium, access to the market is granted either by the French Community Government or by the regulatory authority (Conseil Supérieur de l'Audiovisuel, hereinafter CSA).<sup>43</sup>

Three systems are used:

- Licensing, which is applicable only to regional non-profit AVMS, under the competence of the French Community Government. They benefit from a de facto monopoly in terms of local broadcasting in their coverage area: the territory is divided into 12 coverage areas and only one licence is granted in each coverage area. Indeed, the licensing regime is now liberalised for private broadcasters so that any provider could, in theory, declare itself to the CSA in order to create a local AVMS seeking any kind of local audience. However, given the small size of the market, this possibility is theoretical.
- Notification, which is applicable to all other AVMS, under the competence of the CSA.
- Public service, which is applicable to the public service media Radio-télévision belge de la Communauté française (hereinafter RTBF). The missions of the RTBF are prescribed in a specific law, and a management contract between the RTBF and the French Community Government details the scope of its offer and the obligations of both parties. The DTT frequencies necessary to make its services available to the public are granted by the French Community Government.

The compliance of all AVMS providers with the regulatory framework is ensured by the CSA.

It should be highlighted that if a licensing system exists for linear AVMS distributed via DTT, this framework is purely theoretical and has never been implemented.

**Table 20. Applicable systems**

System	Category
Licensing	Formal licence
Notification	N/A

<sup>42</sup> The factsheet on the French speaking community of Belgium incorporates the feedback received from members of the *Conseil Supérieur de l'Audiovisuel (CSA)* during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>43</sup> <http://csa.be/>



Public service

Law &amp; contract

Source: Belgian (French Community) response to European Audiovisual Observatory standardised questionnaire

## 4.2.2. Functioning of the applicable systems

Pursuant to the Coordinated Act on Audiovisual Media Service,<sup>44</sup> local AVMS have to be licensed by the French Community Government, upon the advice of the CSA. Although they conduct commercial activities like a “traditional” private AVMS provider, they have to be non-profit organisations. Pursuant to Article 66 of the Act, within a coverage area,<sup>45</sup> only one licence can be granted by the government, although the reception area can be broader than the coverage area. Also, these non-profit organisations cannot be granted more than one licence. Although, in theory, this procedure could be considered as a beauty contest, in practice, and for the purpose of this mapping, it should be considered as a formal licence: the government has adapted itself to a reality which has been shaped over the years and has always renewed the licence of the existing AVMS in each coverage area, always upon positive (and collective) advice from the CSA.

Licences are granted for nine years. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Administrative Court<sup>46</sup> within sixty days following receipt of the decision. It is not a full jurisdiction review: the Administrative Court only deals with the legality of administrative decisions, but not with arguments of opportunity.

All the other AVMS have to be notified to the CSA prior to their launch; the CSA acknowledges receipt of the notification within a month.

The public service media RTBF<sup>47</sup> is out of the scope of the licensing and notification systems. The RTBF was created by the Act on the RTBF<sup>48</sup> and a contract with the government details the scope of its offer and the obligations of both parties.<sup>49</sup> The DTT frequencies necessary to make its services available to the public are granted by the French Community Government. In practice, the RTBF is the only AVMS provider to be distributed via DTT and has therefore a de facto monopoly on this platform (operated also by the RTBF), which represents less than 1% of the various reception modes and is consequently not attractive and affordable for other AVMS providers.

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<sup>44</sup> <http://www.csa.be/documents/1440> (in French).

<sup>45</sup> The Act defines the coverage area as “*the geographical space in which the local television fulfils its mission*” (Article 66). The coverage differs from the reception area, since some programmes of these AVMS are available worldwide via the Internet, and some of them are also distributed beyond their coverage area via cable.

<sup>46</sup> <http://www.raadvst-consetat.be/?page=index&lang=fr>.

<sup>47</sup> <https://www.rtf.be/>.

<sup>48</sup> <http://www.csa.be/documents/2474>.

<sup>49</sup> The current management contract, covering the years 2013-2017, is available (in French) at <http://www.csa.be/documents/1703> It has exceptionally been extended for one more year.

**Table 21. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Formal licence	Government	Application to send to the Government, who decides based on formal criteria mentioned in Article 72 of the Act and upon the advice of the CSA
Notification	N/A	CSA	Notification to send prior to the launch of the service to the CSA, who acknowledges its receipt within a month
Public service	Law & contract	Parliament & Government	The public service media RTBF was created by law and a contract with the Government details the scope of its offer and the obligations of both parties

Source: Belgian (French Community) response to European Audiovisual Observatory standardised questionnaire

### 4.2.3. Application to public audiovisual media service providers

The missions of the RTBF are prescribed in the Act on the RTBF. The public service media already existed before 1997, having been previously created by a federal law in 1930 (under the name Institut National de Radiodiffusion – INR) and then by another federal law in 1960 (under the name Radio Télévision Belge - RTBF) before being split between the Communities in 1997.

There is no limited term to the activities of the RTBF.

In application of this law, a management contract of three to six years between the RTBF and the government details the scope of its offer, its obligations in terms of programming and management, and fixes the amount of the yearly subvention it receives. The DTT frequencies necessary to make its services available to the public are granted by the government. The latest contract covers the years 2013-2017.

**Table 22. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government
<i>Non-linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government

Source: Belgian (French Community) response to European Audiovisual Observatory standardised questionnaire

#### 4.2.4. Application to private (commercial) audiovisual media service providers

All AVMS have to be notified to the CSA prior to their launch. The notification shall include various information such as the name of the AVMS and of the AVMS provider; the statutes; the addresses of the head office and of the operational office; data about the shareholders if relevant; a financial plan for the next three years, including information about copyright agreements; a description of the service, including provisions for information programmes if relevant; the date of the launch of the service; and information about the AVMS distributors supposed to distribute the service or any other form of commercialisation of the service if the AVMS provider is its own distributor.

Proof of receipt is delivered by the CSA within a month. Copies of the notification and of the proof of receipt are sent by the CSA to the government and the Secretary General of the Ministry within eight days.

There is no deadline imposed on an AVMS provider for the effective provision of its service.

**Table 23. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Notification	CSA



<i>Via cable</i>	Notification	CSA
<i>Via IPTV</i>	Notification	CSA
<i>Via satellite</i>	Notification	CSA
<i>Via OTT</i>	Notification	CSA
<b>Non-linear</b>		
<i>Via DTT</i>	Notification	CSA
<i>Via cable</i>	Notification	CSA
<i>Via IPTV</i>	Notification	CSA
<i>Via satellite</i>	Notification	CSA
<i>Via OTT</i>	Notification	CSA

Source: Belgian (French Community) response to European Audiovisual Observatory standardised questionnaire

#### 4.2.5. Application to regional/local audiovisual media service providers

Pursuant to Article 72 of the Coordinated Act on Audiovisual Media Services and to the decree adopted by the government in application of this article on the ways and means of licensing of local televisions,<sup>50</sup> applicants have to submit to the French Community Government and to the Secretary General of the Ministry an application containing all the relevant data such as the name of the service; the statutes; the address; the composition of the board and other organs of the AVMS provider; a financial plan for the next three years; a description of the service; an employment plan; the technical transmission conditions; the service zone; and a commitment to respect the regulations adopted by the Advisory College of the CSA.

Local AVMS providers have to be non-profit organisations, that is, be registered either as an association without lucrative purpose (*association sans but lucratif*) or as a company with a social goal (*société à finalité sociale*). They may not be controlled by another AVMS provider, nor by an advertising company, a holding company or an AVMS distributor.

The criteria on which the government decides to grant a licence to one applicant or another are not explicitly mentioned in the law, but it is understood that the government will always grant the licence providing that the legal conditions are fulfilled and, most of all, that no other local AVMS is already licensed for the same coverage zone, as there can be only one local AVMS by coverage zone.

The licence covers all the services distributed by the local AVMS provider, be they linear or non-linear.

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<sup>50</sup> <http://www.csa.be/documents/518>.



The deadline obliging the government to respond to an application is five months after it has requested the opinion of the CSA on the application. There is no deadline imposed on an AVMS provider for the effective provision of its service.

In practice, these services have existed for decades and are considered as “functional public services”, rooted in the local cultural and institutional environment, and the licensing procedure is purely formal: no new non-profit organisation would reasonably consider applying for a licence in order to replace an existing local broadcaster.

**Table 24. Access to market by regional/local service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence	Government
<i>Via cable</i>	Formal licence	Government
<i>Via IPTV</i>	Formal licence	Government
<i>Via satellite</i>	Formal licence	Government
<i>Via OTT</i>	Formal licence	Government
<i>Non-linear</i>		
<i>Via DTT</i>	Formal licence	Government
<i>Via cable</i>	Formal licence	Government
<i>Via IPTV</i>	Formal licence	Government
<i>Via satellite</i>	Formal licence	Government
<i>Via OTT</i>	Formal licence	Government

Source: Belgian (French Community) response to European Audiovisual Observatory standardised questionnaire

#### 4.2.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.2.4 above is applicable.

#### 4.2.7. Licence fee

No licence fee is required.



## 4.2.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying.

Media concentration cannot be taken into consideration in the licensing process since only local televisions are licensed and are granted a monopoly in their coverage zone. In terms of licensing, the rules on media concentration can, in practice, only apply to the radio sector. Pursuant to Article 7 of the Coordinated Act on Audiovisual Media Service, it is the CSA's mission to ensure that a service provider (or a group of service providers directly or indirectly controlled by a common shareholder) holding a significant position does not harm the freedom of the public to access a pluralist AVMS offer. A pluralistic offer should be understood to mean a supply of media through a plurality of independent and autonomous media reflecting the broadest possible diversity of opinions and ideas. A significant position is considered as reached when a physical or moral person, holding more than 24% of the capital of a television service provider, holds, directly or indirectly, more than 24% of the capital of another television service provider or when the cumulative audience of several television service providers reaches 20% of the total audience of television services and that these television service providers are held directly or indirectly, mostly or in a minority, by the same person or entity. When the CSA notes the exercise of a significant position, it engages a procedure to evaluate the pluralism of the offer; if, at the end of its assessment, the CSA finds an infringement of the freedom of the public to access a pluralistic offer, it engages in a process of conciliation with the legal person(s) concerned in order to agree on measures which would allow the pluralism of the offer to be respected. If the conciliation does not lead to the conclusion of a protocol of agreement within a period of six months or if this protocol is not respected, the CSA can take any of the administrative sanctions mentioned in the next section.

**Table 25. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	No

Source: Belgian (French Community) response to European Audiovisual Observatory standardised questionnaire

## 4.2.9. Management of the licence and notification

Licences are granted for nine years and notifications have no limited term.

In 2011, considering that all previous licences granted to the 12 local public AVMS had not been explicitly renewed since they were originally granted (from the 1970s to the 1990s), the government asked all local AVMS providers to apply for a new licence, it



asked the CSA for a collective opinion, and eventually granted 12 new licences, valid from 1 January 2013 (and therefore retroactive) and for nine years.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the CSA. The essence of the administrative sanction system is its gradual character, depending on the gravity of the infringement. The possible sanctions are the following:

- warning;
- publication on the AVMS and/or in the written press and at the expense of the AVMS provider of a statement by the CSA explaining the infringement;
- suspension of the programme;
- withdrawal of the programme;
- suspension of the licence for a maximum of six months;
- suspension of the distribution of the service;
- an administrative fine of at least EUR 250 and of a maximum of 3% of the AVMS annual turnover; provider (a maximum of 5 % in case of recidivism of the infringement within 5 years);
- revocation of the licence.

Except for the suspension and revocation of a licence, all the other sanctions are also applicable to non-linear AVMS.

Notified AVMS providers shall notify to the CSA, prior to their occurrence, any changes in the information provided in the notification.

In case of modifications to the service with a view to targeting different audiences, decisions would be made by the CSA on a case-by-case basis, taking into account all relevant circumstances.

**Table 26. Main issues regarding the management of the licence**

Issue	Description
Duration	9 years
Procedure to renew	Same as licensing
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	No
Procedure in case of modifications in the licence conditions	Prior notification to the CSA (for notifications)
Procedure in case of modifications to the service with a view to targeting different audiences	No (decisions taken on a case-by-case basis)

Source: Belgian (French Community) response to European Audiovisual Observatory standardised questionnaire



#### 4.2.10. Future amendments to the regulatory framework

N/A.

#### 4.2.11. Video-sharing platforms

N/A.

#### 4.2.12. Applicable regulatory framework

- Primary legislation:
  - In French - Décret coordonné sur les services de médias audiovisuels (Coordinated Act on Audiovisual Media Services): <http://www.csa.be/documents/1440>
  - In French - Décret du 14 juillet 1997 portant statut de la Radio-Télévision belge de la Communauté française – RTBF (Act on the RTBF): <http://www.csa.be/documents/2474>
- Secondary legislation:
  - In French - Arrêté du Gouvernement de la Communauté française fixant les modalités d’octroi des autorisations aux télévisions locales (Government Decree on the ways and means of licensing of local televisions): <http://www.csa.be/documents/518>

#### 4.2.13. Data compilation

This factsheet was produced based on data compiled by François Jongen, Professor, Faculty of Law, Université Catholique de Louvain.



## 4.3. BE – Belgium (Flemish Community) – National Summary<sup>51</sup>

### 4.3.1. Summary

In the Flemish Community of Belgium, access to the market is granted either by the Flemish Government or by the regulatory authority (Flemish Regulatory Authority for the Media - Vlaamse Regulator voor de Media, hereinafter VRM).<sup>52</sup> In certain instances, access to the market is not subject to any requirements.

Four systems are used:

- Licensing, which is applicable only to regional AVMS providers, under the competence of the Flemish Government and under the form of a formal licence. They benefit from a monopoly in terms of local broadcasting in their coverage area: the territory is divided into 11 service areas by the Flemish Government and only one licence is granted in each service area.
- Notification, which is applicable to private (commercial) AVMS providers, under the competence of the VRM.
- Open system, which is applicable to community (non-profit) AVMS providers.
- Public service, which is applicable to the public service media Vlaamse Radio-en Televisieomroeporganisatie (hereinafter VRT).<sup>53</sup> The missions of the VRT are prescribed in law, and a management contract between the VRT and the Flemish Government details the scope of its offer and the obligations of both parties. The DTT frequencies necessary to make its services available to the public are granted by the Flemish Government.

The compliance of all AVMS providers with the regulatory framework is ensured by the VRM.

**Table 27. Applicable systems**

System	Category
Licensing	Formal licence
Notification	N/A
Public service	Law & contract
Open system	N/A

<sup>51</sup> The factsheet on the Flemish speaking community of Belgium incorporates the feedback received from members of the *Agentschap Vlaamse Regulator voor de Media* (Flemish Regulatory Authority for the Media - VRM) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>52</sup> <http://www.vlaamseregulatormedia.be/nl>

<sup>53</sup> <https://www.vrt.be/nl/>



Source: Belgian (Flemish Community) response to European Audiovisual Observatory standardised questionnaire

### 4.3.2. Functioning of the applicable systems

Pursuant to the Radio and Television Broadcasting Act,<sup>54</sup> regional AVMS have to be licensed by the Flemish Government. Although they conduct commercial activities like a “traditional” private AVMS provider, they have to be non-profit organisations. Within a service area<sup>55</sup>, only one licence can be granted by the government. Also, these organisations cannot be granted more than one licence. Although, in theory, this procedure could be considered as a beauty contest, in practice, and for the purpose of this mapping, it should be considered as a formal licence: the government has never launched a competition and has always renewed the licence of the existing AVMS in each service area.

Licences are granted for nine years. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Administrative Court<sup>56</sup> within sixty days following receipt of the decision. It is not a full jurisdiction review: the Administrative Court only deals with the legality of administrative decisions, not with arguments of opportunity.

Commercial AVMS have to be notified to the VRM.

Community AVMS benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority. No procedure exists in order to establish an inventory of existing services.

The public service media VRT is out of the scope of the licensing and notification systems. The VRT was created by the Radio and Television Broadcasting Act, and a five-year management contract with the government details the scope of its offer and the obligations of both parties.<sup>57</sup> The DTT frequencies necessary to make its services available to the public are granted by the Flemish Government. In practice, as in the French Community, DTT represents less than 1% of the various reception modes (according to the latest data of the European Audiovisual Observatory) and is consequently not attractive and affordable for other AVMS providers. Only public AVMS are distributed on this platform by the network operator Norkring.

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<sup>54</sup>[http://www.vlaamseregulatormedia.be/sites/default/files/geconsolideerde\\_tekst\\_van\\_het\\_mediadecreet\\_van\\_27\\_maart\\_2009\\_-\\_bijgewerkt\\_tot\\_3\\_februari\\_2017.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/geconsolideerde_tekst_van_het_mediadecreet_van_27_maart_2009_-_bijgewerkt_tot_3_februari_2017.pdf) (in Dutch)

[http://www.vlaamseregulatormedia.be/sites/default/files/act\\_on\\_radio\\_and\\_television\\_broadcasting.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/act_on_radio_and_television_broadcasting.pdf) (in English).

<sup>55</sup> The Act does not provide a definition of a service area. The service area should not be understood as being the reception area (some of these AVMS programmes are available worldwide via the Internet), but as the area in which they fulfil their mission. The Act states that « *at least eighty percent of the broadcasting programme of the regional television broadcaster is related to one's own regional service area* » (Article 168 section 8).

<sup>56</sup> <http://www.raadvst-consetat.be/?page=index&lang=nl>

<sup>57</sup> The current management contract, covering the years 2016-2020, is available (in Dutch) at <https://www.vrt.be/content/dam/vrtbe/over-de-vrt/opdrachten/opdrachten/Beheersovereenkomst%202016-2020.pdf>.



**Table 28. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Formal licence	Government	Application to send to the Government, who decides based on criteria mentioned in Article 169 of the Act
Notification	N/A	VRM	Notification to send prior to the launch of the service to the VRM, who acknowledges its receipt
Public service	Law & contract	Parliament & Government	The public service media VRT was created by the Act and a contract with the Government details the scope of its offer and the obligations of both parties
Open system	N/A	None	None

Source: Belgian (Flemish Community) response to European Audiovisual Observatory standardised questionnaire

### 4.3.3. Application to public audiovisual media service providers

The missions of the VRT are prescribed in the Radio and Television Broadcasting Act.

There is no limited term to the activities of the VRT.

In application of this Act, a five-year management contract between the VRT and the government details the scope of its offer, its obligations in terms of programming and management, and fixes the amount of the yearly subvention it receives. The DTT frequencies necessary to make its services available to the public are granted by the Flemish Government. The latest contract covers the years 2016-2020.

**Table 29. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government



<i>Non-linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government

Source: Belgian (Flemish Community) response to European Audiovisual Observatory standardised questionnaire

#### 4.3.4. Application to private (commercial) audiovisual media service providers

Private AVMS have to be notified to the VRM at least 14 days before they start to be distributed. The notification shall contain at least the following information: “*all the information which can serve to determine whether the Flemish Community is competent for the television service concerned, the articles of association, the financial structure, a clear description of the service to be provided*” (Article 161 of the Radio and Television Broadcasting Act).

Pursuant to Article 163 of the Act, anyone can offer private linear AVMS insofar as:

*1° the provider of linear television services has been established as a legal entity under private law and falls under the competence of the Flemish Community;*

*2° the purpose of the legal entity under private law consists in offering linear television services, excluding the offer of linear broadcasting services as referred to in Article 165.*

*3° the private broadcaster is not linked to a political party;*

*4° the broadcasts are the editorial responsibility of the editorial staff;*

*5° the private broadcaster broadcasts in Dutch, except in case of derogations to this rule, to be granted by the Flemish Government.”*

Pursuant to Article 174 of the Act, anyone can offer private non-linear AVMS insofar as:

*1° the entity offering such services has been established as a legal entity under private law and falls under the competence of the Flemish Community;*

*2° the object of the legal entity under private law is to provide non-linear television services in a digital manner.”*

Non-linear AVMS providers shall broadcast (at least) in Dutch, except in case of derogation granted by the Flemish Government.

There is no deadline obliging the VRM to acknowledge receipt of a notification and no deadline imposed on an AVMS provider for the effective provision of its service.

**Table 30. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Notification	VRM
<i>Via cable</i>	Notification	VRM
<i>Via IPTV</i>	Notification	VRM
<i>Via satellite</i>	Notification	VRM
<i>Via OTT</i>	Notification	VRM
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	VRM
<i>Via cable</i>	Notification	VRM
<i>Via IPTV</i>	Notification	VRM
<i>Via satellite</i>	Notification	VRM
<i>Via OTT</i>	Notification	VRM

Source: Belgian (Flemish Community) response to European Audiovisual Observatory standardised questionnaire

#### 4.3.5. Application to regional/local audiovisual media service providers

Regional AVMS have to be licensed by the Flemish Government prior to the launch of the activity. The application shall contain at least the following information: “*all the data which can serve to determine whether the Flemish Community is competent for the broadcaster concerned, the articles of association, the financial structure, the programmes provided and the broadcasting schedule*” (Article 167 of the Radio and TV Broadcasting Act).

Pursuant to Article 169, “*in order to receive a licence and to continue to be a licensed broadcaster, regional television broadcasters need to comply with the following conditions:*

- 1° take the form of a non-profit organisation, of which the directors may not serve as the director of another association, which owns or manages a regional television broadcaster;*
- 2° the registered office and the operating office are situated in the Dutch-language region or in the bilingual Brussels-Capital Region, more specifically in their service area;*
- 3° the object of the association is exclusively restricted to producing regional programmes;*
- 4° one association does not provide more than one regional broadcasting programme;*
- 5° the regional television broadcasters are not associated with a political party, professional federation or organisation with a commercial object;*
- 6° the regional television broadcaster broadcasts in Dutch subject to derogations granted by the Flemish Government;*



7° the regional television broadcasters broadcast their own programmes. In their own programmes, the regional broadcasters aim to develop the potential for expression of the local population, and encourage its participation. Own programmes should be interpreted as programmes or programme components which were developed and produced by the broadcaster's own staff or at the request of and under the end responsibility of the regional television broadcaster's staff;

8° at least eighty percent of the broadcasting programme of the regional television broadcaster is related to one's own regional service area;

9° an editor-in-chief is responsible for the news programmes. The editorial independence is guaranteed and determined in an editorial statute. The regional television broadcaster can make use of cooperative ventures for its news programmes. The conditions for this are determined by the Flemish Government;

10° every year, the regional television broadcasters will submit an operational report and a financial report.”

Most of these criteria are formal and it is understood that the government will always grant the licence providing that legal conditions are fulfilled and, most of all, that no other local AVMS is already licensed for the same coverage zone, as there can be only one local AVMS by service area.

The licence covers all the services distributed by the local AVMS provider (linear or non-linear).

There is no deadline obliging the Flemish Government to respond to an application and no deadline imposed on an AVMS provider for the effective provision of its service.

In practice, existing licences have always been extended, and no other applicants have ever submitted a request for a licence as a local television broadcaster at the time that a licence had expired. Moreover, Article 34 of the Decision of the Flemish Government on the Procedure before the VRM<sup>58</sup> states that requests for a licence can only be submitted for service areas that are not serviced and following a call for submissions published by the government. If there is no call, it is not possible to request a licence. In the hypothetical case whereby several requests are submitted for a non-serviced area, the Flemish Government would need to evaluate which request fulfils the requirements in the best way, but this has never happened in practice.

**Table 31. Access to market by regional/local service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence	Government
<i>Via cable</i>	Formal licence	Government

<sup>58</sup> <http://www.vlaamseregulatormedia.be/sites/default/files/procedurebesluit.pdf>.



<i>Via IPTV</i>	Formal licence	Government
<i>Via satellite</i>	Formal licence	Government
<i>Via OTT</i>	Formal licence	Government
<b>Non-linear</b>		
<i>Via DTT</i>	Formal licence	Government
<i>Via cable</i>	Formal licence	Government
<i>Via IPTV</i>	Formal licence	Government
<i>Via satellite</i>	Formal licence	Government
<i>Via OTT</i>	Formal licence	Government

Source: Belgian (Flemish Community) response to European Audiovisual Observatory standardised questionnaire

### 4.3.6. Application to community (non-profit) audiovisual media service providers

Pursuant to Article 2 25° and 26° of the Radio and Television Broadcasting Act:

- “broadcasting activity means any activity consisting of making available moving images, with or without sound, or of a series of sounds or noises aimed at the general public or part thereof by means of electronic communication networks.
- “broadcasting service means a) a service as mentioned in Articles 49 and 50 of the Treaty establishing the European Community, which falls under the editorial responsibility of the service provider, its main object being to supply audiovisual or audio programmes to the general public, with the aim of providing information, entertainment, education or of a cultural nature, by means of electronic communication networks; and/or b) commercial communication.”

It is therefore considered in the Flemish Community of Belgium that non-commercial broadcasting activities cannot be classified as broadcasting services and therefore are not subject to a licensing or a notification system. The provisions of the Act that are applicable to broadcasting activities in general are Articles 37 and 38 of the Act according to which:

- “Freedom of expression is guaranteed for all broadcasting activities. Broadcasting activities are free and cannot be subjected to any requirements as regards form or prior control, subject to what is set out below for broadcasting services.
- “Broadcasting activities may not incite hate and violence.”

**Table 32. Access to market by community service providers**

Service	Category	Authority
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<b>Linear</b>		
<i>Via DTT</i>	Open system	None
<i>Via cable</i>	Open system	None
<i>Via IPTV</i>	Open system	None
<i>Via satellite</i>	Open system	None
<i>Via OTT</i>	Open system	None
<b>Non-linear</b>		
<i>Via DTT</i>	Open system	None
<i>Via cable</i>	Open system	None
<i>Via IPTV</i>	Open system	None
<i>Via satellite</i>	Open system	None
<i>Via OTT</i>	Open system	None

Source: Belgian (Flemish Community) response to European Audiovisual Observatory standardised questionnaire

### 4.3.7. Licence fee

No licence fee is required.

### 4.3.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying.

**Table 33. Main issues regarding media ownership and concentration**

<b>Issue</b>	<b>Description</b>
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	No

Source: Belgian (Flemish Community) response to European Audiovisual Observatory standardised questionnaire

### 4.3.9. Management of the licence and notification

Licences are granted for nine years and notifications have no limited term.

A request for the renewal of the licence must be submitted at the latest six months before the end of the licence term.



If the government does not want to renew the licence, it has to notify its decision at least one year before the end of the licence term.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the VRM. The VRM has to follow a gradual approach, depending on the gravity of the infringement. The possible sanctions for infringements of the provisions of the Radio and Television Broadcasting Act are the following:

- warning with the order to put an end to the violation;
- order to broadcast the decision at the time and in the way that was instructed by the VRM, at the expense of the AVMS provider;
- mandatory publication of the decision in dailies and weeklies, at the expense of the AVMS provider;
- administrative fine of up to EUR 125 000;
- suspension of the licence;
- revocation of the licence;
- suspension of transmission.

The procedure to follow by the VRM is the same as for other sanctions, except that Article 170 section 2 of the Act adds that, for a regional AVMS, the VRM can suspend or revoke the licence for a maximum of three months any time its obligations are not observed. If the local AVMS provider so requests, the Flemish Government can suspend the execution of the decision for a maximum of three months in order to give the AVMS provider concerned the opportunity to comply with its obligations. After this period, the case is placed on the VRM's agenda once again if the grounds for it are still present.

**Table 34. Main issues regarding the management of the licence**

Issue	Description
Duration	9 years
Procedure to renew	At the request of the licensee
Procedure to suspend	Same as for other sanctions, except for the appeal possibility of Article 170 section 2
Procedure to revoke	Same as for other sanctions, except for the appeal possibility of Article 170 section 2
Procedure in case of termination of the provision of the service	Notification to the VRM
Procedure in case of modifications in the licence conditions	Notification to the relevant authority (Flemish Government for licensed service providers and VRM for notified service providers)
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Belgian (Flemish Community) response to European Audiovisual Observatory standardised questionnaire



#### 4.3.10. Future amendments to the regulatory framework

N/A.

#### 4.3.11. Video-sharing platforms

N/A.

#### 4.3.12. Applicable regulatory framework

- Primary legislation:
  - In Dutch - Decreet betreffende Radio-omroep en Televisie van 27 maart 2009 (Radio and Television Broadcasting Act): [http://www.vlaamseregulatormedia.be/sites/default/files/geconsolideerde\\_tekst\\_van\\_het\\_mediadecreet\\_van\\_27\\_maart\\_2009\\_-\\_bijgewerkt\\_tot\\_3\\_februari\\_2017.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/geconsolideerde_tekst_van_het_mediadecreet_van_27_maart_2009_-_bijgewerkt_tot_3_februari_2017.pdf)
  - In English - Radio and Television Broadcasting Act (non-official translation): [http://www.vlaamseregulatormedia.be/sites/default/files/act\\_on\\_radio\\_and\\_television\\_broadcasting.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/act_on_radio_and_television_broadcasting.pdf)
- Secondary legislation:

In Dutch - Besluit van de Vlaamse Regering van 30 juni 2006 betreffende de procedure voor de Vlaamse Regulator voor de Media: <http://www.vlaamseregulatormedia.be/sites/default/files/procedurebesluit.pdf>, amended by :

- Besluit van de Vlaamse Regering van 8 juni 2007: [http://www.vlaamseregulatormedia.be/sites/default/files/besluit\\_vlaamse\\_regering\\_8\\_juni\\_2007.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/besluit_vlaamse_regering_8_juni_2007.pdf)
- Besluit van de Vlaamse Regering van 29 januari 2010: [http://www.vlaamseregulatormedia.be/sites/default/files/29\\_januari\\_2010\\_zendvergunningen.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/29_januari_2010_zendvergunningen.pdf)
- Besluit van de Vlaamse Regering van 21 april 2017: [http://www.vlaamseregulatormedia.be/sites/default/files/bs\\_21-04-2017-bvr\\_houdende\\_diverse\\_uitvoeringsbepalingen\\_over\\_radio-omroep\\_en\\_houdende\\_wijziging\\_van\\_dirverse\\_besluiten\\_over\\_radio-omroep\\_.pdf](http://www.vlaamseregulatormedia.be/sites/default/files/bs_21-04-2017-bvr_houdende_diverse_uitvoeringsbepalingen_over_radio-omroep_en_houdende_wijziging_van_dirverse_besluiten_over_radio-omroep_.pdf)



### 4.3.13. Data compilation

This factsheet was produced based on data compiled by Eva Lievens, Assistant Professor of Law & Technology, Faculty of Law, Ghent University.



## 4.4. BG – Bulgaria – National Summary<sup>59</sup>

### 4.4.1. Summary

In Bulgaria, access to the market is granted exclusively by the regulatory authority (Council for Electronic Media - *СЪВЕТ ЗА ЕЛЕКТРОННИ МЕДИИ*, hereinafter CEM).<sup>60</sup>

The CEM is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Concerning access to DTT frequencies, the competent authority is the telecommunications regulatory authority (Communications Regulation Commission, hereinafter CRC).<sup>61</sup>

Two systems are used:

- Licensing, which is applicable to linear AVMS distributed via DTT and which is organised in the form of a beauty contest or, for public service media, of an individual licence.
- Notification, which is applicable to all other linear and non-linear AVMS, with a higher level of requirement for linear AVMS distributed via cable and satellite.

The licensing and notification systems fully apply to the public service media Bulgarian National Television (hereinafter BNT)<sup>62</sup>, except for its access to DTT frequencies (licences are granted without a beauty contest).

**Table 35. Applicable systems**

System	Category
Licensing	Beauty contest Individual licence
Notification	N/A

Source: Bulgarian response to European Audiovisual Observatory standardised questionnaire

<sup>59</sup> The factsheet on Bulgaria incorporates the feedback received from members of the *СЪВЕТ ЗА ЕЛЕКТРОННИ МЕДИИ* (Council for Electronic Media - CEM) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>60</sup> <http://www.cem.bg/>.

<sup>61</sup> <http://www.crc.bg/index.php?lang=en>.

<sup>62</sup> <https://www.bnt.bg/bg>.



## 4.4.2. Functioning of the applicable systems

Pursuant to the Radio and Television Act,<sup>63</sup> linear services distributed via DTT have to be licensed by and all other services have to be notified to the CEM. All AVMS of BNT have also to be either licensed or notified.

The licensing procedure is managed by the CEM, which grants licences based on criteria defined in the Radio and Television Act and upon the advice of a committee of experts. For private broadcasters, the procedure takes the form of a beauty contest, while for the public service media, the CEM delivers individual licences.

Licences are granted for 15 years. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Supreme Administrative Court<sup>64</sup> within 14 days of receipt of the decision. It is a full jurisdiction review: the Court may declare the nullity of the contested administrative decision, revoke it in whole or in part, modify it or reject the appeal.

**Table 36. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest Individual licence	CEM	Application to send to the CEM, who decides based on criteria mentioned in the Radio and Television Act
Notification	N/A	CEM	Notification to send prior to the launch of the service to CEM, who acknowledges receipt

Source: Bulgarian response to European Audiovisual Observatory standardised questionnaire

## 4.4.3. Application to public audiovisual media service providers

The AVMS of BNT need to be licensed by or notified to the CEM. The same procedure as the one described in section 4.4.4 below is applicable, with the exception that there is no beauty contest for DTT licences: pursuant to Article 105 (3) of the Radio and Television Act, the BNR (the national radio) and the BNT “*shall pursue radio and television*

<sup>63</sup> <http://www.lex.bg/bg/laws/ldoc/2134447616> (in Bulgarian).

<sup>64</sup> <http://www.sac.government.bg/>.



*broadcasting activities as national public-service broadcasters by virtue of licences granted without a contest or by virtue of registrations.” Moreover, pursuant to Article 44 (2) of the Act, “the State shall take the necessary measures to guarantee the distribution of the programme services of the BNR and the BNT within the entire territory of Bulgaria upon implementation of the policy in the sphere of electronic communications.”*

**Table 37. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Individual licence	CEM
<i>Via cable</i>	Notification <sup>65</sup>	CEM
<i>Via IPTV</i>	Notification	CEM
<i>Via satellite</i>	Notification <sup>66</sup>	CEM
<i>Via OTT</i>	Notification	CEM
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	CEM
<i>Via cable</i>	Notification	CEM
<i>Via IPTV</i>	Notification	CEM
<i>Via satellite</i>	Notification	CEM
<i>Via OTT</i>	Notification	CEM

Source: Bulgarian response to European Audiovisual Observatory standardised questionnaire

#### 4.4.4. Application to private (commercial) audiovisual media service providers

Licences are granted to linear AVMS distributed via DTT in the form of a beauty contest.

The procedure can be initiated at the request of an interested person or upon the initiative of the CEM or of the Communications Regulation Commission.

The CEM shall announce the procedure on its website as well as in the State Gazette. Within seven days of the closing date for the applications, the Chairperson of the CEM shall designate a commission of experts, which shall mandatorily include three members of the CEM and two members of the Communications Regulation Commission.

<sup>65</sup> With stronger requirements.

<sup>66</sup> With stronger requirements.



Pursuant to Article 116f (5) of the Radio and Television Act, the criteria on which the commission of experts has to assess the application are the following:

- “1. *originality and variety of the programme service;*
2. *capacity to create and provide own output;*
3. *degree of readiness and stages for uninterrupted (24-hour) distribution of the programme service;*
4. *proved experience as a radio or television broadcaster.”*

The commission of experts proposes that the CEM grant or refuse to grant a licence in respect of each of the applicants. Article 116f (7) of the Act adds that “*upon adoption of the decision on the grant or on a refusal to grant a licence, the CEM shall be guided by the following principles:*

1. *guaranteed right to information of citizens in the Republic of Bulgaria;*
2. *creating favourable conditions for variety of the media landscape and for pluralism;*
3. *preservation of national identity.”*

The deadline obliging the CEM to take a decision is thirty days after the designation of the commission of experts. Furthermore, within ten days after the adoption of its decision, the CEM shall grant the licence.

There is no deadline imposed on an AVMS provider for the effective provision of its service.

Linear AVMS distributed via other means and non-linear AVMS shall be notified to the CEM. Even though the Radio and Television Act uses a different terminology for linear services (registration) and for non-linear services (notification), for the purpose of this mapping, no difference will be made between the two. The procedures are relatively similar (even though the provider who notifies an AVMS has to provide the same data as for licensing), and lead to the same outcome, which is an access to the market with no limited term. The main difference lies in the treatment of the AVMS when granted access to the market, with stronger obligations imposed on linear AVMS distributed via cable and satellite than linear services distributed via other means and non-linear services.

The deadline obliging the CEM to acknowledge receipt of an application for a linear AVMS is 14 days. A similar deadline of 14 days applies for entering non-linear services into the register of non-linear AVMS. The legal consequences of both procedures are also similar in case of systematic violations of the law: the notification of the linear AVMS is revoked and the non-linear AVMS is struck off the register. The only difference lies in the level of the administrative fines which can be imposed on linear services (between 3 000 and 15 000 BGN) and non-linear services (between 2 000 and 5 000 BGN).

**Table 38. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		



<i>Via DTT</i>	Beauty contest	CEM
<i>Via cable</i>	Notification <sup>67</sup>	CEM
<i>Via IPTV</i>	Notification	CEM
<i>Via satellite</i>	Notification <sup>68</sup>	CEM
<i>Via OTT</i>	Notification	CEM
<b>Non-linear</b>		
<i>Via DTT</i>	Notification	CEM
<i>Via cable</i>	Notification	CEM
<i>Via IPTV</i>	Notification	CEM
<i>Via satellite</i>	Notification	CEM
<i>Via OTT</i>	Notification	CEM

Source: Bulgarian response to European Audiovisual Observatory standardised questionnaire

#### 4.4.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.4.4 above is applicable.

#### 4.4.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.4.4 above is applicable.

#### 4.4.7. Licence fee

The amount of 150 BGN is due for checking the regularity of the application (both for licensing and notification).

The amount of the licence fee depends on the type of document delivered:

- 3 000 BGN for a licence;
- 2 250 BGN for a notification certificate;

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<sup>67</sup> With stronger requirements.

<sup>68</sup> With stronger requirements.



The amounts of the initial licence fee or notification fee are determined depending on the necessary administrative costs incurred for the preparation and granting of the licence or notification.

In addition, an annual fee is also due, according to the following criteria (amount in BGN):

number of inhabitants	< 6 000	6 001 to 30 000	30 001 to 100 000	100 001 to 500 000	> 500 000	national coverage
local coverage	2 000	2 500	3 000	3 500	4 000	-
regional coverage	2 500	3 000	3 500	4 000	4 500	-
national coverage	-	-	-	-	-	5 000

The amount of the annual fee is determined depending on the necessary administrative costs incurred by the CEM for the supervision of the compliance with the conditions for the provision of services on the basis of the following criteria:

- number of registered residents who can be serviced by the licensed or registered service or the on-demand service;
- territorial coverage of the service;
- type of service – radio or television.

A fee is also due when changes to the conditions of an individual licence occur:

- for consideration of the request: 150 BGN;
- for making changes related to the identification parameters of the legal person: 150 BGN;
- for making changes related to the name and duration of the programme: 150 BGN;
- for making other changes, including the extension of the issued licence: 2 000 BGN.

The fees are determined in accordance with the following principles:

- equal treatment of radio and television AVMS providers;
- proportionality in administrative costs incurred;
- promotion of competition and of the provision of new AVMS;
- meeting the needs of the public for quality AVMS.

The beneficiary is the CEM.



## 4.4.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence. However, this is not the case for notification.

Pursuant to Article 108 of the Radio and Television Act, applicants for a licence “shall declare that they do not hold any interests, shares or rights of any other kind to participation in radio and television broadcasters in excess of the permissible limit according to the anti-trust legislation of the Republic of Bulgaria.”

**Table 39. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence
Media concentration issues considered during the licensing process	Applicants have to declare that they respect anti-trust legislation

*Source: Bulgarian response to European Audiovisual Observatory standardised questionnaire*

## 4.4.9. Management of the licence and notification

Licences are granted for 15 years and notifications have no limited term.

The duration of a licence can be extended by the CEM at the request of the licensee for an aggregate duration which may not exceed 25 years.

Not later than six months prior to the expiration of the term of validity of its licence shall the holder declare its intention to seek an extension of the term of licence. The CEM shall consider the request for the extension of the term of validity of the licence within three months prior to the expiration of the term of the licence.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the CEM. Sanctions have to follow a gradual approach, and revocation can only happen after having imposed two administrative fines for the same violation and if the licensee has failed to rectify the violation within the time period it was given to do so.

In case of revocation of the licence, the person shall be barred from applying for a licence for a period determined by the CEM and which cannot be shorter than two years.

The CEM also has the power to revoke a notification in the following circumstances:

- violation of the following principles:
  - the guaranteed right to freedom of expression of opinion;
  - the guaranteed right to information;
  - the protection of confidential sources of information;



- the protection of citizens' personal inviolability;
- the inadmissibility of programmes inciting to intolerance among citizens;
- the inadmissibility of programmes which are contrary to good taste, especially if they involve pornography, extol or condone brutality or violence, or incite to hatred on grounds of race, sex, religion or nationality;
- the guaranteed right of reply;
- the guaranteed copyrights and neighbouring rights;
- safeguarding the purity of the Bulgarian language;
- the respect for human dignity;
- ensuring the specified proportion within the total annual transmission time reserved for European works, as well as for works created by independent producers;
- the protection of children;
- the respect for copyrights and neighbouring rights according to the effective legislation;
- the provision of information to the Council for Electronic Media;
- if any of these circumstances have occurred:
  - any legal persons which have been denied the grant of an insurance business authorisation or whose insurance business authorisation has been revoked;
  - any legal persons referred to in the latter or the partners or shareholders therein hold a participating interest;
  - any sole trader persons or legal persons who or which are unable to produce evidence of the ownership of their property or of the capital under the Measures against Money Laundering Act;
  - any legal persons in which any sole trader natural person or legal persons or the partners or shareholders therein hold a participating interest;
  - any sole trader persons or legal persons who or which, during the five years last preceding the application for a licence, have been adjudicated bankrupt or are subject to bankruptcy or liquidation proceedings;
  - any legal persons wherein any persons included in the list referred to in the Act on Information Regarding Non-Performing Loans are partners or shareholders;
  - any sole trader persons or legal persons who or which received a refusal to an application for a licensed broadcasting activity of the same kind or whose licence granted under RTA has been revoked during the year last preceding the application for a licence.
- the AVMS is not distributed for a period longer than 12 consecutive months after the recording in the register or at any time after the notification;
- the programme design, programme concept, programme type or programme schedule as submitted conflict with the provisions of the law;
- the provider fails to fulfil the obligations to notify the CEM of the conditions, place and method of distribution, transmission time, as well as of any change therein, within 14 days after the occurrence of any such change;



The notification shall be revoked if, after a warning, the provider has failed to cure the circumstances within thirty days or if the provider commits systematic violations of the Act. A violation shall be considered as systematic when the same chapter of the Act is violated three or more times within one year.

**Table 40. Main issues regarding the management of the licence**

Issue	Description
Duration	15 years
Procedure to renew	At the request of the licensee
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to the CEM
Procedure in case of modifications in the licence conditions	Notification to the CEM
Procedure in case of modifications to the service with a view to targeting different audiences	No

*Source: Bulgarian response to European Audiovisual Observatory standardised questionnaire*

#### 4.4.10. Future amendments to the regulatory framework

N/A.

#### 4.4.11. Video-sharing platforms

N/A.

#### 4.4.12. Applicable regulatory framework

■ Primary legislation:

- In Bulgarian - Radio and Television Act: <http://www.lex.bg/bg/laws/ldoc/2134447616>
- In English - Radio and Television Act: [https://www.mtitc.government.bg/upload/docs/Radio\\_and\\_Television\\_Act\\_en.pdf](https://www.mtitc.government.bg/upload/docs/Radio_and_Television_Act_en.pdf)



### 4.4.13. Data compilation

This factsheet was produced based on data compiled by Raina Nikolova, Professor, New Bulgarian University.



## 4.5. CY – Cyprus – National Summary<sup>69</sup>

### 4.5.1. Summary

In Cyprus, access to the market is granted exclusively by the regulatory authority (Cyprus Radio-Television Authority - Αρχή Ραδιοτηλεόρασης Κύπρου, hereinafter CRTA)<sup>70</sup>, except for the public service media, which was created by law. The CRTA is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Two systems are used:

- Licensing, which is applicable to all non-public service AVMS and which had, until the digital switchover in 2011, been organised in the form of a beauty contest (and since 2011 in the form of temporary renewal).
- Public service, which is applicable to the public service media Cyprus Broadcasting Corporation (hereinafter RIK). The missions of the RIK are prescribed in a specific law. The DTT frequencies necessary to make its services available to the public are granted by the government.

It should be highlighted that the legal framework also includes one provision concerning AVMS providers established in another member state or a third country but targeting the national public with advertising windows, which imposes an authorisation and an obligation to pay 0,5% of the revenues from these advertising windows to the CRTA: *“A media service provider or any other natural or legal person having the responsibility to manage the advertisements and audiovisual commercial communications addressed to the Cypriot public which are included in the programme of a television broadcaster based in a member state of the European Union or a third country, which is broadcast, upon authorisation by the Authority, via an electronic communications network, shall pay the Authority the percentage of 0.5% on the revenues from the said advertisements or audiovisual commercial communications, as this is provided for in subsection (1) of this section.”*

However, this article has not been implemented until recently. The term *“authorisation”* itself does not appear anywhere else in the law, and there is no procedure detailed for such an authorisation.

**Table 41. Applicable systems**

System	Category
Licensing	Beauty contest (in theory)

<sup>69</sup> The factsheet on Cyprus incorporates the feedback received from members of the Αρχή Ραδιοτηλεόρασης Κύπρου (Cyprus Radio and Television Authority - CRTA) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>70</sup> <http://www.crtac.org.cy/>.



Source: Cypriot response to European Audiovisual Observatory standardised questionnaire

## 4.5.2. Functioning of the applicable systems

According to the Radio and Television Broadcasters Laws,<sup>71</sup> when DTT frequencies are available, the CRTA makes a call for interested legal persons to submit applications using forms established by the CRTA.<sup>72</sup>

The list of available frequencies is based on a frequency coverage plan drawn up by the Department of Electronic Communications of the Ministry of Transport, Communications and Works.

The CRTA has to grant licences “with the purpose of serving the public interest” (Article 14). This public interest is further detailed in a set of criteria which have to be used by the CRTA to assess the applications (Article 22).<sup>73</sup>

Licences are granted for 10 years. If the licence is not granted, the applicant can lodge an appeal with the Supreme Court<sup>74</sup> within 75 days following receipt of the decision.

This regulatory framework is therefore shaped for terrestrial broadcasting, which is indeed the main distribution platform in Cyprus (53% according to the latest data of the European Audiovisual Observatory). However, since the digital switchover in 2011, this licensing system in the form of a beauty contest is applied only to radio. For television, the former analogue licences have been transformed into temporary digital licences and renewed annually. The last major revision of the Laws dates back to 2010 with the amending Law N°118(I)/2010 aimed at transposing the provisions of the AVMS Directive into the national law. No significant amendment has been made since then, which explains why it does not respond to the environment created by the digital switchover in 2011 and the (real or potential) development of other distribution platforms.

The public service media RIK<sup>75</sup> is out of the scope of the licensing and notification systems. The missions of the RIK are prescribed in a specific law (Law on the Cyprus

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<sup>71</sup> [http://www.cylaw.org/nomoi/indexes/1998\\_1\\_7.html](http://www.cylaw.org/nomoi/indexes/1998_1_7.html) (in Greek)

<http://www.crtat.org.cy/applications/assets/FINAL%20CONSOLIDATED%20LAW%2016.3.17.pdf> (in English).

<sup>72</sup> The forms (in Greek) are available at

<http://crtat.org.cy/images/users/1/entypo%20xorigisis%20neas%20adeias%20tileoptikou%2025.7.16.docx> (for a new temporary licence), at

<http://crtat.org.cy/images/users/1/NEOEntypoAnanewsisisAdeiasTVorganismou%202017-2018%208.6.17.docx> (for the renewal of an existing temporary digital) and at

<http://crtat.org.cy/images/users/1/NEOEntypoAnanewsisisAdeiasTVorganismou%202017-2018%208.6.17.docx> (for additional services of an existing licensed provider).

<sup>73</sup> The evaluation form (in Greek) is available at

<http://www.crtat.org.cy/images/users/1/kanonismoi/PARARTIMA%20VI.pdf>.

<sup>74</sup> [http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLindex\\_en/DMLindex\\_en?OpenDocument](http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLindex_en/DMLindex_en?OpenDocument).

<sup>75</sup> <http://www.riknews.com.cy/>.



Broadcasting Corporation).<sup>76</sup> The DTT frequencies necessary to make its services available to the public are granted by the government (Department of Electronic Communications of the Ministry of Transport, Communications and Works).

**Table 42. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest (in theory)	CRTA	Licence granted by the CRTA with the purpose of serving the public interest, which is assessed by a set of criteria determined by Article 22 of the Radio and Television Broadcasters Laws
Public service	Law	Parliament & Government	The public service media RIK was created by law and the Government grants the frequencies needed, if available

Source: Cypriot response to European Audiovisual Observatory standardised questionnaire

### 4.5.3. Application to public audiovisual media service providers

The missions of the RIK are prescribed in the Law on the Cyprus Broadcasting Corporation.

There is no limited term to the activities of the RIK.

The DTT frequencies necessary to make its services available to the public are granted by the Director of the Department of Electronic Communications of the Ministry of Transport, Communications and Works. Pursuant to Article 18.4 of the Law on Radiocommunications,<sup>77</sup> the Director of the Department of Electronic Communications of the Ministry of Transport, Communications and Works, in order “to serve goals of general interest”, can grant “individual rights of use of radiofrequencies” for the transmission of programmes that constitute public service broadcasting. This is subject to the approval of the government.

<sup>76</sup> <http://www.cylaw.org/nomoi/indexes/300A.html> (in Greek).

<sup>77</sup> [http://www.cylaw.org/nomoi/enop/non-ind/2002\\_1\\_146/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2002_1_146/full.html) (in Greek).



One multiplex was attributed by the government to the RIK, and the second one to a platform operator in charge of the distribution of the private AVMS.

**Table 43. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament & Government
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament
<i>Non-linear</i>		
<i>Via DTT</i>	Law	Parliament & Government
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament

Source: Cypriot response to European Audiovisual Observatory standardised questionnaire

#### 4.5.4. Application to private (commercial) audiovisual media service providers

In theory, when DTT frequencies are available, the CRTA makes a call for interested legal persons to submit applications and grants licences “with the purpose of serving the public interest” (Article 14 of the Radio and Television Broadcasting Laws). This public interest is further detailed in a set of criteria which have to be used by the CRTA to evaluate the applications (Article 22):

*“(a) the completeness and quality of the programme: Provided that the completeness of the programme shall concern neither the thematic television or radio broadcasters nor the television broadcasters of encoded broadcasts regarding their programme broadcast in a closed zone;*

*(b) the knowledge, experience, ability and numerical adequacy of regular staff, especially of that involved in informational, educational and entertainment broadcasts;*

*(c) the programming commitment for the development of the sectors of information, education and entertainment and the contribution to all forms of literature and art as well as the ability to keep these commitments;*



(d) the ability and the commitment of the applicants to ensure pluralism in their programmes and broadcasts and the greatest possible access thereto, the journalistic and creative independence of journalists and other creators in the television or radio broadcaster and the regulation of the terms of employment of editors and other employees in the television or radio broadcaster through collective negotiations and collective employment contracts with their legally recognised professional body pursuant to the Industrial Relations Code;

(e) the technical efficiency of the station;

(f) the economic viability of the television or radio broadcaster.”

There is no deadline obliging the CRTA to respond to an application. However, the Regulations or Normative Administrative Acts<sup>78</sup> provide that any inquiries to the CRTA shall receive a response within a month; otherwise the application is assessed as “non-satisfactory”.

Once the licence is granted, a schedule of actions must follow to make possible the operations of the AVMS provider. The technical control of installations and equipment is carried out by the Department of Electronic Communications of the Ministry of Transports, Communications and Works. When transmission starts, the Department carries out quality controls. This “test or examination period” must not extend beyond a four-week period.

This is, however, a partly theoretical framework. The granting of new licences is indeed possible, but, in practice, since the digital switchover in 2011, the former analogue licences have been transformed into temporary digital licences and renewed annually.

**Table 44. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest (in theory)	CRTA
<i>Via cable</i>	Beauty contest (in theory)	CRTA
<i>Via IPTV</i>	Beauty contest (in theory)	CRTA
<i>Via satellite</i>	Beauty contest (in theory)	CRTA
<i>Via OTT</i>	Beauty contest (in theory)	CRTA
<i>Non-linear</i>		
<i>Via DTT</i>	Beauty contest (in theory)	CRTA
<i>Via cable</i>	Beauty contest (in theory)	CRTA
<i>Via IPTV</i>	Beauty contest (in theory)	CRTA
<i>Via satellite</i>	Beauty contest (in theory)	CRTA

<sup>78</sup> [http://www.cylaw.org/KDP/data/2000\\_1\\_10.pdf](http://www.cylaw.org/KDP/data/2000_1_10.pdf) (in Greek)



Via OTT	Beauty contest (in theory)	CRTA
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Source: Cypriot response to European Audiovisual Observatory standardised questionnaire

#### 4.5.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.5.4 above is applicable.

Although the regulatory framework makes a difference between national and regional/local coverage, the same licensing system applies to all AVMS, whatever the coverage.

#### 4.5.6. Application to community (non-profit) audiovisual media service providers

The Radio and Television Broadcasters Laws does not recognise this type of AVMS.

#### 4.5.7. Licence fee

The amount of the application fee depends on the type of licence applied for:

- EUR 8 543 for a nationwide TV licence;
- EUR 3 417 for a local TV licence.<sup>79</sup>

In addition, an annual fee is also due:

- EUR 51 400 for a nationwide TV licence;
- EUR 12 000 for a local TV licence.<sup>80</sup>

There are no criteria on how the amount of the fees is calculated.

The beneficiary is the CRTA.

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<sup>79</sup> In theory. In practice, local TV no longer exists since the digital switchover.

<sup>80</sup> In theory. In practice, local TV no longer exists since the digital switchover.

## 4.5.8. Media ownership and concentration

Transparency of ownership is ensured by the obligation to provide the relevant data when applying for a licence.

Media concentration is avoided during the licensing process by the following articles of the Radio and Television Broadcasting Laws:

- Pursuant to Article 18, the same natural or legal person shall be prohibited from obtaining more than one licence for a radio AVMS and the same legal person shall be prohibited from obtaining more than one licence for a television AVMS;
- Pursuant to Article 19, several other limitations apply to the ownership of shares in AVMS providers :

*“(1) Notwithstanding any other provision of this Law, no licence shall be granted to a company, either a general or limited partnership or a legal person of public law, as provided for in paragraphs (a), (b) and (c) of subsection (1) of section 16, which in this section shall be referred to as the company, unless the following requirements are met:*

*(a) Where a registered owner or a beneficial owner of shares in a licensed company is another company or other companies registered in the Republic or an EU member state and a registered owner or a beneficial owner of shares therein is another company or companies, the total number of shares in the latter company or companies shall belong to natural persons and the number of shares that each natural person shall hold in the other company or companies shall be specified by the provisions of subsection (2) of this section:*

*Provided that where a registered owner or a beneficial owner of shares in a licensed company is another public company listed on the Cyprus Stock Exchange or on a Stock Exchange of an EU member state or other public companies listed on the Cyprus Stock Exchange or on the Stock Exchange of an EU member state and a registered owner or a beneficial owner of shares therein is another company or companies, it shall not be necessary for the total number of shares of the latter company or companies to belong to natural persons:*

*Provided further that in the case referred to in the aforementioned proviso, the latter company or companies may not individually hold or control, directly or indirectly, more than 25% in the share capital of the public company which is listed on the Cyprus Stock Exchange or on the Stock Exchange of an EU member state and which is the beneficial owner of shares in a licensed company.*

*(b) No shareholder may control more than 25% in the company’s total share capital:*

*Provided that the shareholder of a radio broadcaster of local coverage may control up to 40% in the company’s total share capital.*

*(c) The total shares in a company belonging to persons who are related to each other up to the second degree or are spouses may not exceed 25% of the company’s total share capital:*



*Provided that in the case of a radio broadcaster of local coverage, the total shares in a company belonging to persons who are related to each other to the first degree or are spouses, may not exceed 40% of the company's total share capital.*

*(d) An alien may acquire, upon obtaining permission from the Council of Ministers, company shares not exceeding 5% of its total share capital.*

*(e) The share capital of a company which may belong to aliens may not exceed 25% of its total share capital.*

*(f) A licence for a radio broadcaster of small local coverage shall be granted to a company irrespective of its share composition.*

*(2) (a) No other company which is a shareholder in another company may hold or control, directly or indirectly, more than 25% of the company's total share capital.*

*(b) Where the shareholders of the company are more than one company, these other companies may not hold in total or control, directly or indirectly, more than 74% of the company's total share capital.*

*(c) A natural person who is a shareholder in another company, which is a shareholder in the company, may not hold or be a beneficial owner of shares of more than 10% in the other company.*

*(d) Where the shareholders of the company are more than one other company, no person who is a shareholder in more than one other company may be a holder or control shares or be a beneficial owner of shares in such other companies, the percentage of which sums up in total to more than 10% of the company's shares.*

*(e) No other company which is registered or a beneficial owner of shares or which controls, directly or indirectly, more than 25% of the company's share capital, may be a shareholder of the company, if the Members of the Board of Directors of the company and of the other company are essentially the same or have a majority over 50% of the Members of the Board of Directors of the company and of the other company.*

*(f) Where shareholders of the company are more than one other company, no other company may be a shareholder of the company, if the Board of Directors of any other company or if the Members of the Board of Directors of the other companies are in substance the same or have a majority over 50% of the Members of the Board of Directors of the company or of any of the other companies which is a shareholder of the company.*

*(g) The total shares of another company or other companies belonging to persons who are related to each other up to the second degree or are spouses may not be more than 25% of the total number or value, as the case may be, of the shares that the other company or the other companies in total hold in the company's share capital.*

*(h) For the purposes of this law, each other company that participates in the company's share capital shall be deemed to be a holding, subsidiary, dependent or associated company, if the shares of such other company are held or controlled by shareholders of another company or by the company or if the legal beneficiaries*



*hold or control more than 51% in another company which is a shareholder of the company.*

- (3) *A media service provider licence shall not be granted to:*
- (a) a natural person who has been convicted of an offence involving dishonesty or moral turpitude or who suffers from a mental disorder;*
  - (b) a company in which a shareholder controlling more than 5% of its share capital is any of the persons referred to in sub-paragraph (a) of this paragraph.*
- (4) *(a) Notwithstanding any other provision of this Law, no licence for a radio broadcaster shall be granted to a natural person or a company holding or controlling in any way:*
- (i) a share percentage over 5% in a publishing house, newspaper or magazine;*
  - (ii) a percentage over 5% in a television broadcaster of national coverage.*
- (b) Notwithstanding any other provision of this Law, no licence for a national or local or thematic television broadcaster or television broadcaster of encoded broadcasts shall be granted to a company holding or controlling in any way -*
- (i) a share percentage over 5% in a publishing house, newspaper or magazine;*
  - (ii) a percentage over 5% in a radio broadcaster of national coverage.*
- (c) Notwithstanding any other provision of this Law, no licence for a television or radio broadcaster shall be granted to a company the shareholders of which hold or control in any way -*
- (i) a share percentage over 5% in a publishing house, newspaper or magazine;*
  - (ii) a percentage over 5% in a radio or television broadcaster of national coverage, respectively.*
- (d) For the purposes of this subsection, the share percentage shall include the percentage of the shares held by persons who are related to each other up to the second degree or are spouses.*
- (5) *The shareholders of a company as well as the legal beneficiaries of shares, holding shares in a company through proxies to which a licence is granted for a radio or television broadcaster, shall submit an affidavit for the shares they hold regarding their exclusive ownership over the shares.*
- (6) *A natural or legal person violating any provision of this section shall be guilty of a criminal offence and, in case of conviction, shall be subject to imprisonment for up to three years or to a fine up to 85.400 Euro or both penalties.”*

**Table 45. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence
Media concentration issues considered during the	Limitation to ownership of several licences and



Source: Cypriot response to European Audiovisual Observatory standardised questionnaire

## 4.5.9. Management of the licence and notification

Licences are granted for ten years. However, since the digital switchover in July 2011 and in the absence of an update of the law in force, licences continue as provisional digital licences valid for one year. They expire on 30 June each year, and their renewal by the CRTA requires an amendment of the Radio and Television Broadcasting Laws, adopted every year.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the CRTA. Sanctions have to respect the principle of proportionality. The possible administrative sanctions are the following:

- recommendation;
- warning;
- temporary suspension of the operation of a television or radio broadcaster for a period not exceeding three months;
- revocation of the licence;
- administrative fine, which may not exceed the following amounts:
  - EUR 8 500 per day for a national television broadcaster;
  - EUR 1 700 per day for a local television broadcaster.<sup>81</sup>

Article 25 section 1 details the conditions in which a licence can be revoked:

*“(a) if it is proven that the conditions of section 22, under which the licence was initially approved, have ceased to be fulfilled; or*

*(b) if it is proven that the principles set out in section 26 are not fulfilled; or*

*(c) if a serious or repeated violation of the terms of the licence is established; or*

*(d) if a serious violation of the provisions of this Law and of the Regulations issued thereunder is proven; or*

*(e) in the case of a second conviction since the granting or the latest renewal of the licence due to the commitment of any of the offences provided for in Part II of the Criminal Code; or*

*(f) if the licence was obtained on the basis of false or misleading information when submitting the relevant application; or*

*(g) in case of a delay exceeding two months in the payment of the fees provided for in section 24 or of an administrative fine imposed by virtue of section 41; or*

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<sup>81</sup> In theory. In practice, local TV no longer exists since the digital switchover.



(h) in case the Director of the Department of Electronic Communications of the Ministry of Transport, Communications and Works requests so, under the Radiocommunications Laws of 2002 and 2003 and with the assent of the Authority; or

(i) in case of unjustified delay of more than six months in the commencement of operation of the television or radio broadcaster, according to the schedule submitted with the application.”

There is no specific procedure in case of the termination of the provision of an AVMS, but if a provider suspends its service for three consecutive months, this shall imply the expiration of the licence, except in exceptional cases and upon prior approval by the CRTA.

There is no specific procedure in case of modifications in the licence conditions. The principles which guide the granting of licences, such as serving the public interest and pluralism, which means also variety of content, offer little flexibility on changes. As a result, the only possible solution might be a notification to the CRTA. If this receives an initial approval, a new application that includes all the relevant documents may lead to the desired change, provided the applicant is eligible for the licence sought with the application and if no restraining technical issues exist.

**Table 46. Main issues regarding the management of the licence**

Issue	Description
Duration	10 years <sup>82</sup>
Procedure to renew	Not in the law, but specific form provided by the CRTA
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions, in respect of Article 25 of the Laws
Procedure in case of termination of the provision of the service	Suspension of the provision of service for more than three months is considered as an end to the licence
Procedure in case of modifications in the licence conditions	Upon prior approval by the CRTA. New licence necessary in some cases.
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Cyprus response to European Audiovisual Observatory standardised questionnaire

#### 4.5.10. Future amendments to the regulatory framework

N/A.

<sup>82</sup> In theory. In practice, yearly renewal.



#### 4.5.11. Video-sharing platforms

N/A.

#### 4.5.12. Applicable regulatory framework

- Primary legislation:
  - In Greek - Radio and Television Broadcasters Laws: [http://www.cylaw.org/nomoi/indexes/1998\\_1\\_7.html](http://www.cylaw.org/nomoi/indexes/1998_1_7.html)
  - In Greek - Law on the Cyprus Broadcasting Corporation: <http://www.cylaw.org/nomoi/indexes/300A.html>
  - In Greek - Law on Radiocommunications: [http://www.cylaw.org/nomoi/enop/non-ind/2002\\_1\\_146/full.html](http://www.cylaw.org/nomoi/enop/non-ind/2002_1_146/full.html)
  - In English - Radio and Television Broadcasters Laws: <http://www.crt.a.org.cy/applications/assets/FINAL%20CONSOLIDATED%20LAW%2016.3.17.pdf>
- Secondary legislation:
  - In Greek - Regulations on Normative Administrative Acts: [http://www.cylaw.org/KDP/data/2000\\_1\\_10.pdf](http://www.cylaw.org/KDP/data/2000_1_10.pdf)
  - In Greek - Application forms:  
<http://www.crt.a.org.cy/default.asp?id=241>

#### 4.5.13. Data compilation

This factsheet was produced based on data compiled by Christophoros Christophorou, Media expert.



