



**Survey and data gathering to support the Impact Assessment of a possible new legislative proposal concerning Directive 2010/13/EU (AVMSD) and in particular the provisions on media freedom, public interest and access for disabled people**

**Framework contract for evaluations, evaluation-related studies and support for impact assessments, EAC/22/2013-01**

**FINAL REPORT**

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## Contents

Abbreviations .....	5
Definitions .....	7
Introduction .....	8
1. Methods and Scenarios .....	10
1.1. Methods of data collection .....	10
1.2. Scenario: extend material scope.....	14
1.3. Scenario: extend geographical scope .....	18
2. Independence of Regulators .....	23
2.1. Regulation and contextual information .....	23
2.2. Implementation in Member States .....	24
2.3. Options and scenarios.....	25
2.4. Impacts on administration and enforcement costs.....	26
2.4.1. Costs of regulating TV-like and non-TV like on-demand services with editorial responsibility... 28	
2.4.2. Costs driven by an extension of the scope of the AVMSD .....	31
2.4.3. Option 2. Lay down in the AVMSD a mandate for the independence of regulatory authorities.. 35	
2.4.4. Option 3. Lay down minimum mandatory requirements for regulatory authorities .....	36
2.5. Impacts on effective transposition of AVMSD and preservation of free and pluralistic media .....	41
2.6. Impacts on providers' willingness to establish in an EU MS and serve audiences in several MS.....	46
3. Accessibility for Persons with Disabilities.....	48
3.1. Regulation and contextual information .....	48
3.2. Implementation in Member States .....	49
3.3. Options and scenarios.....	50
3.4. Impacts on administration and enforcement costs.....	52
3.5. Impacts on administrative burden and compliance costs .....	56
3.6. Social impacts: more accessible audiovisual media services and innovations.....	62
4. Right of reply .....	67
4.1. Regulation and contextual information .....	67
4.2. Implementation in Member States .....	68
4.3. Options and scenarios.....	70
4.4. Impacts on administration and enforcement costs.....	71
4.5. Impacts on administrative burden and compliance costs .....	72
4.6. Social impacts: preservation of free and pluralistic media.....	73
5. Must-carry and prominence .....	78
5.1. Regulation and contextual information .....	78
5.2. Implementation in the Member States.....	79
5.3. Options and scenarios.....	80
5.4. Impacts on administration and enforcement costs.....	82
5.5. Impacts on administrative burden and compliance costs .....	83
5.6. Economic impacts: transfers of resources between service providers and investment in new services .....	85
5.7. Social impacts: preservation of free and pluralistic media.....	95
Conclusions.....	103
Annex 1. Audiovisual media services regulators.....	110
Annex 2. Targets for service providers regarding accessibility for people with disabilities .....	118

Annex 3. MS changes in legislation and factual progress regarding accessibility for people with disabilities 122

Annex 4. Number of linear service providers established in MS with market share of at least 2% ..... 124

Annex 5. Linear, non-linear services and online platforms included in assessment of accessibility costs . 126

References..... 127

## Abbreviations

AT	Austria
ATVOD	Authority for Television On Demand
AVMSD	Audiovisual Media Service Directive
BE (DE)	Belgium - German-speaking Community
BE (FL)	Belgium - Flemish Community
BE (FR)	Belgium - French Community
BG	Bulgaria
PSB	Public Service Broadcaster
CEE	Central and Eastern Europe
CY	Cyprus
CNMC	Centre for Media and Communication Studies
CPL	Comparative Price Levels
CRPD	Convention on the Rights of Persons with Disabilities
CZ	Czech Republic
DE	Germany
DG	Directorate General
DK	Denmark
DTT	Digital terrestrial television
DVR	Digital Video Recorder
EC	European Commission
EE	Estonia
EL	Greece
EPG	Electronic Programme guide
EPRA	European Platform of Regulatory Authorities
ERGA	European Regulators Group for Audiovisual Media Services
ES	Spain
EU	European Union
FI	Finland
FR	France
FST	Free Satellite Channels
GB	Great Britain
HD	High Definition
HU	Hungary
IE	Ireland
INDIREG	Indicators for independence and efficient functioning of audiovisual media services regulatory bodies
IPTV	Internet Protocol Television
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MS	Member States
MT	Malta
NGO	Non-Governmental Organization
NL	Nederland
NRA	National Regulators
Ofcom	Office of Communication
OLS	Ordinary Least Squares

