

Digital Single Market: updated audiovisual rules

Modernisation of the Audiovisual Media Services Directive

Why was the Audiovisual Media Services Directive (AVMSD) revised?

The media landscape has shifted dramatically in less than a decade. Instead of sitting in front of the family TV, millions of Europeans, especially young people, watch content online, on demand and on different mobile devices.

- Children are watching less traditional TV: the average daily viewing time for young Europeans was 2 hours in 2014 i.e. about half as much as the average viewer ([source](#)).
- Global internet video share in consumer internet traffic is expected to increase from 64% in 2014 to 80% by 2019 ([source](#)).

Taking these new developments into account, as well as the Commission proposal to review the Audiovisual Media Services Directive (AVMSD), the European Parliament and the Council reached yesterday a political agreement on the revised rules. This paves the way to creating a regulatory environment that is fairer for all players in the audiovisual sector, including more flexibility to broadcasters in terms of advertising, protecting minors and tackling hate speech in all audiovisual content, better promoting European audiovisual productions and ensuring the independence of audiovisual regulators.

Which type of audiovisual media services are covered by the new Directive?

The existing rules already cover traditional TV broadcasters and video on-demand services. In the updated rules the scope of application has been extended to also cover video-sharing platforms.

What does the Directive consider to be a video-sharing platform?

In the revised Directive, a video-sharing platform is defined as a commercial service addressed to the public:

- where the principal purpose of the service (or an essential functionality of such service) is devoted to providing programmes and user-generated videos to the general public, in order to inform, entertain or educate;
- which is made available by electronic communications networks; and
- where the content is organised in a way determined by the provider of the service, in particular by displaying, tagging and sequencing;

This means that services such as YouTube will fall under the scope of the revised Directive. Audiovisual content shared on social media services, such as Facebook, will also be covered by the revised Directive.

While newspaper websites remain outside the scope of the Directive, standalone parts of newspapers' websites which feature audiovisual programme or user-generated videos will be considered as video-sharing platforms for the purpose of the AVMSD. However, any occasional use of videos on websites, blogs, news portals will be outside the scope of the Directive.

What are the new obligations for video-sharing platforms under the revised Directive?

Member States should ensure that video-sharing platforms put in place measures to:

(i) protect minors from harmful content (which may impair the physical, mental or moral development); access to which would have to be restricted; and

(ii) protect the general public from incitement to violence or hatred and content constituting criminal offences (public provocation to commit terrorist offences, child pornography and racism or xenophobia).

Implementation of the new regime via co-regulation would be encouraged: the proposed rules provide basic requirements and partners who share responsibility and contribute to fulfilling the objectives.

The measures listed in the Directive that video-sharing platforms will need to put in place complement the E-Commerce Directive: this includes flagging and reporting mechanisms, age verification systems, systems to rate the content by the uploaders or users, or parental control systems, as well as clarification in the terms and conditions of the platform of a prohibition for users to share the content citizens should be protected from.

In addition, under the revised Directive, video-sharing platforms would also have to respect certain obligations for the commercial communications they are responsible for and to be transparent about commercial communications that are declared by the users when uploading content that contains such commercial communications.

Member States are able to adopt stricter rules for video-sharing platforms under their jurisdiction. Any measures under the new rules will need to remain compatible with the liability exemption for digital intermediaries provided in the E-Commerce Directive.

What is the country of origin principle? How will it be improved?

The aim of the country of origin principle is to protect media service providers established in one Member State from restrictions imposed by other EU Member States receiving their services. Audiovisual providers do not need to comply with rules of 28 different Member States, only with those of the country where they are established.

The new Directive confirms and facilitates the country of origin principle in the following ways:

- ensuring transparency among Member States on jurisdiction: it will be easier to determine the country whose rules apply to each provider, thanks to a database which will contain a list of providers under Member States' jurisdiction. This information will be publicly available;
- aligning the procedures in case of exceptions to the country of origin for TV broadcasting and video on-demand services;
- introducing grounds for derogations for EU Member States as to serious risks to public health and public provocation to commit terrorist offences;
- introducing a new urgency procedure for derogations in case of public security concerns and public provocation to commit terrorist offences.