## 4.6. CZ – Czech Republic – National Summary<sup>83</sup>

### 4.6.1. Summary

In the Czech Republic, access to the market is granted exclusively by the regulatory authority (Council for Radio and Television Broadcasting<sup>84</sup> - Rada pro Rozhlasové a Televizní Vysílání, hereinafter RRTV), except for public service media, which was created by law.

The RRTV is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Three systems are used:

- Licensing, which is applicable to all non-public service linear AVMS and which is organised in the form of a formal licence.
- Notification, which is applicable to all non-linear AVMS.
- Public service, which is partly applicable to the public service media Česká Televize<sup>85</sup> (hereinafter CT). The missions of the CT are prescribed in a specific law. The DTT frequencies necessary to make its services available to the public are granted by the telecommunications regulatory authority (Czech Telecommunication Office – hereinafter CTU) in cooperation with the RRTV.

**Table 47. Applicable systems**

System	Category
Licensing	Formal licence
Notification	N/A
Public service	Law

Source: Czech response to European Audiovisual Observatory standardised questionnaire

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<sup>83</sup> The factsheet on the Czech Republic incorporates the feedback received from members of the *Rada pro rozhlasové a televizní vysílání* (Council for Radio and TV Broadcasting - RRTV) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>84</sup> <http://www.rrtv.cz/cz/>.

<sup>85</sup> <http://www.ceskatelevize.cz/>.



## 4.6.2. Functioning of the applicable systems

Pursuant to the Radio and Television Broadcasting Act<sup>86</sup> and the On-demand Audiovisual Media Services Act,<sup>87</sup> non-public service linear AVMS have to be licensed by and all non-linear AVMS have to be notified to the RRTV.

The licensing procedure is exclusively formal: if the formal requirements are met, the licence has to be granted to the applicant (unless there are plurality issues).

Licences are granted for a maximum of 12 years. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the competent regional Administrative Court within thirty days following receipt of the decision.

All non-linear AVMS have to be notified to the RRTV.

The public service media CT is out of the scope of the licensing systems, but not out of the scope of the notification system. The missions of the CT are prescribed in the Czech Television Act.<sup>88</sup> The DTT frequencies necessary to make its services available to the public are granted by the CTU<sup>89</sup> in cooperation with the RRTV.

**Table 48. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Formal licence	RRTV	Application to send to the RRTV, who grants the licence if formal criteria are met
Notification	N/A	RRTV	Notification to send prior to the launch of the service to the RRTV, who acknowledges its receipt
Public service	Law	Parliament & CTU/RRTV	The public service media CT was created by law and CTU/RRTV grants the frequencies needed, if available

Source: Czech response to European Audiovisual Observatory standardised questionnaire

<sup>86</sup> <http://www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/231-2001.pdf> (in Czech) <http://www.rrtv.cz/en/static/documents/act-231-2001/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf> (in English).

<sup>87</sup> <http://www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/132-2010.pdf> (in Czech) [http://www.rrtv.cz/en/static/documents/act-132-2010/132\\_2010-EN.pdf](http://www.rrtv.cz/en/static/documents/act-132-2010/132_2010-EN.pdf) (in English).

<sup>88</sup> <http://img.ceskatelevize.cz/boss/image/contents/zakony/pdf/zakon-o-ceske-televizi.pdf> (in Czech) <http://www.ceskatelevize.cz/english/act-on-czech-television/> (in English).

<sup>89</sup> <http://www.ctu.eu/>.

### 4.6.3. Application to public audiovisual media service providers

The missions of the CT are prescribed in the Czech Television Act. However, its non-linear services are submitted to the same notification system as other non-linear services.

There is no limited term to the activities of the CT.

Pursuant to Article 3 section 2 of the Czech Television Act, the DTT frequencies necessary to make its services available to the public are granted by the CTU in cooperation with the RRTV.

**Table 49. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament & CTU/RRTV
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	RRTV
<i>Via cable</i>	Notification	RRTV
<i>Via IPTV</i>	Notification	RRTV
<i>Via satellite</i>	Notification	RRTV
<i>Via OTT</i>	Notification	RRTV

*Source: Czech response to European Audiovisual Observatory standardised questionnaire*

### 4.6.4. Application to private (commercial) audiovisual media service providers

#### Linear AVMS

The licensing procedure is launched by the RRTV at the request of an applicant. Section 25 (1) of the Radio and Television Broadcasting Act stresses that the licensing procedure “*may not be started on the initiative of the Council itself*”. There is no tender or beauty contest since the licence is technologically neutral and therefore not tied to the right to use any specific distribution means and especially the use of a scarce resource such as



DTT frequencies. This means that the RRTV has no discretion as to whether or not the licence is granted, (unless on the plurality grounds detailed below), as long as the formal licensing requirements are met by the applicant and as long as it is not in particular situations which have no link with the service itself, such as a liquidation procedure; unpaid taxes or other debts to the state; the revocation of a licence in the last five years; the existence of a final judgment for wilful offence; or “if it appears that the granting of the licence would contravene the obligations arising from an international treaty binding on the Czech Republic” (section 25(5)).

The application shall contain the following information regarding the provider and the service (section 14):

*“a) for legal persons: registered company name, registered office, legal form, identification number (if applicable), name, surname and birth identification number of the person authorised to act on behalf of the legal person; if the licence applicant is a foreign legal person, the information shall also contain data on the location and identification of the subsidiary in the territory of the Czech Republic, the name, surname and birth identification number or the date of birth of subsidiary manager and his/her residential address; if a deputy was appointed the information shall also contain the deputy’s name, surname and place of residence,*

*b) for natural persons: name, surname, birth identification number (if applicable); if not applicable, then the date of birth; the residence address, proof of permanent residence in the territory of the Czech Republic; the company name, identification number (if applicable); if not applicable, then the date of start of business activities and the residence address. If the licence applicant is a foreign person the residence address outside the territory of the Czech Republic shall be specified together with residence address in the Czech Republic, provided that residence in the Czech Republic has been permitted; information must also be provided on the location and identification of the subsidiary registered in the Companies Register on the basis of specific legislation<sup>9b)</sup>, and the name, surname and birth identification number or the date of birth of subsidiary manager and his/her residential address; if a deputy is appointed, the name, surname and residential address of such a deputy must also be indicated,*

*c) information pursuant to Sections 14(1)(a) or 14(1)(b) on all shareholders or members and persons who are the governing bodies or members of governing or supervisory bodies, if the licence applicant is a legal person,*

*d) if the licence applicant is a legal person, it is required to present data on the amount of registered capital, shares of voting rights and capital contributions of shareholders or members, if they are mandatory, including the specification of the type and financial valuation of in-kind contributions,*

*e) identification (name) of the programme,*

*f) time schedule of broadcasting and the territorial area of broadcasting; in the case of broadcasting distributed via transmitters, the territorial area of broadcasting shall be determined in accordance with Section 2(1)(y); in the case broadcasting distributed via cable systems, the territorial area of broadcasting shall be determined by the enumeration of the cadastral areas and districts; in the case of broadcasting distributed via satellites or special transmission systems, the territorial area of broadcasting is not determined,*



*g) basic specification of the programme, including information on the part of the programme retransmitted from another broadcaster and information on any services directly related to the programme,*

*h) in the case of an applicant for operating television broadcasting: the proposed proportion of total broadcasting time to be reserved for the broadcasting of European works and European works produced by independent producers,*

*i) the business plan, including documentary evidence of the funds the applicant is able to spend on radio or television broadcasting,*

*j) in the case of television broadcasting: the main broadcasting language and an enumeration of the states where the broadcasting is to be generally or primarily directed”.*

Additionally, the application shall also contain the following information regarding the distribution of the service (section 25 (2)):

*“a) written consent, issued by the person authorised to operate a cable network pursuant to specific legislation, to placing the licence applicant’s programme in the cable network, if the programme is planned to be broadcast via the cable network and if the party in the procedure has no authorisation to build and operate a cable network,*

*b) information on the states where it is possible to receive the programme and the specification of the satellite, if the programme is planned to be broadcast via satellite,*

*c) identification of the transmission system and information about access to broadcasting, if the programme is planned to be broadcast via a special transmission system,*

*d) information on how the broadcasting is to be supported technically, organisationally and financially, if the terrestrial digital television programme is planned to be distributed via transmitters.”*

Within thirty days of receipt of the application, *“the Council shall order a verbal procedure with the party in the licensing procedure, wherein the party shall propose the programme structure”* (section 25 (3)).

There is no deadline obliging the RRTV to grant a licence after the aforementioned verbal procedure. The deadline imposed on an AVMS provider for the effective provision of its service is 360 days.

Regarding the distribution of foreign AVMS via DTT, it is considered by the RRTV that the providers shall have a subsidiary or residence in the Czech Republic and shall apply for a licence.

### Non-linear AVMS

The notification procedure to the RRTV is the following (section 5 of the On-demand Audiovisual Media Services Act):

*“(1) An on-demand audiovisual media service provider shall deliver to the Council, within 30 days of the inception of its trade authorisation, a written notification, which shall contain:*

*a) the name of the on-demand audiovisual media service,*



- b) information which the on-demand audiovisual media service provider shall make accessible to recipients of the service,
- c) information about its incorporation – entry in the Companies Register or other similar register, including the file number, if assigned,
- d) the identification of the electronic communications network through which the on-demand audiovisual media service is to be provided, and information about access to the on-demand audiovisual media service, including, but not limited to, an Internet address; and
- e) the date on which the provision of the on-demand audiovisual media service is to commence”.

If the notification is incomplete, the RRTV invites the person who made the notification to complete the notification within thirty days. Failure to do so shall mean that the notification obligation has not been fulfilled.

The AVMS is then entered in the Register of On-demand Audiovisual Media Service Providers within thirty days of the notification and a confirmation of this notification is sent to the person who made it.

**Table 50. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence	RRTV
<i>Via cable</i>	Formal licence	RRTV
<i>Via IPTV</i>	Formal licence	RRTV
<i>Via satellite</i>	Formal licence	RRTV
<i>Via OTT</i>	Formal licence	RRTV
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	RRTV
<i>Via cable</i>	Notification	RRTV
<i>Via IPTV</i>	Notification	RRTV
<i>Via satellite</i>	Notification	RRTV
<i>Via OTT</i>	Notification	RRTV

Source: Czech response to European Audiovisual Observatory standardised questionnaire

#### 4.6.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.6.4 above is applicable.



Although the regulatory framework makes a difference between national and regional/local broadcasting, the same licensing system applies to all AVMS, whatever the coverage.

#### 4.6.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.6.4 above is applicable.

#### 4.6.7. Licence fee

The amount of the licence fee depends on the type of licence:

- National TV broadcasting licence or extension of licence: 90 000 CZK;
- Local TV broadcasting licence or extension of licence: 50 000 CZK;
- Change of conditions of TV broadcasting licence: 20 000 CZK.

There are no criteria on how the amount of the fee is calculated.

This amount is payable once for the whole duration of the licence and is meant to cover the administrative costs incurred. However, the beneficiary is not the RRTV, but the state budget.

#### 4.6.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying.

Media concentration is avoided during the licensing process by the following articles of the Radio and Television Broadcasting Act:

■ Article 55a:

“(1) No single legal person, nor any single natural person, may be a holder of more than two licences for nation-wide digital television broadcasting, which authorise the distribution of full-format programmes.

(2) No single legal person, nor any single natural person, may be a holder of more than two licences for nation-wide digital radio broadcasting.

(3) No nation-wide digital television broadcaster may possess any ownership interest in the business of any other nation-wide television broadcaster.



(4) No nation-wide digital radio broadcaster may possess any ownership interest in the business of any other nation-wide radio broadcaster.

(5) No nation-wide statutory television broadcaster may consolidate with any nation-wide digital television broadcaster, such a consolidation being based on the fact that their governing bodies or members of governing bodies are the same persons or related parties, or are members in the same business entity or are related parties.

(6) No nation-wide statutory radio broadcaster may consolidate with any other nation-wide digital radio broadcaster, such a consolidation being based on the fact that their governing bodies or members of governing bodies are the same persons or related parties, or are members in the same business entity or are related parties.

(7) No nation-wide digital television broadcaster may consolidate with any nation-wide digital television broadcaster in any other manner (Section 58).

(8) No nation-wide digital radio broadcaster may consolidate with any nation-wide digital radio broadcaster in any other manner (Section 58).

(9) Provisions of Paragraphs 1, 2, 3, 4, 7 and 8 above shall not apply to radio and television broadcasting distributed via cable systems, satellites and special transmission systems.

(10) Provisions of Paragraph 3 above shall not apply to agreements between digital television broadcasters that use transmitters, concerning shared operation of the electronic programme guide. The provisions of Paragraphs 7 and 8 shall not apply to persons involved in the promotion and sale of advertising services, sponsorship- and teleshopping related services, market surveying services and services relating to the purchase of programme units, except news programmes”.

■ Article 56:

“(1) If any single legal person or any single natural person is a holder of more than one licence to operate television broadcasting other than nation-wide television broadcasting, then the total coverage of the Czech Republic by such a legal person’s or natural person’s broadcasting, counted as a proportion of the sum of all such licences for the operation of television broadcasting other than nation-wide television broadcasting, shall not in aggregate exceed 70% of the total number of population of the Czech Republic, based on information from the most recent population census. Each inhabitant of the Czech Republic so covered shall always be counted in the total number of the population of the Czech Republic only once.

“(2) If any single legal person or any single natural person is a holder of more than one licence to operate radio broadcasting other than nation-wide radio broadcasting, then the total coverage of the Czech Republic by such a legal person’s or natural person’s broadcasting, counted as a proportion of the sum of all such licences for the operation of radio broadcasting other than nation-wide radio broadcasting, shall not in aggregate exceed 300% of the total number of



population of the Czech Republic, based on information from the most recent population census. Each inhabitant of the Czech Republic so covered shall always be counted in the total number of the population of the Czech Republic as many times as many of the respective programmes the inhabitant can listen to, the respective programmes being those broadcast under such a legal or natural person's all licences to operate radio broadcasting other than nation-wide radio broadcasting.

(3) Any single legal person or any single natural person may only hold an ownership interest in the business of more than one operator of radio broadcasting other than nation-wide radio broadcasting insofar as the total coverage of the population of the Czech Republic by the broadcasting of all operators of radio broadcasting other than nation-wide radio broadcasting in whose businesses such a legal or natural person has an interest remains under or at 300% of the total population of the Czech Republic, counted on the basis of the information from the most recent population census. Each inhabitant of the Czech Republic so covered shall always be counted in the total number of the population of the Czech Republic as many times, as many of the respective programmes the inhabitant can listen to, the respective programmes being those broadcast by all operators of radio broadcasting other than nation-wide radio broadcasting in whose business such a legal or natural person has an interest.

(4) Any single legal person or any single natural person may only hold an ownership interest in the business of more than one operator of television broadcasting other than nation-wide television broadcasting insofar as the total coverage of the population of the Czech Republic by the broadcasting of all operators of television broadcasting other than nation-wide television broadcasting in whose businesses such a legal or natural person has an interest remains under or at 70% of the total population of the Czech Republic, counted on the basis of the information from the most recent population census. Each inhabitant of the Czech Republic so covered shall always be counted in the total number of the population of the Czech Republic only once.

(5) The obligations referred to in Paragraphs 1 to 4 above do not apply to radio and television broadcasting distributed via cable systems, satellites and special transmission systems”.

■ Article 57:

“(1) No programme network may cover by radio broadcasting more than 80% and by television broadcasting more than 70% of the total population of the Czech Republic, counted on the basis of the information from the most recent population census. Each inhabitant of the Czech Republic so covered shall always be counted in the total number of the population of the Czech Republic only once.

(2) Broadcasters that are, or have been, distributing their broadcasting within a programme network may not change programme network nor may they change the broadcaster from which they take over the programme, during the period of validity of the licences awarded to them or extended for them”.

**Table 51. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	Limitation to ownership of several licences and of ownership in several AVMS providers and of coverage of population

Source: Czech response to European Audiovisual Observatory standardised questionnaire

#### 4.6.9. Management of the licence and notification

Licences are granted for a maximum of 12 years and notifications have no limited term.

The licence can be extended by the RRTV at the request of the licensee for a maximum of another 12 years. This extension has the same legal effect as a decision to grant a licence. A request for the renewal of the licence must be submitted:

- in case of nation-wide television broadcasting: within the period between the beginning of the 48<sup>th</sup> month and the end of the 42<sup>nd</sup> month remaining to the expiration of validity of the existing licence;
- in case of local radio or television broadcasting: within the period between the beginning of the 36<sup>th</sup> month and the end of the 30<sup>th</sup> month remaining to the expiration of validity of the existing licence.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the RRTV. The RRTV shall revoke the licence if the AVMS provider has (Article 63 section 1 of the Radio and Television Broadcasting Act):

*“a) attained the granting of the licence on the basis of false information in the licence application or such a broadcaster breached the obligation specified in Sections 55, 55a and 56,*

*b) repeatedly committed a particularly serious breach of the obligations set out in Section 32 (1)(a), (c), (d) and (e) hereof and a fine has repeatedly been imposed upon the broadcaster for such breaches,*

*c) repeatedly committed a particularly serious breach of the licence conditions”.*

The RRTV may revoke the licence if the AVMS provider has (Article 63 section 2):

*“a) failed to start radio broadcasting within 180 days of the finality of the decision to grant the licence, or failed to start television broadcasting within 360 days of the finality of the decision to grant the licence, or failed to do so within any other period defined in law,*

*b) having started broadcasting, failed for 30 days in total to do any broadcasting within the calendar year; the time of failure to broadcast shall not include the time for which the broadcasting was impeded by justified technical hindrances,*



*c) insolvency proceedings have been adjudicated in respect of the assets of the broadcaster”.*

Linear AVMS shall ask the RRTV in advance for consent to any change in the following facts specified in the licence application:

- “a) identification of the programme name,*
- b) change in the time schedule of broadcasting or the territorial area of broadcasting pursuant to Section 2(1)(y),*
- c) change in the territorial area of broadcasting in cable systems,*
- d) change to licence conditions,*
- e) change in the amount of registered capital, in the key to the distribution of voting rights, in the capital contributions of members (including the specification of the type and financial valuation of in-kind contributions) and in the amount of their ownership interest, memoranda of association or foundation, statutes and lists of members or shareholders”.*

Other changes shall be notified to the RRTV within 30 days from the date when the changes were made.

Non-linear AVMS providers shall notify the RRTV of any change in the registered information or of the interruption or termination of the service within thirty days from the date of such change or of the interruption or termination of the AVMS. The RRTV shall modify the Register of On-demand Audiovisual Media Service Providers accordingly within thirty days of receiving the notification. Where the provision of non-linear AVMS is not commenced within one year from the date of entry in the Register of On-demand Audiovisual Media Service Providers, or if such a provision is interrupted for a period of longer than one year, the provision of the AVMS shall be deemed to have been terminated on the last day of that period. The RRTV shall modify the Register of On-demand Audiovisual Media Service Providers accordingly and notify the AVMS provider of this modification.

In case of modifications to the service with a view to targeting different audiences, it would be considered that different linguistic versions or different programming or advertising windows are part of the same licence but that these variations have to be included in the licence.

**Table 52. Main issues regarding the management of the licence**

Issue	Description
Duration	12 years maximum
Procedure to renew	At the request of the licensee
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to the RRTV
Procedure in case of modifications in the licence	Notification to the RRTV



conditions	
Procedure in case of modifications to the service with a view to targeting different audiences	Modifications shall be included in the licence

Source: Czech response to European Audiovisual Observatory standardised questionnaire

#### 4.6.10. Future amendments to the regulatory framework

N/A.

#### 4.6.11. Video-sharing platforms

N/A.

#### 4.6.12. Applicable regulatory framework

■ Primary legislation:

- In Czech – Zakon o provozování rozhlasového a televizního vysílání a o změně dalších zákonů (Radio and Television Broadcasting Act): <http://www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/231-2001.pdf>
- In Czech – Zakon o audiovizuálních mediálních službách na vyžádání a o změně některých zákonů (On-demand Audiovisual Media Services Act): <http://www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/132-2010.pdf>
- In Czech – Zakon o České televizi (Act on Czech Television): <http://img.ceskatelevize.cz/boss/image/contents/zakony/pdf/zakon-o-ceske-televizi.pdf>
- In English - Radio and Television Broadcasting Act: <http://www.rrtv.cz/en/static/documents/act-231-2001/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf>
- In English - On-demand Audiovisual Media Services Act: [http://www.rrtv.cz/en/static/documents/act-132-2010/132\\_2010-EN.pdf](http://www.rrtv.cz/en/static/documents/act-132-2010/132_2010-EN.pdf)
- In English – Act on Czech Television: <http://www.ceskatelevize.cz/english/act-on-czech-television/>

#### 4.6.13. Data compilation

This factsheet was produced based on data compiled by Jan Fučík, Legal advisor, Česká televise.





## 4.7. DE – Germany – National Summary<sup>90</sup>

### 4.7.1. Summary

In Germany, access to the market is exclusively granted by the State (regional) media authorities (“Landesmedienanstalten”), except for the various national and regional public services, which have a statutory existence. In certain instances, access to the market is not subject to any requirements.

Three systems are used:

- Licensing, which is applicable to non-public service linear AVMS, under the form of an individual licence.
- Open system, which is applicable to non-public service non-linear AVMS.
- Public service, which is applicable to the national and regional public service media, under the form of the respective state laws and statutory existences, under the competence of their respective internal supervisory bodies.

The compliance of AVMS providers with the regulatory framework is ensured either by the competent State media authority (for non-public service AVMS) or by the competent internal supervisory body (for public service AVMS).

**Table 53. Applicable systems**

System	Category
Licensing	Individual licence
Public service	Law & statute
Open system	N/A

Source: German response to European Audiovisual Observatory standardised questionnaire

### 4.7.2. Functioning of the applicable systems

Pursuant to the Interstate Treaty on Broadcasting and Telemedia<sup>91</sup> and the respective State Media Laws,<sup>92</sup> non-public service linear AVMS have to be licensed by the competent State media authority.

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<sup>90</sup> The factsheet on Germany incorporates the feedback from members of *Die Medienanstalten* (the State Media Authorities) during the checking round with media regulators and from *Die Beauftragte der Bundesregierung für Kultur und Medien* (Ministry of Culture) during the follow-up round with the members of the Contact Committee set up by the AVMSD.



The licensing procedure is managed by the competent State media authority in the case of regional or local AVMS providers, and by a nationwide joint Commission on Licensing and Supervision - Kommission für Zulassung und Aufsicht (hereinafter ZAK)<sup>93</sup> in the case of national AVMS providers. Licences are granted upon individual application.

Licences are granted for seven to ten years or with no limited term, depending on the respective state law. If the licence is not granted, the applicant has the opportunity, depending on regional state law, to file an objection against such rejection with the Authority itself. This objection must be filed within one month of receiving the decision. Should the Authority not remedy the objection or should an objection be excluded under regional state law, the applicant can file an enforcement action with the regional Administrative Court. This action must be filed within one month of receiving the Authority's decision on the objection. The same applies if the State media authority does not reach a decision on the application at all. In this case, an enforcement action may be filed upon expiration of a suitable period of time after filing the application (generally three months). The court decision can be challenged by either party (the applicant or the Authority) before the regional Higher Administrative Court, and finally before the Federal Administrative Court.<sup>94</sup>

Non-public service non-linear AVMS providers benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority. No procedure exists in order to establish an inventory of existing services.

The national and regional public service media are out of the scope of the licensing system. They benefit from a statutory existence established by the respective state laws or by interstate treaties,<sup>95</sup> under the competence and supervision of their respective self-regulatory body.

**Table 54. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Individual licence	State media authority	Application to send to any State media authority (forum-shopping allowed) , who grants the licence if formal and substantive criteria are met

<sup>91</sup> [https://www.die-medienanstalten.de/fileadmin/user\\_upload/Rechtsgrundlagen/Rundfunkstaatsvertrag\\_RStV.pdf](https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Rundfunkstaatsvertrag_RStV.pdf) (in German)  
[https://www.die-medienanstalten.de/fileadmin/user\\_upload/Rechtsgrundlagen/RStV\\_20\\_english\\_version.pdf](https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/RStV_20_english_version.pdf) (in English)

<sup>92</sup> <http://www.die-medienanstalten.de/service/rechtsgrundlagen/landesmediengesetze.html> (in German)

<sup>93</sup> <https://www.die-medienanstalten.de/ueber-uns/organisation/kommission-fuer-zulassung-und-aufsicht-zak/>

<sup>94</sup> <http://www.bverwg.de/index.php>.

<sup>95</sup> Interstate Treaty on ARD available at [www.ard.de/download/348930/ARD\\_Staatsvertrag.pdf](http://www.ard.de/download/348930/ARD_Staatsvertrag.pdf) and InterState Treaty on ZDF available at <https://www.zdf.de/ZDF/zdfportal/blob/26486074/1/data.pdf>.



Public service	Law & statute	Parliament & internal supervisory body	The public service media are created by law and ruled by their own statutes
Open system	N/A	None	None

Source: German response to European Audiovisual Observatory standardised questionnaire

### 4.7.3. Application to public audiovisual media service providers

The provision of linear services by public service media can only be ordered via statutory provisions and is not subject to any further licensing requirement. As the provision of public linear services can only be ordered by statutory provision, the public broadcaster itself does not need to fulfil any specific requirements.

For new services, a specific procedure applies, compliant with the Communication from the European Commission on the application of State aid rules to public service broadcasting.

There are no pre-emption rules for public service media regarding DTT frequencies. However, in cases where the needs for DTT frequencies identified by the states cannot be fully satisfied, one of the several criteria to be taken into account for the distribution of DTT frequencies is ensuring the basic supply of broadcasting services and the participation of public service media in the development of new technologies and new services. Still, this does not ensure that all of the public AVMS will have access to DTT distribution. In practice, half of the available DTT frequencies are currently assigned to public service media while the other half are assigned to the distribution of private AVMS.

There is no limited term to the activities of the national and regional public service media.

**Table 55. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law & statute	Parliament & internal supervisory body
<i>Via cable</i>	Law & statute	Parliament & internal supervisory body
<i>Via IPTV</i>	Law & statute	Parliament & internal supervisory body
<i>Via satellite</i>	Law & statute	Parliament & internal supervisory body
<i>Via OTT</i>	Law & statute	Parliament & internal supervisory body
<i>Non-linear</i>		
<i>Via DTT</i>	Law & statute	Parliament & internal supervisory body
<i>Via cable</i>	Law & statute	Parliament & internal supervisory body



<i>Via IPTV</i>	Law & statute	Parliament & internal supervisory body
<i>Via satellite</i>	Law & statute	Parliament & internal supervisory body
<i>Via OTT</i>	Law & statute	Parliament & internal supervisory body

Source: German response to European Audiovisual Observatory standardised questionnaire

#### 4.7.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

Linear AVMS have to be licensed by the competent regulatory authority among the 14 State media authorities. Licences are granted in the form of individual decisions upon the request of the applicant. There is no tender or beauty contest since the licence is technologically neutral and therefore not tied to the right to use any specific distribution means, particularly those of a scarce resource such as DTT frequencies. If the formal and substantial requirements are met by the applicant (including that of plurality, as detailed in section 4.7.8. below), the regional regulatory authorities shall grant the licence. These licensing requirements depend on each regional state law but are relatively similar from one state to another. They usually include the obligation to have an establishment in the EEA; the ability to hold public office; proof of the technical and financial capability of running the service; the submission of a business- and a proposed broadcasting schedule; and the obligation to appoint a youth protection officer and a head of programming. Certain public organisations such as domestic or foreign government agencies, political parties or subsidiaries of such organisations are excluded from applying.

If the AVMS is regional or local, the licence is delivered and managed by the competent State media authority.

If the AVMS is national, the application has to be sent by the applicant to one of the State media authorities - not necessarily the one where the AVMS is established, which means that forum shopping is allowed. To ensure the consistent treatment of the applications by the different State media authorities, the Authority receiving the application shall forward it to the ZAK. When deciding whether the licence is granted or not, the ZAK's decision is binding on the State media authority which had received the application and which is in charge of granting it. The decision shall also take into account the role of the KEK in terms of media concentration (see section 4.7.8 below).

If a national AVMS provider wishes to insert regional advertising windows in its services, these may only be inserted if such regional advertising windows are generally permitted in the targeted state and if the AVMS provider has obtained a separate licence for the advertising window under the applicable state law of the targeted state.

National AVMS also insert regional programming windows in their services, usually based on legal requirements to do so. In this case, while it is part of the licence conditions of the national AVMS provider to allow access to such programming windows by regional content providers, the regional providers of the content windows shall themselves obtain a regional window licence from the competent State media authority.



Licences are delivered for generalist or thematic services.

There is no deadline obliging the State media authorities or the ZAK to respond to an application and no deadline imposed on an AVMS provider for the effective provision of its service.

Consistent compliance at nationwide level is ensured by the following three joint bodies:

- The Commission on Licensing and Supervision (ZAK),<sup>96</sup> a joint body consisting of one representative of each State media authority, in charge of deciding on the merits of a licence application or on an alleged infringement of statutory or licence requirements, and whose decisions are binding on the State media authority that received the application or granted the licence.
- The Commission on Concentration in the Media (KEK),<sup>97</sup> a joint body consisting of six representatives of the State media authorities and six independent experts, in charge of assessing each initial and subsequent issuance of a licence on media plurality grounds by applying specific media concentration rules, and whose decisions are binding on the State media authority that received the application or granted the licence.
- The Commission for the Protection of Minors in the Media (KJM),<sup>98</sup> a joint body consisting of six representatives of the State media authorities and six representatives from other youth protection authorities, in charge of applying the statutory youth protection rules to both linear and non-linear services, and whose decisions are binding on the competent State media authority (as licensor in the case of a linear service or, in the case of non-linear services, based on the location of the service provider's headquarters).

### Non-linear AVMS

Non-linear AVMS benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority.

**Table 56. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Individual licence	State media authority
<i>Via cable</i>	Individual licence	State media authority
<i>Via IPTV</i>	Individual licence	State media authority
<i>Via satellite</i>	Individual licence	State Media Authority

<sup>96</sup> <https://www.die-medienanstalten.de/ueber-uns/organisation/kommission-fuer-zulassung-und-aufsicht-zak/>.

<sup>97</sup> <https://www.kek-online.de/>.

<sup>98</sup> <https://www.kjm-online.de/>.



<i>Via OTT</i>	Individual licence	State media authority
<b>Non-linear</b>		
<i>Via DTT</i>	Open system	None
<i>Via cable</i>	Open system	None
<i>Via IPTV</i>	Open system	None
<i>Via satellite</i>	Open system	None
<i>Via OTT</i>	Open system	None

Source: German response to European Audiovisual Observatory standardised questionnaire

#### 4.7.5. Application to regional/local audiovisual media service providers

Considering the links between national and regional/local licensing systems, the procedure has been described in section 4.7.4 above.

#### 4.7.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.7.4 above is applicable.

One exception to this procedure is granted to so-called “Open Channels” that are designed to broadcast content produced by individuals or community groups. Open Channels were introduced in the 1980s with a view to increasing media competence and media diversity by providing an opportunity for the general public to create their own content without requiring a broadcasting licence. The respective rules regarding these channels may vary depending on the applicable State media law. Access to an Open Channel is regulated by statutes established by the State media authority, restricted to individuals, and granted free of charge based on an individual agreement between the respective user and the State media authority. This agreement sets forth provisions on airtime as well as on the equipment and training provided by the Authority. Each broadcast must previously be notified to the State media authority and each user remains fully liable for the content of the broadcast.

#### 4.7.7. Licence fee

The amount of the licence fee depends on the type of licence:

- nationwide licence: between EUR 5 000 and EUR 100 000; average fees in practice range between EUR 10 000 and 15 000;



- nationwide licence for services exclusively distributed via the Internet: between EUR 1 000 and EUR 10 000;<sup>99</sup>
- regional and local licences: depending on respective state laws, but generally starting at EUR 300.

The State media authority has the discretion to determine the fee within the statutory range. When exercising this discretion, it shall take into account the administrative effort that is required to handle the application, and the relevance of the fee, that is, the economic value of the licence for the applicant. In addition, the Authority can waive part of or the entirety of the fee if its collection would be unreasonable or unfair.

This amount is payable once for the whole duration of the licence.

The beneficiary is the competent State media authority.

#### 4.7.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence. All this data is then made public by the Kommission zur Ermittlung der Konzentration im Medienbereich (KEK - Media Concentration Commission).<sup>100</sup>

Media concentration is avoided at national level during the licensing process by Article 26 of the Interstate Treaty on Broadcasting and Telemedia according to which:

*“(1) An undertaking (natural person or legal entity or partnership) may itself or through undertakings attributable to it provide an unlimited number of television services transmitted nationally in the Federal Republic of Germany unless this results in the undertaking acquiring dominant power of opinion in accordance with the following provisions.*

*(2) If the services attributable to an undertaking reach an annual average audience share of 30 percent of all viewers, dominant power of opinion shall be assumed to be given. The same applies for an audience share of 25 per cent if the undertaking holds a dominant position in a media-relevant related market or an overall assessment of its activities in television and in media-relevant related markets shows that the influence on the formation of opinion obtained as a result of these activities corresponds to that of an undertaking with a 30 per cent audience share. In the calculation of the relevant audience share pursuant to sentence 2, two percentage points shall be deducted from the actual audience share if window services are included in the general channel attributable to the undertaking with the highest audience share pursuant to Article 25 (4). If at the same time broadcasting time is included for third parties in accordance with (5), a further three percentage points shall be deducted from the actual audience share.*

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<sup>99</sup> Please note that the State media authorities in February 2018 decided to change this fee to range from EUR 100 to EUR 10.000. The new rules will be applicable after ratification by all 14 State media authorities.”

<sup>100</sup> <https://www.kek-online.de/>.



*(3) If an undertaking has acquired dominant power of opinion with the services attributable to it, no licence may be issued for further services attributable to this undertaking, nor may the acquisition of further participating interests in broadcasters attributable to it be confirmed as being acceptable.*

*(4) If an undertaking has acquired dominant power of opinion with the services attributable to it, the State media authority shall, through the Commission on Concentration in the Media (KEK, Article 35 (2) sentence 1 no. 3), propose the following measures to the undertaking:*

- 1. the undertaking may give up its participating interests in broadcasters attributable to it until the attributable audience share of the undertaking falls below the limit pursuant to (2) sentence 1, or*
- 2. it may, in the case specified in (2) sentence 2, limit its market position in media-relevant related markets or give up its participating interests in broadcasters attributable to it until dominant power of opinion pursuant to (2) sentence 2 no longer prevails, or*
- 3. it may, with regard to service providers attributable to it, take the measures within the meaning of Articles 30 to 32 in order to ensure plurality of opinion.*

*The KEK shall discuss the possible measures with the undertaking with the objective of reaching mutual agreement. If agreement cannot be reached or if the measures which the undertaking and the KEK have mutually agreed upon are not implemented within a reasonable period, the State media authorities may, after the KEK has established the facts, revoke the licences of as many of the services attributable to the undertaking as may be required to ensure that the undertaking no longer exercises dominant power of opinion. The KEK shall select the licences to be revoked, taking into account the specificities of each case. No compensation shall be granted for any financial loss incurred as a result of the revocation of the licence.*

*(5) If a service provider reaches an annual average audience share of 10 per cent with a general channel or an information-oriented thematic channel, the service provider must allocate broadcasting time to independent third parties in accordance with Article 31 within six months after this fact has been established and after having been informed accordingly by the State media authority. If a service provider reaches an annual average audience share of 20 per cent with services attributable to it without one of the general channels or information-oriented thematic channels reaching an audience share of 10 per cent, the obligation pursuant to 1 shall apply to the service provider of the service attributable to the undertaking with the highest audience share. If the service provider does not implement the required measures, the licence shall be revoked by the competent State media authority after the facts have been established by the KEK. Paragraph (4) sentence 5 applies accordingly”.*

In addition, there are further media concentration requirements for regional/local AVMS providers based on each state law. These rules have a stronger focus on cross-media ownership rules than is the case at national level, and address situations where there is an overlap between the operation of regional and local television channels and respective newspapers.

**Table 57. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence
Media concentration issues considered during the licensing process	No licence can be granted above certain audience thresholds and at regional level cross-media ownership is taken into consideration

Source: German response to European Audiovisual Observatory standardised questionnaire

#### 4.7.9. Management of the licence and notification

Licences are granted for seven to ten years depending on the respective state law. Some state laws have been changed in order to allow the State media authorities to grant licences with no limited term.

Where the licence has not been granted for an unlimited term, the licensee can apply for a renewal usually by following the same procedure as for the initial licence application.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the State media authorities. Sanctions have to be decided following a gradual approach and, in case of suspension or revocation, may only occur in cases of repeated, severe infringements of the applicable laws and licence conditions or where the requirements for granting a licence no longer apply. Before revoking a licence, the State media authority must in any event first allow the licensee to be heard on the allegations, and it shall consider less drastic sanctions, such as issuing a warning, imposing a fine or ordering a temporary suspension of the licence.

Changes to the nature of the service must be notified to the competent State media authority, which will amend the licence respectively. If the changes in licence conditions are major, the AVMS provider might have to apply for a new licence and abandon the old one, depending on the specific circumstances.

If a national AVMS wishes to modify its service in order to target different audiences in other member states, the licence may be extended in order to do so upon request of the licensee.

**Table 58. Main issues regarding the management of the licence**

Issue	Description
Duration	7 to 10 years or without limited term (depending on state law)
Procedure to renew	Usually same as licensing (depending on state law)
Procedure to suspend	Usually same as for other sanctions (depending on state law)



Procedure to revoke	Usually same as for other sanctions (depending on state law)
Procedure in case of termination of the provision of the service	Usually, notification to the State media authority (depending on state law)
Procedure in case of modifications in the licence conditions	Notification to the State media authority with limited possibilities
Procedure in case of modifications to the service with a view to targeting different audiences	Modifications shall be included in the licence

Source: German response to European Audiovisual Observatory standardised questionnaire

#### 4.7.10. Future amendments to the regulatory framework

There is currently a discussion with respect to user-generated channels streaming live broadcasts over the Internet on whether those services should require a licence (and therefore qualify as regulated linear services), or whether a softer regulatory framework should apply in these cases (for example a mere notification requirement as is already the case for internet radio).

#### 4.7.11. Video-sharing platforms

N/A.

#### 4.7.12. Applicable regulatory framework

■ Primary legislation:

- In German - Staatsvertrag für Rundfunk und Telemedien (Interstate Treaty on Broadcasting and Telemedia):

[https://www.die-medienanstalten.de/fileadmin/user\\_upload/Rechtsgrundlagen/Rundfunkstaatsvertrag\\_RStV.pdf](https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Rundfunkstaatsvertrag_RStV.pdf)

- In German - ARD Staatsvertrag (Interstate Treaty on the First Nationwide Channel ARD):

[www.ard.de/download/348930/ARD\\_Staatsvertrag.pdf](http://www.ard.de/download/348930/ARD_Staatsvertrag.pdf)

- In German - ZDF Staatsvertrag (Interstate Treaty on the Second Nationwide Channel ZDF):

<https://www.zdf.de/ZDF/zdfportal/blob/26486074/1/data.pdf>

- In German - list of the different State media laws:



<http://www.die-medienanstalten.de/service/rechtsgrundlagen/landesmediengesetze.html>

- In English - Interstate Treaty on Broadcasting and Telemedia:  
[https://www.die-medienanstalten.de/fileadmin/user\\_upload/Rechtsgrundlagen/Rundfunkstaatsvertrag\\_RStV.pdf](https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Rundfunkstaatsvertrag_RStV.pdf)

#### 4.7.13. Data compilation

This factsheet was produced based on data compiled by Andreas Grünwald, Partner, Morrison & Foerster LLP, and Christoph Nüßing, Associate, Morrison & Foerster LLP.



## 4.8. DK – Denmark – National Summary<sup>101</sup>

### 4.8.1. Summary

In Denmark, access to the market is granted exclusively by the regulatory authority (Radio and Television Board -Radio og tv-nævnet, hereinafter RTB), except for public service media, which was created by law. In certain instances, access to the market is not subject to any requirements.

The RTB is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Four systems are used:

- Licensing, which is applicable to non-public service AVMS distributed via DTT and which is organised in the form of a beauty contest. A technical licence from the Danish Energy Agency (hereinafter DEA) is also necessary.
- Notification, which is applicable to non-public service AVMS distributed via other means.
- Open system, which is applicable to non-public service non-linear AVMS.
- Public service, which is applicable to the public service media DR and TV2 Denmark. The missions of DR and TV2 Denmark are prescribed in law, and a contract between them and the government (Ministry of Culture) details the scope of their offer and the obligations of both parties. The DTT frequencies necessary to make their services available to the public are granted by the Ministry of Culture. Moreover, those services also have to be distributed by the communal aerial stations.

**Table 59. Applicable systems**

System	Category
Licensing	Beauty contest
Notification	N/A
Public service	Law & contract
Open system	N/A

*Source: Danish response to European Audiovisual Observatory standardised questionnaire*

<sup>101</sup> The factsheet on Denmark incorporates the feedback received from members of the *Radio og tv-nævnet* (Radio and Television Board) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.



## 4.8.2. Functioning of the applicable systems

Pursuant to the Radio and Television Broadcasting Act,<sup>102</sup> only non-public service linear AVMS distributed via DTT have to be licensed by the RTB<sup>103</sup>, which has to grant licences based on criteria established by the Ministry of Culture (beauty contest).

Pursuant to the Frequency Act,<sup>104</sup> a technical licence must also be obtained from the DEA, which is the public agency in charge of spectrum management.<sup>105</sup> However, the DEA can only issue such a licence to AVMS providers who have been granted a broadcast licence by the RTB.

Licences are granted for a period of between one and four years, on a case-by-case basis. If the licence is not granted, there is no opportunity to lodge an appeal. An applicant could seek redress by filing a complaint with the Folketingets Ombudsman,<sup>106</sup> however this scrutinizing and overseeing institution is limited to vocally criticising the public administration.

All the other non-public service linear AVMS have to be notified to the RTB. Notifications have no limited term.

Non-public service non-linear AVMS benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority. No procedure exists in order to establish an inventory of existing services.

The public service media DR<sup>107</sup> and TV2 Danmark<sup>108</sup> are out of the scope of the licensing and notification systems. The missions of DR and TV2 Danmark (which is a private limited company but owned by the state and invested with public service obligations) are prescribed in the Radio and Television Broadcasting Act, and a contract between them and the Ministry of Culture details the scope of their offer and the obligations of both parties.<sup>109</sup> The DTT frequencies necessary to make their services available to the public are granted by the Ministry of Culture. Moreover, those services also have to be distributed by the communal aerial stations.

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<sup>102</sup> <https://www.retsinformation.dk/forms/r0710.aspx?id=161625> (in Danish)

[https://english.slks.dk/fileadmin/user\\_upload/dokumenter/medier/radio\\_og\\_tv/Engelsk\\_side/Promulgation\\_of\\_the\\_Radio\\_and\\_Television\\_Broadcasting\\_Act\\_2010.pdf](https://english.slks.dk/fileadmin/user_upload/dokumenter/medier/radio_og_tv/Engelsk_side/Promulgation_of_the_Radio_and_Television_Broadcasting_Act_2010.pdf) (in English).

<sup>103</sup> <https://slks.dk/medier/radio-og-tv-naevnet/>.

<sup>104</sup> <https://www.retsinformation.dk/Forms/r0710.aspx?id=183640> (in Danish)

[https://ens.dk/sites/ens.dk/files/Tele/act\\_on\\_radio\\_frequencies.pdf](https://ens.dk/sites/ens.dk/files/Tele/act_on_radio_frequencies.pdf) (in English).

<sup>105</sup> <https://ens.dk/en/our-responsibilities/spectrum>.

<sup>106</sup> <http://www.ombudsmanden.dk/>.

<sup>107</sup> <http://www.dr.dk/>.

<sup>108</sup> <http://tv2.dk/>.

<sup>109</sup> The current DR contract, covering the years 2015-2018, is available at [https://kum.dk/fileadmin/KUM/Documents/Kulturpolitik/medier/DR/Public\\_Serviceaftale\\_2015-18/DR\\_public\\_service-kontrakt\\_for\\_2015-2018.pdf](https://kum.dk/fileadmin/KUM/Documents/Kulturpolitik/medier/DR/Public_Serviceaftale_2015-18/DR_public_service-kontrakt_for_2015-2018.pdf) (in Danish).

The current TV2 Danmark licence, covering the years 2015-2018, is available at [https://kum.dk/fileadmin/KUM/Documents/Kulturpolitik/medier/TV2/2015/Tilladelse\\_til\\_TV\\_2\\_DANMARK\\_til\\_a\\_t\\_udoeve\\_public\\_service-programvirksomhed.pdf](https://kum.dk/fileadmin/KUM/Documents/Kulturpolitik/medier/TV2/2015/Tilladelse_til_TV_2_DANMARK_til_a_t_udoeve_public_service-programvirksomhed.pdf) (in Danish).

The current contracts for the eight regional windows of TV2 Danmark, covering the years 2015-2018, are available at <https://kum.dk/kulturpolitik/medier/tv/de-regionale-tv-2-virksomheder/> (in Danish).



**Table 60. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest	RTB	Application to send to the Government, who decides based on criteria established by the Ministry of Culture
Notification	N/A	RTB	Notification to send prior to the launch of the service to the RTB, who registers the AVMS
Public service	Law & contract	Government	The public service media DR and TV2 Danmark are created by law and a contract with the Government details the scope of their offer
Open system	N/A	None	None

Source: Danish response to European Audiovisual Observatory standardised questionnaire

### 4.8.3. Application to public audiovisual media service providers

The public service media each have a public service contract (DR, TV2/Regions) or a public service licence (TV2/Danmark) with a number of public service obligations to fulfil. These contracts/licences vary widely as to the level of detail and number of public service-obligations. Their purpose is to specify the framework for public service activities and the operational tasks which are considered to fall within this framework.

There is no limited term to the activities of DR and TV2/Danmark.

TV2/Danmark is granted a licence by the Ministry of Culture; its content is rather similar to the one that applies to DR.

The DTT frequencies necessary to make their services available to the public are granted by the Ministry of Culture. Moreover, those services also have to be distributed by the communal aerial stations.

**Table 61. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government



<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government
<b>Non-linear</b>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government

Source: Danish response to European Audiovisual Observatory standardised questionnaire

#### 4.8.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

Licences are granted to linear AVMS distributed via DTT in the form of a beauty contest.

The licensing procedure is ruled by the Executive Order of the Ministry of Culture on Experimental Activities under the Radio and Television Broadcasting Act.<sup>110</sup> The licences are awarded based on the following criteria:

- technological development; technological development means the development of new or existing technology or a new or modified use of existing technology;
- programme innovation; programme innovation means that the pilot company aims to create new programme concepts or to modify existing programme concepts;
- further development of the commercial possibilities for technology; by further developing the commercial possibilities, it is understood that the pilot company aims to identify new commercial opportunities or intend to test the commercial basis for such opportunities.

This licensing framework is experimental; therefore, the licences granted under this pilot framework are awarded for a one-year period and can only be renewed three times.

The deadlines obliging the RTB to conduct the tender and imposed on the AVMS provider for the effective provision of its service are determined on a case-by-case basis in the tender conditions.

Pursuant to Article 47 of the Act, linear AVMS distributed via other means have to be notified to the RTB. The notification is carried out online by filling out a form on the

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<sup>110</sup> <https://www.retsinformation.dk/Forms/R0710.aspx?id=12000> (in Danish).



website of the Ministry of Culture.<sup>111</sup> The application is then assessed by the RTB at its following meeting (once a month). The registration is of a formal nature: the RTB does not make a qualitative assessment of the notification, but rather determines whether it meets the formal criteria established in the Executive Order No. 697 of 9 June 2016.<sup>112</sup>

### Non-linear AVMS

Non-linear AVMS benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority. No procedure exists in order to establish an inventory of existing services.

**Table 62. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	RTB
<i>Via cable</i>	Notification	RTB
<i>Via IPTV</i>	Notification	RTB
<i>Via satellite</i>	Notification	RTB
<i>Via OTT</i>	Notification	RTB
<i>Non-linear</i>		
<i>Via DTT</i>	Open system	None
<i>Via cable</i>	Open system	None
<i>Via IPTV</i>	Open system	None
<i>Via satellite</i>	Open system	None
<i>Via OTT</i>	Open system	None

Source: Danish response to European Audiovisual Observatory standardised questionnaire

## 4.8.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.8.4 above is applicable.

<sup>111</sup> Form available at

[https://slks.dk/fileadmin/user\\_upload/0\\_SLKS/Dokumenter/Medier/TV/Registreringer/Kabelregistrering\\_skema.doc](https://slks.dk/fileadmin/user_upload/0_SLKS/Dokumenter/Medier/TV/Registreringer/Kabelregistrering_skema.doc).

<sup>112</sup> <https://www.retsinformation.dk/Forms/R0710.aspx?id=180509> (in Danish).



## 4.8.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.8.4 above is applicable, with the following exceptions.

The licensing procedure is ruled by the Executive Order of the RTB concerning non-commercial local TV.<sup>113</sup> The licences are awarded based on the following criteria:

- versatility: the highest-weighted criterion is that the overall programme activities in the region are versatile;
- beauty:
  - local content in addition to the minimum requirement;
  - the applicant's documented professionalism, skills, experience, etc. in the field of television and the like;
  - the applicant's facilitation of public access, that is, whether and, if so, how licensing holders offer other citizens access to produce and broadcast programmes on the television station;
  - the applicant airs the programmes in live streaming or makes it available on demand;
  - the applicant holds activities to increase the number of viewers, including viewers in younger sections of the population, the use of social media, etc.

Licences are granted for a period of between three and four years.

## 4.8.7. Licence fee

A licence fee may be required by the Ministry of Culture or the RTB in case of licensing, however this is not determined in the Radio and Television Broadcasting Act but on a case-by-case basis in the tender.

In 2017, a fixed annual fee of 600 DKK was also due to the DEA for the use of the frequencies as well as a variable annual fee which depends on the volume of spectrum used.

The beneficiaries of the fees are the RTB and the competent Ministry for the DEA, which is the Ministry of Energy, Utilities and Climate.<sup>114</sup>

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<sup>113</sup> <https://www.retsinformation.dk/Forms/R0710.aspx?id=186887> (in Danish).

<sup>114</sup> <http://en.efkm.dk/>.



## 4.8.8. Media ownership and concentration

**Table 63. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	No
Media concentration issues considered during the licensing process	No

Source: Danish response to European Audiovisual Observatory standardised questionnaire

## 4.8.9. Management of the licence and notification

Licences are granted for a period of between one and four years, on a case-by-case basis, and notifications have no limited term.

Licences may be extended by the RTB upon the request of the licensee.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the RTB. Sanctions have to be decided following a gradual approach and, pursuant to Article 93 of the Radio and Television Broadcasting Act, mainly include fines. Articles 50 and 51 of the Radio and Television Broadcasting Act detail the circumstances in which a licence can be suspended or revoked:

“50. The Radio and Television Board may withdraw a licence granted under Section 45, either temporarily or permanently, if the licensee:

- 1) infringes the Act or any provisions laid down pursuant to the Act, where such infringement is gross or frequently repeated; or
- 2) disregards Section 87 or any order issued pursuant thereto; or
- 3) disregards the terms upon which the programme licence is granted; or
- 4) disregards instructions issued under Section 88.

(2) *The Radio and Television Board may make a decision concerning temporary or permanent discontinuation of programme services under the first sentence of Section 47(1), if the registered undertaking:*

- 1) *infringes the Act or any provisions laid down pursuant to the Act, where such infringement is gross or frequently repeated; or*
- 2) *disregards Section 87 or any order issued pursuant thereto; or*
- 3) *disregards instructions issued under Section 88.*

3) *The Radio and Television Board may make a decision concerning the temporary or permanent discontinuation of programme services under the second sentence of Section 47(1), if the media service provider grossly or repeatedly infringes the Act or any provisions laid down pursuant to the Act.*



51. The Radio and Television Board may withdraw a programme licence temporarily or permanently if the licensee does not utilize the licence or in the event of a major interruption of the programme services”.

**Table 64. Main issues regarding the management of the licence**

Issue	Description
Duration	On a case-by-case basis
Procedure to renew	Upon the request of the licensee
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	No
Procedure in case of modifications in the licence conditions	No
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Danish response to European Audiovisual Observatory standardised questionnaire

#### 4.8.10. Future amendments to the regulatory framework

N/A.

#### 4.8.11. Video-sharing platforms

N/A.

#### 4.8.12. Applicable regulatory framework

■ Primary legislation:

- In Danish - Bekendtgørelse af lov om radio- og fjernsynsvirksomhed (Radio and Television Broadcasting Act): <https://www.retsinformation.dk/forms/r0710.aspx?id=161625>
- In Danish - Bekendtgørelse af lov om radiofrekvenser (Radio Frequency Act): <https://www.retsinformation.dk/Forms/r0710.aspx?id=183640>
- In English - Radio and Television Broadcasting Act: [https://english.slks.dk/fileadmin/user\\_upload/dokumenter/medier/radio\\_og\\_tv/Engelsk\\_side/Promulgation\\_of\\_the\\_Radio\\_and\\_Television\\_Broadcasting\\_Act\\_2010.pdf](https://english.slks.dk/fileadmin/user_upload/dokumenter/medier/radio_og_tv/Engelsk_side/Promulgation_of_the_Radio_and_Television_Broadcasting_Act_2010.pdf)



- In English – Radio Frequency Act:  
[https://ens.dk/sites/ens.dk/files/Tele/act\\_on\\_radio\\_frequencies.pdf](https://ens.dk/sites/ens.dk/files/Tele/act_on_radio_frequencies.pdf)
- Secondary legislation:
  - In Danish - Executive Order N°145 of 18 February 2014 of the RTB concerning non-commercial local TV:  
<https://www.retsinformation.dk/Forms/R0710.aspx?id=161797>
  - In Danish - Executive Order N°226 of 3 March 2017 of the RTB amending the Executive Order concerning non-commercial local TV:  
<https://www.retsinformation.dk/Forms/R0710.aspx?id=186887>
  - In Danish – Executive order N°1098 of 22 September 2017 of the RTV concerning non-commercial local TV:  
<https://www.retsinformation.dk/Forms/R0710.aspx?id=193786>
  - In Danish - Executive Order N°697 of 8 June 2016 of the RTB concerning notification and on-demand audiovisual program services:  
<https://www.retsinformation.dk/Forms/R0710.aspx?id=180509>
  - In Danish - Executive Order N°103 of 28 January 2016 of the Ministry of Culture concerning TV2/Danmark A/S' programme services:  
<https://www.retsinformation.dk/Forms/R0710.aspx?id=130040>
  - In Danish – Executive Order N°461 of 19 May 2006 of the Ministry of Culture on Experimental Activities under the Radio and Television Broadcasting Act:  
<https://www.retsinformation.dk/Forms/R0710.aspx?id=12000>

#### 4.8.13. Data compilation

This factsheet was produced based on data compiled by Jøren Ullits Olai Nielsen, Ph.d.-fellow, University of Copenhagen, Faculty of Law, Centre of Information & Innovations Law (CIIR).



## 4.9. EE – Estonia – National Summary<sup>115</sup>

### 4.9.1. Summary

In Estonia, access to the market is granted exclusively by the regulatory authority (Technical Regulatory Authority - Tehnilise Järelevalve Amet, hereinafter TJA)<sup>116</sup>, except for public service media, which was created by law.

The TJA is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Three systems are used:

- Licensing, which is applicable to non-public service linear AVMS and which is organised either in the form of a beauty contest or of an individual licence.
- Notification, which is applicable to non-public service non-linear AVMS providers.
- Public service, which is applicable to the public service media Eesti Rahvusringhääling (hereinafter ERR). The missions of the ERR are prescribed in a specific law. The DTT frequencies necessary to make its services available to the public are granted by the government on the proposal of the TJA.

It should also be highlighted that a licence for the provision of satellite television AVMS targeted at a foreign country is granted only after the TJA has consulted the relevant authority in the country of reception to check whether the content of the proposed AVMS meets the requirements set in the reception country, particularly regarding advertising and the protection of minors.

**Table 65. Applicable systems**

System	Category
Licensing	Beauty contest Individual licence
Notification	N/A
Public service	Law

Source: Estonian response to European Audiovisual Observatory standardised questionnaire

<sup>115</sup> The factsheet on Estonia incorporates the feedback from members of the *Tehnilise Järelevalve Amet* (Technical Regulatory Authority - TJA) during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>116</sup> <https://www.tja.ee/et>



## 4.9.2. Functioning of the applicable systems

Pursuant to the Media Services Act,<sup>117</sup> non-public service linear AVMS have to be licensed by the TJA and non-public non-linear AVMS have to be notified to the Ministry of Economic Affairs and Communications via the electronic Register of Economic Activities.

The licensing procedure is managed by the TJA. The TJA has to grant licences based on criteria defined in the Media Service Act and secondary conditions established by the Ministry of Culture (beauty contest in the case of free access services or individual licences in the case of conditional access). Licences meant for distribution via satellite are granted via an individual licensing procedure, with no beauty contest. This is also the case for conditional access services, whatever the distribution means.

Licences are granted for a maximum of 10 years for free access AVMS and 5 years for conditional access AVMS. If the licence is not granted, the applicant has the opportunity to file an objection against such rejection with the Director General of the TJA himself/herself and/or to lodge an appeal with the Administrative Court,<sup>118</sup> then with the Circuit Court<sup>119</sup> and then with the Supreme Court.<sup>120</sup>

The public service media ERR<sup>121</sup> is out of the scope of the licensing and notification systems. The missions of the ERR are prescribed in the Public Broadcasting Act.<sup>122</sup> The DTT frequencies necessary to make its services available to the public are granted by the government on the proposal of the TJA.

**Table 66. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest Individual licence	TJA	Licence granted by the TJA on the basis of a set of criteria determined by law and secondary conditions adopted by the Ministry of Culture
Notification	N/A	Ministry of Economic Affairs and Communications	Notification to submit electronically prior to the launch of the service to the Ministry of Economic Affairs and Communications, which

<sup>117</sup> <https://www.riigiteataja.ee/akt/106012011001> (in Estonian)

<https://www.riigiteataja.ee/en/eli/511052015002/consolide> (in English).

<sup>118</sup> <http://www.kohus.ee/en/estonian-court-system/administration-courts>.

<sup>119</sup> <http://www.kohus.ee/en/estonian-court-system/circuit-courts>.

<sup>120</sup> <https://www.riigikohus.ee/en>.

<sup>121</sup> <http://www.err.ee/>.

<sup>122</sup> <https://www.riigiteataja.ee/akt/12786086?leiaKehtiv> (in Estonian)

<https://www.riigiteataja.ee/en/eli/ee/527062014005/consolide/current> (in English).



			is acknowledged automatically in the electronic Register of Economic Activities.
Public service	Law	Parliament & Government	The public service media ERR was created by law and the Government grants the frequencies needed, if available

Source: Estonian response to European Audiovisual Observatory standardised questionnaire

### 4.9.3. Application to public audiovisual media service providers

The missions of the ERR are prescribed in the Public Broadcasting Act.

There is no limited term to the activities of the ERR.

Pursuant to Article 3 of the Act, “Public Broadcasting does not need an activity licence for provision of television or radio service or registration for provision of on-demand audiovisual media service in the register of economic activity. Radio frequencies and channels needed by Public Broadcasting for the performance of its functions provided by this Act and other necessary parameters shall be approved by the Government of the Republic on the proposal of the Technical Surveillance Authority.”

**Table 67. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament & Government/TJA
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament
<i>Non-linear</i>		
<i>Via DTT</i>	Law	Parliament & Government/TJA
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament

Source: Estonian response to European Audiovisual Observatory standardised questionnaire



#### 4.9.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

Private AVMS have to be licensed by the TJA via a beauty contest (in the case of free access television) or with an individual licence (in the case of conditional access television).

Licence applications shall consist of two parts: information about the fulfilment of the technical requirements and information about the content of the AVMS (secondary conditions).

The TJA shall notify the Ministry of Culture of the forthcoming competition for free access television AVMS at least two months before the announcement of the competition.

The Ministry of Culture shall decide on whether there is a need to establish secondary conditions to the licence and, if this is the case, it shall establish these conditions one month before the announcement of the competition. The announcement of the competition; the types and number of the activity licences to be issued; the final date for the submission of applications; and other conditions shall be announced on the websites of both the Ministry of Culture and of the TJA.

The application shall include information on the type of licence applied for; the characteristics of the service; information about the coverage area; and other relevant information necessary to confirm the compliance of the activities of the AVMS provider with the conditions and secondary conditions of the licence.

Different types of licences are granted:

- licence for the provision of a free access regional television service in the media coverage area of one or several counties with a population of up to 50% of the population of Estonia;
- licence for the provision of a free access national television service in the media coverage area with a population of over 50% of the population of Estonia;
- licence for the provision of a conditional access regional television services in the media coverage area of one or more counties with a population of up to 50% of the population of Estonia;
- licence for the provision of a conditional access national television service in the media coverage area with a population of over 50% of the population of Estonia;
- licence for the provision of a satellite television service;
- temporary licence for the provision of television.

The following may be established as secondary conditions for the delivery of the licence: a minimum amount of works of Estonian authors and works produced with the financial support of the Estonian State; the proportion of musical and verbal broadcasts in the programme service, including the proportion of news programmes; the amount of programmes in the programme service reflecting life in the coverage area; the requirement for the coverage area, the main target audience and the language of the programmes.



The selection of the best applicant is based on both the Media Service Act and the secondary conditions established by the Ministry of Culture. Applications are evaluated by an Advisory Committee which is formed by the Director General of the TJA and which includes representatives of agencies and legal persons of the sector and experts in the field of media, including the representative of the Ministry of Culture. The Advisory Committee's decisions are not binding for the Director General of the TJA.

The Director General of the TJA shall make the decision on the applications within three months of the final date for the submission of applications (one month for a conditional access television licence and six months for satellite television licences).

In practice, this procedure has never been implemented since there has never been more than one applicant for a licence.

There is no deadline imposed on an AVMS provider for the effective provision of its service, unless otherwise specified in the tender.

In the case of conditional access television, the licence is granted upon a submitted application without a competition. Secondary conditions might be established in accordance with the proposal made by the Minister of Culture.

Pursuant to Article 36 of the Media Services Act, a licence for the provision of satellite television AVMS targeted at a foreign country is granted only after the TJA has consulted the relevant authority in the country of reception to check whether the content of the proposed AVMS meets the requirements set in the reception country, particularly regarding advertising and the protection of minors

### Non-linear AVMS

Non-linear AVMS have to be notified to the Ministry of Economic Affairs and Communications via the electronic Register of Economic Activities, indicating information about the AVMS provider; the name and type of the service to be provided; the form of accessibility to the service and the coverage area; and the name of the executive producer of the programme catalogue.

The AVMS provider shall also be registered in the Commercial Register.

**Table 68. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest (free access) Individual licence (conditional access)	TJA
<i>Via cable</i>	Beauty contest (free access) Individual licence (conditional access)	TJA
<i>Via IPTV</i>	Beauty contest (free access)	TJA



	Individual licence (conditional access)	
<i>Via satellite</i>	Individual licence	TJA
<i>Via OTT</i>	Beauty contest (free access) Individual licence (conditional access)	TJA
<b>Non-linear</b>		
<i>Via DTT</i>	Notification	Ministry of Economic Affairs and Communications
<i>Via cable</i>	Notification	Ministry of Economic Affairs and Communications
<i>Via IPTV</i>	Notification	Ministry of Economic Affairs and Communications
<i>Via satellite</i>	Notification	Ministry of Economic Affairs and Communications
<i>Via OTT</i>	Notification	Ministry of Economic Affairs and Communications

Source: Estonian response to European Audiovisual Observatory standardised questionnaire

#### 4.9.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.9.4 above is applicable.

Although the regulatory framework makes a difference between national and regional coverage, the same licensing system applies to all AVMS, whatever the coverage.