OTT	Over-the-top
PC	Personal Computer
PL	Poland
PSB	Public Service Broadcaster
PT	Portugal
RO	Romania
RTR	The Austrian Regulatory Authority for Broadcasting and Telecommunications
SD	Standard Definition
SE	Sweden
SI	Slovenia
SK	Slovakia
TV	Television
TVwF	Television without Frontiers
UK	United Kingdom
UN	United Nations
US	United States
VoD	Video on Demand

## Definitions

Concepts	Definitions
Accessibility	"The degree to which a product, device, service, or environment is available to as many people as possible." <sup>1</sup>
Apps	A type of software that is installed on a computerized device that the user directly utilizes and manipulates <sup>2</sup> .
Apps store	Digital distribution platforms where users are able to obtain apps.
Co-regulation	"A mechanism whereby the Union legislator entrusts the attainment of specific policy objectives set out in legislation or other policy documents to parties which are recognized in the field" <sup>3</sup>
(Digital Distribution) Platform	The businesses that distributes audiovisual media content for viewers, using various technologies to do so (e.g. cable, IPTV, satellite, DTT, telephone, broadband). <sup>4</sup>
Electronic Programme Guide (EPG)	EPG sends to the decoders information on the events currently on air and on the following one already scheduled. It provides information not only about the currently showing service but also about all the others present in the multiplex <sup>5</sup> .
Linear audiovisual media service	"An audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule." <sup>6</sup>
"Must-carry"	Obligation imposed by public body on network operator (platform) to distribute specific radio and/or television channel and/or content <sup>7</sup>
National regulator	Regulatory body in MS, which is in charge of supervising the implementation of audiovisual media legislation <sup>8</sup> .
On-demand / non-linear audiovisual media service	"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." <sup>9</sup>
Producer of devices	The businesses that manufacture and sell devices that are capable of displaying audiovisual media content.
Public Service Broadcaster (PSB)	Broadcaster, which is fully or partially funded by state (e.g. directly or through license fees). PSB broadcasts content for the public benefit rather than purely commercial purposes <sup>10</sup> .
Self-regulation	A system "where business or industry sectors formulate codes of conduct or operating constraints on their own initiative for which they are responsible for enforcing." <sup>11</sup>
Service provider	"The natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised." <sup>12</sup>
Video on Demand (VoD)	Program transmission method whereby the program starts playing after a certain amount of data has been buffered while receiving subsequent data in the background where the program is completely created by the content provider <sup>13</sup> .

<sup>1</sup> International Telecommunication Union, "Technical Report: Part 2: Vocabulary for ITU-T Focus Group on Audiovisual Media Accessibility (FG AVA)", 2013.

<sup>2</sup> ITV Dictionary, "Application Definition", 2015. <[http://www.itvdictionary.com/definitions/itv\\_application\\_definition.html](http://www.itvdictionary.com/definitions/itv_application_definition.html)> [Last accessed December 28, 2015].

<sup>3</sup> Ibid.

<sup>4</sup> European Audiovisual Observatory, European Commission „On-demand Audiovisual Markets in the European Union“, 2014.

<sup>5</sup> Avalpa Digital Engineering Srl, "EPG: Electronic Program Guide", 2011.

<<http://www.avalpa.com/assets/freesoft/opencaster/AvalpaBroadcastWebEPGManual-v1.0.pdf>>

<sup>6</sup> The European Parliament and the Council of the European Union, "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 (Audiovisual Media Services Directive)", *Official Journal of the European Union*, L 95, 2010.

<sup>7</sup> See: Organization for Security and Co-operation in Europe Office of the Representative on Freedom of the Media, *Best practices regarding "must carry" and "must offer" rules for cable operators and broadcasters*, 2015, p. 3.

<sup>8</sup> European Platform of regulatory authorities, "About Regulatory Authorities" 2015. <<http://www.epra.org/articles/about-regulatory-authorities>> [Last accessed December 28, 2015].

<sup>9</sup> Ibid.

