

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	REFIT Evaluation and Impact Assessment of the EU Audiovisual Media Services Directive 2010/13/EU (AVMSD)		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG CONNECT, UNIT G.1 (CONVERGING MEDIA AND CONTENT)	DATE OF ROADMAP	10/2015
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INDICATIVE PLANNING	Q2 2016		
ADDITIONAL INFORMATION	<a href="http://ec.europa.eu/dgs/connect/en/content/dg-connect">http://ec.europa.eu/dgs/connect/en/content/dg-connect</a>		
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## A. Context, Subsidiarity Check and Objectives

### Context

This initiative focuses on the review of the EU Audiovisual Media Services Directive (Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, hereinafter "AVMSD").

#### **General background on the AVMSD:**

Since the adoption of the Television without Frontiers Directive in 1989, technological and market developments have made it necessary to amend the audiovisual regulatory framework. The Directive was revised in 1997 and 2007. With the last revision, it was renamed Audiovisual Media Services Directive (Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services AVMSD) and then codified in 2010.

Since the entry into force of the AVMSD in 2007, the market has significantly and rapidly evolved. Technical developments allow for new types of services and user experiences. The viewing habits, particularly of younger generations, have significantly changed. While the main TV screen in the living room remains an important device to share audiovisual experiences, many viewers have moved to tablets and/or smartphones to watch audiovisual content. Traditional TV content accounts still for a major share of the average daily viewing time. However, video-on-demand (VOD) and other Internet-based services gain increasing importance. New players and business models that were emerging at the time are now well-established.

#### **Specific background on the AVMSD:**

The overarching objective of the AVMSD is to create a single market for audiovisual media services whilst ensuring at the same time a high level of protection of objectives of general interest, inter alia the protection of minors and human dignity as well as promoting the rights of persons with disabilities. The AVMSD's main objective is articulated into a number of more specific objectives:

- Create a level playing field for emerging audiovisual media services;
- Guarantee conditions of fair competition;
- Strengthen the competitiveness of the European audiovisual industry;
- Protect and empower consumers (audiences), in particular minors and people with a visual or hearing disability;
- Contribute to the support of cultural and linguistic diversity and heritage in Europe;
- Safeguard media pluralism, freedom of expression and information.

The AVMSD provides for a minimum harmonisation of certain aspects of national legislation related to audiovisual media services, with a view to facilitating the circulation of audiovisual media services in the Internal market on the basis of the country of origin principle. The Member States are free to apply more detailed or

stricter rules in the fields coordinated by the AVMSD to providers under their jurisdiction, as long as those rules are consistent with the general principles of European Union law.

According to the country of origin principle, audiovisual media service providers have to abide only by the rules of the one Member State with jurisdiction over them, but can operate in all Member States. This does not prevent Member States from establishing higher standards at national level. However, a receiving Member State with stricter rules than those laid down by the AVMSD cannot restrict the reception of services from another Member State on the basis of those stricter rules. Exceptions apply in specific circumstances defined in the AVMSD.

The AVMSD is based on the principle of technological neutrality: rules apply to providers of audiovisual content irrespective of the screen on which the content is watched (TV, PC, tablet, ...). This contributes to achieving a level playing field and fair competition regardless of the technologies used.

The AVMSD had already foreseen the advent of on-demand audiovisual media services such as VOD and catch-up TV. Accordingly, it covers both broadcast services and on-demand audiovisual media services.

The AVMSD lays down a basic tier of rules which aim to guarantee key societal values and apply to all audiovisual media services (for example, the prohibition of incitement to hatred the obligation for the Member States to encourage providers to make services gradually accessible to people with disabilities).

In specific fields, the Directive provides for a two-tier approach with lighter touch regulation for on-demand services, due to the users' higher degree of choice and control over the content and the time of viewing, and stricter and more detailed rules for broadcast services. The two-tier approach applies to the fields of commercial communications, protection of minors, promotion of European works, right to information (short news reports and events of major importance for society) and right of reply.

#### **Ongoing REFIT evaluation of the AVMSD:**

The Directive is currently being assessed under the Regulatory Fitness and Performance Programme (REFIT) of the Better Regulation Framework. The REFIT evaluation is listed in the Commission Staff Working Document "REFIT: Initial results of the mapping of the acquis" (SWD(2013) 401) and is part of the Commission's 2015 Work Programme (Annex 3, (COM2014) 910 final of 16.12.2014), and has three objectives:

a) Provide the necessary evidence base for meeting the reporting obligations set out in the AVMSD. The AVMSD requires the Member States to report to the Commission and the Commission to report to Parliament and Council on the state of play of the Directive according to Article 33 (Application report), and Articles 13, 16 and 17 (Reports on the promotion of European Works).

b) Assess (a) whether the current Directive provides an adequate regulatory framework taking account of developments in the audiovisual media services sector, and b) determine whether the AVMSD efficiently achieves its objectives and fulfils other evaluation criteria such as EU-added value and coherence. A preliminary analysis suggests that the relevant sector has evolved considerably since the last revision of the Directive and transposition has been protracted. The REFIT evaluation should also identify areas where simplification and cost reduction are possible without undermining the overall objectives of the regulatory framework.

c) Should the REFIT evaluation identify aspects on which a revision of the AVMSD might be justified, the output of the REFIT evaluation will provide input for the Impact Assessment on policy options for the future of the AVMSD, which is broadly carried out in parallel to the REFIT evaluation.