#### 4.9.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.9.4 above is applicable.

#### 4.9.7. Licence fee

The amount of the licence fee depends on the type of licence:

- free access television licence: EUR 640;
- conditional access television licence: EUR 510;
- satellite television licence: EUR 960.



There are no criteria on how the amount of the fee is calculated.

The fee is payable once for the whole duration of the licence and is meant to cover the administrative costs incurred. However, the beneficiary is not the TJA, but the state budget.

#### 4.9.8. Media ownership and concentration

There are no rules about the transparency of ownership during the licensing or notification process, but this transparency is ensured in the Commercial Register.

Pursuant to Article 32 of the Media Services Act, one of the conditions for granting a licence is that the applicant “is not connected through the dominant influence over the management to the undertaking that has been issued an activity licence for provision of television and radio service and the issue of the activity licence may substantially damage the competition in the media services market, particularly through creation or reinforcement of the dominant position in the market”.

**Table 69. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	No
Media concentration issues considered during the licensing process	Granting a licence shall not substantially damage competition

*Source: Estonian response to European Audiovisual Observatory standardised questionnaire*

#### 4.9.9. Management of the licence and notification

Licences are granted for a maximum of ten years for free access AVMS and five years for conditional access AVMS. Notifications have no limited term.

The suspension of the licence is foreseen at the request of the licensee for up to one month if material obstacles have become evident in the technical transmission of the AVMS.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the TJA and shall follow the general rules set out in the Economic Activities Code Act. Revocation can also happen when the licensee has not transmitted the programme service that is in compliance with the conditions or secondary conditions of the licence for over one month. Violations of the obligations regarding the protection of minors and commercial communication are punishable by an administrative fine of up to EUR 32 000.



Modifications to the licence conditions are not foreseen by the regulatory framework. If the changes in licence conditions are major, the AVMS provider might have to apply for a new licence and abandon the old one, depending on the specific circumstances.

**Table 70. Main issues regarding the management of the licence**

Issue	Description
Duration	5 or 10 years
Procedure to renew	Same as licensing
Procedure to suspend	According to the Economic Activities Code Act or the Media Services Act
Procedure to revoke	According to the Economic Activities Code Act or the Media Services Act
Procedure in case of termination of the provision of the service	Notification to the TJA
Procedure in case of modifications in the licence conditions	Not possible
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Estonian response to European Audiovisual Observatory standardised questionnaire

#### 4.9.10. Future amendments to the regulatory framework

N/A.

#### 4.9.11. Video-sharing platforms

N/A.

#### 4.9.12. Applicable regulatory framework

■ Primary legislation:

- In Estonian - Meediateenuste seadus (Media Services Act): <https://www.riigiteataja.ee/akt/106012011001>
- In Estonian - Eesti Rahvusringhäälingu seadus (Public Broadcasting Act): <https://www.riigiteataja.ee/akt/12786086?leiaKehtiv>
- In Estonian - Majandustegevuse seadustiku üldosa seadus (Economic Activities Code Act): <https://www.riigiteataja.ee/akt/119032015051?leiaKehtiv>



- In English - Media Services Act:  
<https://www.riigiteataja.ee/en/eli/511052015002/consolide>
- In English - Public Broadcasting Act:  
<https://www.riigiteataja.ee/en/eli/ee/527062014005/consolide/current>
- In English - Economic Activities Code Act:  
<https://www.riigiteataja.ee/en/eli/ee/510072017007/consolide/current>

### 4.9.13. Data compilation

This factsheet was produced based on data compiled by Andres Joesaar, Associate professor, Baltic Film, Media, Arts and Communication School, Tallinn University.



## 4.10. ES – Spain – National Summary<sup>123</sup>

### 4.10.1. Summary

In Spain, at national level, access to the market is granted exclusively by the Spanish Government.

Three systems are used:

- Licensing, which is applicable only to non-public service linear AVMS distributed via DTT, and which is organised in the form of a beauty contest.
- Notification, which is applicable to all other non-public service linear and non-linear AVMS providers.
- Public service, which is applicable to the public service media Corporación Radio y Televisión Española (hereinafter CRTVE). The missions of the RTVE are prescribed in a specific law. If the CRTVE needs DTT frequencies to make its services available to the public, those frequencies are granted by the government.

The compliance of all AVMS providers with the regulatory framework is ensured by the National Commission on Markets and Competition - Comisión Nacional de los Mercados y la Competencia (hereinafter CNMC).<sup>124</sup>

At regional level (Autonomous Communities), a similar regulatory framework is applicable, usually under the competence of the regional government. Two Autonomous Communities have established an independent regulatory authority:

- In Catalonia, the Catalan Audiovisual Council (Consell de l'Audiovisual de Catalunya) is competent to grant DTT licences and receive prior notifications from all non-public service linear and non-linear AVMS providers which are under its jurisdiction (i.e. active only this Autonomous Community). Public service broadcasters should specify in their programme contract the AVMS - linear and non-linear - they provide via means other than DTT.
- In Andalusia, the Audiovisual Council of Andalusia (Consejo Audiovisual de Andalucía) only has advisory powers and therefore licensing and notification are dealt with by the regional government.

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<sup>123</sup> The factsheet on Spain incorporates the feedback from members of the *Comisión Nacional de los Mercados y la Competencia* (National Authority for Markets and Competition - CNMC) and the *Consell de l'Audiovisual de Catalunya* (Catalan Audiovisual Council - CAC) during the checking round with media regulators and from the *Ministerio de Industria, Comercio y Turismo* (Ministry of industry, trade and tourism) during the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>124</sup> <https://www.cnmcc.es/en>

**Table 71. Applicable systems (national)**

System	Category
Licensing	Beauty contest
Notification	N/A
Public service	Law

Source: Spanish response to European Audiovisual Observatory standardised questionnaire

#### 4.10.2. Functioning of the applicable systems

Pursuant to the General Law on Audiovisual Communication 7/2010 of 31 March,<sup>125</sup> linear AVMS distributed via DTT have to be licensed by the government.

According to the Spanish Constitution and the Telecommunications Law, radio spectrum planning is an exclusive national competence that is developed by the government in the Frequency Planning for DTT. This DTT Planning establishes the number of frequencies available for DTT at both national and regional level and for both public and commercial broadcasters. The government grants licences based on a beauty contest.

Licences are granted for 15 years. If the licence is not granted, the applicant has the opportunity to file an objection against such rejection with the government itself and subsequently before the ordinary courts.

The rest of the linear and non-linear AVMS have to be notified to the government.

The public service media CRTVE<sup>126</sup> is out of the scope of the licensing and notification systems. The missions of the CRTVE are prescribed in the Law on Public Broadcasting.<sup>127</sup> The DTT frequencies necessary to make its services available to the public are granted by the government.

**Table 72. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest	Government	Application to send to the Government, who decides based on criteria mentioned in its tender

<sup>125</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2010-5292> (in Spanish)

[https://www.en.uni.lu/research/fdef/media\\_law/audiovisual\\_media\\_services\\_directive/national\\_execution\\_measures/spain](https://www.en.uni.lu/research/fdef/media_law/audiovisual_media_services_directive/national_execution_measures/spain) (in English)

<sup>126</sup> <http://www.rtve.es/>

<sup>127</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2006-9958> (in Spanish)



Notification	N/A	Government	Notification to send prior to the launch of the service to the Government, who acknowledges its receipt
Public service	Law	Parliament & Government	The public service media RTVE was created by law and the Government grants the frequencies needed, if available

Source: Spanish response to European Audiovisual Observatory standardised questionnaire

### 4.10.3. Application to public audiovisual media service providers

The missions of the CRTVE are prescribed in the General Law on Audiovisual Communication 7/2010 of 31 March and in the Law on Public Broadcasting 17/2006 of 5 June.

The DTT frequencies necessary to make its services available to the public are pre-empted in the technical spectrum plan, adopted by the national government.

At regional level, a similar regulatory framework applies under the competence of the regional government (in Catalonia, under the competence of the Catalan Audiovisual Council and the Catalan Parliament). However, the national spectrum plans which includes the pre-emption of frequencies for regional and local public service media is adopted by the national government.

There is no limited term to the activities of the various public service media.

**Table 73. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament & Government
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament
<i>Non-linear</i>		
<i>Via DTT</i>	Law	Parliament & Government
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament



<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament

Source: Spanish response to European Audiovisual Observatory standardised questionnaire

#### 4.10.4. Application to private (commercial) audiovisual media service providers

According to the General Law on Audiovisual Communication 7/2010, the conditions for providing audiovisual services are established by the government in the tender rules. The tender rules usually contain commitments by the applicants in terms of programming, ownership structure, management and financial strategies, as well as staffing and personnel management; these all play a central role. The weight and specific evaluation of these criteria are also determined by the government in the tender rules.

A licence can be granted only to persons or legal entities who have Spanish nationality (or the nationality of an EEA State or of a state that fulfils the principle of reciprocity); who are established in an EEA State (or any other state that fulfils the principle of reciprocity); and who have a legal representative established in Spain. In the case of legal entities, ownership application by persons or entities from states that do not belong to the EEA is only accepted on the basis of reciprocity, limited to an individual participation of up to 25% and a total participation of up to 50%.

The deadline obliging the government to respond to an application is in general established by the tender rules, but the law establishes a maximum period of time of 6 months as of the final date for the submission of applications. In any case, once a frequency for the provision of broadcasting services is planned, the government has the obligation to call on a tender in order to adjudicate it within 6 months. At the end of this period, if the adjudication procedure has not been started, any interested party is entitled to request its launch.

The Audiovisual Law does not impose a deadline on a linear DTT AVMS provider for the effective provision of its service, but it is usually specified in the tender rules.

All the other linear and non-linear AVMS have to be notified to the government or the competent regional body. Notification is made electronically to the Ministry of Economy and Entrepreneurship (or the competent regional body). Once notification is completed, the service is registered in the National Registry of Audiovisual Media Services Providers (under the authority of the Ministry). The notification is acknowledged automatically except in two cases (which have to be identified within three months of the notification):

- the notification is carried out by a person or entity whose licence or the effects of a previous notification have been revoked by the competent authority in the previous two years;
- the provision of the service by the concerned person or entity has been prohibited by the authorities of another EEA State due to the violation of the European Convention of Human Rights.



**Table 74. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	Government
<i>Via cable</i>	Notification	Government (Ministry of Economy)
<i>Via IPTV</i>	Notification	Government (Ministry of Economy)
<i>Via satellite</i>	Notification	Government (Ministry of Economy)
<i>Via OTT</i>	Notification	Government (Ministry of Economy)
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	Government (Ministry of Economy)
<i>Via cable</i>	Notification	Government (Ministry of Economy)
<i>Via IPTV</i>	Notification	Government (Ministry of Economy)
<i>Via satellite</i>	Notification	Government (Ministry of Economy)
<i>Via OTT</i>	Notification	Government (Ministry of Economy)

Source: Spanish response to European Audiovisual Observatory standardised questionnaire

#### 4.10.5. Application to regional/local audiovisual media service providers

This is the competence of the Autonomous Communities. Usually, the same procedure as the one described in section 4.10.4 above is applicable, under the competence of the regional government or, if such authority exists and if it is empowered to do so, the regional regulatory authority. The Catalan Audiovisual Council, according to the Catalan Broadcasting Act, holds the competence to establish the conditions for the provision of AVMS in the Autonomous Community of Catalonia.

However, pursuant to Article 2.3 of the General Law on Audiovisual Communication 7/2010, AVMS reaching an audience in more than one Autonomous Community are considered to have national coverage. Therefore, when the AVMS is provided by means of a technology whose coverage cannot be geographically limited to a region (that is to say, satellite and OTT), the AVMS is deemed to be national and access to the market should be granted by the Ministry of Economy following the above-mentioned notification procedure.

**Table 75. Access to market by regional/local service providers**

Service	Category	Authority
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<b>Linear</b>		
<i>Via DTT</i>	Beauty contest	Competent authority according to regional legislation
<i>Via cable</i>	Notification	Competent authority according to regional legislation
<i>Via IPTV</i>	Notification	Competent authority according to regional legislation
<i>Via satellite</i>	Notification	Government (Ministry of Economy)
<i>Via OTT</i>	Notification	Government (Ministry of Economy)
<b>Non-linear</b>		
<i>Via DTT</i>	Notification	Competent authority according to regional legislation
<i>Via cable</i>	Notification	Competent authority according to regional legislation
<i>Via IPTV</i>	Notification	Competent authority according to regional legislation
<i>Via satellite</i>	Notification	Government (Ministry of Economy)
<i>Via OTT</i>	Notification	Government (Ministry of Economy)

Source: Spanish response to European Audiovisual Observatory standardised questionnaire

#### 4.10.6. Application to community (non-profit) audiovisual media service providers

Article 32 of the General Law on Audiovisual Communication 7/2010 includes some rules regarding the provision of community media services through spectrum frequencies. The law establishes the need to reserve a number of frequencies for the provision of such services. Providers are requested to obtain a specific licence. However, these provisions have never been applied and therefore community media services still lack the specific regulation that would be needed in order for service providers to be able to operate in a legal manner. On the other hand, there are no rules applicable to community media that do not use spectrum frequencies, although it could be interpreted that general rules on notification would be applicable to them.



#### 4.10.7. Licence fee

There is no licence fee directly related to the licensing or notification processes; however, the General Telecommunications Law 9/2014 of 9 May establishes a tax for the use of radio spectrum, therefore, AVMS providers using DTT licences must pay this tax since they make use of radio spectrum.

#### 4.10.8. Media ownership and concentration

Pursuant to the Royal Decree 847/2015 of 28 September, the service provider must include in its notification the owners of capital who owns more than the 5% of the capital. This information is public and one can consult it at the National Registry of Audiovisual Media Services Providers.<sup>128</sup> In case of licensing, the transparency is ensured once the licence has been granted by the obligation to disclose to the public the identity of the service provider, including all legal entities potentially integrated into its group and the identity of stakeholders.

During the licensing process, media concentration in television audiovisual market is avoided at national level by Article 36 of the General Law on Audiovisual Communication 7/2010 according to which:

*“1. Natural and legal persons may hold shares or voting rights simultaneously in different television audiovisual service providers.*

*2. However, no natural or legal person may acquire significant holdings in more than one television audiovisual media service provider with national coverage when the average audience of all the channels of the considered providers with national coverage exceeds 27% of the total audience for the twelve consecutive months prior to the acquisition.*

*3. If the average audience exceeds 27% of the total audience after the acquisition of new significant holdings, this shall have no effect on the holder*

*4. The shares or voting rights of natural or legal persons from countries that are not members of the European Economic Area are subject to compliance with the principle of reciprocity. In the event of an increase in the shares held by natural and legal persons from countries that are not members of the European Economic Area, on the entry into force of this Act, the total percentage held in the share capital of the television audiovisual media service provider must be less than 50% at all times.*

*5. No natural or legal person may acquire significant holdings or voting rights in more than one television audiovisual media service provider:*

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<sup>128</sup> <https://sedeaplicaciones.minetur.gob.es/RuecaListadosPublicos/>



a) When national audiovisual media service providers accumulate rights of use over the radioelectric public domain which together are greater than the technical capacity of two multiplex channels.

b) When regional audiovisual media service providers accumulate rights of use over radioelectric public domain which together are greater than the technical capacity of a multiplex channel.

c) No natural or legal person or participant in the share capital of a national television audiovisual media service provider may acquire significant holdings or voting rights in the capital of another provider of the same service, where this would prevent the existence of at least three different private national television audiovisual media service providers, thus ensuring respect for pluralism of information”.

**Table 76. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	Ownership in several AVMS providers and audience thresholds

Source: Spanish response to European Audiovisual Observatory standardised questionnaire

#### 4.10.9. Management of the licence and notification

Licences are granted for 15 years and notifications have no limited term.

The renewal of the licence is automatic, as a general principle, provided that:

- the licensee complies and pledges to continue complying with the conditions of the licence;
- there are no new technical obstacles or circumstances which impede the further use of the frequency;
- the licensee has no pending payments regarding the taxes for the use of the spectrum.

However, automatic renewal will not take place and therefore a new beauty contest will be launched when:

- there is a lack of available spectrum;
- there are third parties interested in being granted a licence;
- such interest has been formally conveyed to the competent authority 24 months before the expiration of the licence;
- Any interested party aiming to obtain the licence fulfils the requirements and conditions applicable to the current licensee.



Temporary suspension is not foreseen by the legislation, whereas revocation procedure has only to follow the general administrative procedure. The revocation of a licence is possible only in the event of a licensee committing three serious breaches in the last three years. However, immediate revocation is possible if the licensee has not respected the decisions of the independent regulatory authority regarding the protection of pluralism and diversity, particularly with regard to the previous non-authorisation of an intended merger or concentration.

The termination of the provision of the service requires a formal communication to the competent authority.

The legislation does not contain any specific regulation regarding the modification of the licence conditions. However, the general administrative procedure is applicable and therefore requires a request from the licensee and the approval by the competent authority, on the basis of the existence of a compelling public interest.

**Table 77. Main issues regarding the management of the licence**

Issue	Description
Duration	15 years
Procedure to renew	Automatic renewal, under certain conditions
Procedure to suspend	Suspension not possible
Procedure to revoke	General administrative procedure
Procedure in case of termination of the provision of the service	Notification to the competent authority
Procedure in case of modifications in the licence conditions	General administrative procedure
Procedure in case of modifications to the service with a view to targeting different audiences	No

*Source: Spanish response to European Audiovisual Observatory standardised questionnaire*

#### 4.10.10. Future amendments to the regulatory framework

The Autonomous Community of the Balearic Islands has established by law its regulatory authority, but this bodies are still in the process of being effectively installed.<sup>129</sup>

In Adalusia the Autonomous Parliament is currently reforming its Audiovisual Law.<sup>130</sup>

<sup>129</sup> The Law for the Balearic Islands is available at <http://www.caib.es/eboibfront/es/2013/8203/524893/ley-5-2013-de-1-de-octubre-audiovisual-de-las-ille> (in Spanish).

<sup>130</sup> <http://www.juntadeandalucia.es/servicios/normas-elaboracion/detalle/67859.html>



## 4.10.11. Video-sharing platforms

N/A.

## 4.10.12. Applicable regulatory framework

- Primary legislation:
  - In Spanish - Ley 7/2010, de 31 de marzo, General de Comunicación Audiovisual (Law on Audiovisual Communication): <https://www.boe.es/buscar/act.php?id=BOE-A-2010-5292>
  - In Spanish - Ley 17/2006, de 5 de junio, de la radio y televisión de titularidad estatal (Law on Public Broadcasting): <https://www.boe.es/buscar/act.php?id=BOE-A-2006-9958>
  - In English - Law on Audiovisual Communication: [https://www.en.uni.lu/research/fdef/media\\_law/audiovisual\\_media\\_services\\_directive/national\\_execution\\_measures/spain](https://www.en.uni.lu/research/fdef/media_law/audiovisual_media_services_directive/national_execution_measures/spain)
- Secondary legislation:
  - In Spanish - Real Decreto 847/2015, de 28 de septiembre, por el que se regula el Registro Estatal de Prestadores de Servicios de Comunicación Audiovisual y el procedimiento de comunicación previa de inicio de actividad:  
  
[https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-10394](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-10394)
  - In Spanish - Real Decreto 805/2014, de 19 de septiembre, por el que se aprueba el Plan Técnico Nacional de la Televisión Digital Terrestre y se regulan determinados aspectos para la liberación del dividendo digital: <https://www.boe.es/boe/dias/2014/09/24/pdfs/BOE-A-2014-9667.pdf>
- Autonomous Communities legislation:
  - In Catalan - Llei 22/2005, de 29 de desembre, de la comunicació audiovisual de Catalunya (Catalan Broadcasting Act): [http://portaljuridic.gencat.cat/ca/pjur\\_ocults/pjur\\_resultats\\_fitxa/?action=fitxa&mode=single&documentId=440333&versionId=1626853&language=ca\\_ES](http://portaljuridic.gencat.cat/ca/pjur_ocults/pjur_resultats_fitxa/?action=fitxa&mode=single&documentId=440333&versionId=1626853&language=ca_ES)
  - In Catalan - Llei 11/2007, d'11 d'octubre, de la Corporació Catalana de Mitjans Audiovisuals (CCMA Act): [http://portaljuridic.gencat.cat/ca/pjur\\_ocults/pjur\\_resultats\\_fitxa/?action=fitxa&mode=single&documentId=415418&versionId=1341159&language=ca\\_ES](http://portaljuridic.gencat.cat/ca/pjur_ocults/pjur_resultats_fitxa/?action=fitxa&mode=single&documentId=415418&versionId=1341159&language=ca_ES)
  - In English - Catalan Broadcasting Act: <https://www.parlament.cat/document/intrade/152498>
  - In Spanish/Valenciano - Ley 10/2018, de 18 de mayo, de la Generalitat, de creación del Consell del Audiovisual de la Comunitat Valenciana (CACV):  
  
[http://www.dogv.gva.es/datos/2018/05/23/pdf/2018\\_5013.pdf](http://www.dogv.gva.es/datos/2018/05/23/pdf/2018_5013.pdf)



- In Spanish – Ley 1/2004, de 17 de diciembre, de creación del Consejo Audiovisual de Andalucía:

[http://www.consejoaudiovisualdeandalucia.es/sites/default/files/ley\\_de\\_creacion\\_boe.pdf](http://www.consejoaudiovisualdeandalucia.es/sites/default/files/ley_de_creacion_boe.pdf)

- In Spanish – Ley 18/2007, de 17 de diciembre, de la radio y televisión de titularidad autonómica gestionada por la Agencia Pública Empresarial de la Radio y Televisión de Andalucía (RTVA):

[http://www.consejoaudiovisualdeandalucia.es/sites/default/files/ley\\_18\\_2007\\_rtva.pdf](http://www.consejoaudiovisualdeandalucia.es/sites/default/files/ley_18_2007_rtva.pdf)

### 4.10.13. Data compilation

This factsheet was produced based on data compiled by Joan Barata Mir, International consultant, CommVisions and Albany Associates.



## 4.11. FI – Finland – National Summary<sup>131</sup>

### 4.11.1. Summary

In Finland, access to the market is granted either by the government or by the regulatory authority (Finnish Communications Regulatory Authority - Viestintävirasto, hereinafter FICORA)<sup>132</sup>, except for the public service media, which was created by law.

Three systems are used:

- Licensing, which is applicable to non-public service linear AVMS distributed via DTT, and which is organised either in the form of a beauty contest or of a formal licence.
- Notification, which is applicable to all other non-public service AVMS and to the non-linear services of the public service media Yleisradio (hereinafter Yle).
- Public service, which is applicable to the linear AVMS of Yle. The missions of Yle are prescribed in a specific law on public service media. The DTT frequencies necessary to make its services available to the public are granted by a government decree.

The compliance of all AVMS providers with the regulatory framework is ensured by FICORA as well as, for issues regarding the protection of minors, by the National Audiovisual Institute (hereinafter KAVI).<sup>133</sup>

**Table 78. Applicable systems**

System	Category
Licensing	Beauty contest Formal licence
Notification	N/A
Public service	Law

Source: Finnish response to European Audiovisual Observatory standardised questionnaire

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<sup>131</sup> No remarks were received on the factsheet on Finland during the during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>132</sup> <https://www.viestintavirasto.fi/>

<sup>133</sup> <https://kavi.fi/en/about-kavi>



### 4.11.2. Functioning of the applicable systems

Pursuant to the Information Society Code,<sup>134</sup> non-public service linear AVMS distributed via DTT have to be licensed either by FICORA (formal licence) or by the government (beauty contest) depending on the scarcity of frequencies.

Licences are granted for a maximum of ten years. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Administrative Court<sup>135</sup> (if the decision is taken by FICORA) or with the Supreme Administrative Court<sup>136</sup> (if the decision is taken by the government) within thirty days of receiving the decision. An appeal against a decision of the Administrative Court may be lodged with the Supreme Administrative Court.

All the other AVMS have to be notified to FICORA, who acknowledges receipt of the notification within a week.

Yle is out of the scope of the licensing system for its linear services. Yle is covered by the Act on Finnish Broadcasting Company.<sup>137</sup> Its non-linear services have to be notified to FICORA.

Besides the aforementioned systems and pursuant to the Act on Audiovisual Programmes,<sup>138</sup> all AVMS (including those of Yle) also have to be notified to KAVI. KAVI is a public institution which is under the responsibility of the Ministry of Education and Culture and whose mission it is to preserve and restore films and audiovisual programmes; to disseminate knowledge about audiovisual culture; and to promote media education, children's media skills and the development of a safe media environment for children. KAVI also supervises compliance with the Act on Audiovisual Programmes regarding the classification of programmes with a view to protecting minors from harmful content. The notification shall include the following information: "1) the name, business name, contact information and domicile of the audiovisual programme provider; 2) a description of the manner in which the audiovisual programme is provided; 3) the contact information of the place in which the audiovisual programme is provided" (section 4 of the Act on Audiovisual Programmes).<sup>139</sup>

**Table 79. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
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<sup>134</sup> <http://www.finlex.fi/fi/laki/ajantasa/2014/20140917> (in Finnish)  
<http://www.finlex.fi/fi/laki/kaannokset/2014/en20140917.pdf> (in English).

<sup>135</sup> <https://oikeus.fi/tuomioistuimet/hallintooikeudet/fi/index.html>.

<sup>136</sup> <http://www.kho.fi/fi>.

<sup>137</sup> <http://www.finlex.fi/fi/laki/ajantasa/1993/19931380> (in Finnish)  
 In English: <http://www.finlex.fi/fi/laki/kaannokset/1993/en19931380.pdf> (in English).

<sup>138</sup> <http://www.finlex.fi/fi/laki/ajantasa/2011/20110710> (in Finnish)  
<http://www.finlex.fi/fi/laki/kaannokset/2011/en20110710.pdf> (in English).

<sup>139</sup> Notification form available at <https://kavi.fi/fi/meku/kuvaohjelmat/tarjoajaksi-ilmoittautuminen>.



Licensing	Beauty contest Formal licence	Government or FICORA	Application to send to FICORA, who grants the licence if there is no scarcity or significant effect, or transmits the applications to the government for a beauty contest in case of scarcity or significant effect
Notification	N/A	FICORA	Notification to send prior to the launch of the service to FICORA, who acknowledges its receipt
Public service	Law	Parliament	The public service media Yleisradio is covered by law for its linear services (non-linear services shall be notified to FICORA)

Source: Finnish response to European Audiovisual Observatory standardised questionnaire

### 4.11.3. Application to public audiovisual media service providers

The missions of Yle are prescribed in the Act on the Finnish Broadcasting Company. Its linear services need to be licensed or notified to FICORA, and its non-linear services shall be notified to FICORA.

The DTT frequencies necessary to make its services available to the public are granted by a government decree. The capacity for public service must be safeguarded: the Government Decree on the use of radio frequencies and frequency planning notes that *"there are six multiplexes jointly for national and regional TV activity in frequencies 470–790 MHz, one of which is primarily reserved for the public service tasks of Yleisradio Oy and for transmitting its programming pursuant to the licence granted to Yleisradio Oy."*<sup>140</sup>

There is no limited term to the activities of Yleisradio.

**Table 80. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law (& notification)	Parliament (& KAVI)
<i>Via cable</i>	Law (& notification)	Parliament (& KAVI)

<sup>140</sup> <http://www.finlex.fi/fi/laki/alkup/2014/20141246> (in Finnish).



<i>Via IPTV</i>	Law (& notification)	Parliament (& KAVI)
<i>Via satellite</i>	Law (& notification)	Parliament (& KAVI)
<i>Via OTT</i>	Law (& notification)	Parliament (& KAVI)
<b>Non-linear</b>		
<i>Via DTT</i>	Law (& notification)	FICORA (& KAVI)
<i>Via cable</i>	Law (& notification)	FICORA (& KAVI)
<i>Via IPTV</i>	Law (& notification)	FICORA (& KAVI)
<i>Via satellite</i>	Law (& notification)	FICORA (& KAVI)
<i>Via OTT</i>	Law (& notification)	FICORA (& KAVI)

Source: Finnish response to European Audiovisual Observatory standardised questionnaire

#### 4.11.4. Application to private (commercial) audiovisual media service providers

Linear AVMS distributed via DTT have to be licensed either by FICORA or by the government depending on scarcity (that is to say, depending on whether there are enough frequencies available for all applicants) or on potential significant effects to the overall development of the market.

The licensing procedure is launched by FICORA either at its own initiative or at the request of an applicant. The application guidelines adopted by FICORA provide all the technical details about the way the licensing process is conducted.<sup>141</sup> The application shall include: “1) the name, contact information and domicile of the applicant; 2) a statement on the planned duration of the operation; 3) a statement regarding the transmission technology to be used, the maximum capacity required for distribution and the availability of capacity; 4) a statement regarding the applicant’s solvency and ability to carry out regular television broadcasting; 5) a statement regarding the requirements for granting a licence referred to in section 26, if the licence is sought for television and radio programmes that are in the public interest; 6) a public version of the application” (section 23 of the Information Society Code).

If there is no scarcity or no significant effect, licences are granted by FICORA. This procedure can be qualified as formal licensing, considering that FICORA has no discretion as to whether or not the licence is granted, as long as the following formal licensing requirements are met by the applicant: “1) who has paid the application fee set out in section 285; 2) who is solvent and has the apparent ability to broadcast regularly according to the programming licence; 3) for whom there is no justified reason to suspect of violating the

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<sup>141</sup> Form available at

<https://www.viestintavirasto.fi/asioikanssamme/luvattodistuksettunnukset/televisionjaradionohjelmistotoimiluvat.html> (in Finnish).

Specific guidelines for round 2017 for television available at

<https://www.viestintavirasto.fi/ohjauksjavalvonta/toimiluvat/hakukuulutukset/kuulutustelevisionohjelmistotoimilupienhakemiseksi21.3.2016mennessa.html>



*provisions of this Act; 4) who has submitted an adequate statement regarding programme distribution management” (section 25).*

If there is free capacity, FICORA shall publish without delay the licence applications received and, at the same time, announce the deadline during which other applicants may apply for licences. FICORA may also announce the availability of capacity at its own initiative. The licence may be granted within one month at the earliest (section 23).

If there is scarcity, FICORA informs the applicants and looks into whether they are willing to resolve the issue of scarcity among themselves. The applicants might, for instance, negotiate so as to allow all applicants to obtain a licence (with only limited effect on the image quality); this means modifying the applications in terms of required capacity so that no one has to be left without a licence. The applicants might also negotiate something else.

If the issue of scarcity persists or *“if granting a programming licence could have a significant effect on the general development of the communications market”* (section 25 paragraph 1), the licensing procedure is transferred to the government and therefore can be qualified as a beauty contest, since the government shall take into account which applicant would best meet certain public policy objectives.

Within two weeks of the procedure being transferred to the government, the applicants may submit an application augmented by their content commitments. The government shall adopt its decisions within two months of the transfer. This deadline can be extended by eight months at most *“if it is necessary to ensure that the application procedure is fair, reasonable, clear and transparent or to supplement the information in the applications or for other special reasons”* (section 25 paragraph 4). The government shall, *“taking into consideration the television broadcasting of the area in question as a whole, aim at promoting freedom of speech as well as safeguarding the diversity of the provision of programmes and the needs of special groups of the public in a way that best promotes the aims provided in section 1”* (section 25 paragraph 5). Section 1 of the Information Society Code states that *“The objective of the Act is to foster the supply and use of electronic communications services and to ensure that everyone across Finland has access to communications networks and services at reasonable conditions. A further objective of the Act is to secure the efficient and interference-free use of radio frequencies, to foster competition, and to ensure that communications networks and services are technologically advanced, of high quality, reliable, safe, and inexpensive. This Act also aims to ensure the confidentiality of electronic communication and the protection of privacy.”*

The deadline imposed on an AVMS provider for the effective provision of its service is six months.

Linear AVMS distributed by other means and non-linear AVMS have to be notified to FICORA and to KAVI. Article 4 of the Information Society Code distinguishes between three types of notification: linear AVMS other than those subject to a licence, linear pay-



TV AVMS in DTT and non-linear AVMS.<sup>142</sup> The notification shall include relevant basic information such as: name and business ID; address, phone number and email address; contact person: name, phone number and email address; a description of the group of companies; a description of the (intended) service; the provider's geographic area of activity; an estimation of the date of commencement; and a place where recordings can be viewed. FICORA and KAVI shall acknowledge receipt of a notification within one week.

**Table 81. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest (& notification)	Government (& KAVI)
	Formal licence (& notification)	FICORA (& KAVI)
<i>Via cable</i>	Notification	FICORA (& KAVI)
<i>Via IPTV</i>	Notification	FICORA (& KAVI)
<i>Via satellite</i>	Notification	FICORA (& KAVI)
<i>Via OTT</i>	Notification	FICORA (& KAVI)
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	FICORA (& KAVI)
<i>Via cable</i>	Notification	FICORA (& KAVI)
<i>Via IPTV</i>	Notification	FICORA (& KAVI)
<i>Via satellite</i>	Notification	FICORA (& KAVI)
<i>Via OTT</i>	Notification	FICORA (& KAVI)

Source: Finnish response to European Audiovisual Observatory standardised questionnaire

#### 4.11.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.11.4 above is applicable.

<sup>142</sup> The different notification forms and guidelines are available at <https://www.viestintavirasto.fi/ohjausjavalvonta/ohjauksenjavalvonnankohdeetjatavat/imoitusvelvollisuudetjamaksuttoiminnanharjoittamisesta.html#tietoyhteiskuntamaksu>.



#### 4.11.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.11.4 above is applicable, except in the case of notification to KAVI, considering that, pursuant to Article 4 paragraph 1 of the Act on Audiovisual Programmes, *“the notification must be submitted if programmes are provided for economic purposes and on a regular basis.”*

#### 4.11.7. Licence fee

Different types of fees are due.

Pursuant to section 285 of the Information Society Code, an application fee of EUR 5 000 is due for a licence for each linear AVMS distributed via DTT.

Pursuant to Article 294 of the Information Society Code, an annual supervision fee also applies as follows:

- “1) fee payable by the Finnish Broadcasting Company Ltd is EUR 165 000;*
- 2) fee payable by a licence holder carrying out a service other than regional television broadcasting is EUR 16 000 for each television programme set complying with the licence, excluding parallel broadcasts;*
- 3) fee payable by a licence holder carrying out regional television broadcasting is EUR 800 for each television programme set complying with the licence.”*

The supervision fee is collected annually in two instalments by FICORA.

Pursuant to section 27 of the Act on Audiovisual Programmes, another yearly supervision also applies as follows:

- “1) EUR 100 for the programme output of a regional television channel;*
- 2) EUR 200 for business premises that publicly show audiovisual programmes and other corresponding facilities;*
- 3) EUR 100 for business premises that provide audiovisual programmes as recordings and other corresponding facilities;*
- 4) EUR 400 for on-demand services;*
- 5) EUR 400 for a set of programmes of a party retransmitting foreign television broadcasts;*
- 6) EUR 600 for the programme output of a national television channel.”*

The fee is collected annually by KAVI.

The application fee covers the costs of the application process as well as any possible subsequent changes to licences. The supervision fees cover the costs incurred by FICORA or KAVI in carrying out their respective missions.



## 4.11.8. Media ownership and concentration

There are no specific rules concerning transparency of ownership during the licensing or notification process, but in practice, this issue is taken into consideration.

During the licensing process, media concentration is avoided by the procedure detailed in section 4.11.4. above, according to which, if granting a licence could have a significant effect on the general development of the communications market, the licensing procedure is transferred to the government, which shall take into consideration, in the framework of the beauty contest it organises, the promotion of freedom of speech as well as the safeguard of the diversity of the provision of programmes and the needs of special groups of the public. Besides, the government has the opportunity to impose additional requirements, in terms of diversity, in the licence conditions.

**Table 82. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Not in theory
Media concentration issues considered during the licensing process	The government takes into consideration issues related to free speech and diversity

Source: Finnish response to European Audiovisual Observatory standardised questionnaire

## 4.11.9. Management of the licence and notification

Licences are granted for a maximum of ten years and notifications have no limited term.

Suspension and revocation are among the administrative sanctions that can be decided by FICORA. The procedure is ruled by the Administrative Procedure Act.<sup>143</sup> The Information Society Code details that:

*“31. A programming licence granted for television or radio broadcasting ceases to be valid if no regular activity in accordance with the licence has been started within six months from the first date of the licence period or if regular broadcasting has been interrupted for a period exceeding 30 days. Broadcasting can be considered to meet the licence requirements only if operations are carried out in all the frequencies or regions to which the licence entitles. FICORA shall notify the licence holder of the lapse. If amendments are made to a frequency block or frequency band in the programming licence and no operations have been started within six months from the entry into force of the amendment regarding the band that was amended, the programming licence ceases to be valid in terms of the amendments.*

<sup>143</sup> <http://www.finlex.fi/fi/laki/ajantasa/2003/20030434> (in Finnish)  
<http://www.finlex.fi/fi/laki/kaannokset/2003/en20030434.pdf> (in English)



*If there is a particularly weighty reason related to the operating requirements, the licensing authority may grant permission to deviate from the provisions laid down in subsection 1. The licence holder shall apply for an exceptional permit from the licensing authority before the licence lapses.*

*32. The licensing authority may cancel the licence in part or in full, if:*

- 1) the programming licence holder has repeatedly and seriously violated the provisions of this Act or the licence terms referred to in sections 27 or 37;*
- 2) the licence holder no longer has sufficient economic resources to meet its obligations in view of the nature and extent of the operation.*

*A further requirement for cancellation is that the licence holder, despite being requested to do so, fails to rectify its conduct or replenish its economic resources to a sufficient level within a reasonable period of at least one month.*

*The licensing authority may cancel a programming licence if the effective control in respect of the licence holder changes, except for a transfer within the same group of undertakings as referred to in section 30(1)–(2).*

*The licensing authority may cancel the licence in part or in full if this is necessary due to a change in the frequency allocation plan of frequencies allocated to operations subject to a licence.*

*If the programming licence holder is declared bankrupt, the licence shall become invalid immediately.”*

Pursuant to section 29 of the Information Society Code, *“the licensing authority may alter a programming licence during its validity period upon request by or with the consent of the licence holder or otherwise if it is necessary for special reasons due to technical development, international treaty obligations, an essential change in the operating conditions of an activity subject to a licence, changes in market conditions or other essential changes.”*

**Table 83. Main issues regarding the management of the licence**

Issue	Description
Duration	10 years maximum
Procedure to renew	Same as licensing
Procedure to suspend	According to the Administrative Procedure Act
Procedure to revoke	According to the Administrative Procedure Act
Procedure in case of termination of the provision of the service	Notification to the licensing authority
Procedure in case of modifications in the licence conditions	Prior approval of (or request by) the licensing authority
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Finnish response to European Audiovisual Observatory standardised questionnaire



#### 4.11.10. Future amendments to the regulatory framework

Changes in supervision fees are foreseen: the fee for Yleisradio would be increased, while the fee for commercial broadcasters would be decreased. Moreover, the conditions for granting and revoking licences would become more detailed: licences would not be granted if there were justified reasons to suspect the applicant of violating the provisions concerning the marketing of gaming activities/gambling in the Lotteries Act or those concerning the transmission time for programmes detrimental to children in the Act on Audiovisual Programmes, or if there were justified reasons to suspect that the applicant would commit a punishable act of incitement to hatred. The authority would also be granted further powers to revoke licences in cases where the licensee repeatedly violates the provisions concerning the marketing of gaming activities/gambling in the Lotteries Act or those concerning the transmission time for programmes detrimental to children in the Act on Audiovisual Programmes.<sup>144</sup>

#### 4.11.11. Video-sharing platforms

N/A.

#### 4.11.12. Applicable regulatory framework

■ Primary legislation:

- In Finnish - Tietoyhteiskuntakaari (Information Society Code):  
<http://www.finlex.fi/fi/laki/ajantasa/2014/20140917>
- In Finnish - Kuvaohjelmalaki (Act on Audiovisual Programmes):  
<http://www.finlex.fi/fi/laki/ajantasa/2011/20110710>
- In Finnish - Laki Yleisradio Oy:stä (Act on Finnish Broadcasting Company):  
<http://www.finlex.fi/fi/laki/ajantasa/1993/19931380>
- In Finnish - Laki viestintähallinnosta (Act on Communications Administration):

<http://www.finlex.fi/fi/laki/smur/2001/20010625>

- In Finnish - Laki Kansallisesta audiovisuaalisesta instituutista (Act on the National Audiovisual Institute):  
<http://www.finlex.fi/fi/laki/ajantasa/2007/20071434>

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<sup>144</sup> More information on the current legislative changes can be found at :

- [http://valtioneuvosto.fi/artikkeli/-/asset\\_publisher/media-ja-telealan-toimintaedellytyksiin-parannuksia?\\_101\\_INSTANCE\\_3wyslLo1Z0ni\\_languageId=en\\_US](http://valtioneuvosto.fi/artikkeli/-/asset_publisher/media-ja-telealan-toimintaedellytyksiin-parannuksia?_101_INSTANCE_3wyslLo1Z0ni_languageId=en_US) (summary in English);
- <https://finlex.fi/fi/laki/alkup/2018/20180068> (Law in Finnish);
- [https://www.eduskunta.fi/FI/vaski/KasittelytiedotValtiopaivaasia/Sivut/HE\\_82+2017.aspx](https://www.eduskunta.fi/FI/vaski/KasittelytiedotValtiopaivaasia/Sivut/HE_82+2017.aspx) (Preparatory work of the Law in Finnish).



- In Finnish - Hallintolaki (Administrative Procedure Act):  
<http://www.finlex.fi/fi/laki/ajantasa/2003/20030434>
- In English - Information Society Code:  
<http://www.finlex.fi/fi/laki/kaannokset/2014/en20140917.pdf>
- In English - Act on Audiovisual Programmes:  
<http://www.finlex.fi/fi/laki/kaannokset/2011/en20110710.pdf>
- In English - Act on the Finnish Broadcasting Company:  
<http://www.finlex.fi/fi/laki/kaannokset/1993/en19931380.pdf>
- In English - Administrative Procedure Act:  
<http://www.finlex.fi/fi/laki/kaannokset/2003/en20030434.pdf>
- Secondary legislation:
  - In Finnish - Government decree on television and radio activity:  
<http://www.finlex.fi/fi/laki/ajantasa/2014/20141245>
  - In Finnish - Government decree on communications administration:  
<http://www.finlex.fi/fi/laki/smur/2004/20040060>
  - In Finnish - Government decree on the use of radio frequencies and frequency planning:  
  
<http://www.finlex.fi/fi/laki/alkup/2014/20141246>
  - In Finnish - FICORA's regulation on notifications (M69):  
[https://www.viestintavirasto.fi/attachments/maaraykset/M69\\_2014.pdf](https://www.viestintavirasto.fi/attachments/maaraykset/M69_2014.pdf)
  - In Finnish - FICORA's guidelines for application:  
[https://www.viestintavirasto.fi/attachments/maaraykset/MPS69\\_2014.pdf](https://www.viestintavirasto.fi/attachments/maaraykset/MPS69_2014.pdf)

### 4.11.13. Data compilation

This factsheet was produced based on data compiled by Anette Alén-Savikko, LL.D, Postdoctoral researcher, University of Helsinki/University of Lapland.



## 4.12. FR – France – National Summary<sup>145</sup>

### 4.12.1. Summary

In France, access to the market is granted exclusively by the regulatory authority (Conseil supérieur de l'audiovisuel, hereinafter CSA).<sup>146</sup> This competence also includes the allocation of DTT frequencies both to public and private AVMS providers.

The CSA is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Four systems are used: public service, licensing, notification and open system. The type of system used depends on the following combination of criteria:

- the public or private nature of the AVMS;
- the distribution means of the AVMS;
- the amount of the annual turnover of the AVMS;
- the content of the AVMS.

These combinations create a complex mapping of potential situations which can hardly be summarised as in all the other factsheets, but which are explained in detail in the following sections.

**Table 84. Applicable systems**

System	Category
Licensing	Beauty contest Individual licence
Notification	N/A
Public service	Other agreements (legal licence & administrative licence & mission statement)
Open system	N/A

Source: French response to European Audiovisual Observatory standardised questionnaire

<sup>145</sup> The factsheet on France incorporates the feedback received from members of the *Conseil Supérieur de l'Audiovisuel* (CSA) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>146</sup> <http://www.csa.fr/>



## 4.12.2. Functioning of the applicable systems

Pursuant to the Law on Freedom of Communication,<sup>147</sup> several types of licences are granted by the CSA:<sup>148</sup>

- The first category of licences are administrative authorisations to use frequencies. These licences are issued by the CSA to the following service providers or network operators:
  - public service media (France Télévisions,<sup>149</sup> France Médias Monde,<sup>150</sup> Arte-France<sup>151</sup> and The Parliamentary Channel-LCP<sup>152</sup>);
  - DTT networks operators jointly proposed by licensed DTT services;
  - local and regional authorities for the distribution of licensed DTT services in non-covered areas;
  - satellite networks operators.<sup>153</sup>
- The second category of licences associates administrative authorisations to use frequencies allocated by the CSA and legal agreements setting forth the specific obligations of each AVMS. These licences are granted after a call for applications to:
  - private linear AVMS meant for distribution via DTT;
  - private non-linear AVMS providing services other than the catch-up TV of licensed DTT services;<sup>154</sup>
  - private linear AVMS meant for distribution via satellite or non-linear AVMS when the available radio-electric resource is not sufficient to ensure the pluralism of socio-cultural opinions;<sup>155</sup>
- The third category of licences are legal agreements to be concluded between the CSA and linear AVMS distributed by licensed satellite networks and other electronic communications networks not using frequencies allocated by the CSA when their annual turnover is higher than EUR 150 000 or when their programming is mainly dedicated to information on local life.

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<sup>147</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930> (in French)

<sup>148</sup> <http://www.csa.fr/>.

<sup>149</sup> <http://www.francetelevisions.fr/>.

<sup>150</sup> <http://www.francemediasmonde.com/>.

<sup>151</sup> <https://www.arte.tv/fr/>.

<sup>152</sup> <http://www.lcp.fr/>.

<sup>153</sup> The regime of licences to satellite networks operators is foreseen only if frequencies are allocated for broadcasting on satellite (Article 30-6 of the Law on Freedom of Communication). Nevertheless, AVMS are only distributed on networks using frequencies allocated for telecom providers and, consequently, this regime has never been used.

<sup>154</sup> The possibility of broadcasting audiovisual content without having to go through a call for tender is only possible for data related to an authorised service (for instance, data for the deaf or persons with impaired hearing). Catch-up TV is considered as a distinct service since the review of the Law on Freedom of Communication in 2009 and, consequently, broadcasting the catch-up TV of a licensed DTT service should require a specific licence and it should not be possible to share the radio-electric resource allocated to the linear AVMS. Nevertheless, this point is theoretical since there is no catch-up TV available on DTT.

<sup>155</sup> This rule is also derived from Article 30-6 of the Law on Freedom of Communication. As for satellite networks operators, no licence has been granted on this basis to private linear AVMS.



No legal agreement is needed for the simultaneous and unabridged retransmission of licensed DTT services, except for local television services when the population of the area covered increases to over ten million inhabitants.

The following services have to be notified to the CSA:

- commercial distributors of licensed private DTT services;
- linear AVMS (other than licensed DTT services) distributed by electronic communications' networks not using frequencies allocated by the CSA when their annual turnover is lower than EUR 150 000 and their programming is not mainly dedicated to information on local life;
- non-linear AVMS distributed on electronic communications networks not using frequencies allocated by the CSA;
- distributors whose services are provided to more than one hundred households on electronic communications networks not using frequencies allocated by the CSA.

The following activities benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority:

- On electronic communications' networks not using frequencies allocated by the CSA (that is to say: cable, IPTV, satellite and OTT):
  - The simultaneous and unabridged retransmission of DTT public and private licensed AVMS, except for local linear AVMS when the population of the area covered increases to over ten million inhabitants.
  - The distribution of linear and non-linear AVMS provided to less than 100 households;
  - The broadcasting of non-EU linear AVMS under France's jurisdiction because they use a satellite uplink from a station situated in France or, even if they do not use a satellite uplink situated in another EU Member State or another state party to the European Economic Area, they use a French satellite capacity;
  - The broadcasting of linear AVMS under the jurisdiction of another EU Member State, or of a state party to the European Economic Area, or of a state signatory to the European Convention on Transfrontier Television.

The duration of the licences shall not exceed ten years. Beauty contest licenses are granted for ten years. Legal agreements (between the CSA and linear AVMS distributed by cable, IPTV, satellite and OTT) are usually concluded for a renewable period of five years. Notifications have no limited term, but if the CSA notes that the annual turnover of an AVMS exceeds EUR 150 000, the notification shall be replaced by a legal agreement.

If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Council of State<sup>156</sup> (for national services) or with the Paris Administrative Court of Appeal<sup>157</sup> (for all other services) within two months of receipt of the decision. Judgments

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<sup>156</sup> <http://www.conseil-etat.fr/>.

<sup>157</sup> <http://www.paris.cour-administrative-appel.fr/>.



of the Paris Administrative Court of Appeal may be reviewed by the Council of State in appeal.

**Table 85. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest Individual licence	CSA	Licence granted by the CSA on the basis of a set of criteria determined by law and by the CSA
Notification	N/A	CSA	Notification to send prior to the launch of the service to the CSA, who acknowledges its receipt
Public service	Other agreements (legal licence & administrative licence & mission statement)	Parliament & CSA & Government	The public service media are granted a legal licence by the Parliament, an administrative licence by the CSA and negotiate a mission statement with the Government
Open system	N/A	CSA	Monitoring by the CSA

*Source: French response to European Audiovisual Observatory standardised questionnaire*

### 4.12.3. Application to public audiovisual media service providers

Public AVMS providers using DTT frequencies allocated by the CSA are entrusted with public service missions and are subject to a specific licensing system associating a legal licence (by a law which determines which AVMS providers are public AVMS providers) and an administrative licence (from the CSA, in order to allow the use of frequencies). Contrary to private AVMS providers, they do not have to enter into an agreement with the CSA, because their obligations are set forth in mission statements adopted by government decrees.<sup>158</sup>

The Law on Freedom of Communication grants the following public AVMS providers the right to use DTT frequencies allocated by the CSA:

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<sup>158</sup> This is only the case for France Télévisions and France Médias Monde. The obligations for Arte are set forth in a treaty between France and Germany and the obligations concerning LCP are determined by law and a legal agreement adopted by the bureau of each assembly.



- the national companies France Télévisions and France Médias Monde;
- the European cultural channel ARTE-France;
- the Parliamentary Channel (LCP).

As they are granted a legal licence and a priority right of access to available frequencies, these public AVMS providers are exempt from applying to any tender. Frequencies for broadcasting national public television programmes are allocated by the CSA without any call for applications but in consideration of their public service missions. The CSA may refuse the allocation of a frequency that would not be necessary for the fulfilment of such a mission or if the requested allocation is likely to undermine programme pluralism in the private sector. The priority right may be exercised upon request of the government.

**Table 86. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Other agreements (legal licence & administrative licence & mission statement)	Parliament & CSA & Government
<i>Via cable</i>	Other agreements (legal licence & mission statement)	Parliament & Government
<i>Via IPTV</i>	Other agreements (legal licence & mission statement)	Parliament & Government
<i>Via satellite</i>	Other agreements (legal licence & mission statement)	Parliament & Government
<i>Via OTT</i>	Other agreements (legal licence & mission statement)	Parliament & Government
<i>Non-linear</i>		
<i>Via DTT</i>	Other agreements (legal licence & administrative licence & mission statement)	Parliament & CSA & Government
<i>Via cable</i>	Other agreements (legal licence & mission statement)	Parliament & Government
<i>Via IPTV</i>	Other agreements (legal licence & mission statement)	Parliament & Government
<i>Via satellite</i>	Other agreements (legal licence & mission statement)	Parliament & Government
<i>Via OTT</i>	Other agreements (legal licence & mission statement)	Parliament & Government

Source: French response to European Audiovisual Observatory standardised questionnaire



#### 4.12.4. Application to private (commercial) audiovisual media service providers

Different types of licensing and notification processes are applied depending on whether the AVMS are distributed via frequencies allocated by the CSA (that is to say, DTT) or via other means.

##### Distribution via DTT

The licensing of AVMS distributed via DTT takes the form of a beauty contest.

The procedure starts with the publication by the CSA of a tender, which shall be preceded by a public consultation organised by the CSA when the licensing procedure is likely to produce significant changes on the relevant market. In this case, the CSA shall carry out and make public an impact assessment to measure, in particular, the economic impact of such licences. If the prior public consultation or impact assessment reveals that the economic situation of the market is not in favour of the launch of the procedure, the CSA is allowed to postpone the process for a two-year period that may be renewed once for two further years.

Otherwise, the CSA launches a call for applications, specifying the categories of services concerned; the relevant geographic areas for local television services; the available resource; and the list of frequencies to be allocated. The tender also details the application procedure, including the application term; the content of application files in terms of programming and funding; the different stages of the procedure; and the criteria of selection. The CSA shall privilege free-to-air services.

The applicant shall provide the information mentioned in Articles 30 and 30-1 of the Law on Freedom of Communication, such as: information about the applicant; its legal status, capital and leaders; the object and general characteristics of the project in terms of programming; the technical characteristics; estimated expenditures and revenues; the origin and amount of planned funding; the means of commercial distribution; the share of programming devoted to local expression; the planned geographic areas; the constituent parts of a future legal agreement; and the technical propositions regarding the need for resource and the choice of frequencies.

Upon expiration of the application term, the CSA adopts a list of qualified applicants. The criteria to be taken into consideration are: compliance with the application term; the actual existence of the applicant legal person; and the application file's content and service project. All qualified applicants are invited to a public hearing during which they present their project. After this public hearing, the CSA selects the successful applicants on the basis of criteria set forth in the Law on Freedom of Communication.

Legal agreements between the CSA and the selected applicants shall be signed before broadcasting licences can be issued. These legal agreements define the licensee's obligations.

National private free-to-air DTT licensed AVMS can include, within the framework of their licence, regional programming windows under their editorial responsibility within the limit of three hours a day.



A simplified licensing process without the prior publication of a call for applications applies to the use of new frequencies in special/particular geographic areas in order to ensure better reception of DTT licensed services, and to DTT network operators (which are jointly proposed by licensed DTT services).

The deadline obliging the CSA to conduct a tender procedure is eight months from the date of receipt of the applications. The deadline imposed on an AVMS provider for the effective provision of its service is determined in the licence.

#### Distribution via other means

The licensing of AVMS distributed via other means takes the form of an individual licence (legal agreement) or a notification depending on their turnover and their content. A legal agreement with the CSA is required if the annual turnover is higher than EUR 150 000 and a notification if the turnover is below this threshold. In respect of linear AVMS providing information on local life, a legal agreement is required, regardless of their turnover.

In any event, these AVMS have to send a file to the CSA at least two months before the launch of the service. This file should provide a general description of the service, information identifying the provider, and forecasts for the service programming, broadcasting and funding. Other questions depend on whether the applicant service is a cinema service or not.

The deadline obliging the CSA to respond to an application is two months. The deadline imposed on an AVMS provider for the effective provision of its service is determined in the legal agreement.

#### Open system

The activities detailed in section 4.12.2 above which benefit from fully open access to the market have no obligation of any kind to signal their existence to the competent authority. However, this does not mean that an inventory of these AVMS does not exist. For the fulfilment of its legal missions, and by virtue of Article 19 of the Law on Freedom of Communication, the CSA is allowed to carry out investigations and to collect all necessary information from AVMS providers and distributors to ensure that they comply with their obligations. No formality is required, but the CSA can use the power granted by Article 19 of the law to establish an inventory of the existing services.

The catch-up TV of licensed AVMS is usually included in public service media mission statements and private AVMS providers' legal agreements. It is often the same for the simultaneous and unabridged retransmission of DTT public and private licensed AVMS. Otherwise, the CSA may ask licensed AVMS providers to provide information on the nature of their offer.

Regarding non-EU television services under France's jurisdiction because they use a satellite uplink from a station situated in France or a French satellite capacity, Article 19 of the law provides that the CSA is allowed to collect all necessary information from satellite networks operators to identify the provider.



**Table 87. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	CSA
<i>Via cable</i>	Individual licence	CSA
	Notification	CSA
	Open system	None
<i>Via IPTV</i>	Individual licence	CSA
	Notification	CSA
	Open system	None
<i>Via satellite</i>	Beauty contest	CSA
	Individual licence	CSA
	Notification	CSA
	Open system	None
<i>Via OTT</i>	Individual licence	CSA
	Notification	CSA
	Open system	None
<i>Non-linear</i>		
<i>Via DTT</i>	Beauty contest	CSA
	Open system	None
<i>Via cable</i>	Notification	CSA
	Open system	None
<i>Via IPTV</i>	Notification	CSA
	Open system	None
<i>Via satellite</i>	Notification	CSA
	Open system	None
<i>Via OTT</i>	Notification	CSA
	Open system	None

Source: French response to European Audiovisual Observatory standardised questionnaire

#### 4.12.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.12.4 above is applicable.



#### 4.12.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.12.4 above is applicable.

#### 4.12.7. Licence fee

There is no licence fee.

#### 4.12.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying, as well as in case of a direct or indirect modification concerning a legal person holding a licence.

Media concentration is avoided at several stages of the licensing process. Pluralism, diversity of operators and free competition are regarded as “*priority requirements*” to be taken into consideration by the CSA in the DTT licensing process. The CSA has to consider the interest of each project for the public, in particular with regard to “*the need to avoid abuses of dominant position or anti-competitive practices.*” In order to limit media concentration, the CSA has also to take account of the applicant’s direct and indirect shareholdings in the capital of one or several advertising or press publishing companies.

Pursuant to Article 28 of the Law on Freedom of Communication, legal agreements to be concluded between the CSA and private AVMS providers have to set up specific rules “*in accordance with fairness and pluralism of information*” and taking into account the competition conditions of various services on the market. The agreement should also provide for measures to be carried out to ensure fairness, independence and the pluralism of information.

While assessing the applications, the CSA must also ensure compliance with anti-trust rules provided for by several provisions of the law regarding capital shares and the number of licences that may be held by a single person; for instance, Article 39-I provides that the same natural or legal person may not own more than 49% of the capital or voting rights of a company holding a licence for a national DTT service whose annual average audience exceeds 8% of the total audience of television services. Under Article 39-III, a national DTT licence holder may not own more than 33% of the capital or voting rights of a company holding a licence for a DTT service other than national, if the annual average audience of the national service exceeds 8% of the total audience of the television services. According to Article 41, nobody can hold two licences for national DTT services, except for personal mobile television services. But the same person may hold up to seven licences to broadcast national DTT services if these services are edited by separate companies. In respect of local or regional DTT services, a single person may hold several



licences if the population registered in areas covered by all its DTT licensed services does not exceed twelve million inhabitants. However, the holder of a DTT service licence for a determined area could not get another licence for another DTT service broadcast in the same area.

Before granting licences, the CSA has also to take account of the so-called “*two positions out of three rule*” (Articles 41-1-1 and 41-2-1) to avoid that a single person holding interests in three different media sectors (television channels, radio stations and print media publishing companies) undermines pluralism at national or local level.

**Table 88. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	Various ownership, cross-media ownership and audience share thresholds

Source: French response to European Audiovisual Observatory standardised questionnaire

## 4.12.9. Management of the licence and notification

Licences are granted for a maximum of ten years and notifications have no limited term.

DTT licences may be renewed without a call for applications for a period of five years, unless:

- the state has changed the frequency’s destination;
- the licensee has been subject to a sanction or conviction;
- renewal is likely to undermine pluralism at national, regional or local level;
- the service provider’s financial position no longer allows it to continue exploiting the service.

Eighteen months before the expiration of a DTT licence, the CSA publishes its justified decision to make use of or not to make use of the licence renewal procedure without any call for applications. This decision mentions the main points of the legal agreement that the CSA or the licensee wants to be amended. Within one month of the date of the publication of its decision, the CSA organises a public hearing of the provider and any potentially interested third parties. The licence may be renewed if an agreement on the renegotiated agreement is reached nine months before the expiration of the licence; otherwise, a new tender is launched.

Legal agreements are usually concluded for a five-year renewable period. Six months before the end of its legal agreement, the provider has to inform the CSA of any changes it would like to be made to this agreement in the event of its renewal. While assessing the renewal requests, the CSA takes into account the provider’s compliance with its contractual commitments and obligations.



Suspension and revocation are among the administrative sanctions that can be decided by the CSA. Sanctions have to be decided following a gradual approach and, in the case of revocation, shall be preceded by a formal notice, which in itself shall be preceded by other sanctions such as warnings; the broadcast of a statement on air; the suspension of a programme; administrative fines; or a reduction in the length of the licence or of the legal agreement for a maximum of one year. However, pursuant to Article 42-3 of the Law on Freedom of Communication, a licence may be revoked by the CSA without any prior formal notice in case of substantial changes in the data on the basis of which the licence was granted, such as changes in the composition of share capital or managing boards and changes in financing terms.

Modifications in the licence conditions require prior approval by the CSA and, if necessary, an assessment of the impact on the relevant market.

**Table 89. Main issues regarding the management of the licence**

Issue	Description
Duration	5 or 10 years
Procedure to renew	Upon the request of the licensee
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to the CSA
Procedure in case of modifications in the licence conditions	Prior approval of the CSA
Procedure in case of modifications to the service with a view to targeting different audiences	Different linear and non-linear AVMS have to be licensed or notified accordingly

Source: French response to European Audiovisual Observatory standardised questionnaire

#### 4.12.10. Future amendments to the regulatory framework

N/A.

#### 4.12.11. Video-sharing platforms

N/A.

#### 4.12.12. Applicable regulatory framework

- Primary legislation:



- In French - Loi N°86-1067 du 30 septembre 1986 relative à la liberté de communication (Law on Freedom of Communication): <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930>
- Secondary legislation:
  - Décret N°2005-1355 du 31 octobre 2005 relatif au régime déclaratif des distributeurs de services de communication audiovisuelle et à la mise à disposition du public des services d'initiative publique locale (Decree on notification system of audiovisual communication services' distributors and public availability of local public initiative services): <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000449374&dateText>
  - Décret N° 2009-796 du 23 juin 2009 fixant le cahier des charges de la société nationale de programme France Télévisions (Decree establishing the mission statements of France Televisions): <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020788471&dateTexte=20171012>
  - Décret N° 2010-1593 du 17 décembre 2010 relatif aux services de télévision et de médias audiovisuels à la demande relevant de la compétence d'un autre Etat membre de l'Union européenne ou partie à l'accord sur l'Espace économique européen ou à la convention européenne sur la télévision transfrontière du 5 mai 1989 (Decree on television and on-demand media audiovisual services under jurisdiction of another European Union Member State or of a State party to the European Economic Area or to the European Convention on Transfrontier Television of 5 May 1989): <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023247562&dateTexte=20171012>

### 4.12.13. Data compilation

This factsheet was produced based on data compiled by Agnès Granchet, Associated professor, Panthéon-Assas University.



## 4.13. GB – United Kingdom – National Summary<sup>159</sup>

### 4.13.1. Summary

In the United Kingdom, access to the market is granted exclusively by the regulatory authority (Ofcom)<sup>160</sup>, except for the public service media, which was created by a Royal Charter.

Ofcom is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Three systems are used:

- Licensing, which is applicable to all non-public linear AVMS and public linear AVMS, with the exception of the BBC, and which is organised in the form of a beauty contest (for non-BBC public linear AVMS and local AVMS distributed via DTT) or of an individual licence (for other AVMS).
- Notification, which is applicable to all non-linear AVMS.
- Public service, which is applicable to the public service media British Broadcasting Corporation (hereinafter BBC), and which takes the form of a Royal Charter and an Agreement (granted by the Secretary of State for Culture, Media and Sport) and an operating licence (granted by Ofcom).

**Table 90. Applicable systems**

System	Category
Licensing	Beauty contest Individual licence
Notification	N/A
Public service	Other agreements (Royal Charter & agreement & operating licence)

Source: British response to European Audiovisual Observatory standardised questionnaire

### 4.13.2. Functioning of the applicable systems

Pursuant to the Communications Act 2003,<sup>161</sup> non-public service linear AVMS have to be licensed by and non-public service non-linear AVMS have to be notified to Ofcom.