What was agreed on advertising?

The new rules aim to strike the right balance between consumer protection, more specifically the protection of the most vulnerable consumers (for example minors), and a more flexible system for TV broadcasters, taking into account new market realities.

The proposed rules strengthen provisions to protect children from inappropriate audiovisual commercial communications of foods high in fat, salt and sodium, and sugars, by encouraging codes of conduct at EU level, where necessary.

Tobacco advertising remains forbidden in all types of media. For alcohol advertising, the co-legislators agreed also to encourage further development of self- or co-regulation, if necessary also at EU level, to effectively reduce the exposure of minors to such advertisements. This does not prevent Member States from applying stricter rules such as, for example, banning alcohol advertisements or adopting other measures.

The advertising limit of 20% of broadcasting time will apply from 6:00 to 18:00 (i.e. broadcasters can place advertising up to 20% of the viewing time in that period) and the same share is allowed during prime time (from 18:00 to midnight).

The new advertising rules are expected to have a positive economic impact for TV broadcasters and increase their capacity to invest in audiovisual content. This change is important for the competitiveness of the EU audiovisual industry.

How will the protection of children from harmful and illegal content be strengthened?

Children watch less TV and more and more on-demand and online videos. However, the current AVMSD protects them more on TV and less in the online world. This inconsistency will now be fixed. The new rules will:

- require that programmes that may impair the physical, mental or moral development of minors (harmful content) are only made available in such a way as to ensure that minors will not normally hear or see them. This is regardless of whether such programmes are broadcast by TV

broadcasters or provided by on-demand providers. Video-sharing platforms will now also have to put in place measures to protect minors from harmful content. Such measures consist of tools for users to report and flag harmful content, age verification or parental control systems.

- require that the most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures providing a high degree of control (such as encryption and effective parental controls).
- encourage EU co-regulation on content descriptors (words, symbols or acoustic means warning of bad language, sex, violence, drugs, discrimination) which provide sufficient information to viewers about the possible harmful nature of the content. The industry should develop common content descriptors because age ratings without additional explanations on this rating do not always give sufficient information to parents. This will empower parents to make decisions for their children or for children to make decisions for themselves.

How is European culture strengthened by the new Directive?

Under the new rules, TV broadcasters will continue to be obliged to broadcast at least 50% share of European works (including national content) in viewing time. Video-on-demand services – which already have to promote European works under current rules – are subject under the revised Directive to more specific obligations: they need to ensure at least 30% share of European content in their catalogues and should give a good visibility (prominence) to European content in their offers.

The new rules also include a mandatory exemption for companies with a low turnover and low audiences. It could also be deemed inappropriate to impose such requirements in cases where – given the nature or theme of the on-demand audiovisual media services– they would be impracticable or unjustified.

Overall, strengthening the promotion of European works for on-demand services will lead to a broader and more diverse offer for Europeans. This will have a positive impact on cultural diversity and bring more opportunities for European creators.

Will the Member States impose financial contributions for European works on media service providers targeting a specific territory? How will it be enforced?

The rules in force already foresee that promotion of European works can also be carried out, amongst other ways, through financial contributions to the production and rights acquisition of European works. Member States have the option to require media services under their jurisdiction to contribute in this way. The new rules clarify the possibility for Member States to impose financial contributions (direct investments or levies payable to a fund) upon media service providers, including those established in a different Member State but that are targeting their national audiences. This would be a voluntary measure for Member States, not an obligation at EU level.

It is a fact that broadcasters are investing more in European works than video on demand providers. While European TV broadcasters invest around 20%

of their revenues in original content, this figure represents [less than 1%](#) for on-demand providers. Therefore, when Member States impose financial contributions on broadcasters that are not under their jurisdiction, the investment of those broadcasters in European audiovisual works should be taken into account, with due consideration of the principle of proportionality.