#### **REFIT evaluation criteria:**

The REFIT evaluation of the AVMSD will assess the overall functioning of the AVMSD in the light of recent developments of the market, technology and consumption patterns.

It will assess regulatory burden and identify whether there is scope for simplification. It will also look into the causes, consequences and lessons to be learnt from the protracted implementation of the Directive.

The REFIT evaluation of the AVMSD will assess the Directive against the following criteria:

**Relevance:** To what extent have the AVMSD rules proved relevant to the needs of the EU audiovisual market and viewers? In a converging environment, are the rules defining an audiovisual media service and those on advertising, protection of minors and promotion European works still relevant? Are the rules for on-demand audiovisual media services appropriate for other information society services delivered via the Internet?

**European Added Value:** Has the AVMSD created a single market for audiovisual media services in the EU? Have the common advertising rules and other rules (protection of minors, prohibition of hate speech etc.) enabled the free circulation of audiovisual media services in the EU? Have the rules provided legal certainty for all players in the internal market? Have the rules provided for a high level of protection of consumer/viewer's interests? Has the AVMSD ensured a level playing field between various players in the internal market? Have the

rules on the promotion of European works contributed to a better circulation of European works between Member States and help to increase audiovisual production at European level? Does the AVMSD contribute to the respect of fundamental values such as plurality of the media and cultural diversity?

**Effectiveness:** To what extent have the AVMSD objectives been met? Where expectations have not been met, what factors hindered their achievement? Are the rules on the material and geographical scope still delivering on the objectives to ensure a level playing field and economic growth in the digital age? Are the rules on advertising of products targeting children strict enough to achieve a high level of consumer protection? Have the AVMSD rules and envisaged self-regulatory approach on television advertising in children's programmes afforded the required level of protection? Have the AVMSD requirements been effective in ensuring the protection of the physical, mental and moral development of minors? Have the extension of the AVMSD rules on protection of minors to on-demand audiovisual media services been effective in ensuring that children do not have access to harmful content online? Have the provisions on jurisdiction and country of origin, including cooperation mechanisms, contributed to achieving an internal market for audiovisual media services? Have the rules on the promotion of European works effectively contributed to improving distribution and circulation of European works, including across borders? Have the rules on European works contributed to strengthening the European production sector? Have the rules on independent productions contributed to strengthening the position of European independent producers? Have the AVMSD rules provided the appropriate level of accessibility for services to persons with visual and hearing disability?

**Efficiency:** Have the objectives of the AVMSD been achieved at the lowest cost? Could other policy instruments have provided better cost-effectiveness? Could a more extensive use of self- and co-regulation have been more conducive to meeting the AVMSD objectives? Could some objectives of the Directive have been met more efficiently by relying on tools such as Commission guidelines? How useful and manageable is the framework provided by the AVMSD for SMEs and micro-enterprises? Is there scope for streamlining and/or simplifying the procedures laid down in the AVMSD?

This analysis will also address the issue of regulatory burden associated with the application of the AVMSD, and the impact of the AVMSD on the competitiveness of market players (including European broadcasters and content producers) in a changing landscape.

**Coherence:** How well does the AVMSD work together with other (EU) initiatives and activities, including the eCommerce Directive, the Unfair Commercial Practices Directive, the Consumer Protection Cooperation Regulation or the Electronic Communication Framework? To what extent do the AVMSD rules take into consideration potential interaction or conflicts with the other Community policies? How well the rules on European works/work together with other measures at European level supporting European production (e.g. the Creative Europe Programme)?

**Complementarity:** To what extent has the AVMSD proved complementary to other (EU/Member States) initiatives/activities in the fields of protection of minors, consumer protection and the promotion of cultural diversity? Has the AVMSD proved complementary to other EU/Member States interventions in defending the right to information and free speech?

**Protracted implementation:** The REFIT evaluation will also include an assessment of the implementation process, in particular the various infringement procedures launched by the European Commission over the past years and the various implementation issues. What were the causes, consequences and lessons to be learnt from the protracted implementation of the Directive?

### **Previous and ongoing other evaluations and consultation activities regarding the AVMSD:**

In 2013, the Commission published the Green Paper<sup>1</sup> "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values" and invited stakeholders to share their views on the changing media landscape and borderless Internet in particular on market conditions, interoperability and infrastructure, and implications for EU rules. The outcomes of the Green Paper are reflected in the feedback document and executive summary of the replies published by the Commission in September 2014<sup>2</sup>.