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<sup>159</sup> The factsheet on United Kingdom incorporates the feedback received from members of the *Office of Communications* (Ofcom) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>160</sup> <https://www.ofcom.org.uk/>.



The licensing procedures differ between national AVMS distributed via DTT, local AVMS distributed via DTT and AVMS distributed via other means.

Licences are granted with no limited term, with the exception of the public service licences (Channel 3, 4 and 5) and local AVMS licences (L-DTPS), which are granted for 12 years. Notifications have no limited term.

There is no specific appeal process for licences that have been rejected or delayed: Ofcom is subject to normal judicial review.

For the commercial public service AVMS Channels 3 and 5, Ofcom has a duty under the Communications Act to report to the Secretary of State for Culture, Media and Sport about the renewal of these licences and give its opinion as to whether the existing licence holders will be able to continue to deliver the PSB (public service broadcasting) purposes for the next 10-year period. The Secretary of State has the power to block the renewal (requiring Ofcom to auction the slot), allow it to proceed, or extend the period of the existing licences. The Secretary of State can also remove or amend the statutory obligations that must be included in the licence.<sup>162</sup> For the commercial public service AVMS Channel 4, the Communications Act gives Ofcom the power to renew the Channel 4 licence; in doing so, Ofcom must set the licence conditions that it considers appropriate and determine the length of the renewed licence (which may run for such period as Ofcom thinks fit). All three aforementioned licensees are granted access to spectrum and prominence on electronic programme guides. In return, they must meet obligations which can include quotas for independent, original, out-of-London and nation's production, as well as for regional programming and news and current affairs programming.

The BBC is the UK public service media funded by a licence fee.<sup>163</sup> It is established by a Royal Charter set by the UK Government and Parliament.<sup>164</sup>

The Royal Charter<sup>165</sup> is the constitutional basis for the BBC. It sets out the public purposes of the BBC, guarantees its independence, and provides a framework for its funding, governance and regulation. A Framework Agreement<sup>166</sup> between the Secretary of State for Culture, Media and Sport and the BBC sits alongside the charter providing details on many of the topics outlined in the charter. Under a new Royal Charter and accompanying Agreement, regulation of the BBC passed from the BBC Trust to Ofcom in April 2017. One of Ofcom's central responsibilities is to hold the BBC to account for fulfilling its mission and promoting its public purposes. Ofcom is required to publish an Operating Framework<sup>167</sup> containing provisions to secure effective regulation of the BBC. In

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<sup>161</sup> <http://www.legislation.gov.uk/ukpga/2003/21/contents>.

<sup>162</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/24078/c3\\_c5\\_licensing.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/24078/c3_c5_licensing.pdf).

<sup>163</sup> <http://www.bbc.com/>.

<sup>164</sup> <https://www.gov.uk/government/publications/bbc-charter-and-framework-agreement>.

<sup>165</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/577829/57964\\_CM\\_9365\\_Charter\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577829/57964_CM_9365_Charter_Accessible.pdf).

<sup>166</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/584329/57965\\_Cm\\_9366\\_Print\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584329/57965_Cm_9366_Print_1.pdf).

<sup>167</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/bbc-operating-framework>.



relation to the BBC's performance, Ofcom must set an Operating Licence for the BBC<sup>168</sup>, and may set measures to assess the BBC's performance.

**Table 91. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest Individual licence	Ofcom	Beauty contest organised by Ofcom for non-BBC public service AVMS and local AVMS distributed via DTT. For other AVMS, application to send to Ofcom, who decides based on criteria mentioned in the Communications Act
Notification	N/A	Ofcom	Notification to send prior to the launch of the service to Ofcom
Public service	Other agreements (Royal Charter & agreement & operating licence)	Government & Ofcom	Charter and agreement concluded with the government, operating licence concluded with Ofcom based on the Charter and the agreement

Source: British response to European Audiovisual Observatory standardised questionnaire

### 4.13.3. Application to public audiovisual media service providers

The missions and public purposes of the BBC are detailed in the Royal Charter. The latest Royal Charter covers the years 2017-2027.

In application of the Royal Charter, an agreement is concluded between the BBC and the Secretary of State for Culture, Media and Sports. The agreement details the topics outlined in the Charter and covers the BBC's funding and regulatory duties. The agreement also specifies that *"the BBC must continue to ensure UK households can continue to receive the UK Public Television Services in digital form through a television aerial in accordance with the Coverage Plan"* (Article 44.1). The Coverage Plan is a plan drafted by the BBC setting out how it broadcasts its TV services via DTT, and which is approved (and can be amended) by the Secretary of State for Culture, Media and Sport, following

<sup>168</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/107072/bbc-operating-licence.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/107072/bbc-operating-licence.pdf)



consultation with Ofcom. In practice, one of the six national DTT multiplexes is granted by the Secretary of State to the BBC.

In application of the Royal Charter and the Agreement, an operating licence is granted by Ofcom to the BBC, which imposes additional regulatory conditions with a particular regard to the need for the BBC to secure the provision of distinctive output and services.

The agreement and the licence cover the same period as the Royal Charter.

**Table 92. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom
<i>Via cable</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom
<i>Via IPTV</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom
<i>Via satellite</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom
<i>OTT</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom
<i>Non-linear</i>		
<i>Via DTT</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom <sup>169</sup>
<i>Via cable</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom
<i>Via IPTV</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom
<i>Via satellite</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom
<i>Via OTT</i>	Other agreements (Royal Charter, agreement and operating licence)	Government and Ofcom

Source: British response to European Audiovisual Observatory standardised questionnaire

<sup>169</sup> In theory. In practice, there are no non-linear services on the DTT platform.



## 4.13.4. Application to private (commercial) audiovisual media service providers

### Linear AVMS

Different types of licensing processes are applied depending on whether the AVMS is distributed via DTT or via other means.

AVMS providers wishing to be distributed via DTT shall apply for a Digital Television Programme Service (DTPS) licence or a Digital Television Additional Service (DTAS) licence<sup>170</sup> by completing the appropriate application form provided by Ofcom.<sup>171</sup>

A DTPS and a DTAS licence do not grant direct access to a DTT multiplex. Each application for a DTPS or DTAS licence must be accompanied by a letter from the relevant multiplex operator, confirming that it will carry the service. The operators of the multiplexes are also generally licensed by Ofcom (except one multiplex granted by the government which is operated by the BBC). AVMS licensed in another member state and wishing to be distributed on a DTT multiplex do not need a DTPS licence.

AVMS providers wishing to be distributed via other means shall apply for a Television Licensable Content Service (TLCS) licence by completing the appropriate application form provided by Ofcom.<sup>172</sup>

Both procedures are similar. The application shall include details about the applicant and the proposed AVMS; information regarding how compliance with the regulatory codes, rules and licence conditions will be ensured; the relevant information required to assess that the provider is under UK jurisdiction; and several contact details:

- licence contact: the day-to-day contact for Ofcom on licensing matters;
- billing/finance contact: contact details for Ofcom regarding the invoicing/payment of annual licence fees;
- market intelligence data contact: contact details for Ofcom regarding the submission of market intelligence data (information that Ofcom requests from its licensees every year, including information about the service's turnover used to calculate subsequent licence fees and any European productions);
- public contact: contact details for publication on the Ofcom website and/or in other relevant Ofcom publications.

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<sup>170</sup> According to Ofcom's Guidance notes on licence applicants, a DTPS is "a service consisting of the provision of television programmes i.e. it consists wholly or mainly of images capable of being seen as moving pictures. The definition of a DTPS excludes qualifying services and teletext services, but includes text or data which is ancillary to the DTPS (such as subtitling or audio-description). Generally, a DTPS consists of 'normal' television channels (consisting of moving pictures), including their interactive enhancements." A DTAS is "a service which usually consists of self-standing text or data services, including teletext services and EPGs."

<sup>171</sup> Form available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/27278/dtpsdta-applicationform.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/27278/dtpsdta-applicationform.pdf).

<sup>172</sup> Form available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/19179/tlcs-application-form.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/19179/tlcs-application-form.pdf).



Ofcom may refuse to issue a licence if the applicant is not a “fit and proper person”, if the applicant is a “disqualified” person or if the proposed service would be likely to involve contraventions of the standards for programmes and advertising.

There is no deadline obliging Ofcom to respond to an application, but according to Ofcom’s Guidance notes for licence applicants, Ofcom normally acknowledges an application within two working days. If an application cannot be considered (for example, because it is illegible, the correct application fee has not been submitted, the applicant has used the wrong form, etc.), Ofcom will normally return the application form to the applicant. As a guideline, Ofcom aims to issue a licence within 25 working days, provided that full and accurate information has been provided by the applicant. If Ofcom does not receive a response to a request for further information within one month, it will consider the application to have lapsed. There is no deadline imposed on an AVMS provider for the effective provision of its service.

### Non-linear AVMS

Non-linear AVMS meeting the statutory definition of an on-demand programme service (“ODPS”) shall be notified to Ofcom at least ten working days before the launch of the ODPS. The statutory definition is set out in section 368A of the Communications Act 2003. It is the responsibility of the provider to consider whether the service it intends to provide is an ODPS. Service providers can notify an ODPS by sending the appropriate notification form provided by Ofcom.<sup>173</sup> The notification shall include the name of the service; a description of the service; the relevant information meant to assess whether the provider is under UK jurisdiction; ownership data; and several contact details:

- primary contact: the person to whom Ofcom should address inquiries about the notification, and the day-to-day contact for Ofcom on regulatory matters;
- compliance contact: the person whom Ofcom should contact regarding any compliance issues;
- public contact: the person whose details will be published on the Ofcom website alongside a brief description of the service.

**Table 93. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Individual licence	Ofcom
<i>Via cable</i>	Individual licence	Ofcom
<i>Via IPTV</i>	Individual licence	Ofcom
<i>Via satellite</i>	Individual licence	Ofcom
<i>Via OTT</i>	Individual licence	Ofcom

<sup>173</sup> Form available at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/notification.rtf>



<i>Non-linear</i>		
<i>Via DTT</i>	Notification	Ofcom <sup>174</sup>
<i>Via cable</i>	Notification	Ofcom
<i>Via IPTV</i>	Notification	Ofcom
<i>Via satellite</i>	Notification	Ofcom
<i>Via OTT</i>	Notification	Ofcom

Source: Ofcom response to European Audiovisual Observatory standardised questionnaire

#### 4.13.5. Application to regional/local audiovisual media service providers

For local AVMS distributed via DTT, a specific licensing procedure applies.<sup>175</sup> Local AVMS wishing to be distributed via DTT shall apply for a Local Digital Television Programme Service (L-DTPS) licence when Ofcom opens a call for application in the location concerned. The last such call was issued in 2014.

The procedure takes the form of a beauty contest. The applicants shall describe their proposed local programming output in Programming Commitments, which will be part of the licence commitments if the applicant is granted the licence. In addition, the licence application form invites applicants specifically to set out how their programming will:

- meet the needs of the area where it is received;
- broaden the number and range of programmes available for viewing in the area and increase the range of programmes made in or about the area;
- facilitate civic understanding and fair and well-informed debate through the coverage of local news and current affairs;
- reflect the lives and concerns of communities, and cultural interests and traditions in the area;
- include content that informs, educates and entertains and is not otherwise available through a digital programme service which is available across the United Kingdom.

Ofcom also takes into consideration the proposed management and operations side and business plan with a view to assessing the capacity of the applicant to maintain the proposed service for the duration of the licence.<sup>176</sup>

Ofcom also licensed the local multiplex operator. The AVMS licences and the multiplex licence are interdependent: the multiplex operator is required to make capacity available in the relevant location for the granted L-DTPS licensee (must-carry), and an L-

<sup>174</sup> In theory. In practice, there are no non-linear services on the DTT platform.

<sup>175</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/54236/local-tv-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/54236/local-tv-statement.pdf).

<sup>176</sup> <https://www.ofcom.org.uk/manage-your-licence/tv-broadcast-licences/current-licensees/local-tv>



DTPS licensee is required to make its service available to the local multiplex operator (must-offer).

L-DTPS licences and the multiplex licence co-terminate in 2025. Since the introduction of local TV in 2012, Ofcom has granted 34 L-DTPS licences.

Local AVMS wishing to be distributed via other means shall follow the same procedure as the one described in section 4.13.4 above (TLCS licence).

#### 4.13.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.13.4 above is applicable.

#### 4.13.7. Licence fee

Two different types of fees are due.

Each applicant shall pay an application fee (and, if applicable, a fee for the transfer of or variations to the licence) whose amount depends on the type of licence:

	Application	Transfer / Variation
<b>Television Licensable Content Service Licence</b>	£2 500	£1 000
<b>Restricted Events Licence</b>	£250	-
<b>Digital Television Programme Service Licence</b>	£2 500	£1 000
<b>Digital Television Additional Service Licence</b>	£2 500	£1 000
<b>Digital Channel 3, Channel 5 and Public Teletext Licences</b>	£30 000	£30 000
<b>Public Service-Digital Television Programme Service (PS-DTPS)</b>	£15 000	£1 000
<b>Local Digital Television Programme Service</b>	£2 500	£1 000

Each licensee shall pay an annual fee whose amount depends on the type of licence:

- Category A – Channel 3, Channel 4, Channel 5, Local Digital Television Programme Service and the Public Teletext Service Licence (this category also includes the associated Television Licensable Content Service – TLCS where content is simulcast);
- Category B – TLCS Licences, Digital Television Programme Service Licences, Commercial Additional Television Services Licences and Digital Television Additional Service Licences (this category does not include those TLCS licences which are included in Category A);
- Category C – Restricted Television Service Licences (long-term and short-term);
- Category D – Television Multiplex Licences;
- Category E – Teleshopping Channels



The tariffs for categories A and B relate to the licensee's relevant turnover of the year Y-2. The tariffs are progressive: licensees pay proportionately more in fees as their relevant turnover increases, based on the following cumulative sliding scale:

Relevant turnover	Category A PSB / Local TV Revenues	Category A PSB Simulcast Revenues	Category B Revenues
£0m - £10m	0.09183%	0.09183%	0.01526%
£10m - £35m	0.13774%	0.13774%	0.03056%
£35m - £75m	0.20661%	0.20661%	0.06112%
£75m - £300m	0.30992%	0.30992%	0.12224%
Over £300m	0.00000%	0.00000%	0.00000%

The minimum amount is £1 000. If the yearly licence fee calculated is more than £75 000, Ofcom will allow payment of the amount due in equal monthly instalments.

The tariffs for the other categories are:

- for category C: between £100 and £500;
- for category D: between £5 000 and £25 000;
- for category E: £2 000.

Ofcom charges fees that are sufficient to meet the cost of its function relating to the regulation of broadcasting.<sup>177</sup>

#### 4.13.8. Media ownership and concentration

The transparency of ownership of linear AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence.

Media concentration is taken into consideration in the licensing process by various provisions adopted by the UK Parliament that place restrictions on the ownership of media enterprises and broadcast licences.<sup>178</sup> These rules are set out below.

Ofcom has a duty to review and report on the operation of these rules, taken together, at least every three years and to make recommendations to the Secretary of State for Culture, Media and Sport on the exercise of his/her powers to make secondary legislation to change them.<sup>179</sup>

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<sup>177</sup> Ofcom's Statement of Charging Principles:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/51058/charging\\_principles.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/51058/charging_principles.pdf).

<sup>178</sup> The Communications Act 2003, Chapter 5 and Schedule 14.

<sup>179</sup> The Communications Act 2003, section 391; Ofcom's last review can be found here:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/51867/morr\\_2015.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/51867/morr_2015.pdf).



In summary, the rules, and the powers on which Ofcom are required to make recommendations, are:

- The national cross-media ownership rule (the “20/20 rule”) prevents a person with a 20% stake in a large newspaper group, or a large newspaper group itself (accounting for at least 20% of the national newspaper market) from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%. The Secretary of State has a broad power to amend or repeal this rule.
- The Channel 3 appointed news provider rule requires the UK regional Channel 3 licensees to appoint a single news provider. Individuals/organisations disqualified from holding a Channel 3 licence are also disqualified from being the Channel 3 appointed news provider. The Secretary of State has the power to amend or modify this rule and may also, if certain conditions are met, create an equivalent rule for Channel 5.
- The Media Public Interest Test allows the Secretary of State to intervene (through triggering an Ofcom review) in media mergers to determine whether the merger might result in harm to the public interest. The Secretary of State has narrow powers to redefine “broadcasting” or “newspaper”, to add new media public interest considerations to the act, or modify the ones that are there, and to redefine the conditions under which mergers that are too small to trigger merger control at present may still be looked at for public interest purposes.
- The Disqualified Persons Restrictions prevent certain bodies/persons from holding certain licences:
  - Advertising agencies and political bodies, such as political parties or issue-groups, are prohibited from holding any broadcast licences.
  - Local authorities are disqualified from holding broadcast licences except to operate a broadcast service solely to provide information on their functions and services within their area.
  - Bodies which receive more than 50% of their funding from UK public funds, such as some universities or museums, are disqualified from holding most radio licences but are permitted to hold all types of TV licences.
  - Religious bodies are prohibited outright from holding licences for Channel 3, Channel 5, sound broadcasting and multiplexes. For other licence types, such as digital television programme services, community radio, digital sound programme services or digital additional sound services, Ofcom is given discretion to determine if it is appropriate for that body to hold a licence.
  - The BBC, Channel 4 Corporation and S4C (the Welsh-language public-service TV channel) are prohibited from holding Channel 3 and Channel 5 licences.

The Secretary of State has a broad power to amend or repeal these restrictions.



**Table 94. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence
Media concentration issues considered during the licensing process	Various types of persons cannot hold a licence and some cross-media ownership rules apply

Source: British response to European Audiovisual Observatory standardised questionnaire

### 4.13.9. Management of the licence and notification

Channel 3, 4 and 5 licences are granted for ten years. Local licences expire in 2025. All other licences and notifications have no limited term.

The renewal procedure for a fixed-term licence is launched by Ofcom, who notifies the licensees of the renewal process and invites them to apply to renew their licences. Provided that the application to renew a licence is assessed as satisfactory, the licence shall be renewed.

Ofcom has enforcement procedures for the BBC and AVMS providers who breach their licence conditions, including compliance with Ofcom's Broadcasting Code, or in the case of on-demand providers who have failed to comply with the relevant requirements.<sup>180</sup> Ofcom publishes its decisions in its Broadcast and On-Demand Bulletin. When Ofcom considers that a breach of the code is deliberate, serious, repeated or reckless, it may impose the following sanctions:

- issue a direction not to repeat a programme;
- issue a direction to broadcast a correction or a statement of Ofcom's finding;
- impose a financial penalty;
- shorten a licence (not applicable to the BBC, S4C and Channel 4);
- revoke a licence (not applicable to the BBC, S4C and Channel 4).

Ofcom can also exercise its powers under section 111B of the Broadcasting Act 1990 and suspend a licence in cases where an AVMS provider has broadcast programmes containing material likely to encourage or incite to crime or to lead to disorder. The licensee would be provided with an opportunity to make oral or written representations to Ofcom about the matters contained in the suspension notice sent to it.

Pursuant to Article 2.29 of Ofcom's Guidance notes for licensees,<sup>181</sup> Ofcom "may consider revocation of the licence for a number of reasons including, but not limited to:

- the licensee has failed to pay its annual licence fees or provide information requested by Ofcom;

<sup>180</sup> Ofcom's investigation and sanctions procedures are available at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/procedures>

<sup>181</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0012/36201/tlcs\\_guidance\\_notes\\_for\\_licensees.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0012/36201/tlcs_guidance_notes_for_licensees.pdf)



- the licensee has ceased to provide the licensed service and it is appropriate to revoke the licence;
- the licensee has provided false information (or withheld information) with the intention of misleading Ofcom;
- the licensee becomes a “disqualified” person;
- any change takes place affecting the nature, characteristics or control of the licensee which, if in place originally, would have resulted in Ofcom not granting the licence;
- Ofcom ceases to be satisfied that the licensee is “fit and proper” to hold a licence;
- the licensee fails to comply with any requirement to hold (or have held on his behalf) a licence under the Wireless Telegraphy Act 1949 (as amended), or if the licensee ceases to comply with the requirements as set out in Chapter 1, Part 2 of the Communications Act (relating to electronic communications networks and services);
- the service provided by the licensee no longer constitutes a service licensable by Ofcom as a TLCS; or
- the licensee is placed in administration or liquidation, or becomes insolvent.”

Before revoking a licence, Ofcom must first notify the licensee of its intention to revoke and give the licensee a reasonable opportunity to make representations.

Ofcom may vary the licence by notice served on the licensee, provided that the licensee has been given a reasonable opportunity to make representations to Ofcom about the proposed variation. If the licensee wishes to change the name or the nature of its service, the change must be agreed by Ofcom before any changes are made. Any request to change should be accompanied by a proposed schedule for the service, as well as an outline of the proposed changes.<sup>182</sup>

In case of modifications to the service with a view to targeting different audiences, Ofcom has published guidance about services broadcast into different territories,<sup>183</sup> which sets out its policy regarding the three following situations:

- where the programmes (including the advertisements) on each feed are identical or almost identical and only the language of the feeds is different;
- where the editorial content of each feed is identical or almost identical, but the advertisements are different (or the same advertisements are scheduled differently);
- where the editorial content of each feed is different (regardless of whether or not there are differences in the advertising or language).

Decisions are made on a case-by-case basis, taking into account all relevant circumstances. In principle, Ofcom considers that “*feeds of different editorial content (with the same or different advertisements, and whether in the same or different languages) are*

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<sup>182</sup> The update form is available at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0017/4616/updateform.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0017/4616/updateform.pdf).

<sup>183</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/10437/licensing-position.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/10437/licensing-position.pdf).



*likely to be treated as separate services needing separate TLCS licences. The same applies to feeds of the same editorial content but broadcast at different times. Members of the public would not be able to view the same television programmes at the same time on both feeds. This indicates that the feeds are separate services each needing a TLCS licence. On the same basis, feeds of the same editorial content but with different advertisements, or with the same advertisements broadcast at different times, will normally also be separate services needing their own licences. Again, members of the public would not be able to view the same television programmes at the same time.”*

**Table 95. Main issues regarding the management of the licence**

Issue	Description
Duration	10 years or unlimited
Procedure to renew	Upon Ofcom's initiative
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Prior notification to Ofcom
Procedure in case of modifications in the licence conditions	Prior approval of Ofcom
Procedure in case of modifications to the service with a view to targeting different audiences	Several licences (TLCS) needed in certain circumstances, to be assessed on a case-by-case basis

*Source: British response to European Audiovisual Observatory standardised questionnaire*

#### 4.13.10. Future amendments to the regulatory framework

N/A.

#### 4.13.11. Video-sharing platforms

N/A.

#### 4.13.12. Applicable regulatory framework

- Primary legislation:
  - Communications Act 2003:  
<https://www.legislation.gov.uk/ukpga/2003/21/contents>
  - Broadcasting Act 1996:  
<http://www.legislation.gov.uk/ukpga/1996/55/contents>



- Broadcasting Act 1990:

<http://www.legislation.gov.uk/ukpga/1990/42>

■ Secondary legislation:

- Local Digital Television Programme Services Order 2012:  
<http://www.legislation.gov.uk/uksi/2012/292/contents/made>

■ Ofcom guidance notes:

- Digital Television Programme Services & Digital Television Additional Services, Guidance notes for licence applicants:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/57091/dtps\\_dtas\\_guidance\\_notes\\_for\\_licence\\_applicants.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/57091/dtps_dtas_guidance_notes_for_licence_applicants.pdf)
- Digital Television Programme Services & Digital Television Additional Services, Guidance notes for licensees:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/44825/dtps\\_dtas\\_guidance\\_notes\\_for\\_licensees.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/44825/dtps_dtas_guidance_notes_for_licensees.pdf)
- Television Licensable Content Services, Guidance notes for licence applicants:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/10883/tlcs\\_guidance.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/10883/tlcs_guidance.pdf)
- Television Licensable Content Services, Guidance notes for licensees:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0012/36201/tlcs\\_guidance\\_notes\\_for\\_licensees.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0012/36201/tlcs_guidance_notes_for_licensees.pdf)
- Licensing Local Television, How Ofcom will exercise its new powers and duties to licence new local television services:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/54236/local-tv-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/54236/local-tv-statement.pdf)
- Guidance notes on how to notify an On Demand Programme Service to Ofcom:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/47410/how\\_to\\_notify.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/47410/how_to_notify.pdf)
- Guidance notes on who needs to notify an on-demand programme

service to Ofcom:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/71839/guidance\\_on\\_who\\_needs\\_to\\_notify.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/71839/guidance_on_who_needs_to_notify.pdf)

- Guidance regarding the licensing position of television licensable content services broadcast into multiple territories:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/10437/licensing-position.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/10437/licensing-position.pdf)
- Ofcom's Tariff Tables 2017/18:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0029/99614/Tariff-Tables-2017-18-.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0029/99614/Tariff-Tables-2017-18-.pdf)



### 4.13.13. Data compilation

This factsheet was produced based on data compiled by Francesca Farmer, University of Exeter.



## 4.14. GR – Greece – National Summary<sup>184</sup>

### 4.14.1. Summary

In Greece, access to the market is granted exclusively by the regulatory authority (National Council for Radio and Television - Εθνικό Συμβούλιο Ραδιοτηλεόρασης, hereinafter NCRTV)<sup>185</sup>, except for public service media, which was created by law. In certain instances, access to the market is not subject to any requirements.

The NCRTV is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Three systems are used:

- Licensing, which is applicable to non-public free-to-air linear AVMS distributed via DTT and pay-TV services distributed via IPTV, cable or satellite, and which is organised in the form of an auction or an individual licence.
- Open system, which is applicable to non-public linear AVMS distributed via IPTV and OTT, and non-public non-linear AVMS.
- Public service, which is applicable to the public service media ERT. The missions of the ERT are prescribed in a specific law. The DTT frequencies necessary to make its services available to the public are granted by the government in cooperation with the telecommunications regulatory authority (Hellenic Telecommunications and Post Commission – hereinafter EETT).<sup>186</sup>

**Table 96. Applicable systems**

System	Category
Licensing	Auction Individual licence
Public service	Law
Open system	N/A

Source: Greek response to European Audiovisual Observatory standardised questionnaire

<sup>184</sup> The factsheet on Greece incorporates the feedback from members of the Εθνικό Συμβούλιο Ραδιοτηλεόρασης (National Council for Radio and Television – NCRT) during the checking round with media regulators and from the Ministry of Digital Policy, Telecommunications and Media during the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>185</sup> <http://www.esr.gr/>

<sup>186</sup> [http://www.eett.gr/opencms/opencms/EETT\\_EN/index.html](http://www.eett.gr/opencms/opencms/EETT_EN/index.html)



## 4.14.2. Functioning of the applicable systems

Several laws organise the licensing system, which is in all cases managed by the NCRTV. Law 4339/2015<sup>187</sup> (as amended by Article 53 of Law 4487/2017<sup>188</sup> and recently by Article 28 of Law 4496/2017)<sup>189</sup> deals with the licensing of free-to-air linear AVMS distributed via DTT and is organised in the form of an auction. Law 3592/2007 (Article 15)<sup>190</sup> deals with the licensing of linear (free or upon subscription) AVMS distributed via broadband networks (with the exception of the Internet) and is organised in the form of an individual licence.

A third and older law (Law 2644/1998)<sup>191</sup> also deals with the licensing of Pay-TV services delivered through frequencies, satellite or cable. The concept of the law was to license the platform that delivers the AVMS and not the AVMS provider. However, nowadays, the network providers are licensed by the telecommunications regulatory authority EETT. It should be noted that Article 13 of Law 3592/2007 provides that the DTT network provider should be a different legal entity from the AVMS providers. Although the provisions of Article 5, regulating the licensing procedure of Pay-TV services distribution through frequencies, can be considered abolished in fact, the rest of the law is still in effect, although considered outdated. The provisions of Article 6, regulating the licensing procedure of Pay-TV services distributed via cable or satellite, overlap with the provisions of Article 15 of Law 3592/2007, regulating the licensing of (free or subscription) AVMS distributed via broadband networks. The licensing procedure under Law 2644/1998 is also organised in the form of an individual licence.

Licences following an auction (free-to-air DTT) are granted for 10 years; licences granted following the individual licensing procedure of Article 6 of Law 2644/1998 are granted for a period of 5 to 15 years, depending on the business plan of the applicant and the submitted financial data; and those following the individual procedure of Article 15 of Law 3592/2007 have no limited term. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Council of the State.<sup>192</sup> According to the Code of Administrative Procedure, an applicant may also ask the authority that issued a decision affecting his/her interests to amend or revoke it.

All the other non-public service AVMS benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority. No procedure exists in order to establish an inventory of existing services.

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<sup>187</sup> <http://www.media.gov.gr/images/nomoi/nomos-4339-2015.pdf> (in Greek).

<sup>188</sup> [https://www.esos.gr/sites/default/files/articles-legacy/apospaseis\\_8.pdf](https://www.esos.gr/sites/default/files/articles-legacy/apospaseis_8.pdf) (in Greek).

<sup>189</sup> <https://nomoi.info/%CE%A6%CE%95%CE%9A-%CE%91-170-2017-%CF%83%CE%B5%CE%BB-1.html> (in Greek).

<sup>190</sup> [http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list\\_docs?section=134c0bb6fb141e7683571826e98263e5&categ=35df5d37fb141e7683571826e98263e5&last\\_clicked\\_id=link2](http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list_docs?section=134c0bb6fb141e7683571826e98263e5&categ=35df5d37fb141e7683571826e98263e5&last_clicked_id=link2) (in Greek).

<sup>191</sup> : [http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list\\_docs?section=134c0bb6fb141e7683571826e98263e5&categ=35df5d37fb141e7683571826e98263e5&last\\_clicked\\_id=link2](http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list_docs?section=134c0bb6fb141e7683571826e98263e5&categ=35df5d37fb141e7683571826e98263e5&last_clicked_id=link2) (in Greek).

<sup>192</sup> <http://www.adjustice.gr>.



The public service media ERT<sup>193</sup> is out of the scope of the licensing and open systems. The ERT was created by Law 4173/2013<sup>194</sup> (as amended by Law 4324/2015).<sup>195</sup> The DTT frequencies necessary to make its services available to the public are granted by the government.

**Table 97. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Auction Individual licence	NCRTV	Auction managed by NCRTV following a decision of the Government to fix the number of licences open and the starting price of the auction. For other licences, application to send to the NCRTV, who decides based on formal criteria mentioned in the law
Public service	Law	Parliament & Government	The public service media ERT was created by law and frequencies are granted by the Government, if available
Open system	N/A	None	None

*Source: Greek response to European Audiovisual Observatory standardised questionnaire*

#### 4.14.3. Application to public audiovisual media service providers

The missions of the ERT are prescribed in Law 4173/2013.

There is no limited term to the activities of the ERT.

In application of this law, ERT is allowed to provide its services by any technical means. The DTT frequencies necessary to make its services available to the public are granted by the government in cooperation with the EETT.

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<sup>193</sup> <http://www.ert.gr/>.

<sup>194</sup> <https://www.e-nomothesia.gr/enemerose-tupos-radiophono-teleorase/n-4173-2013.html>.

<sup>195</sup> <https://www.e-nomothesia.gr/inner.php/enemerose-tupos-radiophono-teleorase/n-4324-2015.html?print=1>.

**Table 98. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament and Government
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament
<i>Non-linear</i>		
<i>Via DTT</i>	Law	Parliament and Government
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament

Source: Greek response to European Audiovisual Observatory standardised questionnaire

#### 4.14.4. Application to private (commercial) audiovisual media service providers

Licences are granted to linear AVMS providers by different systems depending on their distribution means.

The licensing of linear AVMS distributed via DTT takes the form of an auction in multiple phases with increasing prices. The services have to be free-to-air. The procedure is conducted by the NCRTV. The auction process is launched by a decision in which the government (the competent minister being the Minister of Digital Policy, Telecommunications and Information), after having consulted the NCRTV, specifies the number and the kind of licences (nation-wide or regional, informative or non-informative, generalist or thematic) to be auctioned. The NCRTV examines the applications and shortlists the valid applications to the auction procedure. When the decision is taken on the best bidder, the NCRTV should conduct a capital adequacy audit on the origin and the manner of acquisition of the financial resources of the highest bidders. Upon the successful completion of the audit, the NCRTV announces the highest bidders, who have 6 months to comply with the prerequisites of the law (with regard to personnel, infrastructure and programme). All other deadlines for the procedure are detailed in the auction procedure.

Since a recent amendment to the law in 2017, the predominant criterion for the licensing of free-to-air DTT is the amount of money offered by the applicant through the auction procedure. However, the applicant shall also meet other specific criteria, such as having a minimum capital share which, in the case of nation-wide and of generalist-



informative content AVMS providers, should amount to EUR 8 000 000. Should the share capital of the applicant be less than this amount, the applicant has to submit a bid bond guarantee for the remaining amount. The applicant should also have registered shares. If the shareholder is also a public limited company, then this company should also have registered shares and this goes on until a natural person is reached. Foreign EU companies that are not required, under the laws of their registered office, to have their shares registered are excluded from this obligation. However, they are required to declare their shareholders (persons that own or control at least 1% of the share capital) until natural persons are reached. Public limited companies listed in the Greek or in an EU or an OECD Member State stock market are also excluded from the obligation to have registered shares. Shareholders of the applicant owning or controlling more than 1% of the shares should not have been irrevocably condemned for bribery, fraud, the legalisation of proceeds from illegal activities, forgery, perjury, participation in a criminal organisation, fraudulent bankruptcy, extortion, or for any other felony. The applicant and its shareholders should not participate in advertising companies, companies that conduct audience measurements and similar market research and telemarketing companies.

It should be noted that this auction procedure was by-passed by the government in 2016. Claiming an urgent need to set off the licensing procedure, and given the fact that the NCRTV had no board, the government deprived the NCRTV of its competences by having the parliament adopt a provision (Law 4364/2016) providing that, during the first application of Law 4339/2015, the number and type of DTT licences to be allocated will be determined by law, and another provision (Law 4367/2016) providing that the auction procedure will be handled by the government. The legality of the decisions granting the licences on this basis was questioned before the Council of the State by several applicants. The Council of the State nullified the decisions and confirmed a well-established jurisprudence according to which any licensing procedure should be conducted by the NCRTV.

The licensing of subscription pay-TV services, regardless of the distribution means, is regulated by Law 2644/1998. The provisions of Article 5, regulating the licensing of terrestrial pay-TV services, are considered to be abolished in fact. Article 6, regulating the licensing of subscription pay-TV services, provides for an individual licence system.<sup>196</sup> The interested party files an application before the NCRTV, accompanied by documents proving the eligibility of the applicant, that is to say, documents proving that the applicant meets the requirements of the law with regard to:

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<sup>196</sup> Platforms licensed on the basis of the provisions of Law 2644/1998 transmit their programme through satellite. One of the two also offers IPTV services. It should be noted that Article 15 of Law 3592/2007 which regulates the provision of AVMS (free or upon payment) through broadband networks (cable, optic fibre, radio frequencies but other than the ones allocated for the transmission of AVMS, satellite) overlaps with the provisions of Article 6 of Law 2644/1998. It is noteworthy that the scope of Article 15 of Law 3592/2007 seems to be unclear to the NCRTV, as evidenced from the authority's decisions. The authority has, in some cases, licensed programmes of AVMS providers licensed according to the provisions of Law 2644/1998 on the basis of Article 15 of Law 3592/2007, although Law 2644/1998 does not provide for a licence of the programme "produced" by the licensee [see decision 341/2015 by which the NCRTV licensed the programme HISTORY CHANNEL of OTE TV (OTE SA), which is a licensee according to the provisions of Law 2644/1998 (relevant decisions 424/2008 and 506/2010)].



- concentration in the media market (and especially in relation to the provision of radio and TV services and the production of audiovisual works);
- transparency of the means of funding;
- the nature of the service (trademark that will be used, nature of the content, total time of broadcasting the programme);
- the quality of the programme (and in particular, in relation to plurality, diversity, the protection of minors, and respect of personality rights);
- the terms of access to the service;
- compensatory services that it will offer to the public sector.

The NCRTV examines the application and the relevant documents and decides within forty-five days from the filing of the application. The NCRTV may invite the applicant to a public hearing. If the NCRTV fails to decide within the set period of time, it is presumed that the licence is granted.<sup>197</sup> Licences are granted for a period of 5 to 15 years depending on the business plan of the applicant and the submitted financial data.

The licensing of free or upon subscription services transmitted via broadband networks according to the provisions of Article 15 of Law 3592/2007 is also ensured by the NCRTV. No licence is needed if the AVMS provider already has a DTT licence. The service can be free of charge or pay-TV and programming can be of an informative or non-informative nature. The applications shall contain a presentation of the programming and a declaration that the applicant will comply with the provisions of the law regulating the content and the relevant codes of conduct. The quality of the proposed programming is the only criterion for licensing.

There is no deadline obliging the NCRTV to respond to an application. However, according to the Code of Administrative Procedure, the authorities should respond to all applications filed before them within fifty days, unless shorter deadlines are specifically provided in the law. There is no deadline imposed on an AVMS provider for the effective provision of its service.

AVMS distributed via OTT and all non-linear AVMS benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority. No procedure exists in order to establish an inventory of existing services. In 2015, the NCRTV published a form<sup>198</sup> calling AVMS providers of on-demand and similar services to register, but this has not been enforced due to the lack of a board at the head of the NCRTV.

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<sup>197</sup> The law does not provide for how long the licence is granted in such a case.

<sup>198</sup> Available at [http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list\\_docs?section=af5a909fc0ab1e7683571826e98263e5&categ=15431c9607c41e7d83571826e98263e5&last\\_clicked\\_id=link2](http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list_docs?section=af5a909fc0ab1e7683571826e98263e5&categ=15431c9607c41e7d83571826e98263e5&last_clicked_id=link2) (in Greek).

**Table 99. Access to market by private service providers**

Service	Category	Authority
<b>Linear</b>		
<i>Via DTT</i>	Auction	NCRTV
<i>Via cable</i>	Individual licence	NCRTV
<i>Via IPTV</i>	Individual licence	NCRTV
<i>Via satellite</i>	Individual licence	NCRTV
<i>Via OTT</i>	Open system	None
<b>Non-linear</b>		
<i>Via DTT</i>	Open system	None
<i>Via cable</i>	Open system	None
<i>Via IPTV</i>	Open system	None
<i>Via satellite</i>	Open system	None
<i>Via OTT</i>	Open system	None

Source: Greek response to European Audiovisual Observatory standardised questionnaire

#### 4.14.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.14.4 above is applicable.

#### 4.14.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.14.4 above is applicable.

#### 4.14.7. Licence fee

Pursuant to a decision of 28 July 2017, the NCRTV has expressed the opinion that the starting price of the auction to be conducted for the licensing of free-to-air, nationwide, informative content licences (in application of Law 4339/2015) should be set to the



amount of EUR 35 000 000. The government has followed the opinion of the NCRTV and has issued the relevant Ministerial Decision;<sup>199</sup>

This amount has been calculated considering the fact that no other free-to-air, nationwide, informative content licence will be auctioned in the next 10 years; that licensees will be granted rights of use of rare national resources; the conditions of the media market in Greece and the current economic conditions; the results of the previous auction which was annulled by the Council of the State; and the advertising expenditure per medium in recent years.

The amount of the auction shall be paid in 10 instalments; the first one within 15 days of the winning bidders being declared, and the subsequent ones in January of each of the following years. The beneficiary is the state, with the exception of a yearly amount of EUR 50 000 which is granted to the NCRTV.

For licences delivered in application of Law 3592/2007, there is no licence fee, while Law 2644/1998 provides for a Joint Ministerial Decision on entry fees and annual fees.

#### 4.14.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence (see section 4.14.4. above regarding transparency during the auction procedure).

Media concentration is avoided during both of the licensing processes described in section 4.14.4. above.

Article 5 of Law 3592/2007, which also applies to the auction procedure detailed in Law 4339/2015, provides that it is prohibited to “*control*” more than one electronic media of the same type. Control is defined as “*the exercise of substantive influence over the management and the function of the company*”.

Control is presumed to exist if a natural or legal person:

- is the owner, shareholder, holding at least 1% of the capital of more than one electronic media and figures among the ten most important partners or shareholders of the media concerned in terms of shares or voting rights, member of the board or executive director in more than one electronic media;
- has one of the above-mentioned capacities in more than one electronic media;
- has the right to appoint or to revoke at least one member of the board in more than one electronic media.

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<sup>199</sup> In October 2017, the Association of the nationwide informative content AVMS providers filed before the Council of the State an application for the annulment of the ministerial decision by which the starting auction price had been set to the amount of EUR 35 000 000.



Control is also presumed to exist indirectly via “intermediaries” such as the spouse, children and affiliated relatives up to a third degree of Greek natural persons, provided that “unfair influence” has been proved to be exercised over media management to the detriment of pluralism and competition. The exercise of “unfair influence” is determined by an irrevocable (final) judicial decision.

Different rules apply for pay-TV services regulated by Law 2644/1998. The NCRTV is the competent authority to examine whether the applicant complies with the cross-ownership and concentration rules.<sup>200</sup> According to Article 8 section 8 of Law 2644/1998, the NCRTV may at any time examine the compliance of the licensee and its shareholders with these rules. The law provides that the NCRTV should take into account the relevant audience measurements; the number of subscribers; the percentage of the licensee in the media market; the licensee’s percentage in the total advertising expenditure; the licensee’s capital share; the shareholders’ ability to influence decisions taken by the licensee’s executive members of the board; and the number of contracts and the amount of the transactions made between specific companies.

No specific provision exists regarding the licensing of free or upon subscription AVMS services licensed under the provisions of Article 15 of Law 3592/2007. Hence, the general concentration rules apply.

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<sup>200</sup> Article 2 section 3 (a) of Law 2644/1998 provided that a company may hold only one licence for each of the delivery systems (terrestrial, cable, satellite) provided in the law and that every natural or legal person could hold shares to only one company transmitting with a particular system and to a second one transmitting the programme with a different system, provided that there was no violation of the concentration rules. However, these provisions were abolished by Article 40 of Law 4487/2017.

Article 2 section 4 of Law 2644/1998 was amended by Article 4 section 2 (c) of Law 4506/2017 as follows:

*“4. The license holder according to present law or its shareholders may also hold only one radio and one free-to-air TV station. Any participation of the licensee according to present law or its shareholders in another corporation holding a radio or a free-to-air television license is permitted if there is no control over it. Control exists when the licensee or its shareholders (natural or legal persons) holding a license for radio station or a free-to-air television station are also involved in another corporation which is licensed to operate a free-to-air TV or radio station and substantially affect in any way the decision-making process of this corporation, as to how it is managed and, in general, how it functions. In particular, control exists if any of the above (natural or legal) persons: (a) holds in the undertaking such capacity as owner, executive manager, member of the management body, manager, partner or shareholder, who is ranked among the ten largest shareholders, partners or holders of voting rights of the corporation, based on the number of stocks, shares or voting rights it holds, on any grounds, prior to the submission of the application to the last General Assembly or the last minutes of a Meeting of shareholders or partners, provided that it owns a number of stocks, shares or voting rights, either directly or through third parties, representing at least one per cent (1%) of the total share capital or voting rights in the General Assembly or in the minutes of the Meeting of the partners of the undertaking or (b) is entitled by virtue of law or the company statute or by assignment of a relative right of another shareholder or partner, to appoint or recall at least one member of the board of directors of that corporation or its manager”.*

Article 2 section 5 of Law 2644/1998 also provided that the licensee, its shareholders and the shareholders of the licensee’s shareholders may not participate in more than one category of mass media (TV, radio or print media). However, this section was repealed by Article 4 section 1 of Law 4506/2017.

The participation restrictions of section 5 also existed for free-to-air TV and radio services (Article 1 section 10 of Law 2328/1995) but the relevant provisions were abolished by Law 3592/2007.



**Table 100. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence
Media concentration issues considered during the licensing process	Various potential limitations based on various criteria depending on the different applicable laws

*Source: Greek response to European Audiovisual Observatory standardised questionnaire*

#### 4.14.9. Management of the licence and notification

Licences following an auction are granted for 10 years, licences granted under the provisions of Law 2644/1998 are granted for a period of 5 to 15 years, and other licences have no limited term.

The law does not provide for a renewal procedure for DTT licences. Licences granted according to the provisions of Law 2644/1998 can be renewed should the licensee send an application to the NCRTV three months prior to the expiration of the licence.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the NCRTV. Sanctions have to respect the principle of proportionality.

A licence can be suspended for a maximum of three months. It can also be revoked in the following situations according to the provisions of Law 4339/2015 (regulating the licensing of free-to-air DTT):

- in case of a non-timely submission by the licensee of its incorporation documents;
- if the level of share capital falls under the minimum amount provided for in law;
- if the level of equity of the licensee's share capital falls under the minimum amount provided for in law for two consecutive corporate uses;
- if the licensee violates the obligation provided for in law to have registered shares;
- if the licensee reduces the number of employees below the number provided for in law;
- if the licensee changes the use of the licence (for example, from informative to non-informative);
- if the licensee fails to contract the network provider in good time;
- if the licensee fails to comply with any of the requirements of the law in good time.

Modifications to the licence conditions are not allowed.



**Table 101. Main issues regarding the management of the licence**

Issue	Description
Duration	10 years for free-to-air DTT services regulated by Law 4339/2015 5-15 years for pay-TV services regulated by Law 2644/1998 Unlimited term for services regulated by Article 15 of Law 3592/2007
Procedure to renew	Only for services regulated by Law 2644/1998
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	No
Procedure in case of modifications in the licence conditions	Not possible
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Greek response to European Audiovisual Observatory standardised questionnaire

#### 4.14.10. Future amendments to the regulatory framework

N/A.

#### 4.14.11. Video-sharing platforms

N/A.

#### 4.14.12. Applicable regulatory framework

■ Primary legislation:

- In Greek - Law 4339/2015: <http://www.media.gov.gr/images/nomoi/nomos-4339-2015.pdf>
- In Greek - Law 3592/2007: [http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list\\_docs?section=134c0bb6fb141e7683571826e98263e5&categ=35df5d37fb141e7683571826e98263e5&last\\_clicked\\_id=link2](http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list_docs?section=134c0bb6fb141e7683571826e98263e5&categ=35df5d37fb141e7683571826e98263e5&last_clicked_id=link2)
- In Greek - Law 2644/1998: [http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list\\_docs?section=134c0bb6fb141e7683571826e98](http://www.esr.gr/arxeion-xml/pages/esr/esrSite/list_docs?section=134c0bb6fb141e7683571826e98)



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#### 4.14.13. Data compilation

This factsheet was produced based on data compiled by Persa Lampropoulou, Attorney at law, I.G. Anagnostopoulos Law Firm.



## 4.15. HR – Croatia – National Summary<sup>201</sup>

### 4.15.1. Summary

In Croatia, access to the market is granted exclusively by the regulatory authority (Agency for Electronic Media - Agencija za elektronicke medije, hereinafter AEM)<sup>202</sup>, except partly for the public service, which was created by law.

The AEM is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Two systems are used:

- Licensing, which is applicable to all non-public service AVMS providers and to all public AVMS not distributed via DTT, and which is organised either in the form of a beauty contest or of a formal licence.
- Public service, which is applicable to the public service media Hrvatska radiotelevizija (hereinafter HRT). The missions of the HRT are prescribed in a specific law. The DTT frequencies necessary to make its services available to the public are granted by the government. For all other public AVMS not using frequencies, the licensing system applies.

It should also be highlighted that if the activity of the AVMS provider will apply to other members states of the European Union, the AEM is authorised to exchange information with the competent authority of the member states in question on the most advantageous applicant.

**Table 102. Applicable systems**

System	Category
Licensing	Beauty contest Licence
Public service	Law

Source: Croatian response to European Audiovisual Observatory standardised questionnaire

<sup>201</sup> The factsheet on Croatia incorporates the feedback from members of the *Agencija za elektronicke medije* (Agency for Electronic Media – AEM) during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>202</sup> <http://www.e-mediji.hr/>.

## 4.15.2. Functioning of the applicable systems

Pursuant to the Electronic Media Act,<sup>203</sup> all AVMS providers (whether public or non public service AVMS) that are not distributed via DTT have to be licensed by the AEM.

The AEM has to grant licences based on a beauty contest for AVMS distributed via DTT or on a formal licensing procedure for AVMS distributed via other means; if the formal requirements are met, the licence has to be granted to the applicant (unless there are concentration issues).

Licences are granted for 10 to 15 years. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Administrative Court.<sup>204</sup>

The missions of the HRT are prescribed in the Public Broadcasting Act.<sup>205</sup> The DTT frequencies necessary to make its services available to the public are granted by the government. For all other public AVMS not using frequencies (that is to say, for all services which are different from the ones distributed via DTT), the formal licensing system applies.

**Table 103. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest Formal licence	AEM	Application to send to the AEM, who decides based on criteria mentioned in the Electronic Media Act
Public service	Law	Parliament and Government	The public service media HRT was created by law and frequencies are granted by the government, if available

Source: Croatian response to European Audiovisual Observatory standardised questionnaire

## 4.15.3. Application to public audiovisual media service providers

The missions of the HRT are prescribed in the Public Broadcasting Act.

There is no limited term to the activities of the HRT.

<sup>203</sup> [http://www.e-mediji.hr/repository\\_files/file/490/](http://www.e-mediji.hr/repository_files/file/490/) (in Croatian).

[http://www.e-mediji.hr/repository\\_files/file/502/](http://www.e-mediji.hr/repository_files/file/502/) (in English).

<sup>204</sup> <http://www.upravnisudrh.hr/frames.php?right=sudovi.html>.

<sup>205</sup> [http://narodne-novine.nn.hr/clanci/sluzbeni/2010\\_12\\_137\\_3515.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2010_12_137_3515.html) (in Croatian).



The DTT frequencies necessary to make its services available to the public are granted by the government. For all other public AVMS not using frequencies (that is to say, for all services which are different from the ones distributed via DTT), the formal licensing system applies.

**Table 104. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament and Government
<i>Via cable</i>	Formal licence if the AVMS is different from the one for which the relevant DTT licence was granted	AEM
<i>Via IPTV</i>	Formal licence if the AVMS is different from the one for which the relevant DTT licence was granted	AEM
<i>Via satellite</i>	Formal licence if the AVMS is different from the one for which the relevant DTT licence was granted	AEM
<i>Via OTT</i>	Formal licence if the AVMS is different from the one for which the relevant DTT licence was granted	AEM
<i>Non-linear</i>		
<i>Via DTT</i>	Law	Parliament and Government
<i>Via cable</i>	Formal licence if the AVMS is different from the one for which the relevant DTT licence was granted	AEM
<i>Via IPTV</i>	Formal licence if the AVMS is different from the one for which the relevant DTT licence was granted	AEM
<i>Via satellite</i>	Formal licence if the AVMS is different from the one for which the relevant DTT licence was granted	AEM
<i>Via OTT</i>	Formal licence if the AVMS is different from the one for which the relevant DTT licence was granted	AEM

Source: Croatian response to European Audiovisual Observatory standardised questionnaire



#### 4.15.4. Application to private (commercial) audiovisual media service providers

Licences are granted to linear AVMS providers distributed via DTT in the form of a beauty contest.<sup>206</sup>

When the Post and Electronic Communications Agency (HAKOM)<sup>207</sup> determines that frequencies are available in a certain area, the AEM publishes a notice (tender) on the intent to award licences.

The applications have to be submitted within sixty days of the publication and shall contain relevant data about the fulfilment of the conditions stipulated in the tender, that is to say, a programme basis (types of programmes, the planned maximum scope of advertising, the planned scope of own production, and the share of Croatian audiovisual works, European audiovisual works and audiovisual works by independent producers...); detailed data on the company submitting the tender and its head office; data on the ownership structure; and data on the tenderer's financial capability of carrying out the activities.

The procedure for determining the most favourable application is conducted by the AEM through an evaluation based on the criteria mentioned in the Electronic Media Act, such as the quantity of own production, European audiovisual works and works of independent producers; the quality and diversity of the programme; and the technical, financial (amount of resources and financial guarantees) and personnel conditions.

The AEM shall decide within thirty days from receiving the applications.

Licences are delivered for generalist or thematic services.

Licences to all other AVMS providers are granted in the form of individual decisions upon the request of the applicant. There is no tender or beauty contest since the licence is technologically neutral and therefore not tied to the right to use any specific distribution capacity, especially the use of a scarce resource such as spectrum. This means that the AEM has no discretion as to whether or not the licence is granted, as long as the formal licensing requirements are met by the applicant. These formal requirements are: an extract from the Court Register; data on the ownership structure; a credible document on having at one's disposal appropriate business premises; a credible document on the required number of employees or a certified statement that these conditions shall be subsequently fulfilled; a programme basis; a statement on having at its disposal technical equipment which can ensure the quality of production, transmission and broadcast of the programme; the business plan of the media service provider for the first three years, and a credible document on having at its disposal the initial funds; a statement that providing the AVMS would not result in the impermissible concentration of ownership.

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<sup>206</sup> In practice, this applies only to linear DTT. For technical reasons, formal licence is applied to non-linear DTT.



The AEM shall decide within thirty days of receiving a valid request.

The deadline imposed on an AVMS provider for the effective provision of its service is provided in the decision granting the licence.

Pursuant to Article 73 section 6 of the Electronic Media Act, if the activity of the AVMS provider will apply to other member states of the European Union, the AEM is authorised to exchange information with the competent authority of the member states in question on the most advantageous applicant.

**Table 105. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	AEM
<i>Via cable</i>	Formal licence	AEM
<i>Via IPTV</i>	Formal licence	AEM
<i>Via satellite</i>	Formal licence	AEM
<i>Via OTT</i>	Formal licence	AEM
<i>Non-linear</i>		
<i>Via DTT</i>	Beauty contest	AEM
<i>Via cable</i>	Formal licence	AEM
<i>Via IPTV</i>	Formal licence	AEM
<i>Via satellite</i>	Formal licence	AEM
<i>Via OTT</i>	Formal licence	AEM

*Source: Croatian response to European Audiovisual Observatory standardised questionnaire*

#### 4.15.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.15.4 above is applicable.

#### 4.15.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.15.4 above is applicable.



#### 4.15.7. Licence fee

The licence fee only applies to services distributed via DTT.

The amount of the licence fee depends on the type of licence and is divided between a fixed part and a variable part:

- the fixed part is calculated so as to add the amount of 500 HRK for every 50 000 inhabitants in the coverage area of the licence, with a minimum of 500 HRK;
- the variable part corresponds to 0.15% of the total annual gross income accrued in the previous year by providing the AVMS, providing that the total annual gross revenue of the AVMS provider exceeds 5 000 000 HRK.

The fixed part is paid in one lump sum for the current year by the mid-year of that year. The variable part fee is paid in two equal instalments by 31 December of the current year for the previous year. AVMS providers shall file their reports on the gross income accrued in the previous year by 31 April of the current year.

The beneficiary is the state.

#### 4.15.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence.

Media concentration is avoided during the licensing process by Articles 53 to 62 of the Electronic Media Law. In particular, Article 54 states that:

*“The following shall be considered as an impermissible concentration within the meaning of this Act:*

- the television and/or radio broadcaster who has concession at the state level and a share exceeding 25% of the capital of another broadcaster who has the same kind of concession or a concession on the regional, county, city or municipality level, and vice versa,*
- the television and/or radio broadcaster who has concession at the state level and a share exceeding 10% of the capital of publisher who publishes daily newspapers printed in more than 3,000 copies, and vice versa,*
- the television and/or radio broadcaster who has concession at the state level and a share exceeding 10% of the capital of a legal person who performs the activity of a newspaper agency, and vice versa,*
- the television and/or radio broadcaster who has concession at the state level and simultaneously publishes daily newspapers printed in more than 3,000 copies,*
- the television and/or radio broadcaster with a concession at the local or regional level of coverage and shares exceeding 30% of the capital of another such broadcaster with the concession at the local or regional level of coverage in the same area,*



- the television and/or radio broadcaster who has a concession at the regional or local level of coverage and simultaneously publishes daily newspapers of local importance in the same or in the neighbouring area,
- the media service provider set out in Article 79 of this Act who simultaneously publishes daily newspapers printed in more than 3,000 copies,
- the media service provider set out in Article 79 of this Act who has a share exceeding 10% of the capital of a publisher who publishes daily newspapers printed in more than 3,000 copies, and vice versa”.

Article 56 of the Electronic Media Act makes clear that the AEM shall not grant a licence in the framework of a beauty contest if granting the licence would create an impermissible concentration.

**Table 106. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence
Media concentration issues considered during the licensing process	No licence can be granted if it leads to impermissible concentration

Source: Croatian response to European Audiovisual Observatory standardised questionnaire

#### 4.15.9. Management of the licence and notification

Licences via DTT are granted for a number of years depending on the coverage area:

- more than 1 500 000 inhabitants: 15 years;
- between 750 000 and 1 500 000 inhabitants: 13 years;
- between 500 000 and 750 000 inhabitants: 12 years;
- up to 500 000 inhabitants: 10 years.

Other licences are granted for 10 years and notifications have no limited term.

Article 76 of the Electronic Media Law details the conditions in which a terrestrial licence can be suspended or revoked:

*“(1) The Council shall pass a decision on temporary or permanent termination of a concession or permit for a media service provider, if it has determined:*

*1 that the concession was awarded on the basis of incorrectly presented data important for passing the decision on the selection of the most advantageous tenderer,*

*2 that the television and/or radio broadcaster has not started to exercise the concession within the deadline determined by the concession contract or it does not respect the technical conditions from the concession contract for a period longer than one month*



*since the beginning of the exercise of the concession, or if it stops exercising the concession for a period longer than 48 hours,*

*3 that the media service provider performs an activity even after the third warning by the Council which they issued in the previous 12 months, contrary to the provisions of this Act and the regulations adopted on the basis of this Act or to the concession contract,*

*4 that the television and/or radio broadcaster no longer fulfils the conditions for the performance of activities referred to in Article 22 of this Act,*

*5 that the broadcaster publishes audiovisual or radio programmes contrary to the Article 12 and/or 20 and/or 26 of this Act,*

*6 that the media service provider, even after receiving a warning by the Council, fails to adhere to a minimum of 90% of the programme basis,*

*7 that the media service provider, even after receiving a warning by the Council, doesn't comply to the established time of broadcasting set out in Article 36 paragraph and/or 4 and/or 5 and/or 6 and/or 7 of this Act,*

*8 that the media service provider failed to enable another media service provider the exercising of the right to short news reports pursuant to Article 45 paragraph 3 of this Act, contrary to the Council's order,*

*9 that the media service provider failed to pay the concession fee more than twice consecutively or is generally disorderly in paying the concession fee,*

*10 that the media service provider failed to forward information on the change of data referred to in Article 52 paragraph 1 of this Act within a determined deadline, even after receiving a warning by the Council,*

*11 the existence of an impermissible concentration as determined by this Act,*

*12 that the media service provider failed to obtain the approval of the competent association for collective exercise of copyrights and related rights within a determined deadline, even after receiving a warning by the Council,*

*13 that the media service provider transferred the concession to another person contrary to the Article 74 paragraph 5 of this Act,*

*14 that the media service provider transfers the licence to another person contrary to the Article 19 paragraph 7 and Article 79 paragraph 7 of this Act,*

*15 that the media service provider, regardless of the Council decision on measures for the purpose of temporary limitation of the freedom to broadcast audiovisual media services from other states, publishes audiovisual programmes referred to in Article 77 of this Act.*

*(2) A concession shall terminate in the following cases:*

*1 upon expiration of the period for which it was granted,*

*2 if the media service provider renounces the concession,*

*3 by the cessation of the legal person of a media service provider or the cessation of craft,*



*4 if the media service provider was prohibited by an effective decision of the court to perform activity for which the concession was awarded,*

*5 by mutual termination of the concession contract,*

*6 by permanent termination of a concession”.*

In case of the termination of the provision of an AVMS, the AEM shall take a decision on the revocation of the licence and revoke it from the Registry of Media Service Providers. In the case of a revocation of a licence via DTT, the AEM publishes its decision in the official gazette and informs the Post and Electronic Communications Agency and the Ministry of Finance.

Pursuant to Article 79 section 6 of the Electronic Media Act, for other linear licences the AEM “shall ex officio take a decision on termination of licence from paragraph 1 of this Article and cancel the media service provider from the Registry in the following cases:

- if the media service provider notifies the Council in writing on the cessation of the activity providing,
- if the media service provider ceases to provide the activities for a period longer than a year,
- if the media service provider does not fulfil anymore the technical conditions for the transmission of audiovisual and radio programmes,
- if the media service provider was prohibited by an effective decision of the court to perform the registered activity,
- after the cessation of the legal person of a media service provider or the cessation of craft,
- if the impermissible media concentration prescribed by this Act was realized”.

Pursuant to Article 19 section 6 of the Electronic Media Act, for non-linear licences the AEM “shall ex officio take a decision on termination of permit from paragraph 1 of this Article and cancel the media service provider from the Registry in the following cases:

- if the media service provider notifies the Council in writing on the cessation of the activity providing,
- if the media service provider ceases to provide the activities for a period longer than a year,
- if the media service provider does not fulfil anymore the technical conditions for the transmission of audiovisual and/or radio programme,
- if the media service provider was prohibited by an effective decision of the court to perform the registered activity,
- after the cessation of the legal person of a media service provider or the cessation of craft”.

Other sanctions can be decided, such as an admonition, a warning, an administrative fine or initiating a procedure before the relevant court.

Pursuant to Article 48 section 4 of the Electronic Media Act, the status of a non-profit AVMS provider cannot be altered during the licence period. For other AVMS providers,



considering the licences' conditions, if those conditions change, then the AEM shall carry out a new licensing procedure.

**Table 107. Main issues regarding the management of the licence**

Issue	Description
Duration	10 to 15 years
Procedure to renew	Same as licensing
Procedure to suspend	General administrative procedure
Procedure to revoke	General administrative procedure
Procedure in case of termination of the provision of the service	Formal decision of the AEM
Procedure in case of modifications in the licence conditions	Not possible
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Croatian response to European Audiovisual Observatory standardised questionnaire

#### 4.15.10. Future amendments to the regulatory framework

N/A.

#### 4.15.11. Video-sharing platforms

N/A.

#### 4.15.12. Applicable regulatory framework

- Primary legislation:
  - In Croatian - Zakon o Elektroničkim Medijima (Electronic Media Act): [http://www.e-mediji.hr/repository\\_files/file/490/](http://www.e-mediji.hr/repository_files/file/490/)
  - In Croatian - Zakon o Hrvatskoj radioteleviziji (Public Broadcasting Act): [http://narodne-novine.nn.hr/clanci/sluzbeni/2010\\_12\\_137\\_3515.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2010_12_137_3515.html)
  - In English - Electronic Media Act:  
[http://www.e-mediji.hr/repository\\_files/file/502/](http://www.e-mediji.hr/repository_files/file/502/)
- Secondary legislation
  - In Croatian - Pravilnik o sadržaju i postupku obavijesti o nameri davanja koncesija za obavljanje djelatnosti pružanja medijskih usluga televizije I



radija (Ordinance on the content and procedure of the notice of intent on granting concessions for the provision of television and radio media services):

[http://www.e-mediji.hr/repository\\_files/file/11/](http://www.e-mediji.hr/repository_files/file/11/)

- In English - Ordinance on the content and procedure of the notice of intent on granting concessions for the provision of television and radio media services:

[http://www.e-mediji.hr/repository\\_files/file/312/](http://www.e-mediji.hr/repository_files/file/312/)

### 4.15.13. Data compilation

This factsheet was produced based on data compiled by Nives Zvonarić, Ministry of Culture.



## 4.16. HU – Hungary – National Summary<sup>208</sup>

### 4.16.1. Summary

In Hungary, access to the market is granted exclusively by the regulatory authority (Media Council of the National Media and Infocommunications Authority - Nemzeti Média- és Hírközlési Hatóság Médiatanácsa, hereinafter NMHH)<sup>209</sup>, except for public service media, which was created by law.

The NMHH is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Two systems are used:

- Notification, which is applicable to all non-public service AVMS.
- Public service, which is applicable to the Public Service Foundation, a foundation established by parliament to ensure the provision of public service media and which is the owner of Duna Media Service Provider Non-Profit Private Limited Company, the company which, in practice, operates the various public service AVMS offered to the public. The DTT frequencies necessary to make its services available to the public are granted by the NMHH.