Why is a share needed at EU level? Won't it be an extra-burden for businesses?

Mandatory shares of European works in catalogues of on-demand services already exist in [more than half of EU Member States](#). This is required either as a standalone obligation (e.g. Cyprus, Hungary, Lithuania, Malta, Slovakia) or in combination with other joint or alternative obligations (e.g. France, Croatia, Czech Republic, Italy, Poland, Romania, Slovenia, Spain). The required shares in the catalogues vary considerably between Member States (10-60%). This is why minimum harmonisation at EU level is needed, so that all Europeans can have access to European audiovisual content.

It should not be a significant burden for businesses: according to a [2015 study by the European Audiovisual Observatory](#) European films already accounted for 27% of all films available in video-on-demand catalogues in the EU.

More specifically:

- Share of EU films in 75 video-on-demand (VoD) catalogues: 27%
- Share of EU films in 16 subscription VoD catalogues: 30%
- Share of EU films in Netflix: 21%
- Share of EU films in iTunes: 21%

We also need to pay attention to new market entrants and small players. The new rules also include a mandatory exemption for companies with a low turnover and low audiences. It could also be inappropriate to impose such requirements in cases where – given the nature or theme of the on-demand audiovisual media services– they would be impracticable or unjustified.

How can video-on-demand services give adequate prominence to European works?

There is a wide range of tools to ensure visibility of European works, e.g.:

- indicating the country where a film or series comes from;
- providing a dedicated section for European works that is accessible from the service homepage,
- providing possibilities for searching for European works by means of a search tool made available as part of the service;
- placing information and materials promoting European works, including in the home/front page; using trailers or visuals;
- using European works in promotional campaigns for the service; or
- promoting a minimum percentage of European works in the service's catalogue e.g. by means of banners or similar tools.

How will the Directive increase the independence of regulatory authorities

for audiovisual media services?

The Directive includes a requirement for Member States to have independent regulatory authorities for audiovisual media services. They will have to fulfil the criteria of independence listed in the Directive. The regulator:

- should be legally distinct from the government and functionally independent of their respective governments and of any other public or private body.
- should not seek or take instructions from any other body in relation to the exercise of the tasks.
- should exercise its powers impartially and transparently and in accordance with the objectives of the AVMSD in particular media pluralism, cultural and linguistic diversity, consumer protection, accessibility, non-discrimination, internal market and the promotion of fair competition.
- should have its competences and powers clearly defined in law.
- should have adequate resources and enforcement powers to carry out their functions effectively.

Member States have to set up transparent procedures for the appointment and dismissal of the head of a national regulatory authority or the members of the collegiate body. These may be dismissed only if they no longer fulfil the conditions required for the performance of their duties. An appeal mechanism against the decision of a regulator on national level will also be provided.

The Commission will monitor the application of these principles in the Member States, and could take action if they are not respected.

What is the role of the European Regulators Group for Audiovisual Media Services (ERGA)?

The new rules reinforce the role of the [European Regulators Group for Audiovisual Media Services \(ERGA\)](#) by establishing it in the Directive and giving it a clear role in shaping and preserving the internal market. For example, as a Commission expert group ERGA will provide technical expertise in different fields and help the Commission in its tasks to ensure a consistent implementation of this Directive in all Member States.

The Group will also serve as a platform of national regulator in the exchange experiences and best practices on the application of the regulatory framework for audiovisual media services.

What are the next steps?

The current AVMSD will continue to apply until the revised Directive enters into force. The co-legislators have successfully concluded the negotiations for the revision of the Directive at the final trilogue on 6 June 2018. The revised text will be formally adopted by the two institutions in autumn 2018. Once formally adopted and following the date of publication in the Official Journal, Member States will have 21 months to transpose the new Directive into their national legislation.

For More Information

[Press release on the preliminary political agreement](#) (April 2018)

[Proposal for revised Audiovisual Media Services Directive](#)