In the same year, the Commission launched a Public consultation<sup>3</sup> on the independence of audiovisual regulatory bodies. The Commission sought the views of stakeholders<sup>3</sup> on the need to strengthen cooperation between regulatory authorities and reinforce their independence.

The Commission Communication "A Digital Single Market Strategy for Europe" (COM(2015) 192 final of 6 May 2015) announces, amongst other initiatives, the creation of a "Media framework for the 21<sup>st</sup> century". The Strategy states that the Commission will examine the functioning of the rules currently in force and, as a key

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1 <http://ec.europa.eu/digital-agenda/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values>

2 <https://ec.europa.eu/digital-agenda/en/news/publication-summaries-green-paper-replies>

3 <http://ec.europa.eu/digital-agenda/en/news/public-consultation-independence-audiovisual-regulatory-bodies-read-contributions>

action in this domain, it announces that "the Commission will review the Audiovisual Media Services Directive with a focus on its scope and on the nature of the rules applicable to all market players, in particular measures for the promotion of European works, and the rules on protection of minors and advertising rules."

A Public consultation on "Directive 2010/13/EU on Audiovisual Media Services (AVMSD) - A media framework for the 21st century" was launched on 6 July and will run until 30 September 2015. The public consultation, available in the 24 official languages of the EU, seeks inputs on the functioning and impact of the AVMSD and on policy options for the future of the Directive. Accordingly, the feedback of the Public consultation will feed into both the REFIT evaluation of the AVMSD and the Impact Assessment on policy options for its future.

The following reports and documents also cover this policy area:

- First Report on the application of the AVMSD<sup>4</sup> for the period 2009-2010. The report found that the AVMSD was working well, but the audiovisual sector was undergoing rapid changes.
- First Report on the promotion of European works on EU television and On-Demand services, for the period 2009-2010<sup>5</sup>.
- The Council conclusions<sup>6</sup> adopted under the Italian Presidency of the EU in 2014 inviting the Commission to "Urgently complete the exercise of the review of the AVMSD in the light of the rapid technological and market changes resulting from the digital shift, and on the basis of the outcome of this review submit an appropriate proposal for the revision of this Directive as soon as possible, in respect of the principle of subsidiarity."
- Two Own-initiative reports adopted by the European Parliament. A) The July 2013 "Connected TV<sup>7</sup>" report (Rapporteur MEP Petra Kammerevert (S&D, DE)) calling on the Commission to evaluate the extent to which it is necessary to revise the AVMSD. B) The March 2014 report, "Preparing for a Fully Converged Audiovisual World<sup>8</sup>" (Rapporteur MEP Sabine Verheyen (EPP, DE)) which calls for a review of the AVMSD.
- The Opinion adopted by the European Economic and Social Committee in September 2013 on the Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values"<sup>9</sup>.
- Reports of the European Audiovisual Observatory<sup>10</sup>.

### **The Digital Single Market Strategy for Europe (DSM):**

The Digital Single Market Strategy for Europe (COM(2015) 192) announces a number of initiatives with potential relevance to the AVMSD:

- A reform of the EU regulatory framework for electronic communications via Commission proposals to be presented in 2016 and aiming to ensure, amongst other things, consumer protection and a level playing field for market operators.
- A copyright reform to ensure better access to digital content via Commission legislative proposals to be adopted before the end of 2015.
- A comprehensive assessment by the Commission of the role of platforms and online intermediaries including on how to best tackle illegal content on the internet, to be launched at the end of 2015.
- A review of the Satellite and Cable Directive<sup>11</sup> in 2015/2016, to assess the need to enlarge its scope to broadcasters' online transmissions and the need to tackle further measures to ensure enhanced cross-border access to broadcasters' services in Europe.

The DSM Strategy falls under the responsibility of the Commission Vice-President for the Digital Single Market, Mr Andrus Ansip. The Commission is ensuring consistency among AVMSD and the other DSM initiatives by means of internal arrangements, such as Dedicated Task Forces within DG CONNECT, a Commission-wide DSM Steering group and a Steering group on AVMSD, regularly convened by the Commission Secretariat-General, gathering representatives of the relevant Commission services.

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4 <http://ec.europa.eu/digital-agenda/avmsd-application-reports>

5 [http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX\\_SESSIONID=8qhmJpNKX96gCHNRfb4hCCD07GIZnZXJJpcv21pYv9JZnQG45fFJ1-8608491?uri=CELEX:52012DC0522](http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=8qhmJpNKX96gCHNRfb4hCCD07GIZnZXJJpcv21pYv9JZnQG45fFJ1-8608491?uri=CELEX:52012DC0522)

6 [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/educ/145950.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/145950.pdf)

7 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0329&language=EN&ring=A7-2013-0212>

8 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0232&language=EN&ring=A7-2014-0057>

9 <http://www.eesc.europa.eu/?i=portal.en.ten-opinions.28469>

10 <http://www.obs.coe.int/>

11 Council Directive 93/83/EEC of 27 September 1993

### **Rationale for the initiative:**

Since the entry into force of the AVMSD in 2007, the market has evolved at a rapid pace. Media convergence (the progressive merging of traditional broadcast services and the Internet) is part of many citizens' daily lives. Technological developments allow for new types of services and user experience. The viewing habits, particularly of younger generations, have changed. The traditional TV set is now only one of the means to watch audiovisual content as Connected TV, set-top boxes, but also PCs, laptops, tablets and smartphones are increasingly used to watch VOD and Internet-based services.