**Table 108. Applicable systems**

System	Category
Notification	N/A
Public service	Law <sup>210</sup>

Source: Hungarian response to European Audiovisual Observatory standardised questionnaire

### 4.16.2. Functioning of the applicable systems

Pursuant to the Act on Media Services and Mass Communication,<sup>211</sup> all non-public service AVMS have to be notified to the NMHH.

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<sup>208</sup> The factsheet on Hungary incorporates the feedback received from members of the *Nemzeti Média- és Hírközlési Hatóság* (National Media and Infocommunications Authority – NMHH) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>209</sup> <http://www.nmhh.hu/>.

<sup>210</sup> And notification (see section 4.16.3 for further details).

<sup>211</sup> <http://mediatorveny.hu/dokumentum/11/Mttv.pdf> (in Hungarian)

[http://hunmedialaw.org/dokumentum/153/Mttv\\_110803\\_EN\\_final.pdf](http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf) (in English).



Notifications have no limited term. If the notification is refused,<sup>212</sup> the applicant has the opportunity to file an internal appeal proceeding with the NMHH and to lodge an appeal with the Budapest Administrative and Labour Court.<sup>213</sup>

Access to DTT frequencies is left to private negotiations between the AVMS providers and the operator of the DTT multiplexes (Antenna Hungaria).

A specific and unique system applies to public service media. In the Act on Media Services and Mass Communication, the parliament has established the Public Service Foundation, whose mission is to ensure the provision of public service media. Pursuant to Article 84 of the Act, this foundation is the owner of Duna Media Service Provider Non-Profit Private Limited Company,<sup>214</sup> the company which, in practice, operates the various public service AVMS offered to the public.

**Table 109. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Notification	N/A	NMHH	Notification to send (prior to the launch in case of linear AVMS) to the NMHH
Public service	Law <sup>215</sup>	Parliament and NMHH	A public service foundation was created by law and the scope of its activities is managed by a company owned by this foundation, under the supervision of the NMHH

Source: Hungarian response to European Audiovisual Observatory standardised questionnaire

### 4.16.3. Application to public audiovisual media service providers

The Hungarian approach to public service media is unique within the European Union. In the Act on Media Services and Mass Communication, the parliament has established the

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<sup>212</sup> The Hungarian case represents a “borderline” case, since usually notifications cannot be refused. In this case notifications can indeed be refused in theory, but only in very limited circumstances and only on formal grounds. All the other aspects of the system lead to qualify the Hungarian situation as a notification system, and especially the fact that the regulatory framework does not use the term “license” and clearly refer to notifications.

<sup>213</sup> <http://birosag.hu/torvenyszek/jaras-birosag/fovarosi-kozigazgatasi-es-munkaugyi-birosag>.

<sup>214</sup> [http://www.dunamsz.hu/?lang=hu\\_hu](http://www.dunamsz.hu/?lang=hu_hu).

<sup>215</sup> And notification (see section 4.16.3 for further details).



Public Service Foundation, whose mission is to ensure the provision of public service media. Pursuant to Article 84 of the Act, this foundation is the owner of Duna Media Service Provider Non-Profit Private Limited Company, the company which, in practice, operates the various public service AVMS offered to the public.

Pursuant to Article 98 (5) to (8) of the Act, this company “shall provide at least one radio and at least one audiovisual linear public media service to the overwhelming majority of the population of Hungary” (5) and, in addition to its national media services, “may also provide local or regional media services” (6). It is the duty of the NMHH to “decide on the media service facilities used by the individual public media service provider – including media services targeted at foreign countries as well – on the basis of technical, economic, and media policy considerations and after consultation with the CEO of the Fund” (7). It is also the duty of the NMHH, “in relation to public audiovisual and radio media services, the Media Council – after consultation with the CEO of the Fund and taking into consideration economic and budgetary planning related considerations for the next year, and with regard to the fulfilment of the public service objectives set forth in Article 83 of this Act – may supervise the system of public media services annually and may decide whether to maintain the existing media services of the public media service provider or to change the system thereof” (8).

It will be considered, for the purpose of this mapping, that such a system can qualify as “public service”, under the category of “Law”, but under the authority of the NMHH, since the public service has indeed a certain degree of autonomy in launching services, while the services have to be notified to the NMHH in order to use its potential powers to terminate or to change these services.

The DTT frequencies necessary to make the services of the foundation available to the public are granted by the NMHH.

**Table 110. Access to market by public service providers**

Service	Category	Authority
<b>Linear</b>		
<i>Via DTT</i>	Law (& notification)	NMHH
<i>Via cable</i>	Law (& notification)	NMHH
<i>Via IPTV</i>	Law (& notification)	NMHH
<i>Via satellite</i>	Law (& notification)	NMHH
<i>Via OTT</i>	Law (& notification)	NMHH
<b>Non-linear</b>		
<i>Via DTT</i>	Law (& notification)	NMHH
<i>Via cable</i>	Law (& notification)	NMHH
<i>Via IPTV</i>	Law (& notification)	NMHH
<i>Via satellite</i>	Law (& notification)	NMHH
<i>Via OTT</i>	Law (& notification)	NMHH

Source: Hungarian response to European Audiovisual Observatory standardised questionnaire



#### 4.16.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

All linear AVMS have to be notified to the NMHH at least forty-five days prior to the launch of their service. Pursuant to Article 42 (1) of the Act, the notification shall contain the following information:

*“a) particulars of the notifier: aa) name, ab) address (registered office), designation of place(s) of business directly affected by the media service provision, ac) contact information (telephone number and electronic mailing address), ad) name and contact information (telephone number, postal and electronic mailing address) of its executive officer, representative, and of the person appointed to liaise with the Authority, ae) company registration number, or registration number,*

*b) the notifier’s effective Deed of Foundation and the specimen of signature of its representative authenticated by a notary public [except for the case stipulated under Paragraph (2a)], if the notifier is not a natural person;*

*c) basic particulars of the planned media service: ca) kind (radio or audiovisual), cb) type (general or thematic), cc) character (commercial, community), cd) permanent name, ce) name, address (registered office), contact information (telephone number and electronic mailing address) of the electronic communications service provider likely to perform broadcasting, cf) planned number of subscribers, cg) type of the electronic communications network planned for broadcasting, ch) name of the settlements affected by broadcasting, ci) media service transmission time, transmission time schedule and planned programme flow structure, cj) daily, weekly, monthly minimum transmission time intended for broadcasting public service programmes, programmes dealing with local public affairs, or programmes supporting local everyday life, ck) minimum transmission time intended for daily regular news programmes, cl) planned daily minimum transmission time serving nationalities, cm) planned ancillary media services, cn) the media service signal, and – in case of audiovisual media services – the emblem of the media service, co) the fact of expansion of the reception area, or connecting to the network, if applicable.*

*d) in case of satellite media services, a statement of intent from the provider of the satellite capacity the notifier plans to use, with respect to the lease of the channel, also indicating its frequency, technical specifications and fee,*

*e) data on the size of direct or indirect ownership stake held by the notifier or by any other person with a qualifying holding in the notifier undertaking, in any undertaking providing media services, or applying for media service provision rights, within the territory of Hungary,*

*f) planned date of launching the media service.”*

The provider shall also “make a statement that no grounds for exclusion under the Act would arise against it in case of its registration” (Article 42 (2)).



The AVMS can only be launched after the completion of the notification. The NMHH shall adopt a decision on the notification within forty-five days. If it fails to do so within this deadline, the AVMS is deemed to be duly notified.

Pursuant to Article 42 (6) of the Act, the NMHH shall refuse the notification in the following situations:

- “a) a conflict of interests set forth in Article 43 exists vis-à-vis the notifier,<sup>216</sup>*
- b) the notifier, or any of its owners, has overdue fees from earlier media service activities,*
- c) it would be in violation of the provisions set forth in Article 68 on the prevention of media market concentration,*
- d) the notification does not contain the data provision required under Paragraph (1), even after notice to remedy the deficiencies,*
- e) the name of the notified media service is identical with – or is confusingly similar to – the name of a linear media service already registered, having valid records at the time of notification, or*
- f) the notifier failed to pay the administrative service fee.”*

There is no deadline imposed on an AVMS provider for the provision of its service, but the notification shall include the planned date of the launch of the service.

### Non-linear AVMS

All non-linear AVMS have to be notified to the NMHH (no prior deadline is defined). Pursuant to Article 45 (1) of the Act, the notification shall contain the following information:

- “a) particulars of the notifier: aa) name, ab) address (registered office or place of business), designation of place(s) of business that are directly affected by the media service provision, ac) contact information (telephone number and electronic mailing address), ad) name and contact information (telephone number, postal and electronic mailing address) of the executive officer, representative of the media service provider, and of the person appointed to liaise with the Authority, ae) company registration number, or registration number,*
- b) basic particulars of the planned media service: ba) kind (radio or audiovisual), bb) name, bc) type (general or thematic), c) the planned date of launching the media service.”*

The NMHH shall register the AVMS within thirty days.

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<sup>216</sup> This covers mainly the situations of persons holding a public mandate, a position in public administration bodies or political parties.

**Table 111. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Notification	NMHH
<i>Via cable</i>	Notification	NMHH
<i>Via IPTV</i>	Notification	NMHH
<i>Via satellite</i>	Notification	NMHH
<i>Via OTT</i>	Notification	NMHH
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	NMHH
<i>Via cable</i>	Notification	NMHH
<i>Via IPTV</i>	Notification	NMHH
<i>Via satellite</i>	Notification	NMHH
<i>Via OTT</i>	Notification	NMHH

Source: Hungarian response to European Audiovisual Observatory standardised questionnaire

#### 4.16.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.16.4 above is applicable.

#### 4.16.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.16.4 above is applicable.

#### 4.16.7. Licence fee

Linear AVMS providers shall pay a “media service provision fee” for each of their services. The amount is decided by the NMHH. Pursuant to Article 44 (7) of the Act on Media Services and Mass Communication, the fee “*shall be proportionate to the reception area of the given media service. At the same time, it shall give due consideration to the purchasing power indicator of the given area’s population, as well as to the market share attained by media service provider groups grouped according to their reception area, media service type, mode of distribution, or other significant criteria.*”

The amounts are the following:



- between 1 and 12 000 people reached: 50 524 HUF + VAT
- between 12 001 and 25 000: 75 248 HUF + VAT
- between 25 001 and 50 000: 107 497 HUF + VAT
- between 50 001 and 100 000: 161 245 HUF + VAT
- between 100 001 and 250 000: 322 491 HUF + VAT
- between 250 001 and 500 000: 806 227 HUF + VAT
- above 500 001: 1 079 269 HUF + VAT.

Community AVMS providers are exempt.

The fees are paid quarterly. The beneficiary is the Media Service Support and Asset Management Fund, which is an audiovisual fund functioning as a separate entity from the NMHH, although it is managed by the NMHH.

## 4.16.8. Media ownership and concentration

The transparency of ownership of AVMS providers is ensured via the obligation to provide the relevant data when notifying.

Media concentration is avoided during the licensing process by Article 68 of the Act on Media Services and Mass Communication according to which:

*“(1) Linear audiovisual media service providers with an average annual audience share of at least thirty-five percent, linear radio media service providers, and media service providers having a joint average annual audience share of at least forty percent on the linear audiovisual and linear radio markets, any owners of the media service provider and any person or undertaking having a qualifying holding in the media service provider’s owner:*

*a) may not launch new media services, may not acquire shares in undertakings providing media services, and*

*b) shall take measures in order to increase the diversity of the media market by modifying the programme flow structure of its media services, by increasing the proportion of Hungarian works and programmes prepared by independent production companies, or in any other way.*

*(2) In the case presented under Paragraph (1) (a), if the media service provider affected by the rule restricting media market concentration wishes to acquire a share in an undertaking providing media services, the Media Council shall be obliged to reject the special authority approval under its procedure as per Article 171.*

*(3) In the case presented under Paragraph (1) (b), in order to determine the measures aimed at increasing diversity, the Media Council may conclude a public contract – for a term of at least one year – with the media service provider, at the media service provider’s request, and under such procedure the Media Council shall be entitled to assess whether it accepts the obligations the media service provider wishes to undertake or not. Such applications may be submitted within thirty days from the communication of the Media Council’s regulatory decision as per Article 70 (7). If the public contract – due to failure to reach an understanding – is not concluded within three months from the communication of the*



*regulatory decision specified in Article 70 (7), the Media Council shall terminate the procedure by a decision.*

*(4) In the absence of the conclusion of a public contract specified under Paragraph (3), the media service provider shall submit its application for the approval of its measures aimed at increasing media market diversity, within six months of the communication of the Media Council's regulatory decision specified in Article 70 (7). In its procedure conducted regarding the approval of the application, the Media Council shall assess whether the proposed measures are suitable for decreasing the former information monopoly and for increasing media market diversity and information pluralism. In the event of the late fulfilment of such obligation, the Media Council shall impose a procedural fine.*

*(5) If the application complies with the conditions specified under Paragraph (4), the Media Council shall approve it by its decision.*

*(6) In case of any doubt, it is the media service provider's responsibility to prove that the proposed measures comply with the conditions specified under Paragraph (4).*

*(7) If the Media Council does not approve the proposed measures, it shall adopt a decision wherein it shall identify the causes of non-compliance, as far as the principles specified under Paragraph (4) are concerned.*

*(8) In the case presented under Paragraph (7), the media service provider shall submit a new plan for proposed measures by the deadline set by the Media Council, but, within thirty days at most, taking into account the considerations specified in the Media Council's decision as per Paragraph (7). In the event of the late fulfilment of such obligation, the Media Council shall impose a procedural fine. If the measures specified in the new application also fail to satisfy the criteria defined under Paragraph (4), the Media Council may enforce the respective legal sanctions in accordance with Articles 185-187.*

*(9) The Media Council shall supervise the implementation of the measures approved through its decision within the framework of general regulatory supervision.*

*(10) The average annual audience share jointly reached on the linear audiovisual and linear radio market shall, for the purposes of Paragraph (1), be determined by adding the individual average annual audience shares, expressed as a percentage, attained separately on the linear audiovisual and linear radio markets."*

Article 72 adds, regarding the links between AVMS providers and distributors, that:

*"(1) The number of media services in the media service providers of which the same undertaking has a qualifying holding shall not exceed one quarter of the audiovisual media services or half the radio media services distributed on the given transmission system.*

*(2) The number of media services the providers of which also perform media service distribution activities or in the providers of which the same media service distributor undertaking has an ownership stake shall not exceed one quarter of the audiovisual media services or half the radio media services broadcasted on the given transmission system.*

*(3) The ratios defined under Paragraphs (1)-(2) shall also apply to the programme package, offered by the media service distributor undertaking to viewers or listeners, which had the highest number of subscribers at the end of the previous calendar year in the given transmission system."*



**Table 112. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when notifying
Media concentration issues considered during the licensing process	No licence can be granted above certain audience thresholds and the presence of AVMS owned by a platform in its offer is limited

Source: Hungarian response to European Audiovisual Observatory standardised questionnaire

## 4.16.9. Management of the licence and notification

Notifications have no limited term.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the NMHH. Sanctions have to be decided following a gradual approach. Article 42 (7) of the Act on Media Services and Mass Communication gives the situations in which a linear AVMS shall be withdrawn from the register:

- a) refusal of registration would be applicable,*
- b) the media service provider requested its deletion from the register,*
- c) the media service provider failed to pay its overdue fees within thirty days from the Office's written notice thereto,*
- d) the rights holder fails to commence the media service within six months from the date of registration, or interrupts the ongoing service for more than six months, except if the media service provider provides adequate justification thereto,*
- e) a final decision by a court has ordered the cessation of trade mark infringement perpetrated through the use of the media service's name and barred the infringer from further violation of the law, or*
- f) based on repeated and serious violation of the media service provider, the Media Council ordered the application of this legal sanction with regard to the provisions of Articles 185-187."*

Regarding non-linear services, pursuant to Article 45 (4) and (5) of the Act, the NMHH shall revoke the notification if:

- (4) a) a conflict of interests exists vis-à-vis the notifier, or*
  - b) the name of the notified media service is identical with – or is confusingly similar to – the name of an on-demand media service already registered, having valid records at the time of notification.*
- (5) The on-demand media service shall be deleted from the register, if*
- a) the registration is to be withdrawn pursuant to Paragraph (4),*
  - b) the media service provider requested its deletion from the register,*



c) the media service is not commenced for more than a year, or the ongoing media service is interrupted for more than a year, or

d) a final decision by a court has ordered the cessation of trade mark infringement perpetrated through the use of the media service's name and barred the infringer from further violation of the law.”

Any change in the data provided by an AVMS provider in its notification shall be notified to the NMHH within 15 days after the change.

**Table 113. Main issues regarding the management of the licence**

Issue	Description
Duration	N/A
Procedure to renew	N/A
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	No
Procedure in case of modifications in the licence conditions	Notification to the NMHH
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Hungarian response to European Audiovisual Observatory standardised questionnaire

#### 4.16.10. Future amendments to the regulatory framework

N/A.

#### 4.16.11. Video-sharing platforms

N/A.

#### 4.16.12. Applicable regulatory framework

- Primary legislation:
  - In Hungarian - In Hungarian - 2010. évi CLXXXV. Törvény a médiaszolgáltatásokról és a tömegkommunikációról: <http://mediatorveny.hu/dokumentum/11/Mttv.pdf>



- In English - Act CLXXXV of 2010 on Media Services and Mass Communication:  
[http://hunmedialaw.org/dokumentum/153/Mttv\\_110803\\_EN\\_final.pdf](http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf)

#### 4.16.13. Data compilation

This factsheet was produced based on data compiled by Dr Péter Bajomi-Lázár, Professor of Mass Communication at the Budapest Business School, Dr Judit Bayer, Media lawyer, and Cecília Filep, Freelance researcher.



## 4.17. IE – Ireland – National Summary<sup>217</sup>

### 4.17.1. Summary

In Ireland, access to the market is granted exclusively by the regulatory authority (Broadcasting Authority of Ireland, hereinafter BAI)<sup>218</sup>, except for public service media, which was created by law. In certain instances, access to the market is not subject to any requirements.

The BAI is also in charge of monitoring the compliance of all linear AVMS providers with the regulatory framework.

Three systems are used:

- Licensing, which is applicable to non-public service linear AVMS providers and which is organised either in the form of “proactive licensing” (that is to say, for the purpose of this mapping, a beauty contest) or in the form of “reactive licensing” (that is to say, for the purpose of this mapping, an individual licence).
- Open system, which appears to be applicable to non-public service non-linear AVMS providers.
- Public service, which is applicable to the public service media Raidió Teilifís Éireann, TG4 and Oireachtas TV (hereinafter PSBs). The missions of PSBs are prescribed by law. The DTT frequencies necessary to make their services available to the public are granted by the telecommunications regulatory authority (Commission for Communications Regulation – hereinafter ComReg) in cooperation with the government and the BAI. Additional services over and above services which came on air after the enactment of the Broadcasting Act 2009 may also require approvals and sectoral impact assessments.

It should be highlighted that the situation is unclear concerning non-linear AVMS providers, as detailed in section 4.17.4 below.

**Table 114. Applicable systems**

System	Category
Licensing	Beauty contest (primarily for radio services) Individual licence
Public service	Law <sup>219</sup>

<sup>217</sup> The factsheet on Ireland incorporates the feedback from members of the *Broadcasting Authority of Ireland* (BAI) during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>218</sup> <http://www.bai.ie/en/>.

<sup>219</sup> And regulatory approval (see section 4.17.3 for further details).



Open	N/A
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Source: Irish response to European Audiovisual Observatory standardised questionnaire

#### 4.17.2. Functioning of the applicable systems

Pursuant to the Broadcasting Act,<sup>220</sup> non-public service linear AVMS have to be licensed by the BAI. The BAI has to grant licences based on two different procedures:

- A “proactive” one, which is currently only applicable to radio services. This system shall also be used for companies looking for licences to run either a DTT or a DAB multiplex. It would also be used in the event that the Section 70 licence held by TV3 became available (beauty contest);
- A “reactive” one, which is applicable for distribution over any platform, with no beauty contest, but rather the negotiation of a “content provision contract” between the AVMS provider and the BAI (individual licence). While this is not a beauty contest, there are a range of criteria determining whether or not a content provision contract will be approved.

Licences are granted for ten years and content provision contracts are concluded for a period of between five and ten years. The desirable period should be indicated by the AVMS provider in its application. If the contract is not concluded, the applicant has the opportunity to lodge an appeal with the High Court.<sup>221</sup>

For non-public service non-linear AVMS, we refer to section 4.17.1. above and especially to Article 11 section 3 of the European Communities (Audiovisual Media Services) Regulations 2010 according to which non-linear AVMS providers “*shall notify the Minister or the relevant regulatory body of their intention to provide or continue to provide such services in such manner as the Minister or the relevant regulatory body decides.*”<sup>222</sup>

PSBs are out of the scope of licensing and open systems. The objects of PSBs are defined in the Broadcasting Act 2009.

**Table 115. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest Individual licence	BAI	Beauty contest for radio licences only. For TV licences for distribution over all platforms, application to

<sup>220</sup> <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print>.

<sup>221</sup> [http://www.citizensinformation.ie/en/justice/courts\\_system/high\\_court.html](http://www.citizensinformation.ie/en/justice/courts_system/high_court.html).

<sup>222</sup> <http://www.irishstatutebook.ie/eli/2010/si/258/made/en/print>.



			send to the BAI, who decides based on criteria mentioned in the Broadcasting Act and the guidelines attached to the application form
Public service	Law <sup>223</sup>	Parliament, Government, BAI and ComReg	PSBs are established by Statute <sup>224</sup> and ComReg grants the frequencies needed, if available
Open system	N/A	None	None

Source: Irish response to European Audiovisual Observatory standardised questionnaire

### 4.17.3. Application to public audiovisual media service providers

The objects of RTE are defined in the Broadcasting Act. The DTT frequencies necessary to make its services available to the public are granted by ComReg in cooperation with the government and the BAI. Pursuant to Article 103 of the Broadcasting Act, RTE “*may vary the number of television or sound broadcasting channels it operates*”, but this has to be done “*with the consent of the Minister*” and after the minister has consulted the BAI “*as to the sectoral impact of a proposal*”. These services will also be subject to a public value test.

There is no limited term specified in the Broadcasting Act 2009 to the activities of PSBs.

The same regulatory framework applies to all PSBs AVMS (that is to say, RTÉ, TG4, and the Oireachtas Channel,<sup>225</sup> as well as the Irish Film Channel).

**Table 116. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law (and regulatory approval)	Parliament, ComReg (and Government and BAI)
<i>Via cable</i>	Law (and regulatory approval)	Parliament (& Government & BAI)
<i>Via IPTV</i>	Law (and regulatory approval)	Parliament (& Government & BAI)
<i>Via satellite</i>	Law (and regulatory approval)	Parliament (& Government & BAI)

<sup>223</sup> And regulatory approval (see section 4.17.3 for further details).

<sup>224</sup> Broadcasting Act 2009.

<sup>225</sup> Provision is also made in the Act for the establishment of the Irish Film Channel, however this channel has not yet been established.



<i>Via OTT</i>	Law (and regulatory approval)	Parliament (& Government & BAI)
<b>Non-linear</b>		
<i>Via DTT</i>	Law (and regulatory approval)	Parliament, ComReg (and Government and BAI)
<i>Via cable</i>	Law (and regulatory approval)	Parliament (& Government & BAI)
<i>Via IPTV</i>	Law (and regulatory approval)	Parliament (& Government & BAI)
<i>Via satellite</i>	Law (and regulatory approval)	Parliament (& Government & BAI)
<i>Via OTT</i>	Law (and regulatory approval)	Parliament (& Government & BAI)

Source: Irish response to European Audiovisual Observatory standardised questionnaire

#### 4.17.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

Linear AVMS have to be licensed by the BAI in the form of two different licensing procedures.

- A proactive licensing procedure (beauty contest) is conducted where BAI initiates the licensing procedure for the provision for analogue terrestrial commercial and community television and radio AVMS. The BAI also sets application deadlines and the various elements of the procedure. This system is currently still applicable, but now exclusively for radio AVMS (which are still analogue). For commercial terrestrial television AVMS (which have become digital), this proactive licensing procedure has never been implemented: the private commercial company (TV3), which had an analogue licence, has been granted access to the DTT platform with no procedure, pursuant to section 70 (5) of the Broadcasting Act according to which “*the television programme service contract entered into between TV3 Television Network Limited trading as TV3 and the BCI<sup>226</sup> under section 17 of the Radio and Television Act 1988 and section 6 of the Broadcasting Act 1990, if in force immediately before the passing of this Act, continues as if entered into under this section.*” In addition, the broadcasting company TV3 launched additional AVMS under its licence by way of supplemental agreement (TV3+1) and acquired the AVMS “Channel 6”<sup>227</sup> which was later rebranded as 3e. In 2016, TV3 also acquired the content provision contract for the UTV Ireland service and rebranded it as b3. All TV3-related AVMS are currently owned and controlled by Virgin Media Ireland.

<sup>226</sup> The BCI is the predecessor of the BAI.

<sup>227</sup> TV3 purchased Channel 6 in July 2008. Channel 6 was originally licensed by the BCI in 2006 to broadcast on satellite and cable under Sections 36 and 41 of the *Broadcasting Act 2001*. In 2009, the BCI approved a request by TV3 for 3e to be licensed as an additional service under its existing broadcasting contract with the BCI.



The Broadcasting Act provides in its Article 70 (2), as a general principle, that the BAI “shall ensure that a television programme service provided by a television programme service contractor under this section shall in its programming (a) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language; (b) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression; (c) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of other member states, and (d) include a reasonable proportion of news and current affairs programmes.”

Initiated by the BAI, the process involves a call for tender or call for expressions of interest in providing a service, which gives to this licensing procedure the format of a beauty contest. The BAI is required to produce plans regarding the number, nature and scope of broadcasting contracts that it plans to enter into.<sup>228</sup> As mentioned above, the commercial AVMS licensed under this system are only radio services. Regarding television services, there are two community television services which are licensed under statute. To date, there has been no interest from prospective applicants wishing to establish further community TV services in the state; therefore, the establishment of an application process for such services has not been necessary.

- A reactive licensing procedure is conducted where any applicant initiates the licensing procedure with a view to having its AVMS distributed over any platform. This can be initiated at any time by submitting an application form which is available online<sup>229</sup> and which has to be accompanied by the relevant documentation (certificate which confirms the legal status of the company, company constitution or equivalent, proof of payment of the application fee, indicative programme schedule and quote for insurance).

The procedure is conducted in three stages. The first stage consists in a preliminary assessment to verify that the formal requirements are met. The second stage consists in a qualitative assessment conducted by a Contract Awards Committee (composed of four members of the BAI and four members appointed by the government) and based on criteria such as the purpose of the service (national, regional, outside the state); the distribution platforms; the diversity of the content; ownership and control; the past record of compliance; the system put in place for compliance, and resources and expertise; contribution to the plurality and diversity of broadcasting services; contribution to the needs of the people, bearing in mind their languages and traditions, and their religious, ethical and

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<sup>228</sup> Examples of these licensing plans for 2015, 2016 and 2017 (but exclusively for radio) are available at <http://www.bai.ie/en/broadcasting/licensing-2/licensing-plans/#al-block-7>

<sup>229</sup> Form (and guidelines to fill in the form) are available at <http://www.bai.ie/en/download/131953/>



cultural diversity; how the proposed service will respect the constitutional right to freedom of expression; how the proposed service will protect the interests of children; and how the proposed service will comply with applicable broadcasting codes and rules, with the provisions on the protection of minors, and with the prohibition on incitement to hatred and incitement to commit an offence. Stage 3 is the ratification of the licensing application by the BAI Authority upon recommendation of the Contract Awards Committee. Elements of a successful application will form the basis of the content provision contract which will be concluded between the BAI and the applicant.

Regarding the deadlines obliging the BAI to respond to an application, this also differs between proactive and reactive licensing. Deadlines for proactive licensing are set out in the tender document. In the case of reactive licensing, there is no deadline obliging the BAI to respond to an application. The application guidelines state that *“it normally takes the BAI a minimum of five months to process an application. As such, applicants should ensure that their applications are submitted at least five months in advance of their first proposed on air date. The BAI cannot guarantee that an application will be processed within this five-month timeframe. The BAI may seek additional clarification in relation to an applicant’s proposals. This may extend the timeframe required, especially if there is any delay in the submission of responses from the applicant, to queries or clarifications made by the BAI.”*

There is no deadline imposed on an AVMS provider for the effective provision of its service.

#### Non-linear AVMS

The situation is unclear about non-linear AVMS providers.

The applicable law requires that non-linear AVMS providers *“shall notify the Minister or the relevant regulatory body of their intention to provide or continue to provide such services”*, but it is not clear if such a notification system exists. Non-linear AVMS are self-regulated by a body named On-Demand Audiovisual Services Group (ODAS), under the auspices of the Irish Business and Employers Confederation (IBEC), but no information is available regarding their notification system, if any.

For the purpose of this mapping, and considering the absence of information regarding any notification system, it will be therefore considered that an open system is applicable in practice.

**Table 117. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Individual licence	BAI
<i>Via cable</i>	Individual licence	BAI
<i>Via IPTV</i>	Individual licence	BAI
<i>Via satellite</i>	Individual licence	BAI
<i>Via OTT</i>	Individual licence	BAI



<i>Non-linear</i>		
<i>Via DTT</i>	Open system	None
<i>Via cable</i>	Open system	None
<i>Via IPTV</i>	Open system	None
<i>Via satellite</i>	Open system	None
<i>Via OTT</i>	Open system	None

Source: Irish response to European Audiovisual Observatory standardised questionnaire

#### 4.17.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.17.4 above is applicable.

Although the regulatory framework makes a difference between national, regional and local coverage, the same licensing system applies to all AVMS, whatever the coverage.

#### 4.17.6. Application to community (non-profit) audiovisual media service providers

For community television services, the proactive licensing procedure described in section 4.17.4. above applies.

#### 4.17.7. Licence fees

In relation to content provision contract fees, the standard application fee (payable once) is EUR 1 500 + 23% VAT.

To secure a contract, a successful applicant must pay a fee of EUR 2 000 + 23% VAT for each year of service. The contract fee is front-loaded and must be paid in full, prior to contract execution.<sup>230</sup>

All other licensing under statute requires applicants and/or contractors to pay application fees and or levy fees to the BAI depending on the nature of the licence.

The beneficiary of all fees is the BAI.

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<sup>230</sup> For example, if a service wishes to broadcast for 5 years, the fee due prior to contract execution would be EUR 10 000 + 23% VAT.



#### 4.17.8. Media ownership and concentration

The transparency of ownership of linear AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence.

Media concentration provisions are included in section 66 of the Act which sets out the criteria to be taken into consideration in determining the award of radio licences and the commercial television service licensed under section 70 of the Act. The provisions refer to “*the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in the area specified*”. Specific mechanisms have been drawn up in the BAI Ownership and Control policy (2012) which give effect to these provisions and include a test of substitutability which assesses the extent to which one service may be deemed to be a substitute for another, and a test of dominance which assesses an applicant’s ability to influence opinion-forming power through an examination of their audience share in the relevant area. These provisions have also been extended to applicants for content provision contracts under section 71 of the Act, in keeping with one of the principle objectives of the BAI at section 25 of the Act to “*endeavour to ensure the provision of open and pluralistic broadcasting services*”.

Media Concentration is also considered in Ireland when a media merger occurs. Under the provisions of the Competition and Consumer Protection Act 2014, competition elements of the merger are examined by the Competition and Consumer Protection Commission while the Minister for Communications will examine the matter from a plurality perspective. The minister may also request that the BAI undertake a more detailed examination in cases where media plurality may be perceived to be lessened by such a merger.

**Table 118. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence
Media concentration issues considered during the licensing process	Detailed within statute and BAI policies

*Source: Irish response to European Audiovisual Observatory standardised questionnaire*

#### 4.17.9. Management of the licence and notification

Licences are granted for ten years and content provision contracts are concluded for a period of between five and ten years. The desirable period should be indicated by the AVMS provider in its application.

For the renewal of a licence, a licensee shall go through the same process as in case of reactive licensing or reply to a potential new tender in case of proactive licensing.



Article 51 of the Broadcasting Act details the conditions in which a content provision contract can be suspended or revoked:

*“a) if any false or misleading information of a material nature was given to the Contract Awards Committee by or on behalf of the holder of the contract before it was entered into, or*

*(b) if the holder of the contract has, upon a finding by the Compliance Committee under section 50 (7), having regard to the investigation concerned under that section, failed on one or more occasions to comply with a term or condition of the contract and the nature of that failure is of such seriousness as, in the opinion of the Compliance Committee, warrants the termination or suspension of the contract.”*

In addition, the application form for a content provision contract indicates that the contract shall contain a range of provisions, including the following:

- “A condition requiring the Contractor to pay, on request by the Compliance Committee of the BAI, a sum of money in respect of a failure by the Contractor to comply with a particular term or condition of the contract. The maximum amount to be paid under any contract shall be specified, and a Content Provision Contractor is required to comply with a request for payment by the BAI.
- A condition providing that the BAI may terminate a contract where any of the programme material supplied in pursuance of the contract contravenes Article 27 (Protection of Minors in Television Broadcasting) of the EU Audio Visual Media Services Directive (“AVMSD”).
- A condition providing that the BAI may terminate a contract where any of the programme material supplied in pursuance of the contract contravenes the Prohibition of Incitement to Hatred Act 1989, or constitutes an incitement to commit an offence. The condition will also specify if such a supply of programme material has occurred within 6 months of a previous such supply by the same person, the BAI shall terminate the contract.”

Any change in licence conditions must be authorised in advance by the BAI.

Modifications to the licence conditions require the prior approval of the BAI. The holder of a contract is also obliged to inform the BAI throughout the contract term of any changes to the broadcasting service and of changes in relation to its ownership structure.

**Table 119. Main issues regarding the management of the licence**

Issue	Description
Duration	5 to 10 years
Procedure to renew	Same as licensing
Procedure to suspend	Same as other sanctions
Procedure to revoke	Same as other sanctions
Procedure in case of termination of the provision of the service	Notification to the BAI



Procedure in case of modifications in the licence conditions	Prior approval of the BAI
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Irish response to European Audiovisual Observatory standardised questionnaire

#### 4.17.10. Future amendments to the regulatory framework

Besides the licensing fees mentioned in section 4.17.4 above, some AVMS providers (but not those who seek a content provision contract), pursuant to Article 33 of the Broadcasting Act, also pay a “levy” which funds the BAI. An amendment to the Broadcasting Act has recently been proposed by the government, whose aim is to make provision for the BAI to also apply the levy to content provision contract holders. If enacted, it would ensure that AVMS providers who relocate to Ireland (and who would probably seek a content provision contract) would also be submitted to this levy depending on their means and the regulation required. The amendment states that *“given the likelihood that some UK-based broadcasters will look to establish a base in Ireland following Brexit, the Head aims to allow the BAI to ensure that each service it regulates can make a fair and proportionate contribution to the BAI levy. Broadcasters seeking to establish a base in Ireland are likely to seek a ‘content provision contract’ under section 71, which, under existing legislation, would mean they are exempt from paying the levy, irrespective of their size or the amount of work involved in regulating them. The proposal aims to strike a balance which allows the Authority to determine that those who have the means and require a significant level of regulation will make a contribution, while continuing to permit exemptions for those who do not.”*<sup>231</sup>

In the same bill, another proposed amendment clarifies the specific situation of TV3 (holder of TV programme service contract) with a view to ensuring any new AVMS launched by TV3 would require additional licences.

Moreover, the BAI is currently in the process of reviewing its Broadcasting Services Strategy (BSS)<sup>232</sup> in the framework of its Strategy Statement for 2017-2019.<sup>233</sup> This is likely to have an influence on its licensing plans (types of services to be licensed over a time period), but as explained earlier, these proactive plans almost exclusively cover radio services.

#### 4.17.11. Video-sharing platforms

N/A.

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<sup>231</sup><https://www.oireachtas.ie/parliament/media/committees/communicationsclimatechangenaturalresources/publicservicebroadcasting/qsbroadcastingamendmentbill2017/GS-Broadcasting--Amendment--Bill-2017.pdf>.

<sup>232</sup> Available at <http://www.bai.ie/en/broadcasting/licensing-2/television/#al-block-1>.

<sup>233</sup> Available at <http://www.bai.ie/en/about-us/our-strategic-goals/>.



## 4.17.12. Applicable regulatory framework

- Primary legislation:
  - In English - Broadcasting Act 2009:  
<http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print>
  - In English - European Communities (Audiovisual Media Services) Regulations 2010:  
<http://www.irishstatutebook.ie/eli/2010/si/258/made/en/print>
  - In English - Competition and Consumer Protection Act 2014:  
<http://www.irishstatutebook.ie/eli/2014/act/29/enacted/en/print.html>

## 4.17.13. Data compilation

This factsheet was produced based on data compiled by Deirdre Kevin, Consultant, Commsol.



## 4.18. IT – Italy – National Summary<sup>234</sup>

### 4.18.1. Summary

In Italy, access to the market is granted either by the government (Ministero dello Sviluppo Economico - Ministry of Economic Development, hereinafter MISE)<sup>235</sup> or by the regulatory authority (Autorità per le garanzie nelle comunicazioni, hereinafter AGCOM)<sup>236</sup>, except for public service media, which was created by law. In certain instances, access to the market is not subject to any requirements.

Four systems are used:

- Licensing, which is applicable to non-public service linear AVMS and which is organised in the form of a formal licence, under the competence of the MISE or AGCOM.
- Notification, which is applicable to non-public service non-linear AVMS, under the competence of AGCOM.
- Open system, which is applicable to AVMS (excluding linear AVMS distributed via DTT, cable or satellite) whose turnover is below EUR 100 000.
- Public service, which is applicable to the public service media Radiotelevisione italiana (hereinafter RAI). The missions of RAI are prescribed in law. The regulatory framework does not directly grant pre-emption for public service television channels, although in practice, AGCOM reserves some of the most effective frequencies for RAI, according to the PNAF (National Frequencies Plan).

The compliance of all AVMS providers with the regulatory framework is ensured by AGCOM.

**Table 120. Applicable systems**

System	Category
Licensing	Formal licence
Notification	N/A
Public service	Law & contract <sup>237</sup>
Open system	N/A

Source: Italian response to European Audiovisual Observatory standardised questionnaire

<sup>234</sup> The factsheet on Italy incorporates the feedback received from members of the *Autorità per le garanzie nelle comunicazioni* (Italian Communications Authority – Agcom) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>235</sup> <http://www.sviluppoeconomico.gov.it/index.php/it/>.

<sup>236</sup> <http://www.agcom.it/>.

<sup>237</sup> The exact term is “concession”, but for the purpose of this mapping we will use the word “contract”.



## 4.18.2. Functioning of the applicable systems

Pursuant to Legislative Decree N°177 of 31 July 2005,<sup>238</sup> non-public service linear AVMS have to be licensed either by the MISE or by AGCOM depending on the distribution means.

Three different regulations adopted by AGCOM detail the ways in which the licensing procedures are conducted:

- AGCOM's Resolution N°353/11/CONS on DTT licensing;<sup>239</sup>
- AGCOM's Resolution N°127/00/CONS on cable and satellite licensing;<sup>240</sup>
- AGCOM's Resolution N°606/10/CONS on other platforms licensing (IPTV and OTT).<sup>241</sup>

Licences meant for distribution via DTT and cable<sup>242</sup> are granted by the MISE while licences meant for distribution via IPTV, satellite and OTT are granted by AGCOM. However, for linear AVMS distributed via IPTV and OTT, no licence is needed and an open system applies below an annual turnover of EUR 100 000.

Licences are granted for six years for cable and satellite and 12 years for DTT and the other platforms. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Regional Administrative Court of Lazio<sup>243</sup> within sixty days of receipt of the decision. Decisions of the Administrative Court can be appealed before the Supreme Administrative Court.<sup>244</sup>

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<sup>238</sup> [www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=) (in Italian).

<sup>239</sup> [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_kidx9GUnlodu&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_assetEntryId=831440&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_kidx9GUnlodu&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_kidx9GUnlodu_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_kidx9GUnlodu_assetEntryId=831440&_101_INSTANCE_kidx9GUnlodu_type=document) (in Italian).

<sup>240</sup> [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_kidx9GUnlodu&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_assetEntryId=707528&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_kidx9GUnlodu&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_kidx9GUnlodu_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_kidx9GUnlodu_assetEntryId=707528&_101_INSTANCE_kidx9GUnlodu_type=document) (in Italian).

<sup>241</sup> [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_kidx9GUnlodu&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_assetEntryId=686964&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_kidx9GUnlodu&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_kidx9GUnlodu_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_kidx9GUnlodu_assetEntryId=686964&_101_INSTANCE_kidx9GUnlodu_type=document) (in Italian).

<sup>242</sup> Although regulated in theory, the cable has never been used in practice in Italy for the broadcasting of audiovisual media services.

<sup>243</sup> [https://www.giustizia-amministrativa.it/cdsavvocati/faces/mainAreaPubblica.jsp?n=1&\\_afWindowMode=0&attivita=tar\\_rm&\\_afLoo p=655476806633245&\\_adf.ctrl-state=yd2no7qlz\\_4](https://www.giustizia-amministrativa.it/cdsavvocati/faces/mainAreaPubblica.jsp?n=1&_afWindowMode=0&attivita=tar_rm&_afLoo p=655476806633245&_adf.ctrl-state=yd2no7qlz_4).

<sup>244</sup> <https://www.giustizia-amministrativa.it/cdsintra/cdsintra/Attivita/consigliodistato/index.html>.



Non-linear AVMS have to be notified according to a fourth specific AGCOM Resolution (Resolution N°607/10/CONS).<sup>245</sup> Notifications have a limited term of 12 years. The EUR 100 000 threshold also applies.

The public service media RAI<sup>246</sup> is out of the scope of the licensing and notification systems. The missions of the RAI are prescribed in the Legislative Decree and a concession with the MISE details the scope of its offer and the obligations of both parties.<sup>247</sup> The regulatory framework does not directly grant pre-emption for public service television channels. There are specific rules concerning the attribution of frequencies and the Logical Channel Numbering (LCN, that is to say, a position in the channel line-up), but they are not specifically devoted to public service media. However, since it is subject to much higher coverage obligations than private AVMS, AGCOM reserves some of the most effective frequencies for RAI, according to the PNAF (National Frequencies Plan).

**Table 121. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Formal licence	MISE or AGCOM	Licence granted by the MISE or AGCOM on the basis of a set of criteria determined by law and a procedure determined by AGCOM
Notification	N/A	AGCOM	Notification to send to AGCOM at the latest on the day of the launch of the service
Public service	Law & contract	Parliament & Government	The public service media RAI was created by law and a contract with the Government details the scope of its offer and the obligations of both parties
Open system	N/A	None	None

Source: Italian response to European Audiovisual Observatory standardised questionnaire

<sup>245</sup> [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_kidx9GUnlodu&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_assetEntryId=854396&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_kidx9GUnlodu&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_kidx9GUnlodu_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_kidx9GUnlodu_assetEntryId=854396&_101_INSTANCE_kidx9GUnlodu_type=document) (in Italian).

<sup>246</sup> <http://www.rai.it/>.

<sup>247</sup> Available (in Italian) at [www.gazzettaufficiale.it/eli/id/2017/05/23/17A03581/sq](http://www.gazzettaufficiale.it/eli/id/2017/05/23/17A03581/sq).

### 4.18.3. Application to public audiovisual media service providers

The missions of RAI are prescribed in the Legislative Decree (section 45).

In application of the act, a public service concession of ten years is concluded between RAI and the MISE. The latest contract covers the years 2017-2026. In addition, a provincial concession of public service is executed with the autonomous provinces of Bolzano and Trento.

In application of the act and of the concession, a national service contract which details the obligations that RAI must comply with with a view to performing its public service mission is concluded between RAI and the MISE on a three-year basis.

**Table 122. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government
<i>Non-linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government

Source: Italian response to European Audiovisual Observatory standardised questionnaire

### 4.18.4. Application to private (commercial) audiovisual media service providers

#### Linear AVMS

Licences are granted to linear AVMS providers by different authorities depending on their distribution means.

The licences of linear AVMS distributed via DTT are granted by the MISE, pursuant to a specific regulation adopted by AGCOM concerning DTT licensing. The application shall include relevant information and documents such as the applicant's corporate



certificate; the company's chain of control; the criminal records of the directors; the application fee payment receipt, etc. The deadline to respond to an application is thirty days. This deadline may be extended once for another thirty days in case the MISE requests clarifications.

Linear AVMS already licensed or notified in another member state do not need an Italian licence in order to be distributed via DTT, but they must submit the relevant application to obtain a LCN position.

The licences of linear AVMS distributed via cable and satellite are granted either by the MISE (for cable) or AGCOM (for satellite), pursuant to a specific regulation adopted by AGCOM concerning cable and satellite licensing. The application shall include the applicant's basic information (for example, registered office, VAT number, corporate purpose, etc.); a corporate certificate; the criminal records of the directors; an application fee payment receipt, etc. The deadline to respond to an application is sixty days. This deadline may be extended once for another thirty days in case the MISE or AGCOM requests clarifications.

The licences of linear AVMS distributed via IPTV and OTT are granted by AGCOM, pursuant to a specific regulation adopted by AGCOM concerning licensing for platforms other than DTT, cable and satellite. However, if the annual turnover generated by the services distributed via those platforms is lower than EUR 100 000, no licence is required. The application shall include the applicant's basic information (for example, registered office, VAT number, corporate purpose, etc.); a corporate certificate; a statement that the applicant's annual revenues are higher than EUR 100 000; and an application fee payment receipt. In this case, AGCOM's silence for thirty days implies that the licence is granted; otherwise, in case the application does not meet the requirements set forth by law within thirty days from the filing of the application, AGCOM notifies its refusal to grant the licence. Wherever possible, the applicant has sixty days to comply with the relevant requirements and conditions.

Considering that the criteria used to assess an application are relatively formal, it will be considered for the purpose of this mapping that we are indeed in the presence of a formal licence. The criteria are the following:

- registered offices: must be established in Italy, in the European Economic Area or in a country applying reciprocal treatment to Italians willing to operate as a broadcaster in such countries;
- kind of company, depending on the platform: a) DTT: limited to joint stock companies, limited liability companies and cooperative companies; b) cable and satellite: limited to joint stock companies and limited liability companies; c) other platforms: no limitations;
- company purpose must expressly include the exercise of radio-television or editorial activity, or be related in some way to information or show business;
- directors must not have been sentenced to imprisonment for more than six months for offences with criminal intent nor have been subject to prevention or security measures.



There is no deadline imposed on an AVMS provider for the effective provision of its service; however, the MISE may order the revocation of the position of the AVMS in the LCN in the event of a DTT channel not being broadcast within the term indicated in the resolution assigning the LCN position.

### Non-linear AVMS

Non-linear AVMS have to be notified to AGCOM via a “certified start-up notification” containing the description of the AVMS provided and the information necessary to enable AGCOM to keep an up-to-date list of non-linear AVMS providers. However, if the annual turnover generated is lower than EUR 100 000, no notification is required. The notification shall include the applicant’s basic information (that is to say, registered office, VAT number, corporate purpose, etc.); a corporate certificate; a statement that the applicant’s annual revenues are higher than EUR 100 000; and an application fee payment receipt. Providers can start providing the non-linear service the same day as the notification, and AGCOM has thirty days to raise issues and stop the service if the notification does not meet the requirements set forth by law. Wherever possible, the concerned party has sixty days to comply with the relevant requirements and conditions.

For the AVMS who benefit from fully open access to the market (that is to say, providers of linear AVMS distributed via IPTV and OTT and of non-linear AVMS who are below the turnover threshold of EUR 100 000), no procedure exists in order to establish an inventory of existing services.

**Table 123. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence	MISE
<i>Via cable</i>	formal licence	MISE
<i>Via IPTV</i>	Formal licence	AGCOM
	Open system	None
<i>Via satellite</i>	Formal licence	AGCOM
<i>Via OTT</i>	Formal licence	AGCOM
	Open system	None
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	AGCOM
	Open system	None
<i>Via cable</i>	Notification	AGCOM
	Open system	None
<i>Via IPTV</i>	Notification	AGCOM



	Open system	None
<i>Via satellite</i>	Notification	AGCOM
	Open system	None
<i>Via OTT</i>	Notification	AGCOM
	Open system	None

Source: Italian response to European Audiovisual Observatory standardised questionnaire

#### 4.18.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.18.4 above is applicable.

The only difference is that the application for a DTT licence submitted by a local AVMS provider shall indicate that the service will be a local one and the areas involved. Moreover, a local DTT licence can be submitted only by limited- to joint-stock companies, limited liability companies and cooperative companies having a fully paid-in corporate capital not lower than EUR 155 000 net of losses and with no less than four employees.

#### 4.18.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.18.4 above is applicable.

#### 4.18.7. Licence fee

The amount of the licence fee depends on the type of licence:

- DTT licence: EUR 7 000;
- DTT licence for community AVMS provider: EUR 3 500;
- DTT licence for local AVMS provider EUR 3 000;
- cable licence: EUR 6 026;
- satellite licence: EUR 6 026;
- other platforms licence (IPTV and OTT): EUR 500;
- notification of a non-linear service: EUR 500.

There are no criteria on how the amount of the fee is calculated.



The fee is payable once for the whole duration of the licence and is meant to cover the administrative costs incurred.

The beneficiary is the authority which has granted the licence (MISE or AGCOM).

#### 4.18.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying. Moreover, AVMS providers must enrol with the Register of Communication Operators (ROC), kept by AGCOM, aimed at ensuring the transparency of ownership structures, as well as allowing the enforceability of the rules on anti-concentration, the protection of pluralism of information and the respect of the foreign ownership restrictions. AVMS providers shall also detail the corporate chain of control when they enrol with the ROC. This data is then made public by AGCOM, with the exception of the chain of control, which remains confidential.

Media concentration is avoided during the licensing process by section 5 (1 a) of the Legislative Decree which includes among the principles of the regulatory framework the protection of competition in the audiovisual media services sector and advertising market, and the protection of pluralism in broadcast media. Section 5 prevents the emergence of positions that would lead to a reduction in pluralism, also through subsidiaries and affiliated entities, and it ensures the transparency of corporate structure. Section 5 (1 g) requires corporate separation between DTT national broadcasters and DTT network operators. Section 43 provides that operators falling within the integrated communications system are required to notify agreements and merger operations to AGCOM in order to allow compliance monitoring. AGCOM shall adopt the necessary measures to eliminate or prevent the formation of dominant positions, or those in anyway detrimental to pluralism. Section 43 also specifies limitations to avoid behaviours that may be detrimental to pluralism:

- each audiovisual media service provider, even through subsidiaries or affiliated companies, may not be the owner of authorisations that allow it to broadcast more than 20% of the total television channels than can be broadcast on terrestrial frequencies on a national basis;
- dominant positions in the individual markets constituting the Integrated System of Communications (SIC) are prohibited; in addition, entities subject to enrolment with the ROC cannot achieve, either directly or through subsidiaries or affiliated companies, revenues greater than 20% of the total revenues of the SIC;
- companies, even through subsidiaries or affiliated companies, whose revenues in the electronic communications sector account for more than 40% of the total revenues of that sector, cannot achieve more than 10% of the SIC revenues;
- national TV broadcasters whose revenues are higher than 8% of the SIC cannot hold quotas in companies publishing newspapers.



This framework allows for the refusal of a licence to an AVMS which would fall under any of those situations.

**Table 124. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence
Media concentration issues considered during the licensing process	Various limitations meant to avoid the creation of a dominant position

*Source: Italian response to European Audiovisual Observatory standardised questionnaire*

#### 4.18.9. Management of the licence and notification

Licences are granted for six years for cable and satellite, and 12 years for DTT and the other platforms. Notifications have a limited term of 12 years.

The same licensing and notification procedures apply for a renewal. The application has to be submitted at least ninety days before the expiry date for cable and satellite licences, at least thirty days before the expiry date for DTT and other platforms licences, and within the expiry date for notifications.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by AGCOM. AGCOM shall adopt a gradual approach in terms of sanctions (using other sanctions such as administrative fines) and respect the principle of proportionality. In case of serious infringements, suspension can be imposed for up to six months. In the most serious cases of non-compliance with AGCOM's orders or warnings, it may revoke the licence. Moreover, in the event of abusive use, duplication or the reproduction of copyrighted works, an administrative sanction may be imposed and, in case of serious and repeated breaches, the licence can also be revoked.

The termination of the provision of an AVMS shall be notified within thirty days to the Registry of Communications Operators (ROC). Licenses for DTT may be surrendered to third parties in possession of the requisites for the granting of the authorisation, subject to prior consent of the MISE, after having heard AGCOM, which provides an opinion pursuant to the rules governing the procedures for the authorisation of transfers of ownership of the companies radio and television broadcasting, dominant positions procedures, and the verification activities of mergers and acquisitions in the integrated communications system (Resolution No. 368/14/CONS).

Modification to the data provided in an application for a DTT licence shall be notified to the MISE within thirty days after the change has occurred. For other licences, they shall be notified either to the MISE or to AGCOM within sixty days after the change has occurred. The same deadline applies for changes in the information provided in a notification.



In case of modifications to a linear service with a view to targeting different audiences through programming or advertising windows, there is an obligation to apply for several licences. Several notifications are also required if the catalogue of a non-linear service has two or more versions.

**Table 125. Main issues regarding the management of the licence**

Issue	Description
Duration	12 years (6 for satellite and cable)
Procedure to renew	Same as licensing
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to the ROC
Procedure in case of modifications in the licence conditions	Notification to the competent authority (MISE or AGCOM)
Procedure in case of modifications to the service with a view to targeting different audiences	Different programming and advertising windows as well as different catalogues have to be licensed or notified accordingly

Source: Italian response to European Audiovisual Observatory standardised questionnaire

#### 4.18.10. Future amendments to the regulatory framework

N/A.

#### 4.18.11. Video-sharing platforms

N/A.

#### 4.18.12. Applicable regulatory framework

- Primary legislation:
  - In Italian - Decreto Legislativo 31 luglio 2005, N°177 - Testo Unico dei servizi di media audiovisivi e radiofonici- (Legislative Decree of 31 July, 2005): [www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=)
- Secondary legislation:
  - AGCOM's Resolution N°353/11/CONS on DTT licensing and Annex A: [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p)



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- AGCOM's Resolution N°127/00/CONS on cable and satellite licensing and Annex A ([https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_kidx9GUnlodu&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=columnn-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_assetEntryId=707528&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_kidx9GUnlodu&p_p_lifecycle=0&p_p_col_id=columnn-1&p_p_col_count=1&_101_INSTANCE_kidx9GUnlodu_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_kidx9GUnlodu_assetEntryId=707528&_101_INSTANCE_kidx9GUnlodu_type=document)) as amended by AGCOM's Resolution N°289/01/CONS: <http://www.sviluppoeconomico.gov.it/index.php/it/normativa/altri-atti-amministrativi/2011512-delibera-n-28901cons-81393817>
  - AGCOM's Resolution N°606/10/CONS on other platforms licensing and Annex A: [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_kidx9GUnlodu&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=columnn-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_assetEntryId=686964&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_kidx9GUnlodu&p_p_lifecycle=0&p_p_col_id=columnn-1&p_p_col_count=1&_101_INSTANCE_kidx9GUnlodu_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_kidx9GUnlodu_assetEntryId=686964&_101_INSTANCE_kidx9GUnlodu_type=document)
  - AGCOM's Resolution N°607/10/CONS on non-linear AVMS and Annex A: [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_kidx9GUnlodu&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=columnn-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_assetEntryId=854396&\\_101\\_INSTANCE\\_kidx9GUnlodu\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_kidx9GUnlodu&p_p_lifecycle=0&p_p_col_id=columnn-1&p_p_col_count=1&_101_INSTANCE_kidx9GUnlodu_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_kidx9GUnlodu_assetEntryId=854396&_101_INSTANCE_kidx9GUnlodu_type=document)
  - AGCOM's Resolution N°368/14/CONS governing the procedures for the authorization of transfers of ownership of the companies radio and television broadcasting, dominant positions procedures and verification activities of mergers and acquisitions in the integrated communications system: [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_2fsZcpGr12AO&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=columnn-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_2fsZcpGr12AO\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_2fsZcpGr12AO\\_assetEntryId=1501602&\\_101\\_INSTANCE\\_2fsZcpGr12AO\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_2fsZcpGr12AO&p_p_lifecycle=0&p_p_col_id=columnn-1&p_p_col_count=1&_101_INSTANCE_2fsZcpGr12AO_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_2fsZcpGr12AO_assetEntryId=1501602&_101_INSTANCE_2fsZcpGr12AO_type=document)



### 4.18.13. Data compilation

This factsheet was produced based on data compiled by Ernesto Apa, Partner, Portolano, Cavallo, and Augusto Preta, Senior partner and Founder, ITMedia Consulting.



## 4.19. LT – Lithuania – National Summary<sup>248</sup>

### 4.19.1. Summary

In Lithuania, access to the market is granted exclusively by the regulatory authority (Radio and Television Commission of Lithuania - Lietuvos radijo ir televizijos komisija, hereinafter LRTK)<sup>249</sup>, except for public service media, which was created by law.

The LRTK is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Three systems are used:

- Licensing, which is applicable to most non-public service linear AVMS and which is organised in the form of a beauty contest or of an individual licence;
- Notification, which is applicable to some non-public service linear AVMS and all non-public service non-linear AVMS.
- Public service, which is applicable to the public service media Lietuvos nacionalinis radijas ir televizija (hereinafter LRT). The missions of the LRT are prescribed in a specific law on public service media. The DTT frequencies necessary to make its services available to the public are granted as a priority by the LRTK in cooperation with the telecommunications regulatory authority, the Communications Regulatory Authority (hereinafter RRT).

**Table 126. Applicable systems**

System	Category
Licensing	Beauty contest Individual licence
Notification	N/A
Public service	Law

Source: Lithuanian response to European Audiovisual Observatory standardised questionnaire

### 4.19.2. Functioning of the applicable systems

Pursuant to the Law on the Provision of Information to the Public,<sup>250</sup> most non-public service linear AVMS have to be licensed by and all non-public service non-linear AVMS have to be registered with the LRTK.

<sup>248</sup> No remarks were received on the factsheet on Lithuania during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>249</sup> <http://www.rtk.lt/>.



The licensing procedure is managed by the LRTK. The LRTK has to grant licences based on criteria defined in law and additional criteria established by the Ministry of Culture in its Rules for Licensing of Broadcasting Activities and Re-broadcast Content.<sup>251</sup> These rules are adopted by the Ministry upon the proposal of the LRTK.

Licences meant for distribution via DTT are granted via a beauty contest and licences meant for distribution via other means take the form of an individual licence.

Licences and notifications have no limited term. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Vilnius Regional Administrative Court<sup>252</sup> within thirty days after the date the decision enters into force.

Non-public service non-linear AVMS have to be notified to the LRTK.

It should be highlighted that the law also regulates the activity of re-broadcasting which is defined as “choosing of broadcast television programmes or individual programmes, their preparation and dissemination, receiving them for this purpose and simultaneously transmitting unchanged to the public by electronic communications networks or by creating with technical means and/or software tools a possibility for the public to receive television programmes or individual programmes transmitted by electronic communications networks and protected by using conditional access” (Article 2 section 59).<sup>253</sup>

The public service media LRT is out of the scope of the licensing and notification systems. The missions of the LRT are prescribed in a specific law.<sup>254</sup> The DTT frequencies necessary to make its services available to the public are granted as a priority by the LRTK in cooperation with RRT<sup>255</sup> in the framework of the Strategic Plan for the Assignment of Radio Frequencies for Broadcasting and Transmission of Radio and Television Programmes.<sup>256</sup>

**Table 127. Functioning of the applicable systems**

System	Category	Authority	Description of the
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<sup>250</sup> <https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/smgmCYGYRC> (in Lithuanian).  
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/911eb75251d611e78869ae36ddd5784f?jfwid=-1d3h0wfy9b> (in English).

<sup>251</sup> <https://www.e-tar.lt/portal/lt/legalAct/a459e020677b11e58e1ab2c84776483b/fOURChCWKB>.

<sup>252</sup> <http://www.vaateismas.lt/en/home.html>.

<sup>253</sup> The law also defines the re-broadcaster as “a person who re-broadcasts to the public unchanged broadcast radio and/or television programmes or parts of programmes” (Article 2 section 61) and a licence of re-broadcast content as “a document issued by the Radio and Television Commission of Lithuania granting its holder the right to engage within a defined territory in the choosing of radio and/or television programmes or individual programmes and their dissemination by radio frequencies (channels) set out in the plan for the assignment of radio frequencies for broadcasting and transmission of radio and television programmes; the said document shall lay down the conditions for such re-broadcasting” (Article 2 section 60).

<sup>254</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.120115?jfwid=rivwzvpvg> (in Lithuanian)  
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.120115?jfwid=rivwzvpvg> (in English).

<sup>255</sup> <http://www.rtt.lt/lt/titulinis.html>.

<sup>256</sup> <https://www.e-tar.lt/portal/lt/legalAct/TAR.287B71A67BA3/atOqjYeHol>.



			procedure
Licensing	Beauty contest Individual licence	LRTK	Licence granted by the LRTK on the basis of a set of criteria determined by law and additional criteria established by the Ministry of Culture
Notification	N/A	LRTK	Notification to send to the LRTK prior to the launch of the service
Public service	Law	Parliament & LRTK & RRT	The public service media LRT was created by law and the LRTK (in cooperation with the RRT) grants the frequencies needed

Source: Lithuanian response to European Audiovisual Observatory standardised questionnaire

### 4.19.3. Application to public audiovisual media service providers

Pursuant to Article 31 section 8 of the Law on Provision of Information to the Public, “radio and/or television programme broadcasting activities pursued by the LRT shall not be licensed. In order to ensure the broadcasting of the LRT radio and/or television programmes, the Commission shall, without tender in order of priority and in accordance with the provisions and conditions set out in this Law, issue authorisations granting the rights equivalent to those granted by the licences referred to in paragraph 2 of this article” (that is to say, the licences delivered to private AVMS providers).

Even if this article uses the term “authorisation”, this is a purely formal procedure, since the LRT was created by a specific law on public service media (Law on the National Radio and Television). For the purpose of this mapping, it is therefore considered that access to the market is granted on a similar basis to the one which exists in most of the other countries, that is to say, a law on public service.

There is no limited term to the activities of the LRT.

**Table 128. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament & LRTK & RRT
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament



<i>Via OTT</i>	Law	Parliament
<b>Non-linear</b>		
<i>Via DTT</i>	Law	Parliament & LRTK & RRT
<i>Via cable</i>	Law	Parliament
<i>Via IPTV</i>	Law	Parliament
<i>Via satellite</i>	Law	Parliament
<i>Via OTT</i>	Law	Parliament

Source: Lithuanian response to European Audiovisual Observatory standardised questionnaire

#### 4.19.4. Application to private (commercial) audiovisual media service providers

Except for AVMS distributed via OTT which have to be notified, all linear AVMS have to be licensed by the LRTK.

The Law on the Provision of Information to the Public states that the following AVMS shall be licensed (Article 31):

- “broadcasting of radio programmes by a terrestrial radio station or a network of such stations” (that is to say, DTT);
- “broadcasting of television programmes by a cable television network”;
- “*broadcasting of television programmes by the MMDS network*” (that is to say, Microwave Multichannel Distribution System);<sup>257</sup>
- “broadcasting of television programmes by electronic communications networks the main purpose of which is not broadcasting and/or re-broadcasting of radio and/or television programmes and/or programmes, except broadcasting of television programmes through the information society media (websites, webpages)” (that is to say, for the purpose of this mapping, IPTV);
- “broadcasting of television programmes by an artificial earth satellite (satellites).”

Licences meant for distribution via DTT are granted in the form of a beauty contest. The licensing procedure is launched by the LRTK, which shall publish a tender within thirty days of receiving notice from the Communications Regulatory Authority that coordinated frequencies are available for licensing.

The LRTK shall take the decision to grant or refuse a licence within thirty days after the expiry of the time limit to submit applications (which is set out in the tender document).