All these new developments lead to questions regarding the relevance and impact of existing AVMSD rules as well as on the need to adopt a different approach on certain aspects for the future.

### **Possible problem statement/problem drivers and EU-level dimension:**

In light of the above mentioned technological and societal development, and of the new market realities, the main issues that will be examined, both in the context of the evaluation and the Impact Assessment, are the following:

- Scope (services to which the AVMSD should apply): The AVMSD regulates broadcast and on-demand services. It applies to programmes that are TV-like and for which providers have editorial responsibility. The AVMSD does not apply to content hosted by online video-sharing platforms and intermediaries. These platforms and intermediaries, which play an increasingly important role, are regulated primarily by the EU eCommerce Directive.
- Level of consumer protection (rules on commercial communications): On-demand services are progressively catching up with broadcast services in terms of consumption uptake. Also, while the Internet is the second medium for advertising in Europe after TV, it has outpaced TV over the period 2008-2013.
- Protection of minors: children and teenagers consume more and more on-demand content and progressively abandon traditional TV. Many stakeholders raise concerns and question the current provisions. However, there is no consensus among stakeholders on possible solutions: some call for a more harmonised approach, others find the current rules appropriate for audiovisual media services but insufficient for services outside the scope of the AVMSD. Some others point to alternative approaches, e.g. more preventive measures, self-regulation or promotion of best practices.
- The country of origin principle is the cornerstone of the current legal framework. The AVMSD foresees derogation and cooperation mechanisms for cases of concern over incitement to hatred and protection of minors, and for situations where there might be circumvention of some Member States' stricter rules. The application of these procedures has in some cases given rise to concerns.

There have been issues regarding the application of the country of origin in the following fields:

- Promotion of European works for on-demand services: Article 13 AVMSD does not provide for a high level of harmonisation. It simply gives three examples of how Member States can ensure the promotion of European works in on-demand services: financial contributions by service providers, reserving a share for European works in the catalogue of providers and/or by giving prominence to European works. The evaluation will strive to establish whether these requirements should be considered as sufficient, adequate in an online world and assess their effectiveness and impact on quality, commercial attractiveness, cross-border circulation, editorial or entrepreneurial freedom.

- Incitement to hatred in programmes broadcasted by some channels established in a Member State but targeting one or several other Member States. The main issue in this field is to identify where the jurisdiction lies and the functioning of the derogation procedure.

- Channels targeting a specific Member State but established in another Member State because of stricter rules in the former MS. The main issue in this field is the functioning of the circumvention procedure.

- Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities: The independence of regulators has been highlighted as an area of particular importance to ensure the correct application of the Directive. Access to information (including public interest content) has also been flagged as a key issue for which regulation should

be fit-for-purpose. Access by people with disabilities should continue to be ensured also in light of the latest innovations.

The problem statement and the problem drivers will be further refined on the basis of the outcomes of the REFIT evaluation and of the above-mentioned public consultation, as well as relevant studies and data.

## **EU dimension**

Audiovisual media services are subject, to some extent, to EU-level harmonisation for two main reasons:

- The EU audiovisual media market has a Union-wide dimension and is not confined to national borders: At the end 2013, about 23% of TV channels established in the EU targeted foreign markets (either EU or extra EU). When it comes to on-demand services, the cross border dimension of the delivery of services is even more evident when the Internet is used to offer those services in more than a single country. For example, as of February 2014, almost 3100 VOD services were established in the EU.
- The AVMSD freedom of reception principle has positive externalities at EU level. It allows citizens from all over the EU to benefit from content transmitted from other Member States, with an evident impact on impact on cultural diversity, freedom of information and expression and media pluralism.

Affected stakeholders:

- Businesses in various sectors (Small and Medium-Sized and large enterprises); Public service Broadcasters; Commercial broadcasters and thematic channels; Cable operators; Pay-TV aggregators; Free and Pay TV operators; IPTV, ISTs; Electronic communications networks and service providers; Over-the-top providers including platforms and intermediaries; Advertisers; Content producers (independent or linked to broadcasters)/Publishers; Press/other media.
- Consumers/Viewers: Viewers (general); Minors; People with hearing or viewing disabilities.
- Public administrations in the EU Member States and in third countries: Policy makers and administrations at national, regional and local level; Regulators.
- EU institutions, primarily the European Commission.
- European Union economy and society as a whole.

## **Subsidiarity check**

The legal basis giving the EU the right to act is Article 53(1) and Article 62 TFEU (freedom to take up and pursue activities and freedom to provide services).

The overarching objective of the Directive, namely to create a single market for audiovisual media services whilst ensuring at the same time a high level of protection of objectives of general interest, inter alia the protection of minors and human dignity as well as promoting the rights of persons with disabilities, cannot be achieved by the Member States alone.

At the end 2013, about 23% of TV channels established in the EU targeted foreign markets (either EU or extra EU). This shows respectively that the Directive has had beneficial impacts for the internal market and that EU intervention in this domain is needed.

The EU may hence adopt measures at Union level in accordance with the principles of subsidiarity and proportionality.

## **Main policy objectives**

### **Objective/Focus of the Impact Assessment:**

The objective of the Impact Assessment is to identify and assess possible policy options for the modernisation of the regulatory framework (Impact Assessment, forward-looking exercise) with the aim to ensure that the original policy objectives of the AVMSD will continue to be delivered upon in the future. The Impact Assessment (forward-looking exercise) and the ongoing REFIT evaluation of AVMSD (backward-looking exercise) are conducted broadly in parallel and will be closely coordinated in terms of timing and contents.

Based on the previous and ongoing evaluations and consultation activities on the AVMSD (outlined above), including the results of the REFIT evaluation of the AVMSD Directive, the work on future options will focus on the following thematic areas:

- Ensuring a level playing field for audiovisual media services (the services to which the AVMSD should apply);
- Providing for an optimal level of consumer protection (rules on commercial communications);
- User protection and prohibition of hate speech and discrimination (rules ensuring viewers protection, including protection of minors);
- Promoting European audiovisual content;
- Strengthening the single market;
- Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities.

## B. Option Mapping

In line with the DSM strategy, possible options should aim at enhancing the internal market for audiovisual services in a convergent technological environment. Doing so requires ensuring a level playing field between the various types of services, taking into account the inherent differences between broadcast and on-demand services. This will require a thorough assessment of the material and geographical scope of the Directive as well as of the level of regulation for both broadcast and on-demand services.

The following preliminary options related to the main areas outlined above have been submitted for public consultation:

- Policy options concerning the **scope** of the Directive (the services to which it applies) include maintaining the status quo or clarifying the scope via Commission guidance as well as options that will possibly enhance the level playing field such as broadening the scope to encompass services that are currently outside the definition of audiovisual media services given by the Directive (such as non-TV like services or audiovisual content distributed via video sharing platforms) and/or providers that fall outside its geographical scope (possibly with a threshold of having a significant presence in the EU notably in terms of market share).

- Policy options in the areas of **consumer and user protection**, as well as the promotion of European works include but are not limited to possible changes to the current system of rules concerning broadcast and on-demand services (e.g. towards a liberalisation of rules for broadcast services or stricter rules for on-demand audiovisual media services which would enhance the level playing field).

- On commercial communications: Options include maintaining the status quo, rendering the rules for broadcast services more flexible (notably the time limits on advertising and the number of interruptions) and/or tightening rules on advertising that aim to protect vulnerable viewers (e.g. alcohol advertising) while ensuring a level playing field and an optimal level of consumer protection.

- On protection of minors: Options include maintaining the status quo, complementing it via self-co regulation measures to improve protection, stronger harmonisation of measures such as technical aspect, certification and labelling and extension of the measures on protection of minors to online content not in the scope of the AVMSD (e.g. user generated content).

- Policy options on the **promotion of European audiovisual content**: Options include maintaining the status quo, removing EU-level rules for broadcast and /or on-demand services, introducing more flexibility for providers in the way they implement the obligations and reinforcing the rules (e.g. in broadcast services via additional quotas for non-national European works or a clear percentage of Recent Independent Productions; in on-demand services by making compulsory one or more methods to promote European works). It will be also assessed to what extent a level playing field can be achieved in this regard when regulating broadcast and on-demand services.

- Policy options to strengthen the **single market** include maintaining the status quo (country of origin principle and related mechanisms); strengthening existing cooperation practices; revising the rules on cooperation and derogation mechanisms e.g. to enhance their functioning; simplifying the jurisdictional criteria; and move to a different approach notably for the promotion of European audiovisual content whereby the providers have to comply with the rules of the countries where they deliver their services (country of destination).

- Policy options to strengthen **media freedom and pluralism** focus in particular on the audiovisual regulators. Options include maintaining the status quo; laying down a mandate for the independence of audiovisual regulators; and laying down minimum mandatory requirements for audiovisual authorities. On events of major

importance for society, short news reports and right of reply options include either maintaining the status quo or "other" options that the respondents can indicate.

- Policy options to promote **accessibility of content** include:

1) On must-carry/findability options include: maintain the status quo e.g. EU rules on must carry in the telecom sector only; removing any must-carry obligations at EU/MS level; extending must-carry rules to on-demand services or other services not covered by the AVMSD; amending the AVMSD to include rules on discoverability of public interest content; address issues only in the comprehensive assessment of online platforms and intermediaries.