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<sup>257</sup> The microwave multichannel distribution system network is defined by the Law on the Provision of Information to the Public as “*an electronic communications network used for the broadcasting, re-broadcasting and receiving television programmes, changing their encoding or electromagnetic oscillation parameters and transmitting them by microwave terrestrial transmitters and by the signal reception networks of such transmitters to the terminal equipment*” (Article section 32).



Licences meant for distribution via cable and satellite are granted in the form of an individual licence. These licences are delivered either after a call for applications is made by the LRTK or at the request of an application.

The law does not make a difference between the criteria to be used for granting a licence for DTT or for other distribution means. Article 31 section 9 of the law provides that *“priority shall be given to persons who undertake to produce original cultural, informational and educational programmes, ensure accurate and impartial presentation of information, respect a person’s dignity and right to privacy, protect minors from public information which might have a detrimental effect on their physical, mental and moral development as well as to persons who have undertaken to broadcast radio and/or television programmes that are not yet broadcast by other broadcasters of radio and/or television programmes within the designated reception zone.”*

However, for licensing via DTT (and by MMDS), the Rules for Licensing of Broadcasting Activities and Re-broadcast Content add that the LRTK shall also take into account the following criteria (section 35):

- the applicant’s commitment to producing more original cultural, educational and informational programmes created in Lithuania for the development of patriotism;
- the applicant’s commitment to broadcasting more works of art and information programmes created in European countries for the development of the general values of European culture and a variety of expressions;
- the applicant’s commitment to providing the consumer with a choice of languages and/or subtitles in the broadcasting/re-broadcasting of television programmes;
- the package of re-broadcasting television programmes, linguistic diversity, and commitment to re-broadcast more television programmes in the EU languages;
- the importance of the project for the development of programme broadcasting and/or re-broadcasting services;
- the applicant’s experience in previous similar projects;
- the terms of the project implementation;
- the rates of the services;
- the observations and claims of the supervisory authorities and the self-regulatory bodies of producers and disseminators of public information regarding the applicant’s implementation of programme broadcasting and/or re-broadcasting activities;
- violations of the Law on the Protection of Minors against the Detrimental Effect of Public Information; licence conditions; Commission decisions; and the Code of Ethics for the Public Information of the Republic of Lithuania (hereinafter: the *Code*); and its reputation in the sense of complying with ethical norms established by the Code;
- other conditions specified in the terms of the tender.

In all cases, the deadline imposed on an AVMS provider for the effective provision of its service is determined in the licence.

Regarding re-broadcasting, a rebroadcast content licence is needed only in case of distribution via DTT.



Pursuant to Article 31 section 11 of the law, the LRTK “*must refuse to issue a broadcasting license or a re-broadcast content license to an applicant if:*

- 1) in the cases defined by law the applicant or its participant is prohibited from being a producer and/or disseminator of public information;*
- 2) the applicant’s broadcasting license or re-broadcast content license has been withdrawn within the last 12 months or the applicant’s participants are the participants of the person whose broadcasting license or re-broadcast content license has been withdrawn within the last 12 months;*
- 3) the person, who may directly or indirectly control the applicant, who has the authorisation to exercise voting rights at the management bodies of the person intending to acquire the applicant’s shares (units) and/or control (management) or who may appoint at least one member of the supervisory board and/or the board of the person intending to acquire the applicant’s shares (units) and/or control (management), has been sentenced for a crime against the independence, independence, territorial integrity, and constitutional order of the State of Lithuania;*
- 4) information is obtained in accordance with the procedure laid down by the Government that the applicant and/or the person, who may directly or indirectly control the applicant, who has the authorisation to exercise voting rights at the management bodies of the person intending to acquire the applicant’s shares (units) and/or control (management) or who may appoint at least one member of the supervisory board and/or the board of the person intending to acquire the applicant’s shares (units) and/or control (management), maintains national-security-threatening relations with institutions of the foreign states which are not the member states of the European Union and the North Atlantic Treaty Organization, or with the persons who are directly or indirectly controlled by such foreign states;*
- 5) information is obtained in accordance with the procedure laid down by the Government that the applicant and/or the person, who may directly or indirectly control the applicant, who has the authorisation to exercise voting rights at the management bodies of the person intending to acquire the applicant’s shares (units) and/or control (management) or who may appoint at least one member of the supervisory board and/or the board of the person intending to acquire the applicant’s shares (units) and/or control (management), is related with organized crime groups, foreign special services or groups related with international terrorist organizations, or maintains relations with the person belonging to them.”*

Linear AVMS distributed via OTT, re-broadcasting by means other than DTT and non-linear AVMS have to be notified to the LRTK. Notified activities may start on the day following the notification. On receipt of the notification form, the LRTK registers it, unless it ascertains shortcomings (the data is not clear, the notification form is not filled out completely, etc.). In this case, the LRTK shall inform the applicant, indicating exact shortcomings and setting a deadline of no more than five working days for specification or addition of lacking information.

Pursuant to Article 33 section 2 of the law, the AVMS provider submitting a notification shall state that:



*“1) a person intending to carry out the activity is not prohibited from being an information producer and/or disseminator or its participant in the cases established by law;*

*2) the broadcasting licence and/or a licence of re-broadcast content has within the last 12 months not been revoked in respect of a person intending to carry out the activity or the participants of a person intending to carry out the activity are not the participants of a person in respect of whom the broadcasting licence and/or the licence of re-broadcast content has within the last 12 months been revoked;*

*3) a person who is able to directly or indirectly control the person intending to carry out the activity, who has the power to exercise the voting rights in the management bodies of the person intending to acquire the licence holder’s shares (interests, member shares) and/or its control/management or who is entitled to appoint at least one member of the supervisory board and/or the board of the person intending to acquire the licence holder’s shares (interests, member shares) and/or control (management) has not been punished for a crime against the independence, territorial integrity or constitutional order of the State of Lithuania;*

*4) a person who is able to directly or indirectly control the person intending to carry out the activity, who has the power to exercise the voting rights in the management bodies of the person intending to acquire the licence holder’s shares (interests, member shares) and/or its control/management or who is entitled to appoint at least one member of the supervisory board and/or the board of the person intending to acquire the licence holder’s shares (interests, member shares) and/or control (management) does not maintain national security threatening relationships with institutions of the foreign states which are not the members of the European Union and the North Atlantic Treaty Organization or with the persons who are directly or indirectly controlled by such states;*

*5) a person who is able to directly or indirectly control the person intending to carry out the activity, who has the power to exercise the voting rights in the management bodies of the person intending to acquire the licence holder’s shares (interests, member shares) and/or its control/management or who is entitled to appoint at least one member of the supervisory board and/or the board of the person intending to acquire the licence holder’s shares (interests, member shares) and/or control (management) are not connected with organised crime groups, special services or groups of foreign states related to international terrorist organizations, or maintain relationships with the persons belonging to them.”*

If it appears that one of these situations is present, the LRTK shall issue a decision forbidding the activity by this AVMS provider.

**Table 129. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	LRTK
<i>Via cable</i>	Individual licence	LRTK
<i>Via IPTV</i>	Individual licence	LRTK



<i>Via satellite</i>	Individual licence	LRTK
<i>Via OTT</i>	Notification	LRTK
<b>Non-linear</b>		
<i>Via DTT</i>	Notification	LRTK
<i>Via cable</i>	Notification	LRTK
<i>Via IPTV</i>	Notification	LRTK
<i>Via satellite</i>	Notification	LRTK
<i>Via OTT</i>	Notification	LRTK

Source: Lithuanian response to European Audiovisual Observatory standardised questionnaire

#### 4.19.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.19.4 above is applicable.

#### 4.19.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.19.4 above is applicable.

The only difference is **that** there is no beauty contest (but an individual licence) for research and higher education institutions or educational establishments for broadcasting educational and cultural television programmes by terrestrial stations with a power level ranging up to 20 watts.

#### 4.19.7. Licence fee

Three different types of fees are due.

1. The annual fee for the broadcasting and re-broadcasting of television programmes, dissemination via the Internet or the provision of on-demand audiovisual media services amounts to:

- for the broadcasting and re-broadcasting of one television programme by a terrestrial television station or a network of such stations: between EUR 38 and EUR 836;
- for the broadcasting and re-broadcasting of one television programme by the MMDS network, by a cable television network, as well as by electronic communications networks, the main purpose of which is not the broadcasting



and/or re-broadcasting of television programmes: between EUR 19 and EUR 3 876;

- for the broadcasting and re-broadcasting of one television programme by an artificial earth satellite, the services of distribution of television programmes and/or individual programmes via the Internet: between EUR 3 800 and EUR 5 700;
- for on-demand audiovisual media services: between EUR 380 and EUR 1 900;
- for on-demand audiovisual media services whose catalogue consists of news programmes about the current issues of a specific municipality community: between EUR 114 and EUR 190;
- for the broadcasting of one television programme through websites: between EUR 570 and EUR 2 280;
- for broadcasting educational and cultural radio and/or television programmes by terrestrial radio and/or television stations with a power level ranging up to 20 watts when providers are research and higher education institutions or educational establishments: between EUR 7.60 and EUR 19;
- for the public service media LRT, the rate of the fees above shall be multiplied by a ratio of 1%.

The amount of the annual fee is calculated on the basis of the following criteria:

- the nature and content of the television programme broadcast and/or rebroadcast by the licence holder; television programmes and/or individual programmes available via the Internet; and on-demand audiovisual media services;
- the territory in which the programmes will be broadcast and/or rebroadcast; decoders and other equipment distributed to enable access to the programmes (where the programmes are broadcast and/or rebroadcast using conditional access systems); and the number of residents in that territory;
- the competitive environment;
- the importance of the television programme for the development of programme broadcasting; re-broadcasting services and/or the services of distribution of television programmes and/or individual programmes via the Internet; and on-demand audiovisual media services.

The fee is paid once each year. The beneficiary is the Association of Ethics in the Provision of Information to the Public. The fee covers the activity of the association, which shall target its activity to ensure compliance with the provisions of the Code of Ethics; to foster principles of ethics in the provision of information to the public in public information activities; and to raise public awareness for the evaluation of public information processes and the use of public information.

2. The income fee for the activity of broadcasting and re-broadcasting television programmes, the dissemination of television programmes and/or individual programmes via the Internet and/or the provision of on-demand audiovisual media services amounts to 0.6% of the income from audiovisual commercial communications, advertising, subscription fees and other activities related to the broadcasting and re-broadcasting of



television programmes, the dissemination of television programmes and/or individual programmes via the Internet and/or the provision of on-demand audiovisual media services. It is due on a quarterly basis. The beneficiary is the LRTK. The fee covers the LRTK's activity. The public service media LRT and research and higher education institutions or educational establishments are exempt.

3. The state fee is paid only once to the state and is meant to cover the administrative costs incurred. It amounts to:

- for issuing a licence under a tender procedure: EUR 521;
- for issuing a licence without tender: 144;
- for the replacement or specification of the licence: EUR 28;
- for issuing a duplicate: EUR 14.

#### 4.19.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying.

Media concentration is not directly taken into consideration in the licensing process, in the sense that there are no provisions in the Law on the Provision of Information to the Public about horizontal, vertical, diagonal, geographical or audience concentration thresholds. But media pluralism is favoured during the licensing process by Article 31 section 9 of the Law on Protection of Information to the Public, which provides that *“priority shall be given to persons [...] who have undertaken to broadcast radio and/or television programmes that are not yet broadcast by other broadcasters of radio and/or television programmes within the designated reception zone.”*

**Table 130. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	No

*Source: Lithuanian response to European Audiovisual Observatory standardised questionnaire*

#### 4.19.9. Management of the licence and notification

Licences and notifications have no limited term.



Article 31 section 15 of the Law on the Provision of Information to the Public details the conditions in which a licence can be suspended (suspension cannot be longer than three months):

- “1) the Communications Regulatory Authority revokes the right to use a radio frequency (channel) and appeals to the Commission to suspend the licence;*
- 2) a broadcasting licence holder disseminates information that is not to be published under paragraphs 1 and 2 of Article 19 of this Law and a fine specified in paragraph 3 of Article 48 of this Law has been already imposed on him or other sanctions laid down in this Law have been applied to him for the same infringement within the last 12 months;*
- 3) a re-broadcasting licence holder does not fulfil the decision of the Commission and a fine specified in paragraph 3 of Article 48 of this Law has been already imposed on him or other sanctions laid down in this Law have been applied to him for the same infringement;*
- 4) a licence holder fails to pay within three months the fine imposed on him under paragraph 3 of Article 48 of this Law;*
- 5) a licence holder infringes the basic terms and conditions of the broadcasting licence and/or the re-broadcasting licence and/or obligations concerning the broadcast and/or re-broadcast radio and/or television programme and an administrative penalty has been imposed on him repeatedly for the same infringement within the last 12 months;*
- 6) a licence holder infringes the statutory requirements regarding the protection of minors against the detrimental effect of public information on their physical, mental or moral development and an administrative penalty has been imposed on him repeatedly for the same infringement within the last 12 months;*
- 7) a licence holder fails to pay the annual licence fee in due time;*
- 8) a licence holder does not pay the contributions specified in this Law to finance the activities of the Commission and has been issued a warning for the same infringement twice within the last 24 months.”*

Article 31 section 16 details the conditions in which a licence can be revoked:

- “1) a licence holder renounces the licence;*
- 2) a licence holder is liquidated or reorganised;*
- 3) the licence holder does not, without the Commission’s consent, pursue for a period of more than two consecutive months or more than three months within a calendar year the licensed broadcasting activity and/or does not re-broadcast a radio and/or television programme (programmes) over the radio frequencies (channels) provided for in the plan for the assignment of radio frequencies for broadcasting and transmission of radio and television programmes and under the conditions laid down in the re-broadcasting licence;*
- 4) the licence holder has not, within the period specified in the licence, commenced the pursuit of the licensed broadcasting activity and/or has not commenced the re-broadcasting of a radio and/or television programme (programmes) over the radio frequencies (channels) provided for in the plan for the assignment of radio frequencies for broadcasting and transmission of radio and television programmes and under the conditions laid down in the re-broadcasting licence;*



- 5) *the licence holder submitted incorrect data when applying for a broadcasting licence or a re-broadcasting licence;*
- 6) *the licence holder fails to eliminate the infringement for which the licence has been temporarily suspended or commits the same infringement within 12 months after the expiration of the temporary suspension term;*
- 7) *the licence holder broadcasts during the term of temporary suspension of the broadcasting licence broadcasts a radio and/or television programme (programmes) or re-broadcasts during the term of temporary suspension of the re-broadcasting licence a radio and/or television programme (programmes) over the radio frequencies (channels) provided for in the plan for the assignment of radio frequencies for broadcasting and transmission of radio and television programmes;*
- 8) *there is a change of the owner of the majority shareholding of the licence holder or the control (management) of the licence holder is transferred to another person (persons) without receiving the Commission's consent, or incorrect data have been provided in the application submitted to receive the Commission's consent;*
- 9) *the Communications Regulatory Authority revokes the right to use a radio frequency (channel) and appeals to the Commission to revoke the licence;*
- 10) *the period of validity of a permit to use a radio frequency (channel) expires and the Communications Regulatory Authority does not extend it in the manner prescribed by law."*

Pursuant to Article 48 section 4 and 5 of the law, notified AVMS, including non-linear AVMS, can also be suspended or terminated. Suspension can happen when:

- 1) *broadcasters, re-broadcasters, any other person providing users of the Republic of Lithuania with the services of dissemination of television programmes and/or individual programmes via the Internet, or a provider of on-demand audiovisual media services fails to pay within three months the imposed penalty referred to in paragraph 3 of this Article;*
- 2) *following the imposition of the penalty referred to in paragraph 3 of this Article or imposition of other sanctions determined in this Law for the non-fulfilment of the Commission's decisions, a broadcaster, re-broadcaster, any other person providing users of the Republic of Lithuania with the services of dissemination of television programmes and/or individual programmes via the Internet, or a provider of on-demand audiovisual media services persists in failing to fulfil the Commission's decision;*
- 3) *a broadcaster, re-broadcaster, any other person providing users of the Republic of Lithuania with the services of dissemination of television programmes and/or individual programmes via the Internet, or a provider of on-demand audiovisual media services fails when due to pay an annual contribution or the set contribution to financing Commission's activities and he has been warned twice within the period of 24 months for the same violation."*

Termination can happen when:

- 1) *a broadcaster, a re-broadcaster, any other person providing users of the Republic of Lithuania with the services of dissemination of television programmes and/or individual programmes via the Internet, or a provider of on-demand audiovisual media services continues to carry out activities concerning the provision of the services related to*



*broadcasting, re-broadcasting, dissemination of television programmes and/or individual programmes via the Internet or on-demand audiovisual media after coming into effect of the decision adopted on the grounds referred to in paragraph 4 of this Article or after the revocation of the broadcasting licence and/or the re-broadcasting licence;*

*2) persons carrying out unlicensed activities related to the services of broadcasting radio and/or television programmes, providing users of the Republic of Lithuania with the services of dissemination of television programmes and/or individual programmes via the Internet, providers of on-demand audiovisual media services as well as re-broadcasters who do not use radio frequencies (channels) provided for in the plan for the assignment of radio frequencies for broadcasting and transmission of radio and television programmes with the purpose of re-broadcasting radio and/or television programmes have commenced their activities without informing the Commission in accordance with the procedure laid down by this Law.”*

There is no specific procedure in case of termination of the provision of an AVMS. However, the licensee shall inform the LRTK about the intended discontinuation of the licensed activity not later than thirty days prior to the discontinuation. Upon the LRTK's consent, the activity may be temporarily suspended, but for a period not longer than three months. The termination of a notified AVMS shall be notified to the LRTK with the exact date of the termination of the activity.

The licence conditions can be changed at the request of the licensee or upon the initiative of the LRTK. If a licensee changes its name, legal form or other details identified in the licence, it shall refer to the LRTK within ten working days to provide a reasoned request and documents confirming the changed data. The LRTK shall issue a revised licence. If a licensee seeks to change the structure and content of television programmes, it shall provide an impact assessment on how these changes will affect the public. If a re-broadcasting content licence holder seeks to change the programme identified in the licence, he must notify information such as the name and the nature of the programme; the country that has jurisdiction over the broadcaster; the languages of the programme and the languages in which the programme will be retransmitted or subtitled; data on how the language balance of retransmitted programmes will change; data on information on how the changed conditions of the licence will affect the variety of retransmitted programmes; as well as any other relevant information. At least once each quarter, notified AVMS shall inform the LRTK in writing or in electronic form via secure access of any change concerning their activity, information on shareholders, authorised representative, the address for correspondence, etc. On reasoned request, they shall submit other requested data.

Broadcasters and/or rebroadcasters of television programmes may not, without prior consent of the LRTK, extend or otherwise change the territorial area of broadcasting and/or re-broadcasting specified in the broadcasting licence and/or the re-broadcasting licence.

In case of modifications to the service with a view to targeting different audiences, it would be considered by the LRTK that:

- different linguistic versions constitute different AVMS (which therefore have to be licensed or notified accordingly);



- different advertising or programming windows constitute different AVMS (which therefore have to be licensed or notified accordingly).

**Table 131. Main issues regarding the management of the licence**

Issue	Description
Duration	No limited term
Procedure to renew	N/A
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to the LRTK
Procedure in case of modifications in the licence conditions	Notification to (and sometimes prior approval of) the LRTK
Procedure in case of modifications to the service with a view to targeting different audiences	Different linguistic versions as well as different programming and advertising windows have to be licensed or notified accordingly

Source: Lithuanian response to European Audiovisual Observatory standardised questionnaire

#### 4.19.10. Future amendments to the regulatory framework

Several amendments to the Law on the Provision of Information to the Public are pending. One draft law *inter alia* proposes:

- to expand the definition of the “*Service of dissemination of television and/or radio programmes via the Internet*” so that more subjects would be covered by the regulation (this should provide a level playing field for all subjects that disseminate television and/or individual programmes via Internet);
- to make the conditions in which the LRTK could suspend a licence for a maximum of 3 months stricter (by shortening the period in which the licensee has repeatedly infringed the law and/or the basic terms and conditions of the licence from 12 months to 6 months);
- to provide the LRTK with the possibility of issuing binding instructions to internet intermediaries to remove or disable access to information or services when the AVMS provider has failed to fulfil its obligation to notify its activity;
- to increase the income fee from 0,6 % to 0,8 % of the income from audiovisual commercial communications, advertising, subscription fees and other activities related to the broadcasting and re-broadcasting of television programmes, the



dissemination of television programmes and/or individual programmes via the Internet and/or the provision of on-demand audiovisual media services.<sup>258</sup>

Another draft law proposes that television programmes broadcast in an EU language (other than in the Lithuanian language) must be translated into Lithuanian or shown with Lithuanian subtitles, and television programmes broadcast in a non-EU language must only be translated into Lithuanian, except for educational, occasional, special, music and rebroadcast foreign television programmes or parts of programmes, as well as programmes produced by broadcasters of television programmes intended for the ethnic minorities of Lithuania.<sup>259</sup>

#### 4.19.11. Video-sharing platforms

N/A.

#### 4.19.12. Applicable regulatory framework

- Primary legislation:
  - In Lithuanian - Lietuvos Respublikos visuomenės informavimo įstatymas (Law on the Provision of Information to the Public):

<https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/smgmCYGYRC>

- In Lithuanian - Lietuvos nacionalinio radijo ir televizijos įstatymas (Law on the National Radio and Television):

<https://www.e-tar.lt/portal/lt/legalAct/TAR.1559303036A8/ICJnpkyFRP>

- In Lithuanian - Lietuvos Respublikos nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymas (Law on the Protection of Minors Against the Detrimental Effect of Public Information):

[https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54/TAIS\\_410367](https://www.e-tar.lt/portal/lt/legalAct/TAR.817CC58C1A54/TAIS_410367)

- In Lithuanian - Lietuvos Respublikos konkurencijos įstatymas (Law on Competition):
- <https://www.e-tar.lt/portal/lt/legalAct/TAR.B8B6AFC2BFF1/qqjSwVVuUG>

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<sup>258</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/38671910476111e7b465dc41e35792b9?positionInSearchResults=4&searchModelUUUIID=8506fcce-0d4d-4ceb-93e1-b257b20ec6b5> (in Lithuanian).

<sup>259</sup> <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/06f8c3208be411e7a5e2b345b086d377?jfwid=a82o51ydf> (in Lithuanian).



- In English - Law on the Provision of Information to the Public:

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/911eb75251d611e78869ae36ddd5784f?jfwid=-1d3h0wfy9b>

- In English - Law on the National Radio and Television:

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.120115?jfwid=rivwzvvpvg>

- In English - Law on the Protection of Minors Against the Detrimental Effect of Public Information:

<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.410974?jfwid=-1d3h0wfvhl>

- In English - Law on Competition:

- <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/49e68d00103711e5b0d3e1beb7dd5516?jfwid=q8i88mh0m>

- Secondary legislation:

- In Lithuanian - Transliavimo veiklos ir retransliuojamo turinio licencijavimo taisyklės, patvirtintos Lietuvos Respublikos kultūros ministro 2015 m. rugsėjo 30 d. įsakymu Nr. ĮV-659 (Rules for Licensing of Broadcasting Activities and Re-broadcast Content):

<https://www.e-tar.lt/portal/lt/legalAct/a459e020677b11e58e1ab2c84776483b/fOURChCWB>

- In Lithuanian - Radijo dažnių skyrimo radijo ir televizijos programoms transliuoti ir siųsti planas, patvirtintas Lietuvos radijo ir televizijos komisijos 2003 m. spalio 15 d. sprendimu Nr. 89 ir Lietuvos Respublikos ryšių reguliavimo tarnybos direktoriaus 2003 m. spalio 15 d. įsakymu Nr. 1V-125 (Plan for the assignment of radio frequencies for broadcasting and transmission of radio and television programmes approved by Decision No. 89 of 15 October 2003 of the Radio and Television Commission of Lithuania and by Order No. 1V-125 of 15 October 2003 of Director of the Communications Regulatory Authority of the Republic of Lithuania): <https://www.e-tar.lt/portal/lt/legalAct/TAR.287B71A67BA3/atOqjYeHol>

### 4.19.13. Data compilation

This factsheet was produced based on data compiled by Deividas Velkas, Head of Public Information Policy Division, Ministry of Culture of the Republic of Lithuania.



## 4.20. LU – Luxembourg – National Summary<sup>260</sup>

### 4.20.1. Summary

In Luxembourg, access to the market is granted exclusively by the government (Minister for Communications and Media), upon the opinion of the regulatory authority (Independent Audiovisual Authority of Luxembourg - Autorité Luxembourgeoise Indépendante de l'Audiovisuel, hereinafter ALIA).<sup>261</sup>

The compliance of all AVMS providers with the regulatory framework is ensured by ALIA.

Two systems are used:

- Licensing, which is applicable to most of the linear AVMS and which is organised in the form of a beauty contest.
- Notification, which is applicable to non-linear AVMS as well as to linear AVMS transmitted by distribution means other than those for which a licence is required (that is to say, AVMS via IPTV and OTT or AVMS not established in a member state of the EEA but using a Luxembourgish uplink or a Luxembourgish satellite).

There is no public service media in Luxembourg.

**Table 132. Applicable systems**

System	Category
Licensing	Beauty contest
Notification	N/A

Source: Luxembourgish response to European Audiovisual Observatory standardised questionnaire

### 4.20.2. Functioning of the applicable systems

According to the Law on Electronic Media,<sup>262</sup> the government grants licences to most linear AVMS upon proposal of the Minister for Communications and Media and upon the opinion of ALIA.

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<sup>260</sup> No remarks were received on the factsheet on Luxembourg during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>261</sup> <http://www.alia.lu/>

<sup>262</sup> [http://alia.lu/dbfiles/lacentrale\\_files/500/593/Presseetmedias-webvf.pdf](http://alia.lu/dbfiles/lacentrale_files/500/593/Presseetmedias-webvf.pdf) (in French)

[https://www.en.uni.lu/content/download/65349/830145/file/Luxembourg\\_ALIA\\_translation\\_consolidated.pdf](https://www.en.uni.lu/content/download/65349/830145/file/Luxembourg_ALIA_translation_consolidated.pdf) (in English)



The licensing procedure is managed by the Minister for Communications and Media. The government has to grant licences meant for distribution via DTT, cable and satellite based on criteria defined in the Electronic Mass Media Law (beauty contest).

Licences are granted for a limited period which is defined on a case-by-case basis in the licence. If the licence is not granted, the applicant can lodge an appeal with an Administrative Court and use all other available remedies in accordance with Luxembourg administrative law.

All the other AVMS (that is to say, AVMS distributed via IPTV or OTT, AVMS from third countries not established in a member state of the EEA using a Luxembourgish uplink or a Luxembourgish satellite and all non-linear AVMS providers) have to be notified to the Minister for Communications and Media.

**Table 133. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest	Government	Application to send to the government, who decides based on criteria mentioned in its own regulations
Notification	N/A	Government	Notification to send prior to the launch of the service to the government, who acknowledges its receipt

*Source: Luxembourgish response to European Audiovisual Observatory standardised questionnaire*

### 4.20.3. Application to public audiovisual media service providers

There is no public service television in Luxembourg.

The agreement between the government and RTL Group gives this AVMS provider the mission of fulfilling certain public service missions, such as broadcasting a daily news and current affairs programme of a duration of at least thirty minutes in Luxembourgish (and a French translation); weekly hour-long cultural and sports magazines; the coverage of special events contained in a list provided by the government (for instance, annual addresses by the heads of state and government); and free airtime for political parties during election campaigns.



#### 4.20.4. Application to private (commercial) audiovisual media service providers

Most linear AVMS have to be licensed by the government, upon the opinion of ALIA, in the form of a beauty contest.

For linear AVMS distributed via DTT, the Law on Electronic Media distinguishes between:

- Luxembourgish international AVMS (Luxembourg AVMS that reach an international public);
- non-Luxembourgish AVMS (that are subject to the competence of another member state of the EEA);
- Luxembourgish AVMS aimed at a resident audience.

Licensing of DTT network is under the responsibility of the telecommunications regulatory authority (Institut Luxembourgeois de Radiodiffusion – ILR).<sup>263</sup>

For linear AVMS distributed via other means, the Law on Electronic Media distinguishes between:

- Luxembourgish AVMS via satellite (which have to go through a beauty contest if they are domestic and have to be notified if they are third country AVMS using a Luxembourgish uplink or satellite);
- Luxembourgish AVMS via cable.

Licences are granted after publication of an open call for applications. Several grand-ducal regulations lay down the procedural details depending on the type of services concerned. The Minister for Communications and Media manages the tender which specifies the information to be supplied as well as the criteria for selection, which take into account the public interest as well as the general objectives of the Law on Electronic Media. The competent minister then grants the licence on behalf of the government.

Licences are granted for a limited period which is defined on a case-by-case basis in the licence. Each licence is accompanied by a book of obligations (“cahier des charges”) which lays down additional obligations including, for example, programme requirements such as impartial and pluralistic news coverage or the promotion of culture and artistic creativity.

The Law on Electronic Media does not specify any deadlines for responding to an application. As licences are attributed following a tender, the tender document sets out the relevant deadlines.

The deadline imposed on an AVMS provider for the effective provision of its service is determined in the licence.

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<sup>263</sup> <https://web.ilr.lu/FR/ILR>.



However, in practice, this tender procedure is not applied. Tenders are applied for the licensing of radios, but for television licences, books of obligations are negotiated directly between the Minister for Communications and Media and the applicant. This practice is based on Article 3 (5) of the Law on Electronic Media according to which “any concession or permit which reaches its expiry date may be renewed in favour of the same holder, without a new open call for candidatures being organised.”

All the other AVMS (that is to say, AVMS distributed via IPTV or OTT, AVMS from third countries not established in a member state of the EEA using a Luxembourgish uplink or a Luxembourgish satellite and all non-linear AVMS providers) have to be notified to the government no later than 20 days before the launch of the service (two months for third-country AVMS using a Luxembourg uplink or satellite), indicating basic information such as the name of the media service provider, the name and description of the notified service and the expected date of launch of the activities. A notification is considered valid if the required information is complete and allows ALIA to conduct its supervision mission.

**Table 134. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest <sup>264</sup>	Government
<i>Via cable</i>	Beauty contest <sup>265</sup>	Government
<i>Via IPTV</i>	Notification	Government
<i>Via satellite</i>	Beauty contest <sup>266</sup>	Government
	Notification	
<i>Via OTT</i>	Notification	Government
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	Government
<i>Via cable</i>	Notification	Government
<i>Via IPTV</i>	Notification	Government
<i>Via satellite</i>	Notification	Government
<i>Via OTT</i>	Notification	Government

Source: Luxembourgish response to European Audiovisual Observatory standardised questionnaire

<sup>264</sup> In theory. In practice, individual licence.

<sup>265</sup> In theory. In practice, individual licence.

<sup>266</sup> In theory. In practice, individual licence.



#### 4.20.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.20.4 above is applicable.

#### 4.20.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.20.4 above is applicable.

#### 4.20.7. Licence fee

The grand-ducal regulation setting the amount and method of payment for fees sets out the amount and modalities for a tax collected by ALIA from AVMS providers under its jurisdiction.

The regulation does not prescribe a specific amount for the licence fee but refers to the Luxembourg civil service pay scale: the amount of the fee equals 1% of the remuneration of a civil servant of rank 17bis. The flat tax is linked to the civil service pay scale because the scale is indexed so that the tax is automatically adapted to economic developments without requiring subsequent changes to the grand-ducal regulation. For the year 2017, this means that AVMS providers pay the amount of EUR 1 480. The tax is due for each licensed or notified service. Non-profit AVMS providers are exempt.

The tax is paid on a yearly basis to the benefit of ALIA.

The tax is meant to cover the administrative costs of supervision incurred by ALIA. If a service is offered in a language other than Luxembourgish, French or German and ALIA requires the assistance of an external expert to carry out its monitoring task, the AVMS provider has to bear the additional costs of translation. Such expenses are invoiced separately from the annual tax and only after they have occurred.

#### 4.20.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is partly ensured via the obligation to provide the relevant data when applying for a licence or notifying.

The Law on Electronic Media does not expressly set out any obligations regarding the transparency of the ownership structure, but an assessment is made during the application process: the applicant must provide information about its registered office (including an extract from the commercial register), its articles of association, as well as its shareholders. Once the licence has been granted, there is also the possibility for the



government to use the book of obligations to request further ownership information. The government may thus obtain information about the licensee's company, its articles of association, as well as its shareholders and any company participating in the operation of the licence. It may also determine the conditions under which the licensee may associate other companies in the operation of the licence. The government may thus carry out an *ex ante* assessment of a licensee's ownership structure and impose relevant requirements in the accompanying book of obligations.

**Table 135. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	No

Source: Luxembourgish response to European Audiovisual Observatory standardised questionnaire

#### 4.20.9. Management of the licence and notification

Licences are granted for a limited period which is defined on a case-by-case basis in the licence and notifications have no limited term.

Licences may be renewed at the request of the licensee without a tender. The licence conditions as well as the book of obligations in relation to the renewed licence may differ from those previously applied.

Any change in licence conditions must be authorised in advance by the government.

Sanctioning powers are shared between ALIA and the government. ALIA can only impose a warning, the publication on the AVMS of a statement explaining the infringement, or administrative fines of between EUR 250 and EUR 25 000 (which can be doubled in case of recidivism). Stronger sanctions, such as the suspension or revocation of the licence, can only be decided by the government upon the opinion of ALIA and following a specific procedure which differs from the one applied by ALIA and which includes a report from ALIA to the Minister for Communications and Media. According to Article 3 of the Law on Electronic Media, a licence may be revoked:

- if the conditions required to obtain the licence are no longer met;
- if the obligations written into the book of obligations are not met;
- if it is not used in a regular manner, in accordance with the arrangements laid down.

In case of modifications to the service with a view to targeting different audiences, it would be considered that:

- different linguistic versions do not constitute different AVMS;



- different programming or advertising windows constitute different AVMS (which therefore have to be licensed or notified accordingly).

**Table 136. Main issues regarding the management of the licence**

Issue	Description
Duration	On a case-by-case basis
Procedure to renew	At the request of the licensee
Procedure to suspend	Decision of the government, upon the report of ALIA
Procedure to revoke	Decision of the government, upon the report of ALIA
Procedure in case of termination of the provision of the service	Notification to the government
Procedure in case of modifications in the licence conditions	Prior approval of the government
Procedure in case of modifications to the service with a view to targeting different audiences	Different programming and advertising windows have to be licensed or notified accordingly

Source: Luxembourgish response to European Audiovisual Observatory standardised questionnaire

#### 4.20.10. Future amendments to the regulatory framework

N/A.

#### 4.20.11. Video-sharing platforms

N/A.

#### 4.20.12. Applicable regulatory framework

- Primary legislation:
  - In French - Loi du 27 juillet 1991 sur les médias électroniques (Law on Electronic Media): [http://alia.lu/\\_dbfiles/lacentrale\\_files/500/593/Presseetmedias-webvf.pdf](http://alia.lu/_dbfiles/lacentrale_files/500/593/Presseetmedias-webvf.pdf)
  - In English – Law on Electronic Media: [https://www.en.uni.lu/content/download/65349/830145/file/Luxembourg\\_ALIA\\_translation\\_consolidated.pdf](https://www.en.uni.lu/content/download/65349/830145/file/Luxembourg_ALIA_translation_consolidated.pdf)
- Secondary legislation
  - In French - Règlement grand-ducal du 17 mars 1993 fixant les modalités selon lesquelles le Gouvernement accorde les concessions pour services luxembourgeois par câble:



(<http://legilux.public.lu/eli/etat/leg/rgd/1993/03/17/n3/jo>) modifié par le Règlement grand-ducal du 17 décembre 2010: [http://alia.lu/\\_dbfiles/lacentrale\\_files/200/261/02RGD17mars1993concessionservicesluxembourgeoisparcable.pdf](http://alia.lu/_dbfiles/lacentrale_files/200/261/02RGD17mars1993concessionservicesluxembourgeoisparcable.pdf)

- In French - Règlement grand-ducal du 21 janvier 1993 déterminant les modalités d'attribution des concessions pour les programmes radiodiffusés luxembourgeois à rayonnement international: (<http://legilux.public.lu/eli/etat/leg/rgd/1993/01/21/n1/jo>) modifié par le Règlement grand-ducal du 17 décembre 2010: [http://alia.lu/\\_dbfiles/lacentrale\\_files/200/260/02RGD21janvier1993modaliteattributionconcessionservicesradiodiffusesluxembourgeoisrayonnementinternational.pdf](http://alia.lu/_dbfiles/lacentrale_files/200/260/02RGD21janvier1993modaliteattributionconcessionservicesradiodiffusesluxembourgeoisrayonnementinternational.pdf)
- In French - Règlement grand-ducal du 21 janvier 1993 fixant les modalités selon lesquelles le Gouvernement accorde les concessions pour les services luxembourgeois par satellite (<http://legilux.public.lu/eli/etat/leg/rgd/2010/12/17/n9/jo>) modifié par le Règlement grand-ducal du 17 décembre 2010: [http://alia.lu/\\_dbfiles/lacentrale\\_files/200/259/02RGD21janvier1993concessionservicesluxembourgeoisparsatellite.pdf](http://alia.lu/_dbfiles/lacentrale_files/200/259/02RGD21janvier1993concessionservicesluxembourgeoisparsatellite.pdf)
- In French - Règlement grand-ducal du 17 mars 1993 déterminant les modalités d'attribution des permissions pour les services de télévision et de télétexte diffusé et services y assimilés: (<http://legilux.public.lu/eli/etat/leg/rgd/2010/12/17/n6/jo>) modifié par le Règlement grand-ducal du 17 décembre 2010: [http://alia.lu/\\_dbfiles/lacentrale\\_files/200/255/02RGD17mars1993attributionpermissionstvteletexte.pdf](http://alia.lu/_dbfiles/lacentrale_files/200/255/02RGD17mars1993attributionpermissionstvteletexte.pdf)
- In French - Règlement grand-ducal du 2 février 2015 fixant le montant et les modalités de paiement des taxes (Grand-ducal regulation setting the amount and method of payment for fees): <http://legilux.public.lu/eli/etat/leg/rgd/2015/02/02/n5/jo>
- In English - Grand-ducal regulation setting the amount and method of payment for fees: [https://www.en.uni.lu/content/download/79703/988216/file/R%C3%A8glement\\_paiement%20taxes\\_translation.pdf](https://www.en.uni.lu/content/download/79703/988216/file/R%C3%A8glement_paiement%20taxes_translation.pdf)

### 4.20.13. Data compilation

This factsheet was produced based on data compiled by Jenny Weinand, Legal counsel, European Broadcasting Union and Sandra Schmitz, Post-doctoral researcher, University of Luxembourg.



## 4.21. LV – Latvia – National Summary<sup>267</sup>

### 4.21.1. Summary

In Latvia, access to the market is granted exclusively by the regulatory authority (National Electronic Mass Media Council - Nacionālā elektronisko plašsaziņas līdzekļu padome, hereinafter NEPLP).<sup>268</sup>

The NEPLP is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Two systems are used:

- Licensing, which is applicable to linear AVMS and which is organised either in the form of a beauty contest or of an individual licence.
- Notification, which is applicable to non-public service non-linear AVMS.

The licensing system fully applies to the public service media Latvijas Televīzija (hereinafter LTV).<sup>269</sup>

It should also be highlighted that if the expected broadcasting area of transmission of the AVMS is fully or mainly the territory of another European Union Member State or European Convention on Transfrontier Television Member State, the NEPLP shall, prior to granting the licence, consult with the regulatory authority of the state concerned.

**Table 137. Applicable systems**

System	Category
Licensing	Beauty contest Individual licence
Notification	Notification

Source: Latvian response to European Audiovisual Observatory standardised questionnaire

<sup>267</sup> No remarks were received on the factsheet on Latvia during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>268</sup> <http://www.neplpadome.lv/>.

<sup>269</sup> <http://ltv.lsm.lv/lv/>.



### 4.21.2. Functioning of the applicable systems

According to the Electronic Mass Media Law,<sup>270</sup> linear AVMS have to be licensed by and non-linear AVMS have to be notified to the NEPLP. All LTV AVMS have to be licensed by the NEPLP.

The licensing procedure is managed by the NEPLP. The NEPLP has to grant licences for distribution via DTT based on criteria defined in the Electronic Mass Media Law (beauty contest).<sup>271</sup> Licences meant for distribution via other means are granted via an individual licensing procedure.

Licences are granted for ten years. If the licence is not granted, the applicant has the opportunity to lodge an appeal against the decision within one month of its coming into force with the competent District Administrative Court.<sup>272</sup>

Non-linear non-public AVMS have to be notified to the NEPLP.

**Table 138. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest Individual licence	NEPLP	Application sent to the NEPLP, who decides based on criteria mentioned in the Electronic Mass Media Law
Notification	N/A	NEPLP	Notification sent prior to the launch of the service to the NEPLP, who acknowledges its receipt

Source: Latvian response to European Audiovisual Observatory standardised questionnaire

### 4.21.3. Application to public audiovisual media service providers

LTV needs to be granted a licence by the NEPLP for each of its services.

If LTV needs DTT frequencies to make its services available to the public, then according to Article 15 section 6 of the Electronic Mass Media Law “*on the basis of the national strategy for the development of the electronic mass media sector, the broadcasting rights are first granted to public mass media without a tender and limitation of term*”. In practice,

<sup>270</sup> <https://likumi.lv/doc.php?id=214039> (in Latvian).

<sup>271</sup> However, this does not apply to retransmitted AVMS, which shall be notified by the AVMS provider.

<sup>272</sup> <https://www.tiesas.lv/>.



frequencies are allocated by the state company Elektroniskie Sakari<sup>273</sup> (responsible for spectrum management and numbering), and permission to use them is granted by the NEPLP.

**Table 139. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Individual licence	NEPLP
<i>Via cable</i>	Individual licence	NEPLP
<i>Via IPTV</i>	Individual licence	NEPLP
<i>Via satellite</i>	Individual licence	NEPLP
<i>Via OTT</i>	Individual licence	NEPLP
<i>Non-linear</i>		
<i>Via DTT</i>	Individual licence	NEPLP
<i>Via cable</i>	Individual licence	NEPLP
<i>Via IPTV</i>	Individual licence	NEPLP
<i>Via satellite</i>	Individual licence	NEPLP
<i>Via OTT</i>	Individual licence	NEPLP

Source: Latvian response to European Audiovisual Observatory standardised questionnaire

#### 4.21.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

Licences are granted to linear AVMS providers distributed via DTT in the form of a beauty contest, which is announced after the NEPLP has assessed beforehand the public demand for a new service in the relevant reception area. On the basis of an analysis of the existing offer — the social, economic and demographic situation — the NEPLP determines the basic requirements for the new service: the language, format and other characteristics that are necessary for the public in the relevant reception area. The basic criteria include the type of service (public, commercial, non-commercial, that is, community); the coverage zone (national, regional, local, transfrontier); the daily transmission time; the channel format; the amount and type of news; the percentage of broadcasts in Latvian

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<sup>273</sup> <http://www.vases.lv/>.



and other languages; and quotas of European audiovisual works and of audiovisual works of independent producers.

Although a deadline for responding to applications is not mentioned in the Electronic Mass Media Law, the Law on Submissions states in Article 5 section 3 that:

*“An institution shall provide a reply on the merits within a reasonable period of time, taking into account the urgency of solving the issue referred to in the submission, but not later than within one month after receipt of the submission, unless otherwise provided by the law”.*

If the application is in response to an invitation to tender, then the deadlines will be stipulated in the terms and conditions of the tender.

The results of the tender must be published no later than 3 months after the deadline for applications. The results must be published in the official gazette as well as in a local newspaper if the tender was announced for regional or local broadcasting.

Linear AVMS already licensed or notified in another member state do not need a Latvian licence in order to be distributed via DTT. Nevertheless, they are required to notify the AVMS to the NEPLP and qualify as *“retransmission”*<sup>274</sup> as defined by Article 1 28° of the Electronic Mass Media Law.

The deadline imposed on an AVMS provider for the effective provision of its service is 15 months.

According to Article 15 section 5 of the Electronic Media Act, if the expected broadcasting area of transmission of the AVMS is fully or mainly the territory of another European Union Member State or European Convention on Transfrontier Television Member State, the NEPLP shall, prior to granting the licence, consult with the regulatory authority of the state concerned.

However, the regulatory framework regarding beauty contests remains theoretical since the digital switchover, as tenders are no longer needed to allocate scarce resources. In practice, all linear AVMS are licensed individually.

### Non-linear AVMS

Non-linear AVMS have to be notified to the NEPLP, indicating information about the AVMS provider; its personal ID number or company registration number and registered address; the name of the catalogue; the aim of the electronic mass medium's operation; the catalogue format, as well as other information which the applicant considers important; and information on the electronic communications network to be used for the distribution of the service.

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<sup>274</sup> *“The reception and immediate complete or partial distribution of a programme distributed in Latvia or other foreign states without making any changes to the content of the programme or broadcast. The translation (by dubbing or subtitling) of a programme or broadcast shall not be considered to be changes in the content if it is done with the consent of the holder of the rights of the programme.”*

**Table 140. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	NEPLP
<i>Via cable</i>	Individual licence	NEPLP
<i>Via IPTV</i>	Individual licence	NEPLP
<i>Via satellite</i>	Individual licence	NEPLP
<i>Via OTT</i>	Individual licence	NEPLP
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	NEPLP
<i>Via cable</i>	Notification	NEPLP
<i>Via IPTV</i>	Notification	NEPLP
<i>Via satellite</i>	Notification	NEPLP
<i>Via OTT</i>	Notification	NEPLP

Source: Latvian response to European Audiovisual Observatory standardised questionnaire

#### 4.21.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.21.4 above is applicable.

#### 4.21.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.21.4 above is applicable.

#### 4.21.7. Licence fee

The amount of the licence fee depends on the type of licence:

- commercial local TV channel: EUR 71.14;
- commercial regional TV channel: EUR 142.29;
- commercial Riga regional TV channel: EUR 1 422.87;
- commercial national TV channel: EUR 2 845.74;
- commercial transfrontier TV channel: EUR 2 845.74.



Non-commercial AVMS providers (public service media and community media) are exempt.

This amount is payable once for the whole duration of the licence and is meant to cover the administrative costs incurred; however, the beneficiary is not the NEPLP, it is the state budget.

## 4.21.8. Media ownership and concentration

Although there are no strict rules in the Electronic Mass Media Law about the transparency of ownership during the licensing or notification process, applicants are required to supply “information about the owners” on the form<sup>275</sup>, setting out the details of the service. Furthermore, Article 10<sup>2</sup> of the Press Law<sup>276</sup> states that if they are capital companies, the founders and owners of mass media have the duty to inform the Register of Enterprises about their ultimate beneficiaries in the circumstances and following the procedure prescribed by the Commercial Law. The Commercial Law requires commercial companies to disclose their beneficial owners to the Register of Enterprises. According to the Commercial Law, only law enforcement bodies and the control authorities in the field of tax administration, public procurement or public-private partnership are entitled to access information regarding the beneficial owners of a partnership and a capital company. Moreover, in November 2017, the Law on the Prevention of Money Laundering and Terrorism Financing was modified to ensure public access to information on the beneficial owners of all legal persons, including AVMS providers.<sup>277</sup>

Media concentration is taken into account during the licensing process as the procedure includes an initial market assessment. Article 14 of the Electronic Mass Media Law states that “*the abuse of a dominant position of an electronic mass medium is prohibited. Within the meaning of this Law, a situation when the market share of an electronic mass medium in Latvia in a particular market exceeds 35 per cent shall be considered as a dominant position*”. However, having more than such a market share does not mean in itself that the dominant position has been abused.

**Table 141. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Applicants are required to supply “information about the owners” on the form setting out the details of the service
Media concentration issues considered during the	Market assessment, but no thresholds

<sup>275</sup> <http://neplpadome.lv/lv/assets/documents/Normative%20Akti/Strategija/Stratēģija%204.doc> (in Latvian).

<sup>276</sup> <https://likumi.lv/doc.php?id=64879> (in Latvian).

<sup>277</sup> For further details, see <http://www.sorainen.com/UserFiles/File/Publications/Registration-of-beneficial-owners.2017-12-11.eng.html>.



## 4.21.9. Management of the licence and notification

Licences are granted for ten years and notifications have no limited term.

The licence can be renewed at the request of the licensee, including without issuing a tender for DTT, if, during its last year of operations, there has been no judgment by a court against the AVMS provider for a violation of the Electronic Mass Media Law.

Article 21 of the Electronic Mass Media Law details the conditions in which a licence can be suspended or revoked. The NEPLP can:

- annul a licence if the AVMS provider has ceased operations but has not returned its licence to the NEPLP or if it operates irregularly, thus failing to fulfil the principal conditions of its licence, except for technical reasons and then for not longer than three months;
- suspend the operations of an AVMS provider for up to seven days if, during a one-year period, it has repeatedly violated the law;
- revoke a licence if the AVMS provider: has been punished administratively on three occasions within one year for a serious violation of the law; has seriously violated the conditions of its licence; seriously fails to cover the reception area stipulated in its licence; fails to cease violations of the conditions of a licence within one month from the day it was warned; has repeatedly and seriously violated the relevant provision of its licence within one month from receiving a warning regarding the violation of the conditions of its licence; has been found guilty of crimes against the state or is the subject of an injunction or coercive measure regarding such crimes.

Other sanctions can be decided, such as a warning or an administrative fine, as provided for in the Code of Administrative Violations.

Modifications to the licence's conditions can be obtained upon prior consent of the NEPLP. However, the language and the format of the AVMS cannot be changed. Furthermore, if the AVMS wishes to change its coverage zone, another fee would apply and therefore a new licence would be needed.

In case of modifications to a linear service with a view to targeting different audiences, different linguistic versions shall be included in the licence.

**Table 142. Main issues regarding the management of the licence**

Issue	Description
Duration	10 years



Procedure to renew	At the request of the licensee
Procedure to suspend	Same as other sanctions
Procedure to revoke	Same as other sanctions
Procedure in case of termination of the provision of the service	No
Procedure in case of modifications in the licence conditions	Application to the NEPLP
Procedure in case of modifications to the service with a view to targeting different audiences	Different linguistic versions shall be included in the licence

Source: Latvian response to European Audiovisual Observatory standardised questionnaire

#### 4.21.10. Future amendments to the regulatory framework

An eventual review of the Press Law will raise the issue of the licensing or registration of internet media which are currently not obliged to register as media and are thus not bound by the same rules on the protection of minors or commercial communications as are the traditional electronic media.

The draft Public Service Media Law envisages a new and legally distinct Public Service Media Council that would take over the relevant administrative functions currently undertaken by the NEPLP, such as the appointment of the directors general and chief editors, financial oversight, drafting of the public service remit etc.<sup>278</sup>

#### 4.21.11. Video-sharing platforms

N/A.

#### 4.21.12. Applicable regulatory framework

- Primary legislation:
  - In Latvian – Elektronisko plašsaziņas līdzekļu likums (Electronic Mass Media Law):

<https://likumi.lv/doc.php?id=214039>

- In Latvian – Par presi un citiem masu informācijas līdzekļiem (Press Law):  
<https://likumi.lv/doc.php?id=64879>

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<sup>278</sup> The bill passed its first reading on 5 October 2017.



- In Latvian – Informācijas sabiedrības pakalpojumu likums (Law on Information Society Services):

<https://likumi.lv/doc.php?id=96619>

- In Latvian – Komerclikums (Commercial Law):  
<https://m.likumi.lv/doc.php?id=5490>
- In Latvian – Lesniegumu likums (Law on Submissions):  
<https://m.likumi.lv/doc.php?id=164501>
- In Latvian – Latvijas Administratīvo pārkāpumu kodekss (Code of Administrative Violations):  
<https://m.likumi.lv/doc.php?id=89648>
- In Latvian – Reklāmas likums (Law on Advertising):  
<https://m.likumi.lv/doc.php?id=163>
- In English - Law on Information Society Services:  
[http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Law\\_On\\_Information\\_Society\\_Services.doc](http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Law_On_Information_Society_Services.doc)
- In English - Commercial Law:

[http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The\\_Commercial\\_Law.doc](http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The_Commercial_Law.doc)

- In English – Law on Submissions:  
[http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Law\\_On\\_Submissions.doc](http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Law_On_Submissions.doc)
- In English - Code of Administrative violations:  
[http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Latvian\\_Administrative\\_Violations\\_Code.doc](http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Latvian_Administrative_Violations_Code.doc)
- In English - Law on Advertising:  
[http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Advertising\\_Law.pdf](http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Advertising_Law.pdf)

■ Secondary legislation:

- In Latvian – Procedure by which the National Electronic Mass Media Council publishes and organises a tender for the award of broadcasting rights:  
[http://neplpadome.lv/lv/assets/documents/Lemumi/Lemums196\\_konkursu%20maksa.pdf](http://neplpadome.lv/lv/assets/documents/Lemumi/Lemums196_konkursu%20maksa.pdf)
- In Latvian – Electronic registration system:  
<http://neplpadome.lv/lv/sakums/kabelu-operatori/elektroniskas-registresanas-sistemas-nolikums.html>

### 4.21.13. Data compilation

This factsheet was produced based on data compiled by Andris Mellakauls, Head of the Information Space Integration Division, Ministry of Culture.





## 4.22. MT – Malta – National Summary<sup>279</sup>

### 4.22.1. Summary

In Malta, access to the market is granted exclusively by the regulatory authority (Broadcasting Authority), except for public service media, which was created by the government. In certain instances, access to the market is not subject to any requirements.

The Broadcasting Authority is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Concerning access to DTT frequencies, the competent authority is the telecommunications regulatory authority (Malta Communications Authority).

Four systems are used:

- Licensing, which is applicable to non-public service linear AVMS and which is organised in the form of an individual licence.
- Notification, which is applicable to certain non-public service non-linear AVMS.
- Open system, which is applicable to certain non-public service non-linear AVMS.
- Public service, which is applicable to the public service company Public Broadcasting Services Ltd (hereinafter PBS). The law allows the government to create a public company with a mission to provide public broadcasting services and to grant licences to this company. If PBS needs DTT frequencies to make its services available to the public, it has direct access to these resources, having been designated by the Malta Communications Authority as the operator of the DTT multiplex.

**Table 143. Applicable systems**

System	Category
Licensing	Individual licence
Notification	N/A
Public service	Other agreements (government licence)
Open system	N/A

*Source: Maltese response to European Audiovisual Observatory standardised questionnaire*

<sup>279</sup> No remarks were received on the factsheet on Malta during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.



## 4.22.2. Functioning of the applicable systems

Pursuant to the Broadcasting Act,<sup>280</sup> non-public service linear AVMS have to be licensed by and most non-public service non-linear services have to be notified to the Broadcasting Authority.<sup>281</sup>

The licensing procedure is managed by the Broadcasting Authority. Licences are granted upon individual application, based on criteria determined in the Broadcasting Act.

Licences are granted for a maximum of eight years (usually between three years for distribution via satellite and five years for others). If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Court of Appeal<sup>282</sup> within 15 days of receiving the decision. The Court of Appeal shall deal with the appeal with urgency and its decision is final.

Non-linear AVMS have to be notified to the Broadcasting Authority, but some AVMS are exempt from such a notification requirement if the provider is not mainly active in the audiovisual sector. In that case, these AVMS benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority. No procedure exists in order to establish an inventory of these services.

The public service company PBS<sup>283</sup> is out of the scope of the licensing and notification systems. The PBS is a public company created by the government and its services are licensed by the government.

**Table 144. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Individual licence	Broadcasting Authority	Application to send to the Broadcasting Authority, who decides based on criteria mentioned in the Broadcasting Act
Notification	N/A	Broadcasting Authority	Notification to send prior to the launch of the service to the Broadcasting Authority, who acknowledges its receipt
Public service	Other agreements (government licence)	Government	The public service company PBS is created and licensed by the

<sup>280</sup> <http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoid=350&lid=1>.

<sup>281</sup> <http://www.ba-malta.org/>.

<sup>282</sup> <http://www.judiciarymalta.gov.mt/court-of-appeal>.

<sup>283</sup> <https://www.tvm.com.mt/mt/aghmel-kuntatt-maghna/>.



			government
Open system	N/A	None	None

Source: Maltese response to European Audiovisual Observatory standardised questionnaire

### 4.22.3. Application to public audiovisual media service providers

The Broadcasting Act allows the government to create a public company with a mission to provide public broadcasting services and to grant licences to this company.

This company (Public Broadcasting Services Ltd) has been created by the government and has been granted two television licences (TVM and TVM2). If PBS needs DTT frequencies to make its services available to the public, it has direct access to these resources, having been designated by the telecommunications regulatory authority (Malta Communications Authority) as the operator of the DTT multiplex.

**Table 145. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Other agreements (government licence)	Government
<i>Via cable</i>	Other agreements (government licence)	Government
<i>Via IPTV</i>	Other agreements (government licence)	Government
<i>Via satellite</i>	Other agreements (government licence)	Government
<i>Via OTT</i>	Other agreements (government licence)	Government
<i>Non-linear</i>		
<i>Via DTT</i>	Other agreements (government licence)	Government
<i>Via cable</i>	Other agreements (government licence)	Government
<i>Via IPTV</i>	Other agreements (government licence)	Government
<i>Via satellite</i>	Other agreements (government licence)	Government
<i>Via OTT</i>	Other agreements (government licence)	Government

Source: Maltese response to European Audiovisual Observatory standardised questionnaire

### 4.22.4. Application to private (commercial) audiovisual media service providers

#### Linear AVMS



All linear AVMS have to be licensed by the Broadcasting Authority upon the request of an applicant.

The Broadcasting Act details the criteria which have to be taken into consideration by the Broadcasting Authority:

*“11. (1) When issuing broadcasting licences, the Authority shall be guided by the following considerations : (a) that the principles of freedom of expression and pluralism shall be the basic principles that regulate the provision of broadcasting services in Malta; (b) that a diverse system of public and private stations with their own particular character, would be the best system for the realisation of the basic principles above referred to; (c) that private broadcasting services shall be allowed to operate in such a way so as to ensure a distribution of programming that appeals to general as well as specific and various interests. The Minister shall prepare and publish Government’s broadcasting policy and update it from time to time; (d) that no situation of monopoly or similar situation of a small group of persons or in favour of any station or group of stations should be allowed; and (e) that in granting licences to different persons, it shall also take into account the possibility of broadcasting by satellite, cable, digital terrestrial television, digital radio or through such other electronic communications networks as may be possible from time to time. [...]*

*(2) The Authority shall specifically consider: (a) that criteria for the assessment of applications for licences shall include: (i) economic potential and viability, (ii) quality of scheduled programming, and (iii) technological and broadcasting plans and projects; [...]*”

In practice, the Broadcasting Authority mainly assesses the applications on the promise of performance and on the financial projections of the applicant. Applicants are also required to submit a letter of intent from one of the two networks providers (Melita and Go) attesting that the AVMS would be carried on a specific network. If the service is meant to be distributed via satellite, the applicant also needs to submit a letter of proof of carriage via uplink.

The deadline obliging the Broadcasting Authority to respond to an application is four months. In practice, the Authority tends to fast track the award of licences, provided that applicants have paid the application fee, completed the necessary documentation and provided any additional information which the Authority may require.

The deadline imposed on an AVMS provider for the provision of its service is ninety days.

### Non-linear AVMS

For non-linear AVMS, a notification is required prior to the launch of the activity and *“shall contain the information that is required to enable the Authority to maintain a list of providers of on-demand audiovisual media services”* (Article 16O (1)). However, in its paragraph (4), the Broadcasting Act adds that the Broadcasting Authority *“may determine that any person providing an on-demand audiovisual media service of a particular class or description specified in such a decision shall not be subject to the requirements of subarticle (1).”*

In practice, the implementation of these provisions has led to the fact that only the non-linear service of the two main IPTV distribution companies is notified. The



companies offering some form of TV-like services but whose main operation is not in the audiovisual field are not required to notify to the Broadcasting Authority and therefore benefit from fully open access to the market.

**Table 146. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Individual licence	Broadcasting Authority
<i>Via cable</i>	Individual licence	Broadcasting Authority
<i>Via IPTV</i>	Individual licence	Broadcasting Authority
<i>Via satellite</i>	Individual licence	Broadcasting Authority
<i>Via OTT</i>	Individual licence	Broadcasting Authority
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	Broadcasting Authority
	Open system	Broadcasting Authority
<i>Via cable</i>	Notification	Broadcasting Authority
	Open system	Broadcasting Authority
<i>Via IPTV</i>	Notification	Broadcasting Authority
	Open system	Broadcasting Authority
<i>Via satellite</i>	Notification	Broadcasting Authority
	Open system	Broadcasting Authority
<i>Via OTT</i>	Notification	Broadcasting Authority
	Open system	Broadcasting Authority

Source: Maltese response to European Audiovisual Observatory standardised questionnaire

#### 4.22.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.22.4 above is applicable.

#### 4.22.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.22.4 above is applicable.



## 4.22.7. Licence fee

Linear AVMS shall pay an application fee and a yearly licence fee:

- The amount of the application fee is EUR 5 800, except for AVMS meant to be distributed via satellite (EUR 1 000).
- The amount of the yearly licence fee is EUR 13 976, except for AVMS distributed via satellite. The yearly licence fee for a satellite station varies according to the output of the station and is usually around EUR 3 550.

In certain instances, an administrative fee is also levied, especially if the AVMS airs in a foreign language other than English.

The fees are supposed to cover the administrative and monitoring costs. The beneficiary is the Broadcasting Authority.

## 4.22.8. Media ownership and concentration

There are no specific rules about the transparency of ownership during the licensing or notification process. However, the Broadcasting Authority asks for information relating to the applicant's other interests in the media, advertising and entertainment sectors in the application form. Also, given that every company shall be registered with the Register of Companies, the Broadcasting Authority would have access to the information regarding ownership.

Media concentration is avoided during the licensing process by Article 10 (6) of the Broadcasting Act according to which:

*Subject to the provisions of subarticle (2) and without prejudice to the provisions of subarticle (4D), the same organisation, person or company may concurrently own, control or be editorially responsible for more than one nationwide radio service and one nationwide television service, provided that: (a) only one nationwide radio service may be licensed on the FM frequency to the same organization, person or company; (b) not more than two generalist nationwide television services may be licensed to the same organization, person or company; (c) the same organisation, person or company may not own, control or be editorially responsible for more than one nationwide radio or television service predominantly transmitting news and current affairs.”*

**Table 147. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Not in theory, but data is available in practice
Media concentration issues considered during the licensing process	No provider can hold more than two generalist television licences and not more than one thematic television licence for news and current affairs.



Source: Maltese response to European Audiovisual Observatory standardised questionnaire

#### 4.22.9. Management of the licence and notification

Licences are granted for a maximum of eight years and notifications have no limited term.

A licence can be renewed at the request of the licensee. Such a request shall be submitted to the Broadcasting Authority no later than 12 months before the expiry of the licence.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the Broadcasting Authority. Sanctions have to be decided following a gradual approach and, pursuant to Article 41 (3) of the Broadcasting Act, “shall observe the guarantees of fair and public hearing in its determination as to whether a person is guilty of an administrative offence.” Other sanctions include warnings and administrative fines.

**Table 148. Main issues regarding the management of the licence**

Issue	Description
Duration	Eight years maximum
Procedure to renew	At the request of the licensee
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	No procedure in theory but in practice the Broadcasting Authority revokes the licence
Procedure in case of modifications in the licence conditions	Prior approval of the Broadcasting Authority
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Maltese response to European Audiovisual Observatory standardised questionnaire

#### 4.22.10. Future amendments to the regulatory framework

N/A.

#### 4.22.11. Video-sharing platforms

N/A.



## 4.22.12. Applicable regulatory framework

- Primary legislation:
  - In English – Broadcasting Act:  
<http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotolD=350&lid=1>
- Secondary legislation:
  - All the applicable secondary legislation is available via the link above. Especially relevant for the mapping is the Broadcast Distribution Services Regulations (350.33):  
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11966&l=1>

## 4.22.13. Data compilation

This factsheet was produced based on data compiled by Pierre Cassar, Freelance consultant.



## 4.23. NL – Netherlands – National Summary<sup>284</sup>

### 4.23.1. Summary

In the Netherlands, access to the market is granted exclusively by the regulatory authority (Commissariaat voor de Media, hereinafter CvdM)<sup>285</sup> concerning content, except for public service media, which was created by law.

The CvdM is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Concerning access to DTT frequencies, the competent authority is the Radiocommunications Agency (*Agentschap Telecom*), which grants frequencies to network operators in the form of an auction.