2) On accessibility for persons with disabilities: Policy options include maintain the status quo; strengthen EU-level harmonisation of the rules; introduce self and co-regulation to improve protection.

On this basis, the most relevant policy options for the Impact Assessment will be defined in detail at a later stage, taking into account the outcomes of the REFIT evaluation and of the Public consultation as well as relevant studies and data gathering activities.

### **Baseline scenario – no EU policy change**

The Directive would continue applying to broadcast and on-demand audiovisual media services under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks and delivered by providers falling under the EU jurisdiction.

The Directive would still be based on the country of origin principle and on the jurisdictional rules (including cooperation and derogation mechanisms) aimed at ensuring and facilitating the application of the country of origin principle.

The Directive would continue applying a basic set of rules equally to all audiovisual media services and a separate set of rules (two-tier of rules) to respectively broadcast and on-demand services in the following fields: commercial communications (qualitative and quantitative rules on advertising), protection of minors, promotion of European audiovisual content.

The Directive would continue setting out an obligation for Member States to encourage providers to make services gradually accessible to persons with disabilities.

Current rules relating to media freedom and pluralism and access to information would continue also to apply as regards events of major importance to society, short news reporting and right of reply.

As regards the independence of regulators, the Directive would continue making reference to independent regulatory authorities without laying down obligations to ensure the independence of regulatory authorities and/or to create an independent regulatory body if such a body does not already exist.

The AVMSD would also continue not including rules related to must-carry/discoverability.

### **Options for improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation**

The various options submitted for public consultation encompass a number of possible approaches consisting of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation.

Scope: possible guidance clarifying the material scope of application of the AVMSD.

Commercial communications: possible simplified and more flexible rules, notably those setting quantitative limits on advertising and on the number of interruptions. On the other hand, the rules might be tightened and see to what extent they may be applied in the same way to both broadcast and on-demand services.

Protection of minors: possible further harmonisation of technical requirements, coordination and certification of technical protection measures or coordination of labelling and classification systems.

Promoting European audiovisual content: possible options towards simplification include repealing the AVMSD obligations for broadcast and/or on-demand services. Alternatively, more flexibility could be introduced for the providers in their choice or implementation of the measures on the promotion of European works.

Country of origin principle: the rules on cooperation practices and derogation mechanisms could be revised by

for example enhancing their effective functioning. Also, the criteria for determining jurisdiction to which a provider is subject could be simplified.

Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities. – the description is provided below

Must-carry/Discoverability: The existing obligations related to "must-carry"/Electronic Programme Guides at national/EU level could be removed.

Accessibility for persons with disabilities: The EU-level harmonisation of rules to ensure access to content for people with visual and hearing disabilities could be strengthened. Instead of encouraging it, the EU Member States would be obliged to ensure gradual accessibility and this obligation could be implemented either via national legislation or co-regulation.

### **Alternative policy approaches**

In specific fields, policy actions could be taken in the context of different policy initiatives, namely for:

- Material scope: Issues related to online services not covered by the AVMSD could be dealt in the assessment of the role of platforms and intermediaries foreseen by the DSM strategy.
- Protection of minors: For on-demand services, this issue could be dealt with under the broader self-regulatory framework of the EU strategy on a Better Internet for kids.
- Findability-must carry: This could be addressed in the comprehensive assessment of the role of platforms and intermediaries to be launched by the Commission at the end of 2015 or in the reform of the EU regulatory framework for electronic communications, both announced in the Digital Single Market Strategy.

### **Alternative policy instruments**

Ensuring a level playing field for audiovisual media services (services to which the AVMSD applies)

The AVMSD would not change but self/co-regulation instruments could extend some or all of the AVMSD rules to additional services, thereby complementing the AVMSD.

User protection and prohibition of hate speech and discrimination. For protection of minors, the baseline scenario could be complemented with self/co-regulatory measures and other activities focused for example on media literacy and awareness raising.

Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities. For accessibility for persons with disabilities, self and co-regulatory measures could be introduced that could include for example subtitling or sign language and audio description.

### **Alternative/differentiated scope**

The AVMSD now applies to SMEs (including micro enterprises) if they provide services fulfilling the criteria on the material and geographical scope laid down in the Directive.

Besides, in relation to provisions on the promotion of European works, Recital 68 of the AVMSD Directive makes reference to the fact that quotas for independent productions will stimulate amongst others also the creation of small and medium sized enterprises.

The public consultation (link provided below) takes directly or indirectly into account the "think small first" principle in some of the options under the following sections:

Ensuring a level playing field for audiovisual media services. The scope of application of the AVMSD could be extended to audiovisual media services established outside the EU that are targeting EU audiences. Such potential extension of the scope of the AVMSD could be limited to services whose presence in the EU is significant in terms of share/turnover (thus excluding smaller size services).

Promoting European audiovisual content. Rules could be reinforced for both broadcast and on-demand services. Stronger rules to promote European audiovisual content would create incentives and support for business (including SMEs) to take up and pursue production activities.

For broadcast services, the existing rules could be reinforced in a number of ways including by introducing additional quotas for non-national European works and/or European quality programming or co-productions and/or defining a percentage to be reserved to Recent Independent Productions (instead of "an adequate proportion"). For on-demand services, further harmonisation could be envisaged by introducing one compulsory

method or a compulsory combination of methods for promoting European works.

### Options that take account of new technological developments

Taking account of new technological developments is one of the core objectives of this initiative. Therefore, a large number of policy options are designed to reflect these developments.

This is the case, inter alia, of a possible extension of the scope of the Directive (material and/or geographical), for instance to those offering audiovisual content which does not qualify as "TV-like" or to providers hosting user-generated content (material scope) or to players established outside the EU that are targeting EU audiences.

As regards commercial communications, protections of minors, and the promotion of European works, the main policy options would aim at adapting the current rules to new realities, including changes in market conditions and consumer behaviour that are directly linked to the take-up of new technologies. Policy options on the need for new or adapted rules on "must-carry" or "discoverability" would also respond to a potential need to ensure that audiovisual media services make available public interest content.

### Preliminary proportionality check

For each field involved the REFIT evaluation will look into whether there is scope for streamlining and simplification of procedures thereby reducing or in any event not augmenting the administrative burden.

## C. Data Collection and Better Regulation Instruments

### Data collection

#### What data are needed

For the ongoing REFIT evaluation, additional information and data are needed on the implementation of the Directive in the areas identified in the section "Main policy objectives" and on the impact on the stakeholder categories listed in the Section "Issue/Affected stakeholders".

For the Impact assessment, information and data are needed on the impact of each of the policy options identified.

#### Data gathering

In the context of both the AVMSD REFIT evaluation and Impact assessment, data are and will be gathered through the following sources:

- A public consultation open to all stakeholders (organisations and citizens alike) ran from 6 July until 30 September 2015. The contributions to this public consultation will be published in due course.
- Studies (on-going or being launched):
  1. Study on Alcohol advertising exposure, to assess whether rules on audiovisual commercial communication for alcoholic beverages have afforded minors the level of protection required. The final report is due in October 2015 and will be published in due course.
  2. Study on the independence of audiovisual regulators, updating a previous study on independence of regulatory authorities. It will update on recent changes and developments in Member States and candidate countries as regards the independence and efficient functioning of the audiovisual media services regulatory bodies. The final report was delivered in September 2015 and will be published in due course.
  3. Study on Self- and co-regulation that will review existing self- and co-regulation approaches in a range of Member States and aim at providing information about relevant evidence of existing schemes and their effectiveness. The Final report is due in February 2016.
  4. Study on standardisation that aims at collecting data regarding the complete standards landscape in the area of TV sets with added Internet connectivity. Furthermore, it will also cover national and industry specification requirements and the cost of adapting them. It should also provide an overview of the reasons for applying diverging standards and give an outline of research needs that exist in the sectors with a view to overcoming fragmentation challenges. The Final report is due in April 2016.
  5. Studies aimed at gathering data for the Impact assessment. The four studies focus respectively on: protection of minors; cultural diversity; media freedom, public interest and access for persons with disabilities (Final reports due in February 2016); and audiovisual commercial communications (Final report due in March 2016).

- Informal questionnaire on data gathering sent to Member States regulators within the European Regulators Group for Audiovisual Media Services (ERGA<sup>12</sup>) and to stakeholders' representatives (primarily via EU-level associations) in different categories:
  - Business in various sectors (Small and Medium-Sized and large enterprises): Public service Broadcasters; Commercial broadcasters and thematic channels; Cable providers; Pay-TV aggregators; Free and Pay TV operators; IPTV, ISTs; Electronic communications networks and service providers; Over-the-top service providers including platforms and intermediaries; Advertisers; Content producers/Publishers.
  - Representatives of consumers/viewers, including minors and people with hearing or visual disabilities.

This informal consultation ran from May/June until the end of September.

- Studies and opinions of the European Regulators Group for Audiovisual Media Services (ERGA). In its 2015 Work Programme, ERGA commits to deliver analyses and reports on: the independence of audiovisual regulatory authorities; material jurisdiction in a convergent audiovisual world; tackling the issue of territorial jurisdiction in the EU context; protecting minors in a converged environment.
- Policy exchanges and opinions of the Member States representatives gathered in the Contact Committee set up under the AVMSD.
- Reports of the European Audiovisual Observatory for example the Yearbook providing data on "Television, cinema, video and on-demand audiovisual services - the pan-European picture" and focused reports on protection of minors and the promotion of European works.

### Consultation approach

For the ongoing REFIT evaluation, additional information and data are needed on the implementation of the Directive in the areas identified in the section "Main policy objectives" and on the impact on the stakeholder categories listed in the Section "Issue/Affected stakeholders".

For the Impact assessment, information and data are needed on the impact of each of the policy options identified.