Three systems are used:

- Licensing, which is applicable to all non-public service linear AVMS, and which takes the form of a formal licence.
- Notification, which is applicable to all non-public service non-linear AVMS.
- Public service, which is, at national level, applicable to the public service media Nederlandse Publieke Omroep (hereinafter NPO).<sup>286</sup> The missions of the NPO are prescribed in law, and a concession granted by the government to the NPO and a performance agreement between the Ministry of Education, Culture and Science and the NPO based thereon, details how this concession should be managed. The DTT frequencies necessary to make its services available to the public are guaranteed by law and granted by the Radiocommunications Agency.

**Table 149. Applicable systems**

System	Category
Licensing	Formal licence
Notification	N/A
Public service	Law & contract <sup>287</sup>

Source: Dutch response to European Audiovisual Observatory standardised questionnaire

<sup>284</sup> The factsheet on the Netherlands incorporates the feedback received from members of the *Commissariaat voor de Media* (Dutch Media Authority - CvdM) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>285</sup> <https://www.cvd.nl/>.

<sup>286</sup> <https://www.npo.nl/>.

<sup>287</sup> The exact term is “concession”, but for the purpose of this mapping we will use the word “contract”.



## 4.23.2. Functioning of the applicable systems

According to the Media Act,<sup>288</sup> all non-public service linear AVMS have to be licensed by and non-linear AVMS have to be notified to the CvdM.

Licences are granted for 5 years and notifications have no limited term. If the licence is not granted, the applicant has the opportunity to file an objection proceeding with the CvdM (internal appeal proceeding) within six weeks of receipt of the decision. The CvdM has to reach a decision on the objection within six weeks; this term can be extended for another six weeks if necessary (12 weeks if the CvdM asks an independent advisory body to advise on the matter). These terms can be extended with the consent of the applicant. If the applicant is not satisfied with the outcome of this internal appeal proceeding, it has the possibility of lodging an appeal with the District Court<sup>289</sup> within six weeks of receiving the decision. Decisions of the District Court can be appealed to the Administrative Jurisdiction Division of the Council of State.<sup>290</sup>

Access to DTT frequencies is left to private negotiations between the AVMS providers and the operator of the DTT multiplexes, which is chosen by the Radiocommunications Agency<sup>291</sup> following an auction organised under the terms of the Radiocommunications Act.

The public service media NPO is out of the scope of the licensing and notification systems. The NPO was created by the Media Act and a concession granted by the government to the NPO and a performance agreement between the Ministry of Education, Culture and Science and the NPO based thereon, details how this concession should be managed.

**Table 150. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Formal licence	CvdM	Application to send to the CvdM, who decides based on formal criteria mentioned in the Media Act
Notification	Notification	CvdM	Notification to send prior to the launch of the service to the CvdM, who acknowledges its receipt
Public service	Law & contract	Parliament and Government	The public service media NPO was created by law and a concession with

<sup>288</sup> <http://wetten.overheid.nl/BWBR0025028/2017-02-01>.

<sup>289</sup> <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken>.

<sup>290</sup> <https://www.raadvanstate.nl/onze-werkwijze/bestuursrechtspraak/algemene-kamer-hoger-beroep.html>.

<sup>291</sup> <https://www.agentschaptelecom.nl/radiocommunications-agency>.



			the Government details how this concession should be managed
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Source: Dutch response to European Audiovisual Observatory standardised questionnaire

### 4.23.3. Application to public audiovisual media service providers

The missions of the NPO are prescribed in the Media Act.

The term of the activities of the NPO is limited to the duration of the concession.

Pursuant to the Media Act, a concession for the entirety of national public broadcasting (NPO, NOS, NTR and *omroepverenigingen* – that is to say, public service broadcasting associations) is granted by the Minister of Education, Culture and Science to the NPO, as the governing body, for a period of 10 years. The concession details the assignment of the public service remit and the modalities of the cooperation between the public service broadcasters under the umbrella of the NPO.

The Dutch approach to public service media is unique within the European Union, especially when it comes to the specific role of the public service broadcasting associations; the latter have the legal status of private associations, but their purpose is not to make profit. Each of them has hundreds of thousands of members and is considered to represent certain groups and interests and thus together present a full, balanced picture of Dutch society. In addition to the *omroepverenigingen*, the public service remit is also performed by two public service providers (NOS and NTR) who have a specific legal task (for example, the provision of news).

The concession period of 10 years is divided into two periods. Every five years, the NPO releases its policy plan (*Concessiebeleidsplan*). On that occasion, the NPO submits a new plan for its programme policy regarding TV, radio and services offered via OTT. The CvdM and the Council for Culture (a body established by law to advise the Dutch Government and Parliament on arts, culture and media policies) submit their comments regarding these NPO plans to the government (Minister of Education, Culture and Science), which subsequently enters into a performance agreement with the NPO for the duration of the policy plan. Furthermore, once every five years, the functioning of all the national public service providers is evaluated by an independent evaluation committee.

This system is technologically neutral. The DTT frequencies necessary to make its services available to the public are guaranteed by the Telecommunications Act and granted by the Radiocommunications Agency.

Regarding regional and local public AVMS providers, a decision by the CvdM assigns them to perform the public remit on a regional and local level respectively for five years. In order to be assigned as such, these AVMS shall satisfy the following requirements:

- the applicant must be a legal person with full legal capacity;



- its exclusive or, at least, principal objective, as laid down in its constitution, must be to provide a media service at local or regional level that shall be aimed at satisfying the social, cultural, religious or spiritual needs of the general public in a municipality or province or in the area of the province served by the establishment to such an extent that it may be deemed to be serving the public interest;
- pursuant to its constitution, it must have a body which determines its programme service policy. This body shall be composed in such a way as to be representative of the main social, cultural, religious and other spiritual movements within the municipality or province.

The provincial executive or the municipal executive respectively shall advise the CvdM as to the fulfilment of these criteria.

With regard to regional public AVMS providers, in 2016, the legislator introduced a concession system in the Media Act. The Regional Public Broadcast Organisation (RPO) was assigned as the governing body of the regional public media service providers. In 2016, a bill was prepared to regulate the relation between the RPO and the regional public media service providers in more detail. However, the State Secretary in charge chose not to send the bill to parliament.

The main difference with the national concession system is that national public AVMS providers are financed by the NPO, whereas the regional public AVMS providers are financed through the CvdM - by the Minister of Education, Culture and Science. The funding of local AVMS providers is ensured by the municipalities.

**Table 151. Access to market by public service providers (at national level)**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government
<i>Non-linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government

Source: Dutch response to European Audiovisual Observatory standardised questionnaire

For regional and local services, decision from the CvdM



#### 4.23.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

The procedure takes the form of a formal licensing, in the sense that the CvdM does not have the opportunity to refuse access to the market to the natural or legal person who notifies, as long as the formal criteria are met.

The applicant shall submit a signed application in writing which shall contain:

- if the application is submitted by a natural person: proof of registration in the municipal personal records database (GBA), an indication of the type of programming (radio or television) and the name of the AVMS;
- if the application is submitted on behalf of a legal person: a recent certificate of registration in the register of companies of the chamber of commerce; a description of the organisational and legal structure and an overview of its directors and shareholders (if present); a copy of the statutes of the establishment (if present); an indication of the type of programming offered (radio or television); and the name of the AVMS).

The only two possible grounds for rejection are the following:

- the information provided is incorrect or incomplete;
- the applicant may be expected to breach the regulations stipulated in the Media Act.

The deadline obliging the CvdM to respond to an application is eight weeks. If the CvdM requires more information in order to reach a decision, the applicant will receive a request to supplement the application. The eight-week term is suspended until the moment the CvdM has received the requested information.

Having a licence does not entitle the AVMS provider to have access to any distribution platforms. Providers wishing to have the AVMS distributed via DTT have to negotiate access with the networks operators which have been licensed by the Radiocommunications Agency in the form of an auction (KPN/Digitenne and Mobiele TV Nederland).

There is no deadline imposed on an AVMS provider for the provision of its service.

##### Non-linear AVMS

A notification is required within two weeks of the launch of the activity. The notification form<sup>292</sup> shall contain the name of the AVMS provider; the launching date; the way in which the public gets access to the service; whether or not the service is protected and if so in

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<sup>292</sup> Form available at <https://www.cvdm.nl/praktisch/commerciele-mediadienst-op-aanvraag-aanmelden/formulier/>.



what way; a description of the nature of the AVMS and the target audience; and whether or not the applicant has editorial responsibility for the choice of the content of the audiovisual media service and if he determines the manner in which it is organised.

**Table 152. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence	CvdM
<i>Via cable</i>	Formal licence	CvdM
<i>Via IPTV</i>	Formal licence	CvdM
<i>Via satellite</i>	Formal licence	CvdM
<i>Via OTT</i>	Formal licence	CvdM
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	CvdM
<i>Via cable</i>	Notification	CvdM
<i>Via IPTV</i>	Notification	CvdM
<i>Via satellite</i>	Notification	CvdM
<i>Via OTT</i>	Notification	CvdM

Source: Dutch response to European Audiovisual Observatory standardised questionnaire

#### 4.23.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.23.4 above is applicable.

The case of public regional/local AVMS providers is detailed in section 4.23.3 above.

#### 4.23.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.23.4 above is applicable.



## 4.23.7. Licence fee

Linear AVMS providers shall pay an annual licence fee for each of their services. The amount depends on the average duration of the programming per day, the market share, and the number of households that can receive the AVMS. The amounts are adjusted to the annual consumer price index.

Tariff groups		A	B	C	D	E	F
<b>Households</b>		< 25 000	25 001 - 50 000	50 001 - 100 000	100 001 - 500 000	> 500 000	> 500 000
<b>Market share</b>		< 0.3%	< 0.3%	< 0.3%	< 0.3%	< 0.3%	> 0.3%
<b>Hours of broadcasting</b>	below 12 hours	EUR 400	EUR 800	EUR 1 600	EUR 3 200	EUR 6 400	EUR 12 800
	above 12 hours	EUR 800	EUR 1 600	EUR 3 200	EUR 6 400	EUR 12 800	EUR 25 600

Non-linear AVMS providers shall pay an annual notification fee of EUR 200 for each of their services.

The fees are paid yearly and are meant to cover the administrative costs incurred. The beneficiary is the CvdM.

## 4.23.8. Media ownership and concentration

There are no rules about transparency of ownership during the licensing or notification process, however, the CvdM asks for a description of the organisational and legal structure of the applicant in the application form. Besides, the Mediamonitor of the CvdM provides insights into the public information supply and particularly into the effects of media concentration on the diversity and independence of that information supply. The Mediamonitor publishes an annual report on the Dutch media landscape, media concentration, ongoing trends, as well as an analysis of particular issues related to media pluralism on an incidental basis.<sup>295</sup>

**Table 153. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Not in theory, but data available in practice
Media concentration issues considered during the licensing process	No

Source: Dutch response to European Audiovisual Observatory standardised questionnaire

<sup>295</sup> <http://www.mediamonitor.nl/english/about-the-mediamonitor>.



## 4.23.9. Management of the licence and notification

Licences are granted for five years and notifications have no limited term.

An application for renewal shall be submitted at least five months prior to the expiration of the licence. The same procedure as for the initial licence applies.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the CvdM, but only for linear AVMS. Sanctions have to be decided following a gradual approach and, in case of suspension or revocation, can only be decided after having notified the intention to do so and after having held a hearing of the AVMS provider concerned. The CvdM shall revoke a licence if the AVMS provider does not pay the licence fee and may revoke it if an application proves to be inaccurate or if the AVMS provider fails to comply with the obligations laid down by or pursuant to the Media Act.

There is no specific procedure for linear AVMS regarding the termination of the service, but since they have to pay a licence fee, they would notify the termination in order to avoid continuing to pay such a fee. Non-linear AVMS providers shall notify the termination of a service within two weeks of its termination.

If an AVMS provider wishes to change the name of its service, it shall submit a written request to the CvdM.

In case of modifications to the service with a view to targeting different audiences, the CvdM would consider that different linguistic versions and different programming or advertising windows constitute different AVMS (which therefore have to be licensed accordingly).

**Table 154. Main issues regarding the management of the licence**

Issue	Description
Duration	5 years
Procedure to renew	Same as for the initial licence
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to the CvdM
Procedure in case of modifications in the licence conditions	Prior approval by the CvdM
Procedure in case of modifications to the service with a view to targeting different audiences	Different linguistic versions as well as different programming and advertising windows have to be licensed or notified accordingly

Source: Dutch response to European Audiovisual Observatory standardised questionnaire



#### 4.23.10. Future amendments to the regulatory framework

N/A.

#### 4.23.11. Video-sharing platforms

N/A.

#### 4.23.12. Applicable regulatory framework

- Primary legislation:
  - In Dutch - Mediawet (Media Act):  
<http://wetten.overheid.nl/BWBR0025028/2017-02-01>
  - in Dutch - Telecommunicatiewet (Telecommunications Act)  
[http://wetten.overheid.nl/BWBR0009950/2017-07-01#Hoofdstuk3\\_Paragraaf3.5\\_Artikel3.10](http://wetten.overheid.nl/BWBR0009950/2017-07-01#Hoofdstuk3_Paragraaf3.5_Artikel3.10)
- Secondary legislation:
  - Regeling van de Minister van Onderwijs, Cultuur en Wetenschap van 18 december 2008, nr. WJZ/84447 (8240), houdende uitvoeringsregels van de Mediawet 2008 (Decision of the Minister of Education, Culture and Science implementing rules of the Media Act):  
<http://wetten.overheid.nl/BWBR0025040/2017-04-01>
  - Beleid ten aanzien van alle commerciële media-instellingen - landelijk, regionaal en lokaal (Policy on all commercial AVMS - national, regional and local):  
  
<https://www.cvdm.nl/regelgeving/beleidsregels-cvdm/beleid-ten-aanzien-van-alle-commerciele-media-instellingen-landelijk-regionaal-en-lokaal/>
  - Besluit tot veilen vergunningen digitale ethertelevisie en vaststelling voorschriften en beperkingen vergunningen (Decision to the auctioning of digital terrestrial television and regulatory requirements and restraints licences):  
  
<http://wetten.overheid.nl/BWBR0037843/2016-04-21>

#### 4.23.13. Data compilation

This factsheet was produced based on data compiled by Louise Doorman, Independent legal advisor.



## 4.24. PL – Poland – National Summary<sup>294</sup>

### 4.24.1. Summary

In Poland, access to the market is granted exclusively by the regulatory authority (National Broadcasting Council - *Krajowa Rada Radiofonii i Telewizji*, hereinafter KRRiT)<sup>295</sup>, except for public service media, which was created by law. In certain instances, access to the market is not subject to any requirements.

The KRRiT is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Four systems are used:

- Licensing, which is applicable to non-public service linear AVMS distributed via DTT, cable and satellite, and which takes the form of a beauty contest/auction or an individual licence.
- Notification, which is applicable to AVMS distributed via IPTV or OTT (public and non-public).
- Open system, which is applicable to non-linear AVMS (public and non-public).
- Law, which is partly applicable to the public service media *Telewizja Polska* (hereinafter TVP). The missions of the TVP are prescribed in law, but some of its services require a licence by or a notification to the KRRiT. The DTT frequencies necessary to make its services available to the public are granted by the telecommunications regulatory authority (Office of Electronic Communication – hereinafter UKE) in agreement with the KRRiT.

**Table 155. Applicable systems**

System	Category
Licensing	Beauty contest/auction Individual licence
Notification	N/A
Public service	Law
Open system	N/A

Source: Polish response to European Audiovisual Observatory standardised questionnaire

<sup>294</sup> The factsheet on Poland incorporates the feedback from members of the *Krajowa Rada Radiofonii i Telewizji* (National Broadcasting Council – KRRiT) during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>295</sup> <http://www.krrit.gov.pl/>.



## 4.24.2. Functioning of the applicable systems

According to the Broadcasting Act,<sup>296</sup> non-public service linear AVMS distributed via DTT, cable and satellite have to be licensed by and all linear services distributed via IPTV or OTT have to be registered to KRRiT.

All non-linear AVMS benefit from fully open access to the market, with no obligation of any kind to signal their existence to the competent authority. However, once they have launched their activity, they shall submit annual reports to the KRRiT on compliance with their legal obligations. In order to facilitate the fulfilment of this obligation, the KRRiT has developed a self-logging platform for non-linear AVMS providers.<sup>297</sup>

Licences are granted for ten years and notifications have no limited term. If the licence is not granted, the applicant has the opportunity to submit an application to reconsider the matter to the Chairman of the KRRiT within 14 days of receipt of the decision. If the applicant is not satisfied with the outcome of this internal appeal proceeding, it has the possibility of lodging an appeal with the Voivodship Administrative Court within thirty days of receiving the decision of the Chairman of the KRRiT and then with the Supreme Administrative Court within thirty days of the date of receipt of the Administrative Court's decision.

It should be highlighted that the act also regulates the activity of retransmission which is defined as *“the reception of a transmitted, complete and unchanged programme service and its simultaneous, secondary transmission”* (Article 4 section 8).

The public service media TVP is only partly out of the scope of the licensing and notification systems: some of its services have to be licensed by or notified to the KRRiT. The missions of the TVP are prescribed in the Broadcasting Act. The DTT frequencies necessary to make its services available to the public are granted by the UKE in agreement with the KRRiT.

**Table 156. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest/auction Individual licence	KRRiT	Application to send to the KRRiT, who decides based on criteria mentioned in the Broadcasting Act
Notification	N/A	KRRiT	Notification to send prior

<sup>296</sup> In Polish: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19930070034>.

In English: [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/angielska/ustawa-o-radiofonii-i-telewizji-2016-eng.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/ustawa-o-radiofonii-i-telewizji-2016-eng.pdf).

<sup>297</sup> <https://www.krrit.gov.pl/dla-nadawcow-i-operatorow/audiowizualne-uslugi-medialne-na-zadanie/platforma-do-logowania-dla-dostawcow-uslug-na-zadanie/>.



			to the launch of the service to the KRRiT
Public service	Law	Parliament	The public service media TVP was created by law but some of its services need to be licensed by or notified to the KRRiT
Open system	N/A	KRRiT	Self-logging platform on the KRRiT's website

Source: Polish response to European Audiovisual Observatory standardised questionnaire

### 4.24.3. Application to public audiovisual media service providers

The missions of the TVP are prescribed in the Broadcasting Act.

Its AVMS are submitted to a hybrid regime: the linear AVMS which are distributed via DTT, cable, IPTV and satellite do not require a licence, unless they are thematic. The linear AVMS which are distributed via OTT and non-linear AVMS are submitted to the same regime as private AVMS, that is to say, notification for linear AVMS and open system for non-linear.

Regarding DTT frequencies, Article 26 section 5 of the Broadcasting Act states that “acting in agreement with the Chairman of the National Council, the President of the Office of Electronic Communications shall reserve, by a decision, the frequencies required for the companies to perform their statutory tasks and shall lay down the conditions of use of these frequencies.” Article 26 section 6 of the act adds that “acting in agreement with the Chairman of the National Council, the President of the Office of Electronic Communications shall allocate to companies producing and transmitting:

- 1) *national television programme services - the frequencies required to cover the territory of the country by the programme services transmitted by the “Polish Television I” and “Polish Television II” channels,*
- 2) *national radio programme services - the frequencies required to cover the territory of the country by programme services transmitted on the first, second, third and fourth channels and frequencies needed to transmit radio programme services for listeners abroad,*
- 3) *regional television programme services - the frequencies required to transmit regional television programme services,*
- 4) *regional radio programme services - the frequencies required to transmit regional radio programme services.”*

Article 26 section 7 adds that the service TV Polonia Channel shall be transmitted by satellite.

There is no limited term to the activities of the TVP.

**Table 157. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law	Parliament & UKE & KRRiT
<i>Via cable</i>	Law	Parliament & KRRiT
<i>Via IPTV</i>	Law	Parliament & KRRiT
<i>Via satellite</i>	Law	Parliament & KRRiT
<i>Via OTT</i>	Notification	KRRiT
<i>Non-linear</i>		
<i>Via DTT</i>	Open system	KRRiT
<i>Via cable</i>	Open system	KRRiT
<i>Via IPTV</i>	Open system	KRRiT
<i>Via satellite</i>	Open system	KRRiT
<i>Via OTT</i>	Open system	KRRiT

Source: Polish response to European Audiovisual Observatory standardised questionnaire

#### 4.24.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

Linear AVMS have to be licensed by the KRRiT, except those which are distributed via OTT or exclusively via IPTV which have to be notified to the Chairman of the KRRiT.

The licensing procedure for distribution via DTT takes the form of a beauty contest and potentially an auction. It is initiated by an announcement by the Chairman of the KRRiT concerning the potential award of a licence. The announcement is published in the Official Journal of the Republic of Poland and on the KRRiT's website after obtaining the opinion of the President of the UKE. The announcement of the publication is also posted in two printed national daily newspapers, not later than 14 days after the date of publishing.

Pursuant to Article 34 (1a) of the Broadcasting Act, the announcement shall specify the following information:

- “1) subject of the procedure,*
- 2) programming conditions of transmission of the programme service, including in particular the type and nature of the programme service,*
- 3) frequencies or channels as well as the maximum radiated power and location of transmitters intended for transmission of the programme service or the area over which the frequencies may be used, unless the transmission of the programme service does not require reservation of frequency;*



- 4) number of broadcasting licences,
- 5) period for which the broadcasting licence may be awarded,
- 6) time-limit and location for filing applications.”

The deadline for submitting an application shall not be shorter than forty-five days. Applications submitted after this deadline or which are not in line with the conditions provided in the announcement in terms of the object of the procedure, the specification of the programme nature or the technical conditions, are rejected.

Applications shall be submitted in a specific form which is detailed in a specific regulation of the KRRiT (Regulation of 4 January 2007 concerning the contents of an application for awarding a licence and detailed procedures for awarding and revoking licences to transmit and retransmit radio and television programme services).<sup>298</sup>

Pursuant to Article 36 of the Broadcasting Act, the application shall be assessed by paying particular attention to the following criteria:

- the degree of conformity of the intended programming activity with the tasks specified in Article 1 section 1 of the act (information delivery; the making available of cultural assets and art; facilitating access to education and scientific achievements; the dissemination of citizenship education; providing entertainment; promoting national audiovisual creation), as well as the extent to which those tasks are covered by other broadcasters operating in the licence area concerned;
- the applicant's capacity to undertake necessary investments and programme funding;
- the estimated proportion in the programming of shows produced or ordered by the broadcaster or coproduced with other broadcasters;
- the estimated proportion in the television programming of shows referred to in Article 15 sections 1 and 3 of the Act (shows initially produced in the Polish language and European shows), or of works referred to in Article 15 section 2 (music & lyrical works performed in the Polish language) in the radio and television programming;
- past compliance with the applicable regulations.

However, pursuant to Article 36 section 2 of the Act, the licence shall not be granted “if transmission of a programme service by the applicant could result in:

- a threat to the interests of the national culture, transgression of the standards of public decency and proper conduct, danger to national security and defence or a threat to the security of classified information, or
- achievement, by the applicant, of a dominant position in mass media in the given area.”

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<sup>298</sup> Available at : [http://www.krrit.gov.pl/Data/Files/iwojciechowska/rozp\\_ujed\\_zawartosc-wniosku\\_2013\\_ang.pdf](http://www.krrit.gov.pl/Data/Files/iwojciechowska/rozp_ujed_zawartosc-wniosku_2013_ang.pdf) (in Polish)



Pursuant to Article 36a of the Act, if in proceedings regarding the awarding of a DTT licence it follows from an assessment of the applications that a licence may be awarded to more than one provider, the KRRiT shall launch a tender. The tender shall be announced if the number of applicants is still higher than the number of licences after their applications have been evaluated, in accordance with Article 36 of the Broadcasting Act. In this case, the KRRiT will select the number of offers corresponding to the number of licences, based on the criterion of the amounts declared by the applicants. If applicants declare the same amount, the KRRiT shall request the applicants to declare another amount and shall select the offer of the applicant who makes the highest bid.

Once the final decision of the KRRiT has been adopted, the licence is forwarded to the President of the UKE, who issues a decision approving the technical aspects.

The licensing procedure for linear AVMS distributed via cable and satellite follows the same procedure, except that there is no announcement and therefore no beauty contest. The procedure therefore takes the form of an individual licence.

There is no specific deadline obliging the KRRiT to respond to an application. However, as a general rule, the Polish Code of Administrative Procedure states that an application shall be decided within one month at the latest (if the matter is especially complex, no later than within two months of the last day for filing applications). Where an authority fails to dispose of a matter within such a deadline, it shall notify the parties, indicating the reasons for the delay and appointing a new deadline to dispose of the matter.

The deadline imposed on an AVMS provider for the provision of its service is determined in the licence.

Linear AVMS distributed via OTT<sup>299</sup> and exclusively via IPTV have to be notified to the KRRiT prior to the launch of the service. This also applies to the retransmission of other AVMS. The notification shall “1) specify the broadcaster, its seat or place of residence, mailing address, including electronic mail address, that ensures effective and fast contact, 2) contain basic information on the programme service intended for transmission, 3) specify the manner of transmission of the programme service” (Article 44a section 3). The activity can be launched if the KRRiT has not refused the notification within one month, on the condition of payment of the fee. The aforementioned rules of the Code of Administrative Procedure also apply to the notification procedure.

### Non-linear AVMS

The same regime applies to all non-linear AVMS, whatever their status (public, private, regional, community). It is detailed in section 4.24.2 above.

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<sup>299</sup> Article 41 of the Broadcasting Act talks about “television programme services transmitted exclusively in an information and communications technology system.”.

**Table 158. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest/auction	KRRiT
<i>Via cable</i>	Individual licence	KRRiT
<i>Via IPTV</i>	Notification	KRRiT
<i>Via satellite</i>	Individual licence	KRRiT
<i>Via OTT</i>	Notification	KRRiT
<i>Non-linear</i>		
<i>Via DTT</i>	Open system	None (but self-logging platform on KRRiT's website)
<i>Via cable</i>	Open system	None (but self-logging platform on KRRiT's website)
<i>Via IPTV</i>	Open system	None (but self-logging platform on KRRiT's website)
<i>Via satellite</i>	Open system	None (but self-logging platform on KRRiT's website)
<i>Via OTT</i>	Open system	None (but self-logging platform on KRRiT's website)

Source: Polish response to European Audiovisual Observatory standardised questionnaire

#### 4.24.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.24.4 above is applicable.

#### 4.24.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.24.4 above is applicable, but the Broadcasting Act doesn't envisage the existence of community AMS providers. Instead, the category of so-called "social broadcaster" is foreseen by Article 39b of the Act and can be granted to associations, foundations or churches.



## 4.24.7. Licence fee

The issue of the licence fee is addressed in a specific regulation of the KRRiT (Regulation of 4 December 2012 concerning the amounts of the fees for awarding a licence to transmit radio and television programme services and the method of calculating the fees).<sup>300</sup>

By October 31 of each year at the latest, the Chairman of the National Broadcasting Council shall announce the value of fees for the following year in the Official Journal of the Republic of Poland.

The amount of the fees for 2018 has been established as follows:

- for an AVMS distributed via terrestrial means: 27 089 562 PLN;
- for an AVMS distributed via satellite: 10 464 PLN;
- for an AVMS distributed via other means: 2 093 PLN.

Pursuant to Article 42 of the Broadcasting Act, a yearly fee (105 PLN for 2018) is due for each notified AVMS.

The amount of the fee for terrestrial broadcasting is calculated by using the following criteria:

- for programme services transmitted by means of analogue terrestrial diffusion, the number of inhabitants covered by the programme service;
- for programme services transmitted by means of digital terrestrial diffusion in multiplex: (a) in the case of granting a licence for coverage less than the range of the Polish national multiplex signal, which is deemed to cover the territory of the whole country – the number of inhabitants covered by the programme service, (b) the standard of the terrestrial digital television service, and (c) in the case of a change in the licence for the transmission of the programme service by way of terrestrial diffusion consisting in granting the right to transmit a digital programme service, the number of inhabitants covered by the analogue programme service;
- the time at which advertisements are broadcast;
- proportionally, until the expiry of the licence in the case of a change in the licence which affects the value of the broadcasting fee.

The so-called social broadcasters are exempt, provided that they:

- propagate learning and educational activities; promote charitable deeds; respect the Christian system of values; are guided by the universal principles of ethics; and strive to preserve national identity;
- do not broadcast programmes harmful for minors;
- do not broadcast commercial communications;
- do not charge any fees for transmission, retransmission or reception.

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<sup>300</sup> Available at [http://www.krrit.gov.pl/Data/Files/iwojciechowska/rozp\\_oplaty\\_22122012\\_ang.pdf](http://www.krrit.gov.pl/Data/Files/iwojciechowska/rozp_oplaty_22122012_ang.pdf)



The fees are also reduced for broadcasters that do not broadcast any commercial communication (20%), that do not broadcast more than three minutes of commercial communication per hour (50%) or that do not broadcast more than six minutes of commercial communication per hour (75%).

The beneficiary is the state budget.

#### 4.24.8. Media ownership and concentration

The transparency of ownership of licensed AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence.

Media concentration is avoided during the licensing process by Article 36 section 2 of the Broadcasting Act according to which:

*“The broadcasting licence shall not be awarded if transmission of a programme service by the applicant could result in [...] achievement, by the applicant, of a dominant position in mass media in the given area.”*

According to Article 4 item 10 of the Competition and Consumer Protection Act, dominant position “shall mean an undertaking’s market position which allows it to prevent effective competition in a relevant market by enabling it to act to a significant degree independently of its competitors, contracting parties and consumers; it is assumed that an undertaking holds a dominant position if its market share in the relevant market exceeds 40%.”

There is an ongoing public debate on potential modifications to the rules regarding media ownership and concentration (see section 4.24.10 below for further details).

**Table 159. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence
Media concentration issues considered during the licensing process	No licence can be granted if it leads to achieving a dominant position

Source: Polish response to European Audiovisual Observatory standardised questionnaire

#### 4.24.9. Management of the licence and notification

Licences are granted for ten years and notifications have no limited term. Notification of retransmitted linear AVMS is valid for a term agreed with the broadcaster.

A licence can be renewed at the request of the licensee. Such a request shall be submitted to the KRRiT no later than 12 months before the expiry of the licence. The renewal can only be refused if a final decision has been issued prohibiting the broadcaster from running business operations covered by the broadcasting licence and/or if the



broadcaster blatantly violates the conditions set forth in the Broadcasting Act or its broadcasting licence. A simplified procedure applies: the renewal application shall indicate only the licence which is to expire as well as the manner of paying the licence fee.

Revocation is among the administrative sanctions that can be decided by the KRRiT. The conditions for revocation are detailed in Article 38 of the Broadcasting Act, according to which:

*“1. The broadcasting licence shall be revoked if:*

- 1) a final decision has been issued prohibiting the broadcaster to run business operations covered by the broadcasting licence,*
- 2) the broadcaster blatantly violates the conditions set forth in the Act or broadcasting licence,*
- 3) the activity covered by the broadcasting licence are run in breach of the Act or the terms of the broadcasting licence, and the broadcaster, despite having been requested by the Chairman of the National Council, has not eliminated the state of facts or the legal status in compliance with the conditions set forth in the broadcasting licence or the Act within a prescribed time-limit,*
- 4) despite having been requested by the Chairman of the National Council, the broadcaster has not commenced to transmit the programme service within the time limit set in the broadcasting licence, or has permanently ceased to transmit it via all or some transmitters – unless the broadcaster proves that the delay in commencing transmission of the programme service or cessation of programme service transmission resulted from circumstances beyond its control. Permanent cessation of programme service transmission shall be deemed to mean non-transmission of the programme service for the period of three consecutive months.*

*2. The broadcasting licence may be revoked if:*

- 1) the transmission of the programme service threatens the interests of the national culture, security and defence or if it transgresses the standards of public decency,*
- 2) (repealed),*
- 3) by transmitting the programme service the broadcaster gains a dominant position in mass media on the given relevant market as defined in regulations on protection of competition and consumers,*
- 4) another person takes over direct or indirect control over the operations of the broadcaster.”*

The revocation procedure is detailed in the Regulation of 4 January 2007 concerning the contents of an application for awarding a licence and detailed procedures for awarding and revoking licences to transmit radio and television programme services. The Chairperson of the KRRiT shall notify the broadcaster of the initiated proceeding and shall make public the information on the initiation of the proceeding by posting such information in the Public Information Bulletin.



In the cases covered by Article 38 section 1 3) and 4) of the Broadcasting Act, the Chairperson of the KRRiT shall request that the broadcaster eliminates the factual or legal circumstances that are inconsistent with the terms set forth in the licence or in the Broadcasting Act, or that it starts broadcasting the AVMS on the date determined in the licence. The Chairperson of the KRRiT may request that the broadcaster furnishes materials or documents and provide explanations to the extent necessary for purposes of controlling the compliance of its activities with the Broadcasting Act and the licence conditions.

The conditions for the removal of a registered AVMS from the register are detailed in Article 45 of the Broadcasting Act, according to which:

*“The registering authority shall remove a retransmitted programme service from the register, if:*

*1) contents in serious breach of provisions of Article 18 paragraphs 1, 4 and 5 were inserted at least twice in the said programme service during the last 12 months,*

*2) the operator, without the broadcaster’s approval, introduces changes to the programme service or does not retransmit it complete or simultaneously.”*

Pursuant to Article 18 paragraphs 1, 4 and 5 of the Broadcasting Act, *“(1) programmes or other broadcasts may not promote actions contrary to law and Poland’s raison d’Etat or propagate attitudes and beliefs contrary to the moral values and social interest. In particular, they may not include contents inciting to hatred or discriminating on grounds of race, disability, sex, religion or nationality, (4) transmission of programmes or other broadcasts threatening the physical, mental or moral development of minors, in particular those containing pornography or exhibiting gratuitous violence is prohibited, and (5) programmes or other broadcasts containing scenes or contents which may have an adverse impact upon a healthy physical, mental or moral development of minors, other than those referred to in paragraph 4, may be transmitted only between 11 p.m. and 6 a.m.”*

The termination of the provision of the service, as well as any other change in the type and scope of the activity of a licensed or notified AVMS, shall be notified to the KRRiT within 14 days from the date of that change.

Modifications to the licence conditions require prior approval from the KRRiT. If technical issues should be at stake, the UKE also has to issue a decision on the technical aspects (that is to say, for DTT). If necessary, the licence fee is adapted according to the new situation. Notified AVMS providers shall notify to the KRRiT within 14 days of any changes to the information provided in the notification.

**Table 160. Main issues regarding the management of the licence**

Issue	Description
Duration	10 years
Procedure to renew	Simplified procedure
Procedure to suspend	Not possible
Procedure to revoke	Specific revocation procedure



Procedure in case of termination of the provision of the service	Notification to the KRRiT
Procedure in case of modifications in the licence conditions	Prior approval from the KRRiT
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Polish response to European Audiovisual Observatory standardised questionnaire

#### 4.24.10. Future amendments to the regulatory framework

The Polish Government is working on legislation concerning the de-concentration of the Polish media which would deal with the issue of the foreign ownership of media outlets. The government was planning to submit proposed new legislation to parliament (Sejm) in autumn 2017, but according to recent information, the work on such legislation has been suspended.<sup>301</sup>

#### 4.24.11. Video-sharing platforms

N/A.

#### 4.24.12. Applicable regulatory framework

- Primary and secondary legislation:
  - In Polish - Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji (Broadcasting Act): <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19930070034>
  - In Polish - Ustawa z dnia 17 lutego 2006 roku o ochronie konkurencji i konsumentów (Competition and Consumers Protection Act): [https://www.uokik.gov.pl/ochrona\\_konkurencji\\_php](https://www.uokik.gov.pl/ochrona_konkurencji_php)
  - In English - Broadcasting Act: [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/angielska/ustawa-o-radiofonii-i-telewizji-2016-eng.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/ustawa-o-radiofonii-i-telewizji-2016-eng.pdf)
  - In English - Competition and Consumers Protection Act: [https://www.uokik.gov.pl/competition\\_protection.php](https://www.uokik.gov.pl/competition_protection.php)
  - Links to all the relevant primary and secondary legislation are available at the following pages:
    - In Polish: <http://www.krrit.gov.pl/regulacje-prawne/polska/>

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<sup>301</sup> <https://www.wprost.pl/kraj/10082794/pis-ma-problem-z-dekoncentracja-mediow-ustawa-na-razie-odlozona.html> (in Polish)



- In English: <http://www.krrit.gov.pl/en/for-broadcasters-and-operators/legal-regulations/>

#### 4.24.13. Data compilation

This factsheet was produced based on data compiled by Krzysztof Kowalczyk, Attorney at law, Partner at BSJP Brockhuis Jurczak Prusak Sp. k.



## 4.25. PT – Portugal – National Summary<sup>302</sup>

### 4.25.1. Summary

In Portugal, access to the market is granted exclusively by the regulatory authority (Regulatory Authority for the Media - Entidade Reguladora para a Comunicação Social, hereinafter ERC)<sup>303</sup>, except for public service media, which was created by law.

The ERC is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Three systems are used:

- Licensing, which is applicable to most non-public service linear AVMS and which is organised in the form of a beauty contest or of an individual licence.
- Notification, which is applicable non-public service linear AVMS distributed exclusively via OTT and to all non-public service non-linear AVMS.
- Public service, which is applicable to the public service media Rádio e Televisão de Portugal (hereinafter RTP). The missions of the RTP are prescribed in law and a public service contract between the RTP and the government details the scope of its offer and the obligations of both parties. The regulatory framework does not directly grant pre-emption for public service television channels, although in practice the four television channels of the RTP are available on one multiplex.

**Table 161. Applicable systems**

System	Category
Licensing	Beauty contest Individual licence
Notification	N/A
Public service	Law & contract

Source: Portuguese response to European Audiovisual Observatory standardised questionnaire

### 4.25.2. Functioning of the applicable systems

Pursuant to the Television and On-demand Audiovisual Services Law,<sup>304</sup> non-public service linear AVMS distributed via DTT, cable, IPTV and satellite have to be licensed by and non-

<sup>302</sup> The factsheet on Portugal incorporates the feedback from members of the *Entidade Reguladora para a Comunicação Social* (Regulatory Authority for the Media – ERC) during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>303</sup> <http://www.erc.pt/>



public service linear AVMS distributed exclusively via OTT and all non-public service non-linear AVMS have to be notified to ERC.

The licensing procedure is managed by ERC. Licences meant for distribution via DTT are granted via a beauty contest launched by the government (Minister responsible for Media Affairs) and based on criteria defined in the law, and licences meant for distribution via other means take the form of an individual licence whose procedure is ruled by a governmental ordinance to regulate the request for television activity.<sup>305</sup>

Licences are granted for 15 years and notifications have no limited term. If the licence is not granted, the applicant has the opportunity to lodge an appeal with the Administrative Court within 30 days of receiving the decision.<sup>306</sup>

Non-public service non-linear AVMS have to be notified to ERC according to a procedure ruled by the Television and On-demand Audiovisual Services Law.

The public service media RTP<sup>307</sup> is out of the scope of the licensing and notification systems. The missions of RTP are prescribed in the Television and On-demand Audiovisual Services Law and a public service contract between RTP and the government details the scope of its offer and the obligations of both parties.<sup>308</sup> The regulatory framework does not directly grant pre-emption for public service television channels, although in practice four television channels of RTP are available on one multiplex (the two historical channels and, pursuant to a decision of the parliament, two additional channels).

**Table 162. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest or formal licence	ERC	Licence granted by ERC on the basis of a set of criteria determined by law and additional criteria established by the Minister responsible for Media Affairs
Notification	N/A	ERC	Notification to send to ERC prior to the launch of the service
Other	Law & contract	Parliament & Government	The public service media RTP was created by the Act and a contract with the Government details

<sup>304</sup> [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=923&tabela=leis&so\\_miolo](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=923&tabela=leis&so_miolo) (in Portuguese)

<sup>305</sup> <http://www.erc.pt/documentos/Portaria%201199-2007.pdf> (in Portuguese).

<sup>306</sup> <https://www.taf.mj.pt/>.

<sup>307</sup> <http://www.rtp.pt/>.

<sup>308</sup> Contract available at <http://media.rtp.pt/empresa/informacao/contrato-de-concessao-publica-radio-etelevisao/> (in Portuguese).



			the scope of its offer and the obligations of both parties
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Source: Portuguese response to European Audiovisual Observatory standardised questionnaire

### 4.25.3. Application to public audiovisual media service providers

The missions of RTP are prescribed in the Television and On-demand Audiovisual Services Law.

In addition to this law, a public service contract of 16 years between RTP and the government details the scope of its offer and the obligations of both parties. The latest contract was signed in 2015 and shall be reviewed within 4 years.

**Table 163. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government
<i>Non-linear</i>		
<i>Via DTT</i>	Law & contract	Parliament & Government
<i>Via cable</i>	Law & contract	Parliament & Government
<i>Via IPTV</i>	Law & contract	Parliament & Government
<i>Via satellite</i>	Law & contract	Parliament & Government
<i>Via OTT</i>	Law & contract	Parliament & Government

Source: Portuguese response to European Audiovisual Observatory standardised questionnaire

### 4.25.4. Application to private (commercial) audiovisual media service providers

All linear AVMS have to be licensed by ERC, except AVMS distributed via OTT, which have to be notified.

Licences meant for distribution via DTT are granted in the form of a beauty contest. The launch of the public tender is decided by the government (Minister



responsible for Media Affairs) in a governmental ordinance. Pursuant to Article 15 section 2 of the Television and On-demand Audiovisual Services Law, the tender shall “*identify the intended geographical area of coverage, type of programming and number of broadcasting hours.*”

All applications are assessed by ERC in two stages. The first stage (Article 15 section 3) consists in identifying the formal conditions for the admission of applications and the accompanying documentation in order to verify the compliance of candidates and projects with legal and regulatory requirements. All candidates are accepted if they conform with the requirements for television broadcasting; the rules on the concentration of ownership; the match between the proposal and the tender’s intentions; the economic and financial viability of the proposal; the requirements in terms of coverage; the adequacy of technical and human resources; and the fulfilment of fiscal and social security obligations.

The second stage (Article 15 section 4) consists in evaluating the content of the application considering the following aspects (whose weighting is determined by the ordinance): the quality in terms of the programming or news services (evaluating issues such as pluralism, independence, whether it is in adequacy with the social-cultural context it targets); the contribution to the general offer of programming services (originality and the response to social issues, such as minorities representation); the contribution to the dissemination of European, independent and Portuguese works and human resources policy.

However, in practice, since the liberalisation of the television market in the 1990s which led to the licensing of two commercial analogue AVMS (SIC and TVI), no other broadcaster has been licensed. A public tender for another commercial AVMS was launched in 2008, but ERC decided that none of the applicants fulfilled all the obligations and no licence was granted. In 2016, pursuant to the law to increase the DTT offer, the government authorised two new public free-to-air channels. This law also provides that two new commercial AVMS may be launched, but that depends on a public tender which is still to be announced.

Linear AVMS distributed via cable, IPTV or satellite also need a licence, but following a procedure of individual licence. The documentation to be provided under this procedure is determined by the Minister responsible for Media Affairs in the Ordinance to regulate the request for television activity authorization.

The deadline obliging ERC to respond to an application is 15 days. If ERC requires more information in order to reach a decision, the applicant receives a request to supplement the application, and also has 15 days to respond. The decision to license (beauty contest) is taken within ninety days and the decision to license (formal licence) is taken within thirty days.

The deadline imposed on an AVMS provider for the provision of its service is 12 months.

Linear AVMS distributed via OTT (provided, pursuant to Article 13 section 8, that they are distributed “*exclusively via the Internet and not subject to retransmission through other networks*”) and non-linear AVMS have to be notified to ERC. The notification procedure is ruled by the Decree for the registration of operators, according to which the



relevant information to be provided includes the identification and headquarters of the AVMS provider; the name of the AVMS; the capital share and the list of stakeholders; the identification of the board members; the identification of the editorial directors for programming and information; and the type and content of programming.

**Table 164. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	ERC
<i>Via cable</i>	Individual licence	ERC
<i>Via IPTV</i>	Individual licence	ERC
<i>Via satellite</i>	Individual licence	ERC
<i>Via OTT</i>	Notification	ERC
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	ERC
<i>Via cable</i>	Notification	ERC
<i>Via IPTV</i>	Notification	ERC
<i>Via satellite</i>	Notification	ERC
<i>Via OTT</i>	Notification	ERC

Source: Portuguese response to European Audiovisual Observatory standardised questionnaire

#### 4.25.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.25.4 above is applicable.

#### 4.25.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.25.4 above is applicable.

#### 4.25.7. Licence fee

Different types of fees are due:



- “Regulation fees” are paid annually to ERC in order to cover its regulation and monitoring activities. Licensed AVMS providers pay annually 562 count units (EUR 57 324) for general programme services with national coverage and 148 count units (EUR 15 096) for thematic, regional, local coverage and international coverage. A count unit is a legal measure indexed to the minimum wage and was worth EUR 102 in 2017.
- The “Spectrum Right to Use Fees” are paid annually to ANACOM. For each MHz of spectrum, national coverage operators pay EUR 45 000; if frequencies are given for part of the country, the value of the fee is proportional to the percentage of population covered. Annually, a governmental decision transfers part of this revenue to ERC (EUR 1 000 000 in 2016).
- The “Municipal Fee for Rights of Way” may be required on distributors annually by each municipality and represents up to 0.25% of the revenues generated within its borders.
- The notification of an AVMS costs 0.10 count units. Granting or renewing a licence costs 2 809 count units (for national coverage), 449 count units (for regional coverage) and 112 (for local coverage). Granting or renewing an authorisation costs 281 count units. The beneficiary of those fees is ERC.

The only exempt AVMS is the Parliament Channel, which is not subject to the Television and On-demand Audiovisual Services Law. Other public service media are subject to the fees.

## 4.25.8. Media ownership and concentration

In application of a specific law on the transparency of media ownership, the transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying.

Media concentration is avoided during the licensing process by Article 4b of the Television and On-demand Audiovisual Services Law according to which:

*“1 - Television operators are subject to the general regime governing the assurance and promotion of competition.*

*2 - Concentration operations between television operators which are subject to the intervention of the authority regulating competition are to be submitted to a prior opinion of Entidade Reguladora para a Comunicação Social (Regulatory Authority for the Media), which opinion will be binding where there is deemed to be a risk to free expression and to the exchange of different views and opinions.*

*3 - It is prohibited for any natural or legal person to hold, either directly or indirectly, including through a relationship of control, a number of licenses for national unrestricted free-to-air television programme services exceeding 50% of all the licenses granted to similar programme services in the same area of coverage.*



4 - *The practice of legal acts which entail changes to the control of providers pursuing the television activity under license are prohibited except where a period of not less than three years has elapsed following the original granting of the license, where a period of not less than two years has elapsed following modification of the approved project and where a period of not less than one year has elapsed following the most recent renewal; such acts are additionally subject to authorisation being given by Entidade Reguladora para a Comunicação Social (Regulatory Authority for the Media).*

5 - *Entidade Reguladora para a Comunicação Social (Regulatory Authority for the Media) will decide thereon, subsequent to having heard interested parties and within a period of 30 working days following verification and consideration of the initial conditions determining the award of the title and the interests of the potential audience of the programme services provided, ensuring that the conditions which gave basis to the decision on the original project or on subsequent alterations are safeguarded.*

6 - *The provisions of the preceding paragraphs shall apply, mutatis mutandis, to legal persons which are not corporations, including legal persons which are associations, cooperatives or foundations and which pursue the television activity, whereas Entidade Reguladora para a Comunicação Social (Regulatory Authority for the Media) shall, where the requisites for performance of the operation are fulfilled, undertake the respective alterations to the title under which pursuit of the activity is authorised.”*

**Table 165. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	No AVMS can hold more than 50% of the licences granted in the same coverage area

Source: Portuguese response to European Audiovisual Observatory standardised questionnaire

## 4.25.9. Management of the licence and notification

Licences are granted for 15 years and notifications have no limited term.

A licence can be renewed at the request of the licensee. Such a request shall be submitted to ERC between 240 and 180 days before the term of the licence. If the licensee uses frequencies, ANACOM is responsible for the renewal. The renewal shall only be granted in case of the recognised performance of the obligations and conditions to which the AVMS provider is bound. The Television and On-demand Audiovisual Services Law foresees a periodic evaluation mechanism. By the end of the 5<sup>th</sup> and 10<sup>th</sup> years after the licence is granted, ERC elaborates and makes publicly available a report in which the compliance of AVMS providers with their obligations is assessed. During this process, the parties involved are heard and recommendations are made for the following years. The reports are taken into account in the decision to renew a licence.



The suspension and revocation of a licence are among the administrative sanctions that can be decided by ERC. Sanctions have to be decided following a gradual approach. The suspension of a licence may happen when there is infringement of Articles 77 and 81 of the Television and On-demand Audiovisual Services Law (respect of the coverage area, of the limits of minimum shared capital, of external funding, of the licence conditions, of programming obligations, etc.). The revocation of a licence may happen in the same circumstances, in case of two infringements of the same gravity, or in case of lack of compliance with decisions issued by the court (namely regarding the right of reply) and with decisions issued by ERC with respect to the right to airtime, the right of reply and of political response.

Pursuant to Article 25 (8) of the Television and On-demand Audiovisual Services Law, prior notification by the AVMS distributor to the consumers (thirty days in advance) is required when changes are made to the contract conditions, which would include the case of the termination of the distribution of a service. Also, in case of the termination of the provision of an AVMS which is distributed via DTT, prior notification by the AVMS provider to ANACOM (15 days in advance) is required pursuant to Article 21 (7) of the Electronic Communications Law.

Modifications to the licence conditions require prior approval by ERC and are only possible when a certain period has elapsed since the granting of the licence (three years in the case of a beauty contest and one year in the case of an individual licence). ERC shall issue a decision within ninety days of receipt of the request.

**Table 166. Main issues regarding the management of the licence**

Issue	Description
Duration	15 years
Procedure to renew	At the request of the licensee
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to the consumers by the distributor
Procedure in case of modifications in the licence conditions	Prior approval of the ERC
Procedure in case of modifications to the service with a view to targeting different audiences	No

*Source: Portuguese response to European Audiovisual Observatory standardised questionnaire*

## 4.25.10. Future amendments to the regulatory framework

N/A.



## 4.25.11. Video-sharing platforms

N/A.

## 4.25.12. Applicable regulatory framework

### ■ Primary legislation:

- In Portuguese - Lei da Televisão e dos Serviços Audiovisuais a Pedido (Television and On-demand Audiovisual Services Law): [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=923&tabela=leis&so\\_miolo](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=923&tabela=leis&so_miolo)
- In Portuguese - Lei das Comunicações Eletrónicas (Electronic Communications Law): [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=1439&tabela=leis&so\\_miolo](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1439&tabela=leis&so_miolo)
- In Portuguese - Lei nº33/2016 de 24 de agosto alarga a oferta de serviços de programas na televisão digital terrestre (TDT), garantindo as condições técnicas adequadas e o controlo do preço (Law to increase DTT offer): <https://dre.pt/application/file/a/75194328>
- In Portuguese - Lei nº78/2015 de 29 de julho Regula a promoção da transparência da titularidade, da gestão e dos meios de financiamento das entidades que prosseguem atividades de comunicação social e altera a Lei de Imprensa, a Lei da Televisão e a Lei da Rádio (Law on Transparency of Media Ownership):

<https://dre.pt/application/file/a/69889623>

### ■ Secondary legislation:

- In Portuguese - Ordinance to regulate the request for television activity authorization:

<http://www.erc.pt/documentos/Portaria%201199-2007.pdf>

- In Portuguese - Regulatory Decree for the registration of operators: <http://www.gmcs.pt/pt/decreto-regulamentar-n-899-de-9-de-junho-registo-dos-orgaos-de-comunicacao-social>

## 4.25.13. Data compilation

This factsheet was produced based on data compiled by Mariana Lameiras, Researcher at the United Nations University Operating Unit on Policy-Driven Electronic Governance (UNU-EGOV) and the University of Minho, and Elsa Costa e Silva, Professor, University of Minho.



## 4.26. RO – Romania – National Summary<sup>309</sup>

### 4.26.1. Summary

In Romania, access to the market is granted exclusively by the regulatory authority (National Audiovisual Council - Consiliul Național al Audiovizualului, hereinafter CNA)<sup>310</sup>, in cooperation with the telecommunications regulatory authority (National Authority for Management and Regulation in Communications, hereinafter ANCOM)<sup>311</sup>.

The CNA is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Two systems are used:

- Licensing, which is applicable to linear AVMS providers and which is organised either in the form of a beauty contest or of an individual licence.
- Notification, which is applicable to non-linear AVMS providers.

The same systems apply to the public service media Televiziunea Română (hereinafter TVR)<sup>312</sup>, except for the beauty contest.

**Table 167. Applicable systems**

System	Category
Licensing	Beauty contest Individual licence
Notification	N/A

Source: Romanian response to European Audiovisual Observatory standardised questionnaire

### 4.26.2. Functioning of the applicable systems

According to the Audiovisual Law,<sup>313</sup> linear AVMS have to be licensed by and non-linear AVMS have to be registered with the CNA.

<sup>309</sup> The factsheet on Romania incorporates the feedback received from members of the *Consiliul Național al Audiovizualului* (National Audiovisual Council - NAC) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>310</sup> <http://www.cna.ro/>.

<sup>311</sup> <http://www.ancom.org.ro/>.

<sup>312</sup> <http://www.tvr.ro/>.

<sup>313</sup> [http://www.cna.ro/IMG/pdf/LEGEA\\_AUDIOVIZUALULUI\\_CU\\_MODIFICARILE\\_LA\\_ZI.pdf](http://www.cna.ro/IMG/pdf/LEGEA_AUDIOVIZUALULUI_CU_MODIFICARILE_LA_ZI.pdf) (in Romanian)  
<http://www.cna.ro/The-Audio-visual-Law.1655.html> (in English).



The licensing procedure is managed by the CNA. The CNA has to grant licences meant for distribution via DTT based on criteria defined in a specific decision of the CNA<sup>314</sup> (beauty contest), and a technical licence from ANCOM is also necessary for the multiplex operator. The only exception to this system is for TVR, which benefits from pre-empted access to one multiplex in the conditions detailed in section 4.26.3 below.

Licences meant for distribution via other means are granted via an individual licensing procedure.

Licences are granted for 9 years. If the licence is not granted, there is no opportunity to lodge an appeal.

Non-linear AVMS have to be notified with the CNA.

**Table 168. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest or Individual licence	CNA	Application to send to the CNA, who decides based on criteria mentioned in its own prior decision
Notification	N/A	CNA	Notification to send prior to the launch of the service to the CNA, who acknowledges its receipt

*Source: Romanian response to European Audiovisual Observatory standardised questionnaire*

### 4.26.3. Application to public audiovisual media service providers

The same procedure as the one described in section 4.26.4 below is applicable.

The only exception is for the beauty contest, since according to Article 52 section 4 of the Audiovisual Law, “the audiovisual analogue or digital licences for radio-broadcasting and television public services shall be granted without competition”. The law does not specify which services are covered by those licences, therefore, in the absence of specific provisions, it can be assumed that a licence is required for each service, be it linear or non-linear.

If the TVR needs DTT frequencies to make its services available to the public, it can benefit from the fact that, according to Government Decision N°403/2013 for the approval of the Strategy on the transition from analogue terrestrial to digital terrestrial

<sup>314</sup> <http://www.cna.ro/Decizie-Nr-277-din-6-iunie-2013.html> (in Romanian).



television and the implementation of digital multimedia services at national level, ANCOM has to pre-empt one multiplex for the distribution of the services of TVR.<sup>315</sup>

**Table 169. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Individual licence	CNA
<i>Via cable</i>	Individual licence	CNA
<i>Via IPTV</i>	Individual licence	CNA
<i>Via satellite</i>	Individual licence	CNA
<i>Via OTT</i>	Individual licence	CNA
<i>Non-linear</i>		
<i>Via DTT</i>	Individual licence & notification	CNA
<i>Via cable</i>	Notification	CNA
<i>Via IPTV</i>	Notification	CNA
<i>Via satellite</i>	Notification	CNA
<i>Via OTT</i>	Notification	CNA

Source: Romanian response to European Audiovisual Observatory standardised questionnaire

#### 4.26.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

Licences are granted to linear AVMS providers distributed via DTT in the form of a beauty contest.

The criteria which have to be used are not mentioned in the Audiovisual Law but are left to the full discretion of the CNA, which has to adopt a specific decision for this purpose. The law simply mentions that the applicants have the obligation to hand in notary declarations issued at the moment of applying for the licence, by means of which the applying trade company, as well as each associate or shareholder holding more than 20% of the company's social capital or voting rights of an audiovisual licensee, shall declare on their own responsibility whether they are investors or direct or indirect shareholders in other audiovisual communications trade companies, mentioning the precise percentage they hold in those companies' social capital, and submitting tax

<sup>315</sup> <http://legislatie.just.ro/Public/DetaliiDocument/149467> (in Romanian).



certificates showing that, at the date of application for the licence, the company requesting the granting of or modification to the licence does not register outstanding debts to the state budget.

According to the decision of the CNA on the procedure for organising such a beauty contest, the CNA has to organise a hearing of the applicants and then has to grant the licence based on *“the observance of the legal provisions in the audiovisual field, in particular as regards: a) Fundamental human rights and the protection of minors; b) Political and social pluralism, cultural, linguistic and religious diversity; c) Correct information, education and entertainment of the public; d) Promoting culture and protecting the Romanian language, culture and languages of national minorities; e) Practices that hinder free competition”*. In making its decision, the CNA shall also take into account the following criteria: *“a) Program service structure; b) Program coverage area in analogue terrestrial system, relative to the multiplex coverage area; c) The annual audience index measured according to the procedure set out in art. 45 of the Broadcasting Law and communicated to CNA by ARMA (the Association for the Measurement of TV Audiences), in the case of multiplexes with national coverage; d) The situation of exploitation of other licences held by the applicant, if applicable; e) The experience in the audiovisual field, the situation of the sanctions applied, the reporting to them and the measures taken regarding the entry into force, where appropriate; f) The day-to-day broadcasting of program services, and, within it, the share of news, information, reports, interviews, debates on events in the economic, social, cultural and political life of the community in the program service coverage area Local and regional television”* (Article 6 of the decision).

Article 13 further details that *“(1) after the hearing of the applicants, the Council shall decide on the granting of the digital audiovisual licence, taking into account the following criteria: a) Respect for public interest; b) Ensuring a balanced relationship between national, regional and local program services, except for the 9 to 9 year extension of audiovisual licences, according to the law; c) Avoiding abuses of dominant position and practices that hinder free competition; d) The editorial strategy, in relation to the CNA strategy of covering the national territory with audiovisual program services provided in art. 68 of the Audiovisual Law; e) The offer of programs and their content, presented in the editorial project”* and that *“(2) The Council shall also decide to grant or extend the validity of the audiovisual licence, taking into account the following criteria for assessing the structure and format of the program service: a) Respect for fundamental human rights and the protection of minors; b) Respect for political and social pluralism, cultural, linguistic and religious diversity, information, education and entertainment for the public; c) Promoting culture and protecting the Romanian language, culture and languages of national minorities; d) The total daily broadcasting time of the program service, the genre, the timetable and the duration of the broadcast and redistribution of the broadcasts; e) Providing technical means of access for people with visual or hearing deficiencies; f) The situation of exploitation of other licences held by the applicant or the shareholders of the applicant company, as the case may be; g) The experience in the audiovisual field, the situation of the sanctions applied, the reporting to them and the measures taken regarding the entry into force, where appropriate; h) The percentage allocated to local programs in the case of regional and local audiovisual broadcasts broadcast by terrestrial radio electric power”*.



Finally, Article 14 also stresses that the CNA “shall also take into account the applicant's commitments regarding the percentages reserved for European works, under the conditions specified in Article 22 and 24 of the Audiovisual Law.”

In case of distribution via DTT, the licensee is entitled to broadcast the AVMS on the multiplex specified in the licence. The multiplex operator shall hold a technical licence issued by ANCOM.

Linear AVMS already licensed or notified in another member state would need a Romanian licence in order to be distributed via DTT.

In the case of distribution via other means, licences are granted by the CNA by individual decision, at the request of the applicants. The procedure is specified in Decision N°277/2013 of the CNA.

The deadline obliging the CNA to respond to an application is, as a common administrative rule, thirty days. The deadline imposed on an AVMS provider for the effective provision of its service is twelve months (with the possibility for the CNA to grant two successive extensions of six months each in justified cases).

#### Non-linear AVMS

Non-linear AVMS have to be notified to the CNA at least 7 days in advance of the beginning of the activity, indicating information about the name, legal status and social headquarters of the AVMS provider; the name of the legal representative and the structure of the shareholders to the level of the natural and legal person, as associate or shareholder having a larger share than 20% of the social capital or of the voting rights of a company holding an audiovisual licence; and the names of the persons in charge of the trade company management and of those that are mainly in charge of the editorial responsibility.

Moreover, non-linear AVMS distributed via DTT shall apply for a digital terrestrial broadcasting licence, granted by CNA. After obtaining this licence, the aforementioned notification procedure applies.

**Table 170. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	CNA
<i>Via cable</i>	Individual licence	CNA
<i>Via IPTV</i>	Individual licence	CNA
<i>Via satellite</i>	Individual licence	CNA
<i>Via OTT</i>	Individual licence	CNA
<i>Non-linear</i>		
<i>Via DTT</i>	Individual licence & notification	CNA



<i>Via cable</i>	Notification	CNA
<i>Via IPTV</i>	Notification	CNA
<i>Via satellite</i>	Notification	CNA
<i>Via OTT</i>	Notification	CNA

Source: Romanian response to European Audiovisual Observatory standardised questionnaire

#### 4.26.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.26.4 above is applicable.

#### 4.26.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.26.4 above is applicable.

#### 4.26.7. Licence fee

There is no licence fee.

The licence fee for the use of DTT is imposed on the multiplex operators by ANCOM, not on AVMS providers by the CNA.

#### 4.26.8. Media ownership and concentration

The transparency of ownership of licensed AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence. This data is verified by notarial statements when the applicant requests the licence. Also, Article 43 section 5 of the Audiovisual Law states that any natural or legal person holding or acquiring a quota equal to or more than 10% of the capital or voting rights of one commercial company holding a licence or of a company controlling a company holding a licence is required to notify this situation to the CNA within one month.

Media concentration is avoided during the licensing process by the following articles of the Audiovisual Law:

- Article 44:



“(1) With a view to protecting pluralism and cultural diversity, ownership concentration and the extension of the audience in the audio-visual field are limited to dimensions ensuring economic efficiency, but not generating dominant positions in forming of public opinion.

(2) For the purpose of this Law and in order to establish the market share of the program services, it is considered that: a) the market of national coverage television programmes comprises all the program services transmitted at national level by radio-broadcasters under the jurisdiction of Romania, including public television service programmes; b) the market of national coverage sound radio-broadcasting programmes comprises all program services transmitted at national level by radio-broadcasters under the jurisdiction of Romania, including the public radio-broadcasting service programmes; c) the market for regional or local radio and/or television program services includes all program services in the respective area; d) program services with significant importance in shaping public opinion are generalist programmes, news, analysis and debates on latest political and/or economical topics; e) the relevant market covers all radio and television services mentioned at point d) broadcast in a certain geographical area; f) the audience share or the market share shall represent the share provided to a certain program service, established under the conditions stipulated by art. 45.

(3) During the procedure for evaluating the dominant position in shaping public opinion of a natural or legal person, the program services stipulated in par. 2, point d) it shall be taken into account. The program services stipulated in par (2), point d) provided by this person, either as an audiovisual licence holder, for which it holds directly or indirectly a percentage of more than 20% of the capital or of the voting rights of a company holding an audiovisual licence shall be considered during the evaluation of the dominant position.

(4) During the procedure of evaluating the dominant position in shaping public opinion, family relationship connections, in keeping with the legislation in force in the field of trade, economy and finance shall be taken into account and evaluated.

(5) For the purpose of the present law, by family is understood the relationship to spouse, kin and in-laws, up to the second kinship.

(6) A natural or legal person shall be deemed to hold a dominant position in shaping public opinion, in case the average market share of its services surpasses 30% of the relevant market.