For both REFIT evaluation and Impact Assessment the same categories of stakeholders will be targeted. The main timeframe is Spring to Fall 2015. The main categories of stakeholders targeted are those listed in Section "Issue/Affected stakeholders".

The Public consultation on "Directive 2010/13/EU on audiovisual media services (AVMSD) - A media framework for the 21st century" ran from 6 July until 30 September 2015. It was available online in the 24 official languages of the EU at:

<https://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st>

The contributions to this public consultation will be published in due course.

### Will an Implementation plan be established?

Yes  No

## D. Information on the Impact Assessment Process

Preparatory work on the (REFIT) evaluation of the AVMSD started already in 2013, and on the Impact Assessment in late Spring 2015 when the consultation of relevant parties was launched with the aim to complement the existing data base.

The AVMSD Inter-Service Steering Group has been set up and the Secretariat-General of the Commission chairs it. Two meetings took place respectively on 12 March and 20 May 2015.

The DGs members of the ISG are: DG CNECT, DG COMP, DG JUST, DG GROW, DG TRADE, DG EAC, DG SANCO, DG RTD, DG NEAR together with the Secretariat-General and the Legal Service.

<sup>12</sup> <http://ec.europa.eu/digital-agenda/en/news/commission-decision-establishing-european-regulators-group-audiovisual-media-services>

## E. Preliminary Assessment of Expected Impacts

The actual impact of the policy options can only be defined with certainty once specific policy options are selected for the purposes of the Impact Assessment and appropriately assessed.

### Likely economic impacts

Most of the policy options, in particular those of regulatory nature, in the six areas identified above would have an economic impact which may vary depending on the stakeholders affected.

Overall, a new initiative preserving the audiovisual internal market while at the same time creating a more level playing field is expected to have a positive economic impact. To this end some of the current rules (e.g. on the promotion of European works, on the protection of viewers and minors, or in the field of advertising) may have to be modified and/or further harmonised, or extended to operators that are currently outside of the scope of the AVMSD. This could give rise to economic impacts for affected stakeholders, positive for some of them (e.g. for broadcasters in case certain advertising rules are made more flexible or for audiovisual producers in case rules on promotion of European works would be reinforced or extended to other services), or negative (in case stronger requirements would apply to some operators or rules would be applied to operators not previously covered by the Directive).

It also cannot be excluded that some of these potential changes may increase compliance costs in certain Member States.

### Likely social impacts

All the policy options in the six areas identified above, especially for protection of minors, consumer protection, accessibility of content and cultural diversity, may have some social impact depending on the specific fields and the parties who will benefit from this social impact.

### Likely environmental impacts

The AVMSD is technologically neutral. No specific or major impact on the environment is foreseen.

### Likely impacts on simplification and/or administrative burden

One of the goals of REFIT evaluation is specifically to assess whether there is scope for simplification. The IA will follow up on this. Simplification and administrative burden on relevant operators will also be looked at in each option in all the six policy fields. Improving the current procedural requirements (e.g. on cooperation between the Member States) may considerably reduce the administrative burden for them.

### Likely impacts on SMEs

Under the new initiative SMEs should continue to be able to provide their services freely throughout Europe and benefit from enhanced legal certainty. If rules on the promotion of European works are upheld or reinforced, this may have a positive impact on small audiovisual production companies.

### Likely impacts on competitiveness and innovation

The REFIT evaluation takes into account technological developments and as such looks at whether the AVMSD is still fit for purpose in the digital age. The Impact Assessment will follow up on this.

The options will have some impact on competitiveness and innovation, depending on the policy options retained such as for instance for providers or/and producers of European works.

### Likely impacts on public administrations

The initiative will have some impact on public administrations (at national, regional or local level) depending on the options selected:

- If the level of regulation is increased/decreased in one or more fields covered by the AVMSD, this will directly affect the tasks of the regulators.
- If the options selected bring more legal certainty, this will facilitate the tasks and work of the public administrations in the Member States, for both policy makers drafting national transposition laws, regulators overseeing the application of the Directive and the judiciary interpreting and applying the Directive.

### Likely impacts on third countries, international trade or investment

The impact on third countries, international trade or investment is expected to be marginal regardless of the options selected.

Already now, under the AVMSD, the "Member States are free to take whatever measures they deem appropriate with regard to audiovisual media services which come from third countries and which do not satisfy the conditions laid down in Article 2 [that makes them fall under EU jurisdiction], provided they comply with Union law and the international obligations of the Union."

Also, many operators with headquarters in third countries and targeting EU audiences do have an establishment in Europe and as such fall under the AVMSD rules. If an extension of the geographical scope of the Directive is selected as an option, this would have an impact on the residual players established only in third countries and targeting EU audiences.

Last but not least, the review of the Directive will aim at strengthening the internal market dimension and legal certainty. As such, the initiative is likely to encourage and incentivise foreign investments in Europe.

In the context of the World Trade Organisation, the European Union has not taken any commitments on audiovisual services.