(7) The establishing of the market share of each national, regional or local program service is performed annually by establishing the average market share registered during the respective year for the entire broadcasting duration.

(8) The average market share of program services covered by a natural or legal person represents the sum of market shares of each program service in par. 3, multiplied by the capital share or voting right held by the respective person.

(9) The Council initiates the procedure for the evaluation of the dominant position in shaping public opinion by a natural or legal person in case there are serious reasons to believe that the dominant position may have been reached, according to par. (6) provisions.



(10) In case the Competition Council identifies by decision an anti-competition practice (an agreement or an abuse of dominant position), or authorises an economic concentration in the field of audiovisual media services respectively, the Council shall act according to the provisions of par. (9).

(11) Upon the Council's request the institute appointed in keeping with art. 45 provisions, shall unfold ad-hoc measurements, required by the procedure for the evaluation of the pre-averaged position in forming public opinion. Program services not included in the audience measurement system, which should be included in the evaluation process, shall be submitted to ad-hoc measurement for a three-month period; in case the market share surpass accepted is confirmed, provisions of art. 46 apply.

(12) For the purpose of the present law: a) the national audiovisual licence shall provide the right to broadcast the same program in a geographical area covering a potential audience of over 60% for radio and 70% for television of the country's censed population; b) the regional audiovisual licence shall entitle the broadcasting of the same program on the territory of one or more counties without reaching the coverage stipulated in point a); c) the local audiovisual licence is the licence which has a geographical coverage area that is smaller than that stipulated for a regional licence, serving a unique local community; d) the audiovisual licences granted for Bucharest, that are not part of a national or regional radio or television network shall be deemed to be local licences.

(13) Situations stipulated in par. 12, a) and b) that do not fall in the case of initial grant of national/regional licence, but are the result of accumulation of local licences, shall be taken into account by the Council as such, or upon the express request of the licence owner, with the adequate modification of the licence data".

■ Article 45:

"(1) The measurement of audiences and market shares shall be accomplished in compliance with the international standards and practices by specialized institutions assigned by tender.

(2) The tender shall be organized by a commission composed of 5 representatives of radio-broadcasters, 5 representatives of advertising agencies and 5 representatives of the Council.

(3) The first tender shall be organized within maximum one year after the date of entry into force of this Law and the following tenders shall be organized every four years.

(4) The Council shall benefit for free of the results of measurements".

■ Article 46:

"(1) Should the case arise when a natural or legal person holds a dominant position in shaping public opinion that surpasses the rating accepted in keeping with art. 44 (6), the Council shall summon broadcasters with a majority position in



shaping it, so as to abide by the accepted rating and to the time compliance which should be fulfilled.

(2) By the time the summon expires, a new evaluation shall be made and should the situation in which the rating continue to be surpassed, the Council shall decide upon the precise ways to diminish some of the participation quotas or the number of licences held, in keeping with the natural or legal person's choice, within a three-month period.

(3) In case, even after this latter term expires, the dominant position persists for the licence for which the natural or legal person holds the largest participation share, then conditions for applying provisions of art. 57, par. 1, c) shall be deemed to be fulfilled.

(4) Broadcasters shall cooperate in establishing the rating by providing all information required by the Council. Refusal to communicate the required information or false data shall lead to applying provisions of art. 57, par. 1 c)".

**Table 171. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Relevant data has to be provided when applying for a licence or notifying
Media concentration issues considered during the licensing process	No licence can be granted above a certain audience threshold

*Source: Romanian response to European Audiovisual Observatory standardised questionnaire*

## 4.26.9. Management of the licence and notification

Licences are granted for nine years and notifications have no limited term.

The licence can be renewed at the request of the licensee, under the conditions established by the CNA.

Articles 57, 57<sup>1</sup> and 95<sup>1</sup> of the Audiovisual Law details the conditions under which a licence can be revoked by the CNA (Article 95<sup>1</sup> also applies to notifications from non-linear services):

- Article 57:

“1) The analogue audio-visual licence shall be withdrawn by the Council under the following circumstances:

a) the licence holder does not start to broadcast the program service under the terms established by the licence, within 12 months since the date of obtaining the audio-visual licence; the Council may grant two successive six- month-extensions under justified situations;



b) the licence holder ceases to broadcast the program service for which he was granted the audio-visual licence for more than 90 days, due to technical reasons , and for more than 96 hours, due to any other reason imputable to the licence holder;

c) as a result of infringing the norms on the ownership regime in the audio-visual field, stipulated by art. 46 and for infringement of provisions in art. 56;

c<sup>1</sup>) as a result of infringing the provisions of par. (8) and (9) of the art. 44 (about the dominant position) and art. 56;

d) the holder does not submit to the Council proof of paying a fine, within 6 months since the fining;

e) upon holder's request.

2) The audio-visual licence for broadcasting a program service by terrestrial radio-electric way shall be also withdrawn under the following circumstances:

a) the licence holder does not obtain the audio-visual authorisation decision due to reasons imputable to him, within 60 days since obtaining the technical operating authorization”.

▪ Article 57<sup>1</sup>:

“The digital audio-visual licence shall be withdrawn by the Council under the following conditions:

a) the licence holder does not provide the program service to the multiplex operator;

b) the licence holder ceases to provide the program service to the multiplex operator;

c) for infringement of provisions in art. 57 par. (1) letters b), c), c<sup>1</sup>), d) and e).b) as a consequence of withdrawing the broadcasting licence”.

▪ Article 95<sup>1</sup>:

“The Council may decide to withdraw an audiovisual licence or the right to provide an audiovisual media service on-demand, for repeated infringements of one of the following deeds by the media service provider:

a) incitement of the public to hatred based on nationality, race or religion;

b) explicit incitement to public violence;

c) incitement to actions meant to dissolve the state authority;

d) incitement to terrorist actions”.

Other sanctions, such as a public summons or an administrative fine, can be decided according to the principle of proportionality, paying particular attention to the seriousness of the violation and its effects, as well as to prior sanctions imposed in the course of and limited to the period covering the previous year.



In case of termination of the provision of an AVMS, the CNA shall take a decision on the revocation of the licence at the request of the licensee.

Modifications to the licence conditions are allowed under the conditions set forth in Decisions N°304/2015 and N°277/2013 of the CNA.

**Table 172. Main issues regarding the management of the licence**

Issue	Description
Duration	9 years
Procedure to renew	At the request of the licensee
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Formal decision of the CNA
Procedure in case of modifications in the licence conditions	Upon prior approval of the CNA
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Romanian response to European Audiovisual Observatory standardised questionnaire

#### 4.26.10. Future amendments to the regulatory framework

N/A.

#### 4.26.11. Video-sharing platforms

N/A.

#### 4.26.12. Applicable regulatory framework

- Primary legislation:
  - In Romanian - Legea audiovizualului N°504/2002 (Audiovisual Law): [http://www.cna.ro/IMG/pdf/LEGEA\\_AUDIOVIZUALULUI\\_CU\\_MODIFICARILE\\_LA\\_ZI.pdf](http://www.cna.ro/IMG/pdf/LEGEA_AUDIOVIZUALULUI_CU_MODIFICARILE_LA_ZI.pdf)
  - In Romanian – Legea N°41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune (Public Broadcasting Law): <http://www.cna.ro/LEGE-Nr-41-din-17-iunie-1994,2196.html>



- In Romanian - Legea N°140/2012 pentru aprobarea Ordonanței de urgență a Guvernului N°111/2011 privind comunicațiile electronice (Law on the approval of the Government Emergency Ordinance on the electronic communications: <https://lege5.ro/Gratuit/gmzdmjvga/legea-nr-140-2012-pentru-aprobarea-ordonantei-de-urgenta-a-guvernului-nr-111-2011-privind-comunicatiile-electronice>
- In English - Audiovisual Law: <http://www.cna.ro/The-Audio-visual-Law,1655.html>
- In English - Public Broadcasting Law: <https://lege5.ro/Gratuit/gmzdqnrwgu/law-no-41-1994-on-the-organization-and-operation-of-the-romanian-radio-broadcasting-corporation-and-of-the-romanian-television-corporation/3>
- Secondary legislation:
  - In Romanian - Government Emergency Ordinance N°111/2011 on the electronic communications: <https://lege5.ro/Gratuit/gi4dkmbwgm/ordonanta-de-urgenta-nr-111-2011-privind-comunicatiile-electronice/4>
  - In Romanian - Government Decision N°403/2013 for the approval of the Strategy on the transition from analogue terrestrial to digital terrestrial television and the implementation of digital multimedia services at national level: <http://legislatie.just.ro/Public/DetaliiDocument/149467>
  - In Romanian - CNA Decision N°277/2013 on the procedure and conditions for granting, amending, extending the validity of the audiovisual licence, the procedure for issuing and amending the audiovisual authorisation decision for the broadcasting of radio or television programme services, hereinafter referred to as programme services, as well as the licence transfer and the transfer of the audiovisual authorisation decision: <http://www.cna.ro/Decizie-Nr-277-din-6-iunie-2013.html>
  - In Romanian - Government Decision N°86/2014 on the granting of licences for the use of radio frequencies in digital terrestrial television system: <http://legeaz.net/index.php?view=article&catid=1639:monitorul-oficial-133-2014&id=810511172:hg-86-2014-acordarea&tmpl=component&print=1&layout=default&page=>
  - In Romanian - Government Emergency Ordinance N°18/2015 on laying down measures necessary to ensure the transition from analogue terrestrial television to digital terrestrial television and the implementation of multimedia services at national level, as well as for the completion of the Audiovisual Law N°504/2002: [http://www.dreptonline.ro/legislatie/oug\\_18\\_2015\\_masuri\\_tranzitie\\_tv\\_iunea\\_analogica\\_terestra\\_tv\\_iunea\\_digitala\\_terestra\\_servicii\\_multimedia\\_nivel\\_national\\_completarea\\_legii\\_audiovizualului.php](http://www.dreptonline.ro/legislatie/oug_18_2015_masuri_tranzitie_tv_iunea_analogica_terestra_tv_iunea_digitala_terestra_servicii_multimedia_nivel_national_completarea_legii_audiovizualului.php)
  - In Romanian - CNA Decision N°304/2015 on the procedure for granting, modifying, extending the validity and disposing of the licence and the decision on digital audiovisual licensing for digital terrestrial broadcasting [http://www.cna.ro/IMG/pdf/Decizie\\_CNA\\_304\\_2015\\_MOF\\_439.pdf](http://www.cna.ro/IMG/pdf/Decizie_CNA_304_2015_MOF_439.pdf)
  - In Romanian - CNA Decision N°405/2015 for the modification and completion of the CNA Decision N°277/2013:



<http://www.cna.ro/Decizie-Nr-277-din-6-iunie-2013.html>

### 4.26.13. Data compilation

This factsheet was produced based on data compiled by Eugen Cojocariu, Head of Radio Romania International.



## 4.27. SE – Sweden – National Summary<sup>316</sup>

### 4.27.1. Summary

In Sweden, access to the market is granted either by the government (for public service media) or by the regulatory authority (Swedish Press and Broadcasting Authority - Myndigheten för press, radio och tv, hereinafter MPRT)<sup>317</sup> for other media.

The MPRT is in charge of monitoring the compliance of all AVMS providers with the regulatory framework. This task is conducted by a specific decision-making body within the MPRT: the Broadcasting Commission (*granskningsnämnden för radio och TV*).

Three systems are used:

- Licensing, which is applicable to non-public service linear AVMS distributed via DTT and which is organised in the form of a beauty contest;
- Notification, which is applicable to non-public service linear AVMS and to all non-linear AVMS;
- Public service, which is applicable to the linear AVMS of the public service media Sveriges Television and Utbildningsradion (hereinafter SVT and UR) and which is organised in the form of an individual licence, under the competence of the government; the DTT frequencies necessary to make its services available to the public are granted by the government in cooperation with the telecommunications regulatory authority (Post and Telecom Authority – hereinafter PTS).

**Table 173. Applicable systems**

System	Category
Licensing	Beauty contest
Notification	N/A
Public service	Other agreements (government licence)

Source: Swedish response to European Audiovisual Observatory standardised questionnaire

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<sup>316</sup> The factsheet on Sweden incorporates the feedback from members of the *Myndigheten för press, radio och tv* (Press and Broadcasting Authority – MRPT) during the checking round with media regulators and the follow-up round with the members of the Contact Committee set up by the AVMSD.

<sup>317</sup> <http://www.mppt.se/>



## 4.27.2. Functioning of the applicable systems

According to the Radio and Television Act,<sup>318</sup> linear AVMS distributed via DTT have to be licensed and all other linear and non-linear AVMS are to be registered, under the competence of the MPRT.

Licences are generally granted for six years. If the licence is not granted, the applicant can lodge an appeal within three weeks of receipt of the decision first with the Administrative Court,<sup>319</sup> then with the Administrative Court of Appeal<sup>320</sup> and then with the Administrative Supreme Court.<sup>321</sup>

The public service media SVT and UR are out of the scope of the licensing system managed by the MPRT: SVT and UR are owned by an independent foundation (*Förvaltningsstiftelsen för Sveriges Radio AB, Sveriges Television AB och Sveriges Utbildningsradio AB*)<sup>322</sup> and its linear AVMS are licensed by the government.

**Table 174. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest	MPRT	Application to send to the MPRT, who decides based on criteria mentioned in the Radio and Television Act
Notification	N/A	MPRT	Notification to send prior to the launch of the service to the MPRT
Public service	Other agreements (Government licence)	Government	Individual licence granted by the Government

Source: Swedish response to European Audiovisual Observatory standardised questionnaire

<sup>318</sup> [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696\\_sfs-2010-696](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696_sfs-2010-696) (in Swedish).

<http://www.mppt.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf> (in English).

<sup>319</sup> <http://www.domstol.se/Myndighetsbeslut/Mal-i-forvaltningsdomstol/>.

<sup>320</sup> <http://www.domstol.se/Om-Sveriges-Domstolar/Domstolarna/Kammarratt/>.

<sup>321</sup> <http://www.hogstaforvaltningsdomstolen.se/>.

<sup>322</sup> <http://www.forvaltningsstiftelsen.se/>.



### 4.27.3. Application to public audiovisual media service providers

The SVT's and UR's linear AVMS are licensed by the government. The DTT frequencies necessary to make SVT's services available to the public are granted by the government in cooperation with the PTS.

Only linear AVMS distributed via DTT require a government licence. In practice, all the linear AVMS of the SVT and UR are distributed on all platforms.

Non-linear AVMS of the SVT and UR shall be notified to the MPRT.

**Table 175. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Other agreements (Government licence)	Government
<i>Via cable</i>	Other agreements (Government licence) <sup>323</sup>	Government
<i>Via IPTV</i>	Other agreements (Government licence) <sup>324</sup>	Government
<i>Via satellite</i>	Other agreements (Government licence) <sup>325</sup>	Government
<i>Via OTT</i>	Other agreements (Government licence) <sup>326</sup>	Government
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	MPRT
<i>Via cable</i>	Notification	MPRT
<i>Via IPTV</i>	Notification	MPRT
<i>Via satellite</i>	Notification	MPRT
<i>Via OTT</i>	Notification	MPRT

Source: Swedish response to European Audiovisual Observatory standardised questionnaire

<sup>323</sup> No licence is needed for distribution via means other than DTT. In practice, all the linear AVMS of the SVT and UR are distributed on all platforms.

<sup>324</sup> No licence is needed for distribution via means other than DTT. In practice, all the linear AVMS of the SVT and UR are distributed on all platforms.

<sup>325</sup> No licence is needed for distribution via means other than DTT. In practice, all the linear AVMS of the SVT and UR are distributed on all platforms.

<sup>326</sup> No licence is needed for distribution via means other than DTT. In practice, all the linear AVMS of the SVT and UR are distributed on all platforms.



#### 4.27.4. Application to private (commercial) audiovisual media service providers

Licences are granted to linear AVMS distributed via DTT in the form of a beauty contest.

The criteria on which the MPRT has to assess the application are determined by the Radio and Television Act and include a mix of financial, technical, diversity and pluralism requirements:

- licences “may only be granted to a broadcaster that has adequate financial and technical resources to broadcast during the entire term of the licence, and is prepared to cooperate with other licence holders on technical issues” (chapter 4 section 5);
- MPRT has to pay particular attention to the fact “that broadcasting frequencies are able to be utilized 1) for different media services so that broadcasts will appeal to a variety of interests and tastes, 2) for national as well as local and regional media services, and 3) by a number of broadcasters that remain independent of each other” (chapter 4 section 6).

These rather broad and non-precise criteria for a beauty contest are motivated by the existence of the Fundamental Law on Freedom of Expression (*Yttrandefrihetsgrundlagen*), pursuant to which it is considered that it is up to the applicants to designate their commitments. It is the application that will form the basis of the licence terms. However, the application does not have to be overly precise and detailed.

A licence is also required for AVMS which are already under the jurisdiction of another member state, but in line with the AVMS Directive, these services would remain under the jurisdiction of that member state and the licence would only include technical conditions.

The Radio and Television Act does not specify any deadlines for responding to an application. As licences are attributed following a tender, the tender document sets out the relevant deadlines. Before the MPRT takes a decision to grant or to refuse a licence, the applicant has the opportunity to access (and express an opinion on) the conditions that the MPRT “*intends to apply to the licence. Decisions to grant broadcasting licences may not contain other programme-related conditions than those accepted by the applicant*” (chapter 4 section 11).

The deadline imposed on an AVMS provider for the effective provision of its service is determined in the licence.

Linear AVMS distributed via other means and non-linear AVMS shall be notified to the MPRT. The notification shall include the following information: “1) the name, trade name or the equivalent information, 2) the representatives for legal persons, 3) the postal address, telephone number, e-mail address and website, and 4) information regarding the activities conducted” (chapter 2 section 2).

There is no deadline imposed on these AVMS for the provision of their service.

**Table 176. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	MPRT
<i>Via cable</i>	Notification	MPRT
<i>Via IPTV</i>	Notification	MPRT
<i>Via satellite</i>	Notification	MPRT
<i>Via OTT</i>	Notification	MPRT
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	MPRT
<i>Via cable</i>	Notification	MPRT
<i>Via IPTV</i>	Notification	MPRT
<i>Via satellite</i>	Notification	MPRT
<i>Via OTT</i>	Notification	MPRT

Source: Swedish response to European Audiovisual Observatory standardised questionnaire

#### 4.27.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.27.4 above is applicable.

#### 4.27.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.27.4 above is applicable.

Non-profit local cable broadcasting organisations have also the possibility to apply for an appointment in the municipality in which the organisation is established. The appointment gives the organisation the right to a specifically determined space, without charge, for broadcasting television programmes in cable networks reaching at least 100 of the connected households in the municipality.

#### 4.27.7. Licence fee

The amount of the licence fee is determined by the government, with a maximum of 35 000 SEK for a licence application and 22 000 SEK for a request to transfer the licence.



The fee is paid once and is meant to cover the administrative costs incurred for the management of the application. The beneficiary is the MPRT.

#### 4.27.8. Media ownership and concentration

There are no specific rules regarding transparency of ownership during the licensing or notification process, but in practice, this issue is taken into consideration (see below).

Media concentration is avoided during the licensing process by chapter 4 section 11 of the Radio and Television Act according to which:

*“A licence to broadcast TV or Teletext may be conditioned on the ownership structure and influence within an enterprise that receives a licence only changing to a limited extent.”*

Additionally, as mentioned in section 4.27.4, one of the criteria for assessing the application in the framework of the beauty contest is *“a number of broadcasters that remain independent of each other.”*

**Table 177. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	Licensing may be conditioned by the ownership structure of the applicant
Media concentration issues considered during the licensing process	Licensing may be conditioned by the ownership structure of the applicant

Source: Swedish response to European Audiovisual Observatory standardised questionnaire

#### 4.27.9. Management of the licence and notification

Licences are granted for six years and notifications have no limited term. If special circumstances apply, the MPRT may decide that a licence will be valid for a shorter duration (chapter 4 section 12).

At the expiration of a licence, a new beauty contest is organised.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the MPRT. Sanctions have to be decided following a gradual approach. Revocation can only be decided if the licensee has violated certain sections of the Radio and Television Act or has not respected certain licence conditions (chapter 18 section 1). Other sanctions can be decided, such as a warning, an order to comply, an administrative fine or an order to publicly announce the MPRT's decision in an appropriate manner.

There is no specific procedure regarding the termination of the service, but the Radio and Television Act states that a licence *“shall be revoked at the request of the licence holder”* (chapter 18 section 1).



There is no specific procedure regarding modifications in the licence conditions, but in practice, the MPRT will review the conditions upon request from a licensee.

**Table 178. Main issues regarding the management of the licence**

Issue	Description
Duration	6 years
Procedure to renew	Same as for licensing
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to the MPRT
Procedure in case of modifications in the licence conditions	At the request of the licensee
Procedure in case of modifications to the service with a view to targeting different audiences	No

Source: Swedish response to European Audiovisual Observatory standardised questionnaire

#### 4.27.10. Future amendments to the regulatory framework

N/A.

#### 4.27.11. Video-sharing platforms

N/A.

#### 4.27.12. Applicable regulatory framework

- Primary legislation:
  - In Swedish - Radio- och tv-lag (Radio and Television Act): [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696\\_sfs-2010-696](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696_sfs-2010-696)
  - In Swedish - Lag om finansiering av radio och TV i allmänhetens tjänst (Law on financing of public service radio and TV): [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-198941-om-finansiering-av-radio-och-tv-i\\_sfs-1989-41](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-198941-om-finansiering-av-radio-och-tv-i_sfs-1989-41)
  - In English - Radio and Television Act:



<http://www.mprt.se/Documents/Styrdokument/Radio%20and%20Television%20Act.pdf>

### 4.27.13. Data compilation

This factsheet was produced based on data compiled by Helene Hillerström Miksche, Attorney, Com Attorneys.



## 4.28. SI – Slovenia – National Summary<sup>327</sup>

### 4.28.1. Summary

In Slovenia, access to the market is granted exclusively by the regulatory authority (the Agency for Communication Networks and Services - Agencija za Komunikacijska Omrežja in Storitve, hereinafter AKOS).<sup>328</sup>

AKOS is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Two systems are used:

- Licensing, which is applicable to all linear AVMS and which is organised either in the form of a beauty contest or of a formal licence.
- Notification, which is applicable to all non-linear AVMS.

The licensing and notification systems fully apply to the public service media RTV Slovenija (hereinafter RTV SLO)<sup>329</sup>, except for its access to DTT frequencies and the right to disseminate its AVMS via DTT: the law grants one national multiplex to RTV SLO and all the AVMS it provides have an automatic right to be disseminated via DTT.

**Table 179. Applicable systems**

System	Category
Licensing	Beauty contest Formal licence
Notification	N/A

Source: Slovenian response to European Audiovisual Observatory standardised questionnaire

<sup>327</sup> The factsheet on Slovenia incorporates the feedback received from members of the *Agencija za komunikacijska omrežja in storitve Republike Slovenije* (Agency for Communication Networks and Services of the Republic of Slovenia – AKOS) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>328</sup> <http://www.akos-rs.si/>.

<sup>329</sup> <http://www.rtv slo.si/>.



## 4.28.2. Functioning of the applicable systems

Pursuant to the Mass Media Act<sup>330</sup> and the Audiovisual Media Services Act,<sup>331</sup> linear AVMS have to be licensed by and non-linear AVMS have to be notified to AKOS. All AVMS of RTV SLO have also to be either licensed or notified.

The licensing procedure is managed by AKOS, in cooperation with the Broadcasting Council, which is an independent expert body composed of experts appointed by the parliament. AKOS grants licences meant for any kind of distribution via a formal licensing procedure. These licensing procedures are ruled by the Mass Media Act and the General Act on Licence for Performing Radio and Television Activity<sup>332</sup> established by AKOS.

AKOS also grants licences for distribution via DTT based on criteria defined in the Mass Media Act and in its own regulations, and via a beauty contest. The conditions and criteria of the contest are prepared in agreement with the Broadcasting Council. The selection is made by AKOS on the basis of a reasoned proposal from the Council.

Non-linear AVMS have to be notified to AKOS according to the Audiovisual Media Services Act and in line with a procedure ruled by the General Act on Notification of Audiovisual Media Services on Demand<sup>333</sup>, also established by AKOS.

Licences and notifications have no limited term. If they are not granted or acknowledged, the applicant has the opportunity to lodge an appeal with the Administrative Court in Ljubljana<sup>334</sup> (the dispute shall be decided by an Administrative Court with its seat in Ljubljana). These proceedings are rapid, since the court shall decide on them as a matter of priority.

In addition to the aforementioned systems and pursuant to the Mass Media Act, all mass media have to be entered in the Media Register at the Ministry of Culture. This notification shall be done prior to the launch of the activity. Article 2 of the Act defines mass media as *“newspapers and magazines, radio and television programme services, electronic publications, teletext and other forms of editorially formulated programme published daily or periodically through the transmission of written material, vocal material, sound or pictures in a manner accessible to the public”* and programme as *“information of all types (news, opinion, notices, reports and other information) and works under copyright disseminated via mass media for the purpose of informing the public, satisfying the public’s cultural, educational and other needs, and communicating on a mass basis.”*

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<sup>330</sup> <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1608> (in Slovenian)

[http://www.akos-rs.si/files/APEK\\_eng/Legislation/mass-media-act.pdf](http://www.akos-rs.si/files/APEK_eng/Legislation/mass-media-act.pdf) (in English).

<sup>331</sup> <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6225> (in Slovenian).

[http://www.akos-rs.si/files/APEK\\_eng/Legislation/Act/AKOS-Audiovisual-Media-Services-Act.Unofficial-Translation.pdf](http://www.akos-rs.si/files/APEK_eng/Legislation/Act/AKOS-Audiovisual-Media-Services-Act.Unofficial-Translation.pdf) (in English).

<sup>332</sup> <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlid=200695&stevilka=4093> and

<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlid=200725&stevilka=1254> (in Slovenian).

<sup>333</sup> <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlid=201235&stevilka=1540> (in Slovenian)

<sup>334</sup> <http://www.sodisce.si/ustr/>.

**Table 180. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Beauty contest Formal licence	AKOS	Application sent to AKOS, who decides based on criteria mentioned in the Mass Media Act and on its own regulations
Notification	N/A	AKOS	Notification to send prior to the launch of the service to AKOS, who enters the AVMS in the appropriate register

Source: Slovenian response to European Audiovisual Observatory standardised questionnaire

### 4.28.3. Application to public audiovisual media service providers

The AVMS of RTV SLO need to be licensed by or notified to AKOS. The same procedure as the one described in section 4.28.4 below is applicable, with the exception of the licence for dissemination via DTT.

Pursuant to Article 13 (2) of the Radio and Television Corporation of Slovenia Act,<sup>335</sup> RTV SLO obtains access to technologically limited resources, necessarily needed for the provision of the public service, not through a public tender, but through a decision by AKOS. The regulator grants RTV SLO priority access to distribution resources following the opinion of the Broadcasting Council. The opinion shall include the reasons why it is considered indispensable to award priority for the performance of the public service.

Pursuant to Article 15 of the Digital Broadcasting Act,<sup>336</sup> one multiplex with geographical coverage of the entire territory of Slovenia is intended primarily for RTV SLO.

**Table 181. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence & law	AKOS & Parliament

<sup>335</sup> <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4461> (in Slovenian)

[http://www.akos-rs.si/files/APEK\\_eng/Legislation/Radio-and-Television-Corporation.pdf](http://www.akos-rs.si/files/APEK_eng/Legislation/Radio-and-Television-Corporation.pdf) (in English).

<sup>336</sup> <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5056> (in Slovenian)

[http://www.akos-rs.si/files/APEK\\_eng/Legislation/Digital-Broadcasting-Act-EN.pdf](http://www.akos-rs.si/files/APEK_eng/Legislation/Digital-Broadcasting-Act-EN.pdf) (in English).



<i>Via cable</i>	Formal licence	AKOS
<i>Via IPTV</i>	Formal licence	AKOS
<i>Via satellite</i>	Formal licence	AKOS
<i>Via OTT</i>	Formal licence	AKOS
<b>Non-linear</b>		
<i>Via DTT</i>	Notification	AKOS
<i>Via cable</i>	Notification	AKOS
<i>Via IPTV</i>	Notification	AKOS
<i>Via satellite</i>	Notification	AKOS
<i>Via OTT</i>	Notification	AKOS

Source: Slovenian response to European Audiovisual Observatory standardised questionnaire

#### 4.28.4. Application to private (commercial) audiovisual media service providers

##### Linear AVMS

Linear AVMS distributed via whatever means need a licence following a formal procedure. The applicant needs to have been entered in the Media Register and to submit an application which shall contain “*data on the type of activity (radio or television); the name of the programme service; the programme requirements that the broadcaster must fulfil during dissemination of the programme service*” (Article 105 (3)).

For specialised thematic services, the procedure for obtaining the formal licence differs only in terms of the obligatory components of the application and it results in a licence with additional features indicating the special characteristics of the service. To this aim, as stipulated in the General Act on thematic television services, the application for a licence for performing television activities in case of thematic television services shall also include:

- an indication that it is about a thematic television service;
- an indication of the type of service, that is to say, the thematic or genre service (two subtypes of thematic services);
- an indication of the basic nature of the thematic television service, for example, sports, documentary, informative, religious, children's, feature, reality;
- the content requirements which the provider takes into account in its service.

Pursuant to the law on general administrative procedure, the general deadline obliging public authorities to respond to an application is a maximum of two months. In case of licences that require a tender procedure, AKOS has to respond to an application within thirty days. Other deadlines envisaged by the law governing the tender procedures related to the use of radio spectrum are the following:



- the deadline for the submission of tenders shall not be shorter than thirty days from the publication of the call for tenders;
- the deadline for amending the tender conditions shall not be shorter than seven days prior to the expiration of the deadline for the submission of tenders.

The deadline imposed on a linear AVMS provider for obtaining the formal licence is 24 months after registration in the Media Register.

Linear AVMS distributed via DTT have to get another licence which is granted via a beauty contest.

Pursuant to Article 104a (2) of the Mass Media Act, the criteria on which AKOS and the Broadcasting Council have to assess the application are determined by AKOS, in agreement with the Broadcasting Council. However, Article 104a (3) gives the framework in which these criteria have to be established:

*“In the process of selection between the interested providers of the programme in a public tender, the following shall be taken into account:*

- the diversity of the programme offered in terms of genre and theme;
- proportion of in-house production;
- for television programme, the amount of production of Slovenian audio-visual works specified in Article 68 of the present Act;
- for radio programme, the amount of Slovenian music specified in Article 67 of the present Act;
- the duration (scope) of the programme service;
- adequately balanced reporting in daily informative programme.”

Article 104a (4) of the Act also stresses that priority shall be given to *“the programme services that are already broadcasted through analogue broadcasting radio frequencies in the tendered area and free (not encoded) programmes.”*

The content requirements that arise from the terms and conditions of a public tender for digital dissemination become substantive content conditions which are included in the formal licence of the provider. After the conclusion of the public tender procedures, AKOS supplements (*ex officio*) the formal licences of the selected providers with the programming requirements which the providers took on by participating in the public tender. These additional programming requirements become a part of the licence conditions that cannot be changed.

The deadline for airing the service is six month after the licence has been granted.

### Non-linear AVMS

Non-linear AVMS have to be notified to AKOS prior to the launch of the activity. Pursuant to Article 36 (2) of the Audiovisual Media Services Act, the notification shall contain *“the information that the Agency requires in order to maintain official records of service providers and for the purposes of their supervision under this Act, as follows: the name of the service and its ident; name, address, tax number and registration number (natural persons); company name, head office, tax number, registration number and indication of the legal representative*



(legal persons); the type of service, with a short description; the envisaged date of commencement, modification or cessation of provision of the service.”

Where a notification does not contain all the necessary information, AKOS shall, within seven days of receipt of the notification, instruct the provider to supplement it by a deadline that may not be shorter than eight days. The service is then entered by AKOS into the register of providers of on-demand audiovisual media services.

**Table 182. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Beauty contest	AKOS
<i>Via cable</i>	Formal licence	AKOS
<i>Via IPTV</i>	Formal licence	AKOS
<i>Via satellite</i>	Formal licence	AKOS
<i>Via OTT</i>	Formal licence	AKOS
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	AKOS
<i>Via cable</i>	Notification	AKOS
<i>Via IPTV</i>	Notification	AKOS
<i>Via satellite</i>	Notification	AKOS
<i>Via OTT</i>	Notification	AKOS

Source: Slovenian response to European Audiovisual Observatory standardised questionnaire

#### 4.28.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.28.4 above is applicable.

#### 4.28.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.28.4 above is applicable.



## 4.28.7. Licence fee

The amount of the fee depends on the revenues earned each year. In 2017, the lowest fee for linear AVMS was EUR 44 and the highest, EUR 210 000; the average amount was EUR 9 562 and the total amount collected was EUR 545 029. For non-linear AVMS, the lowest fee was EUR 84 and the highest, EUR 840; the average amount was EUR 539 and the total amount collected was EUR 3 773.

The method of calculating payments is prescribed by the minister responsible for electronic communications, based on the guiding principle that competition may not be restricted. Providers are divided into classes according to the amount of their annual revenues and the type of service they provide. The provider shall notify AKOS of their revenues for the previous year by 31 March. Where a broadcaster or provider fails to do so by this deadline, AKOS can take into account its total revenues from the preceding year, obtained on the basis of data from the Agency of the Republic of Slovenia for Public Legal Records and Related Services. If there are grounds for doubting the veracity of the information reported, AKOS or an authorised auditor selected by AKOS may review the information and assess the revenues. Where AKOS's doubts as to the veracity of the information prove to be justified, the provider shall bear the costs of the review of information and the assessment of the revenues; where its doubts are not justified, the costs shall be covered by AKOS. If the assessed revenues deviate substantially from the reported revenues, AKOS takes the assessed revenues into account in its calculation.

The amount of the payments shall be set on the basis of a tariff set out in a general act of AKOS. In issuing the tariff, AKOS shall pay due regard to the necessary coverage of the costs related to its remit in the field of audiovisual media services and the planned objectives and tasks laid down in the AKOS annual plan, as well as to the balance of funds from the previous year. The tariff shall contain a special explanatory note stating the reasons for the adoption or the amendment of the tariff and the objectives to be thus achieved. The tariff shall be published in the official gazette, together with an explanatory note, and shall enter into force after its publication.

Prior to the issuing or amendment of the tariff, AKOS's costs must be established or estimated and a deadline set, which may not be shorter than fifteen days or longer than two months, by which the providers may submit their opinions, remarks and proposals regarding the planned issuing or amendment of the tariff. The prior consent of the government must be obtained for a tariff to be issued or amended.

The method of calculation of the fee is defined by the Regulation on the method of calculating payments on the basis of a licence to perform a television activity or a notification of an audiovisual media service on demand.<sup>337</sup> The payments are expressed by an amount of points. The amount of a particular payment is calculated as the product of the amount of points and the value of a point for that type of payment, as applicable for that year for which the amount of the payment is levied (based on the adopted tariff – see above).

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<sup>337</sup> <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlid=201272&stevilka=2779>



The basis on which the linear AVMS is classified into a class shall be determined taking into account the annual revenue earned by the broadcaster through television activities and the type of television programmes it issues by the following formula:  $O = LP \times K1 \times K2$ , where:

- O is the basis on which the broadcaster is classified in the class;
- LP is the broadcaster's annual turnover from television;
- K1 is the factor relating to the type of broadcaster and is calculated according to the following formula:  $((pp \times 0,5) + d) / (pp + d)$ , where pp represents the number of services with the status of a service of special importance or the number of services of RTV SLO; d is the number of services that are not services of special interest or RTV SLO;
- K2 is the factor to be determined according to the number of services, as follows:

The number of services of the broadcaster	Factor (K2)
1	1
2	1.1
3	1.2
4	1.3
5	1.4
X	1,X-1

Based on that, the linear AVMS are classified into the following classes with a corresponding number of points:

Class	Basis (O)	Number of points
1	up to EUR 10 000	75
2	from EUR 10 000 to EUR 50 000 inclusive	450
3	from EUR 50 000 to EUR 100 000 inclusive	1 125
4	from EUR 100 000 to EUR 200 000 inclusive	2 250
5	from EUR 200 000 to EUR 500 000 inclusive	5 250
6	from EUR 500 000 to EUR 1 000 000 inclusive	11 250
7	from EUR 1 000 000 to EUR 2 000 000 inclusive	22 500
8	from EUR 2 000 000 to EUR 5 000 000 inclusive	52 500
9	from EUR 5 000 000 to EUR 10 000 000 inclusive	112 500
10	over EUR 10 000 000	150 000

The providers of non-linear AVMS are classified into the following classes with the corresponding number of points:

Class	Revenues	Number of points
1	up to EUR10 000	60
2	from EUR 10 000 to EUR 25 000 inclusive	175
3	from EUR 25 000 to EUR 50 000 inclusive	300
4	from EUR 50 000 to EUR 100 000 inclusive	450
5	over EUR 100 000	600



The beneficiary is AKOS. The collected fees shall cover exclusively the exercise of its competencies under the Audiovisual Media Services Act.

#### 4.28.8. Media ownership and concentration

Media concentration is not taken into consideration in the licensing process. The Mass Media Act contains provisions regarding media concentration, but they apply only in cases of the transactions of shares and are outdated since they refer mainly to situations happening in an analogue environment.

**Table 183. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during the licensing or notification process	No
Media concentration issues considered during the licensing process	No

*Source: Slovenian response to European Audiovisual Observatory standardised questionnaire*

#### 4.28.9. Management of the licence and notification

Licences and notifications have no limited term.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by AKOS. Sanctions have to be decided following a gradual approach and there is a range of enforcement measures that can be applied before the suspension or the revocation of a licence. AKOS effectively uses fines ranging from EUR 500 to EUR 60 000. The possibility of financial sanctioning was introduced by the law transposing the AVMS Directive in 2011; prior to 2011, only warnings and suspensions/revocation of licences were possible, as stipulated by the Mass Media Act. That regime is still in force, but rarely used. It gives AKOS the possibility of gradually applying the following measures:

- issuing a written warning and ordering the elimination of the violations determined by AKOS within the period it stipulates, which may not be shorter than one month or longer than six months; the deadline may be extended for a maximum period of three months;
- suspending a licence for a maximum of three months if the established violations have not been eliminated at the expiry of the deadline set under the previous indent;
- revoking a licence if it is found that the AVMS provider, despite receiving the suspension specified in the previous indent, fails to bring the activities into



compliance with AKOS's requirements within thirty days of recommencing broadcasting.

There is no procedure for linear AVMS regarding the termination of the service, but since they have to pay a licence fee they would notify the termination in order to avoid continuing to pay such a fee. Non-linear AVMS providers shall notify the termination of a service within two weeks of its termination.

Pursuant to the General Act on Licence for Performing Radio and Television Activities, the conditions related to programming (that is to say, basic programming requirements) may be changed, provided that there is no substantial change in the purpose of the service and its key content characteristics. The application for modification shall include information on the applicant (name, seat or address, indication of the legal representative or proxy, registration number); the number and date of the licence being changed; an indication of the basic programming requirements that are changing; and the completed Basic Programming Requirements Form taking into account the proposed changes and the reasons for changing the basic programming requirements. The additional programming requirements accepted by the tenderer on the basis of a participation in a tender for granting a DTT licence cannot be changed. If the change is approved, AKOS issues a new licence and the old one expires.

In case of modifications to the service with a view to targeting different audiences, it would be considered by AKOS that:

- different linguistic versions constitute different AVMS (which therefore have to be licensed accordingly), with the exception of subtitled services.
- different advertising windows constitute different AVMS (which therefore have to be licensed accordingly).

**Table 184. Main issues regarding the management of the licence**

Issue	Description
Duration	No limited term
Procedure to renew	N/A
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to AKOS (only non-linear)
Procedure in case of modifications in the licence conditions	Prior approval of AKOS
Procedure in case of modifications to the service with a view to targeting different audiences	Different linguistic versions as well as different advertising windows have to be licensed accordingly

Source: Slovenian response to European Audiovisual Observatory standardised questionnaire



## 4.28.10. Future amendments to the regulatory framework

N/A.

## 4.28.11. Video-sharing platforms

N/A.

## 4.28.12. Applicable regulatory framework

### ■ Primary legislation:

- In Slovenian - Zakon o medijih (Mass Media Act):  
<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1608>
- In Slovenian - Zakon o digitalni radiodifuziji (Digital Broadcasting Act):  
<http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5056>
- In Slovenian - Zakon o avdiovizualnih medijskih storitvah (Audiovisual Media Services Act):

<http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6225>

- In Slovenian - Zakon o Radioteleviziji Slovenija (Radio and Television Corporation of Slovenia Act):  
<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4461>
- In Slovenian - Zakon o elektronskih komunikacijah (Electronic Communications Act):  
<http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6405>
- In English - Mass Media Act:

[http://www.akos-rs.si/files/APEK\\_eng/Legislation/mass-media-act.pdf](http://www.akos-rs.si/files/APEK_eng/Legislation/mass-media-act.pdf)

- In English - Digital Broadcasting Act:

[http://www.akos-rs.si/files/APEK\\_eng/Legislation/Digital-Broadcasting-Act-EN.pdf](http://www.akos-rs.si/files/APEK_eng/Legislation/Digital-Broadcasting-Act-EN.pdf)

- In English - Audiovisual Media Services Act:

[http://www.akos-rs.si/files/APEK\\_eng/Legislation/Act/AKOS-Audiovisual-Media-Services-Act.Unofficial-Translation.pdf](http://www.akos-rs.si/files/APEK_eng/Legislation/Act/AKOS-Audiovisual-Media-Services-Act.Unofficial-Translation.pdf)

- In English - Radio and Television Corporation of Slovenia Act:  
[http://www.akos-rs.si/files/APEK\\_eng/Legislation/Radio-and-Television-Corporation.pdf](http://www.akos-rs.si/files/APEK_eng/Legislation/Radio-and-Television-Corporation.pdf)
- In English - Electronic Communications Act:



[http://www.akos-rs.si/files/APEK\\_eng/Legislation/electronic-communications-act-zekom1.pdf](http://www.akos-rs.si/files/APEK_eng/Legislation/electronic-communications-act-zekom1.pdf)

■ Secondary legislation:

- In Slovenian - Splošni akt o dovoljenju za izvajanje radijske ali televizijske dejavnosti (General Act on Licence for Performing Radio and Television Activity):

<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlid=200695&stevilka=4093> and

<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlid=200725&stevilka=1254>

- In Slovenian - Splošni akt o tematskih televizijskih programih (General Act on Thematic Television Services):

[https://www.uradni-list.si/\\_pdf/2016/Ur/u2016067.pdf#%21/u2016067-pdf](https://www.uradni-list.si/_pdf/2016/Ur/u2016067.pdf#%21/u2016067-pdf)

- In Slovenian - Splošni akt o prigrasitvi avdiovizualnih medijskih storitev na zahtevo (General Act on Notification of Audiovisual Media Services on Demand):

<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlid=201235&stevilka=1540>

- In Slovenian - Pravilnik o načinu izračuna plačil na podlagi dovoljenja za izvajanje televizijske dejavnosti oziroma vpisa v uradno evidenco ponudnikov avdiovizualnih medijskih storitev na zahtevo (Regulation on the method of calculating payments on the basis of a licence to perform a television activity or a notification of audiovisual media service on demand):

<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlid=201272&stevilka=2779>

## 4.28.13. Data compilation

This factsheet was produced based on data compiled by Tanja Kerševan Smokvina, Founding partner, MeGI.



## 4.29. SK – Slovakia – National Summary<sup>338</sup>

### 4.29.1. Summary

In Slovakia, access to the market is granted exclusively by the regulatory authority (Council for Broadcasting and Retransmission - Rada pre Vysielanie a Retransmisiu, hereinafter RVR).<sup>339</sup>

The RVR is also in charge of monitoring the compliance of all AVMS providers with the regulatory framework.

Two systems are used:

- Licensing, which is applicable to analogue linear AVMS under the form of an individual licence and to digital linear AVMS under the form of a formal licence.
- Notification, which is applicable to non-linear AVMS.

The licensing and notification systems fully apply to the public service media Rozhlas a Televizia Slovenska (hereinafter RTVS)<sup>340</sup>, except for its access to DTT frequencies: the law grants a multiplex to RTVS.

It should also be highlighted that although the digital switchover has been completed, the regulatory framework for analogue television is still in force in Slovakia. Therefore, two different regimes coexist for analogue and for digital licensing (except for terrestrial broadcasting where the RVR would not issue analogue licences anymore due to the absence of frequencies). Both regimes are ruled by different acts which are still fully in force. Even though the amount of new analogue licences issued by RVR is low, there are still some applicants that apply for an analogue licence or for both licences. There are also lots of analogue licences which remain valid.

**Table 185. Applicable systems**

System	Category
Licensing	Individual licence (analogue) Formal licence (digital)
Notification	N/A

Source: Slovakian response to European Audiovisual Observatory standardised questionnaire

<sup>338</sup> The factsheet on Slovakia incorporates the feedback received from members of the *Rada pre vysielanie a retransmisiu* (Council for Broadcasting and Retransmission – CBR) during the checking round with media regulators. No further remarks were received from the members of the Contact Committee set up by the AVMSD.

<sup>339</sup> <http://www.rvr.sk/sk/>

<sup>340</sup> <http://www.rtvs.sk/>

## 4.29.2. Functioning of the applicable systems

According to the Analogue Act on Broadcasting and Retransmission<sup>341</sup> and the Digital Broadcasting Act,<sup>342</sup> all linear AVMS have to be licensed by and all non-linear AVMS have to be notified to the RVR. All AVMS of RTVS also have to be either licensed or notified.

Analogue licences are granted under the form of an individual licence and digital licences under the form of a formal licence.

Analogue licences are granted for 12 years and digital licences and notifications have no limited term. If the licence is not granted, the applicant has the opportunity to lodge an appeal within 15 days of receipt of the decision with the general courts. Other than this specific deadline (the usual deadline for administrative legal proceedings is two months), the appeal follows the same procedural rules as for any other administrative legal proceedings.

**Table 186. Functioning of the applicable systems**

System	Category	Authority	Description of the procedure
Licensing	Individual licence Formal licence	RVR	Application sent to the RVR, who decides based on criteria mentioned in the Analogue Act on Broadcasting and Retransmission or in the Digital Broadcasting Act
Notification	N/A	RVR	Notification to send to RVR prior to the launch of the service

Source: Slovakian response to European Audiovisual Observatory standardised questionnaire

## 4.29.3. Application to public audiovisual media service providers

The AVMS of RTVS need to be licensed by or notified to the RVR. The same procedure as the one described in section 4.29.4 below is applicable, with the exception that one multiplex is intended exclusively for the distribution of RTVS via DTT.

<sup>341</sup> <http://www.rvr.sk/sk/spravy/index.php?aktualitaId=925> (in Slovakian)  
<http://www.rvr.sk/en/documents/index.php?aktualitaId=3178> (in English).

<sup>342</sup> <http://www.rvr.sk/sk/spravy/index.php?aktualitaId=582> (in English).

**Table 187. Access to market by public service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence	RVR
<i>Via cable</i>	Individual licence	RVR
	Formal licence	RVR
<i>Via IPTV</i>	Individual licence	RVR
	Formal licence	RVR
<i>Via satellite</i>	Individual licence	RVR
	Formal licence	RVR
<i>Via OTT</i>	Individual licence	RVR
	Formal licence	RVR
<i>Non-linear</i>		
<i>Via DTT</i>	Notification	RVR
<i>Via cable</i>	Notification	RVR
<i>Via IPTV</i>	Notification	RVR
<i>Via satellite</i>	Notification	RVR
<i>Via OTT</i>	Notification	RVR

Source: Slovakian response to European Audiovisual Observatory standardised questionnaire

#### 4.29.4. Application to private (commercial) audiovisual media service providers

Licences are granted to analogue AVMS in the form of an individual licence.

The procedure is conducted in two stages. During the first stage, only formal criteria are assessed, that is to say:

- for a natural person: have a permanent or long-term residence in the Slovak Republic and have full legal capacity; if a licence is granted to a natural person, this person shall have the duty to apply for registration in the Business Register;
- for a legal person: have the legal form of a corporation, its head office in the territory of the Slovak Republic, or an organisational unit of its enterprise situated in the territory of the Slovak Republic, and be registered in the Business Register; if this legal entity has the legal form of a joint-stock company, its shares must be registered and entered in the central depository and their owners registered in the list of shareholders kept by the central depository.

During the second stage, the quality of the application is assessed based on the following criteria:



- prerequisites necessary to maintain the plurality of information and media content;
- the transparency of the ownership relations of the applicant for the licence;
- the transparency and credibility of the sources of financing intended to finance broadcasting;
- whether the programme structure proposed by the applicant for the licence is balanced in relation to the existing offer of programme services in the area of broadcasting in the territory that should be covered by this broadcasting;
- the contribution of the applicant for the licence in relation to the broadcasting and production of public interest programmes;
- the fact that a licence applicant should not obtain a dominant position in the relevant market,
- the fact that it is necessary to ensure the adequate capital participation of the Slovak people and their representation in bodies of the company, provided that the applicant for the licence is a legal entity with foreign capital participation.

Licences are granted to digital AVMS in the form of a formal licence. Only the first stage of the aforementioned analogue procedure is conducted.

Regarding distribution via DTT, only AVMS which have been granted a formal licence in application of the Digital Broadcasting Act can be broadcast in a Slovak multiplex.

The deadline obliging the RVR to respond to an application is ninety days. If the RVR grants the licence, another deadline of sixty days applies for the actual delivery of the licence. If, during the procedure, the RVR requires additional information from an applicant, the RVR suspends the procedure and sets a new deadline for the delivery of the information.

There is no deadline imposed on digital AVMS providers for the provision of the service. For analogue AVMS providers the deadline is 360 days.

**Table 188. Access to market by private service providers**

Service	Category	Authority
<i>Linear</i>		
<i>Via DTT</i>	Formal licence	RVR
<i>Via cable</i>	Individual licence	RVR
	Formal licence	RVR
<i>Via IPTV</i>	Individual licence	RVR
	Formal licence	RVR
<i>Via satellite</i>	Individual licence	RVR
	Formal licence	RVR
<i>Via OTT</i>	Individual licence	RVR



	Formal licence	RVR
<b>Non-linear</b>		
<i>Via DTT</i>	Notification	RVR
<i>Via cable</i>	Notification	RVR
<i>Via IPTV</i>	Notification	RVR
<i>Via satellite</i>	Notification	RVR
<i>Via OTT</i>	Notification	RVR

Source: Slovakian response to European Audiovisual Observatory standardised questionnaire

#### 4.29.5. Application to regional/local audiovisual media service providers

The same procedure as the one described in section 4.29.4 above is applicable.

It should be noted that pursuant to Article 27(5)(f) of the Digital broadcasting Act, the RVR shall reject the application for a local licence if the applicant will not manifest that the programme service is focused on the local informational environment or sources and on communal interests that create and deepen inner bonds within this community and lead to the preservation of the identification with the community.

#### 4.29.6. Application to community (non-profit) audiovisual media service providers

The same procedure as the one described in section 4.29.4 above is applicable.

#### 4.29.7. Licence fee

The amount of the licence fee depends on the type of licence:

- digital licence:
  - national: EUR 663.50;
  - regional: EUR 331.50;
  - local: EUR 66;
- analogue licence:
  - national: EUR 265.50;
  - regional: EUR 132.50;
  - local: EUR 66.

The fee is paid once for the whole duration of the licence.



The amounts of the fees are set down in the Tariff of Administrative Fees which is a part of the Act on Administrative Fees.

The beneficiary is the state budget.

#### 4.29.8. Media ownership and concentration

The transparency of ownership of all AVMS providers is ensured via the obligation to provide the relevant data when applying for a licence or notifying.

Media concentration issues are dealt with by both the Analogue Act on Broadcasting and Retransmission and the Digital Broadcasting Act. Applicants for a digital licence shall comply with both Acts, whereas applicants for an analogue licence shall comply only with the Analogue Act.

Pursuant to the Digital Act, an AVMS provider applying for a digital licence cannot establish property or a personal link with another digital broadcaster. Such a property link is established when a person holds at least a 25% share of the issued capital of a second person, or a 25% share of the overall voting rights in the company. A personal link is established if a natural person participates in the executive or in control mechanisms of another legal person. Moreover, several rules apply in terms of the limitations on property or personal links between an AVMS provider and the provider of a terrestrial multiplex.

Pursuant to the Act on Broadcasting and Retransmission, the publisher of a periodical that is published at least five times a week and is available to the public in at least half of the territory of the Slovak Republic cannot simultaneously be a licensed broadcaster at multiregional or national level. One legal entity or natural person must not have a cross-ownership connection with more than one licensed broadcaster of a radio programme service at multiregional or national level, or one licensed broadcaster of a television programme service at multiregional or national level; nor shall cross-media ownership exist with a publisher of periodicals with national circulation. One legal or natural person can have a cross-media ownership connection with several licensed broadcasters of radio programme services at local or regional level, or with several licensed broadcasters of television programme services at local or regional level only if the broadcasting of all of the broadcasters with whom this person has cross-media ownership connections can be received by at most 50% of the total population. Broadcasters may develop a programme network to the extent that it is received by at most 50% of the total population. All forms of cross ownership or personal connection between the broadcaster of a radio programme service and the broadcaster of a television programme service, or with a periodical press publisher at national level, shall be prohibited.

**Table 189. Main issues regarding media ownership and concentration**

Issue	Description
Transparency of ownership issues considered during	Relevant data has to be provided when applying for a



the licensing or notification process	licence or notifying
Media concentration issues considered during the licensing process	Cross-media ownership and population coverage thresholds

Source: Slovakian response to European Audiovisual Observatory standardised questionnaire

#### 4.29.9. Management of the licence and notification

Analogue licences are granted for 12 years and digital licences and notifications have no limited term.

Pursuant to Article 52 of the Analogue Act on Broadcasting and Retransmission, if the broadcast is not conducted terrestrially, an application for the renewal of an analogue licence shall be submitted at least four months prior to its expiration. In the case of terrestrial national and multiregional broadcasting, the application shall be submitted as of 20 months prior to the expiration of the licence and 19 months at the latest. In case of terrestrial regional and local broadcasting, the application shall be submitted as of 18 months prior to the expiration of the licence and 17 months at the latest. When making a decision on the extension of the licence, the RVR shall assess in particular:

- the contribution to the development of culture and public awareness;
- the transparency of the broadcaster's ownership relations;
- the development of original content;
- the contribution to media market development;
- the conformity of the providers' activity with the law of the Slovak Republic, in particular with the Analogue Act on Broadcasting and Retransmission.

The suspension and revocation of a licence are among the administrative sanctions that can be decided by the RVR. Sanctions have to be decided following a gradual approach, and different rules apply for analogue and digital licences:

- The RVR shall revoke an analogue licence in the following circumstances:
  - the provider requests its revocation in writing;
  - the licence was granted on the basis of false information included in the application for the licence or the documents enclosed with the application;
  - a share of the registered capital of a provider or a share of voting rights in a provider exceeding 55% of the total value of registered capital or voting rights is transferred while the licence is in force without the prior consent of the RVR;
  - a share in the registered capital of a provider or a share in the voting rights in a provider is transferred without the prior consent of the RVR within 24 months of the entry into force of the RVR decision granting the licence;
  - the provider has breached the provisions of sections 42 or 43 and failed to adjust his relations so as to make them compliant with the law by the set



- deadline (that is to say, the rules on media diversity, pluralism and the transparency of ownership);
- the provider has breached duties under section 50 (1) (that is to say, the obligation to exercise the rights and obligations arising from the licence in his own name, on his own account and on his own responsibility).
- The RVR may revoke an analogue licence if:
    - within the calendar year after commencing broadcasting the provider did not broadcast continuously for thirty days; periods during which broadcasting is prevented by justified technical obstructions shall not be counted;
    - the provider is declared bankrupt;
    - the provider is a natural person and has been convicted of a criminal act committed in direct connection with broadcasting and retransmission, or for an economic crime, or for a crime against property;
    - the provider has not performed the duties laid down in section 16 (3) (h) (that is to say, the obligation to record the performance of an activity covered by this act as the subject of the activity in the Business Register).
  - The RVR shall revoke a digital licence if:
    - the provider requests its revocation in writing;
    - the licence was granted on the basis of false information included in the application for the licence or the documents enclosed with the application;
    - a share of the registered capital of the provider or a share of voting rights in the provider exceeding 55% of the total value of registered capital or voting rights is transferred while the licence is in force without the prior consent of the RVR;
    - a share in the registered capital of a provider or a share in the voting rights in a provider is transferred without the prior consent of the RVR within 24 months of the entry into force of the RVR decision granting the licence.
  - The RVR may revoke a digital licence if:
    - the provider breached the basic conditions of the granting of the licence (type of licence: national/regional/local, means of broadcasting or ancillary content services);
    - the provider is declared bankrupt;
    - when the legal person holding a licence sells its company or a part of it;
    - the provider no longer meets the formal criteria for granting the licence.

If an AVMS provider wishes to modify the analogue licence conditions, it shall notify the RVR of any changes in connection with the information given in the application for the licence and submit documentation proving the changes within 15 days of their occurrence. After receiving this notification, the RVR shall decide, according to the circumstances of the case, whether to change the granted licence or to refuse the change and set a deadline for corrective action. If the AVMS provider does not take the required corrective action, the RVR shall revoke the licence.



If an AVMS provider wishes to modify the digital licence conditions, three different procedures are applicable:

- changes that shall be notified within 15 days of their occurrence, that is to say, all the changes that are not listed in the two categories below;
- changes that shall be notified at least ninety days before their occurrence, that is to say, type of licence (national, regional, local), change of ancillary content service/services (for example, EPG, different language versions), adding/removal or changes in the additional clause for cross-border broadcasting or an additional clause for different means of broadcasting (satellite, cable, etc.);
- changes that shall occur only with the prior consent of the RVR: a share of the registered capital of the licensed broadcaster or a share of voting rights in the licensed broadcaster exceeding 55% of the total value of registered capital or voting rights is transferred or a share in the registered capital of a broadcaster licensed to broadcast a television programme service, or a share in the voting rights in a broadcaster licensed to broadcast a television programme service is transferred within 24 months of the entry into force of the RVR decision granting the licence.

In case of modifications to the service with a view to targeting different audiences, it would be considered by the RVR that different programming windows constitute different AVMS (which therefore have to be licensed accordingly).

**Table 190. Main issues regarding the management of the licence**

Issue	Description
Duration	12 years for analogue licence
Procedure to renew	At the request of the licensee
Procedure to suspend	Same as for other sanctions
Procedure to revoke	Same as for other sanctions
Procedure in case of termination of the provision of the service	Notification to the RVR
Procedure in case of modifications in the licence conditions	Prior approval of the RVR
Procedure in case of modifications to the service with a view to targeting different audiences	Different programming windows have to be licensed accordingly

Source: Slovakian response to European Audiovisual Observatory standardised questionnaire

## 4.29.10. Future amendments to the regulatory framework

N/A.



## 4.29.11. Video-sharing platforms

N/A.

## 4.29.12. Applicable regulatory framework

### ■ Primary legislation:

- In Slovak – Zákon č.220/2007 o digitálnom vysielaní (Digital Broadcasting Act):

<http://www.rvr.sk/sk/spravy/index.php?aktualitaId=582>

- In Slovak – Zákon č.308/2000 o vysielaní a retransmisii (Analogue Act on Broadcasting and Retransmission):

<http://www.rvr.sk/sk/spravy/index.php?aktualitaId=925>

- In English – Analogue Act on Broadcasting and Retransmission:

<http://www.rvr.sk/en/documents/index.php?aktualitaId=3178>

## 4.29.13. Data compilation

This factsheet was produced based on data compiled by Juraj Polák, Senior legal advisor, Radio and Television of Slovakia.



# Glossary

## **Cable**

The term cable (television) network describes the means used to distribute TV and radio broadcasts by means of broadband cables (copper or fibre-optic cables) laid in the ground.

## **Catch-up TV**

On-demand service allowing replay, or delayed viewing of TV programmes (via Internet, cable, DSL Networks, FTTH, satellite, TNT, mobile telephones).

## **Community audiovisual media services**

Community media are non-profit and accountable to the community that they seek to serve. Their content is created by members of the community. Community media are editorially independent from government, commercial and religious institutions and political parties. They are a distinct group within the media sector alongside commercial and public service media.

## **Digital Terrestrial Television (DTTV or DTT)**

Technological evolution and advance from analogue terrestrial television, which broadcasts land based (terrestrial) signals. The purpose of digital terrestrial television, similar to digital versus analogue in other platforms such as cable, satellite, telecoms, is characterized by reduced use of spectrum and more capacity than analogue, better-quality picture, and lower operating costs for broadcast and transmission after the initial upgrade costs.

## **Free-to-air broadcasting**

Broadcasting, either public service or commercial, of programmes which are accessible to the public without paying any specific fees (except licence fees and/or the basic tier subscription fees to a cable network). 'Free to air' television may cover transmission by cable, satellite or terrestrial technologies but excludes services to which access is limited by conditional access systems such as Pay-TV Services.

## **IPTV (Internet Protocol Television)**

IPTV delivers digital TV over a broadband connection. Instead of a bouquet of broadcast services for direct viewing via aTV tuner, IPTV allows viewers to request a specific service from the server. The service is then streamed for viewing via the internet protocol and other technologies known as Digital Subscriber Line (DSL). (See also the definition of OTT)

**Licensing system**

Any system in which the competent authority (Government, regulatory authority...) has the opportunity to decide to grant or to refuse to grant a licence to the natural or legal person who applies for a licence. This opportunity is usually based on content criteria (such as commitments in terms of programming or investment, amount proposed for the auction...). This should cover for instance situations usually described as tender, beauty contest, auction, licence, individual authorisation...

**Linear audiovisual media service**

(i.e. 'television broadcasting' or 'television broadcast') means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.

**Non-linear audiovisual media service**

(i.e. on-demand audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.

**Open system**

Any system in which service providers can have access to the market without no obligation of any kind to signal to the competent authority (Government, regulatory authority ...) that it has launched an audiovisual media service. In such case all the burden to detect and identify the service providers would bear on the competent authority.

**Over-the-top (OTT)**

Over-the-top players provide audiovisual content online (via Internet) generally without any intermediary between them and their costumers (such as cable or IPTV platform providers). (See also the definition of IPTV)

**Pay TV**

Users obtain access to additional or premium content in return for a specific fee e.g. regular subscription or 'pay per use'. Pay-TV channels broadcast in an encoded (encrypted) form so that access (via a decoder) is limited to only those people who have subscribed to the Pay-TV offers.

**Pre-emption**

Any decision made a public authority with a view to grant to a certain type of audiovisual media service providers (usually public audiovisual media service providers or community audiovisual media services providers) a part of the resources available (usually analogue or digital terrestrial frequencies) without a prior attribution procedure (such as for example a tender).

**Public Service Broadcaster**

Broadcaster entrusted with a public service mandate. According to the Protocol on the System of public broadcasting in the Member States attached to the Treaty of Amsterdam,

public broadcasting is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. The definition of the public service mandate falls within the competence of the Member States, which can decide at national, regional or local level.

### **Regional variation**

'Regional variation' is when a television or a radio channel splits to simultaneously broadcast different programs of interest, to different parts of its coverage area, in the form of short news and also the occasional regional-interest programme or specifically targeted advertising.

### **Registration/notification system**

Any system in which the competent authority (Government, regulatory authority...) does not have the opportunity to refuse access to the market to the natural or legal person who files a registration as long as basic formal criteria are met. This would therefore include the situations in which the registration can eventually be refused, but exclusively on formal criteria (such as providing the requested information about the person, being established in the country, having the appropriate legal status...). This should cover for instance situations usually described as registration, notification, general authorisation, first-come-first-served...

### **Satellite broadcasting**

Satellite broadcasting can deliver content like radio, audiovisual media services and data. The signal transmission qualifies as an electronic communications service; the facilities delivering that service are electronic communications networks.

### **SVoD (subscription video on-demand)**

SVoD is an on-demand services that requires users to pay a monthly fee to access the catalogue.

### **VoD (Video on-demand)**

A system allowing viewers to order and see a programme at the exact time the viewer specifies. VOD can be offered through streaming of the content through a set-top box, a computer or other device, allowing viewing in real time, or by download to a device such as a computer, for viewing at any time. Traditionally VOD meant that the viewer paid per programme.







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