<sup>10</sup> Department for Culture, Media and Sport, "The balance of payments between TV platforms and Public Service Broadcasters and the future of Electronic Programme Guides", 2015

<sup>11</sup> European Commission, "Better Regulation Toolbox", 2014.

<sup>12</sup> Ibid.

<sup>13</sup> Audiovisual Observatory, "On-Demand Audiovisual Markets in the European Union, study prepared for the European

## Introduction

The Audiovisual Media Services Directive (AVMSD)<sup>14</sup> was adopted in 2007 (codified in 2010). The regulation seeks to foster a common market for audiovisual media services. It also aims to guarantee fair competition and contribute to media freedom and pluralism, as well as cultural and linguistic diversity. The AVMSD (replacing the Television without Frontiers Directive<sup>15</sup>) aims to respond to rapidly changing technology, converging audiovisual content services and changing business models.

The European Commission (EC) recently launched a process to review and, if necessary, amend the AVMSD. The review process seeks to assess a number of future challenges for regulation of the European audiovisual media services market. Some of the key issues include<sup>16</sup>:

- Convergence of media services, characterised by progressive merging of traditional broadcast services and the internet. This leads to the adoption of new business models and technologies, as well as the emergence of new services. Convergence also raises questions on the extent to which the material scope of the AVMSD should be extended so that all audiovisual services are regulated by the same set of rules.
- Increasing penetration of service providers based outside the EU. This raises questions on the extent to which there is a need to extend the geographical scope of AVMSD.
- As a result of convergence, regulation of audiovisual media services is increasingly interlinked with other policy fields, such as copyright, e-commerce, telecommunications, etc. Efforts aimed at fostering the Connected Digital Single Market<sup>17</sup> could imply a need to further modernise AVMSD and ensure consistency with related regulations.

The overall objective of this assignment is to provide evidence to be used by the EC in the Regulatory Fitness and Performance (REFIT) evaluation and Impact Assessment accompanying a possible legislative revision of the AVMSD. The assignment focuses on four groups of policy options to amend the Directive: 1) independence of regulators, 2) accessibility for people with disabilities, 3) right of reply and 4) "must-carry" / findability. Currently, the first three are covered by the AVMSD, whereas "must-carry" and findability regulations fall within the scope of Universal Service<sup>18</sup> and Access Directives<sup>19</sup>.

This report provides analysis of the likely economic and social impacts of the above options to amend the AVMSD. The analysis of impacts is based on the following three scenarios: a) maintain the current material and geographical scope of the AVMSD; b) extend the material scope of the AVMSD; and c) extend the geographical scope of the AVMSD. The report draws

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Commission DG Communications Networks", *Content & Technology*, 2012, 7.

<sup>14</sup>The European Parliament and the Council of the European Union, "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 (Audiovisual Media Services Directive)", *Official Journal of the European Union*, L 95, 2010

<sup>15</sup> AVMSD repealed the Television without Frontiers Directive (TVwF) adopted in 1989 and amended in 1997. See: Council Directive of 3 October 1989 On the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC), *Official Journal of the European Union* L 298/23. Council Directive of 3 October 1989 On the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC), *Official Journal of the European Union* L 298/23

<sup>16</sup>European Commission, "Green Paper: Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values", Brussels, 2013

<sup>17</sup> European Commission, "Commission Work Programme 2015. A New Start", 2014.

<sup>18</sup> The European Parliament and the Council of the European Union, "Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). Amended by the Directive 2009/136/EC", November 2009.

<sup>19</sup> The European Parliament and the Council of the European Union, "Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities. Amended by Directive 2009/140/EC", 2009.

on the findings from desk research, 52 interviews across six Member States (MS) and analysis of views submitted during the EC's public consultation.

The report is structured as follows: chapter 1 outlines the data collection methods used and discusses what the two alternative scenarios – *extend material and geographical scope* – could encompass. Chapters 2 through 5 provide analysis of the costs and benefits of maintaining or changing regulation on the independence of regulators, accessibility for people with disabilities, rights of reply and "must carry" and findability under alternative scenarios. The last chapter highlights key conclusions and implications.

# 1. Methods and Scenarios

This section outlines the key tools and assumptions used for data collection and analysis. Firstly, it details the data collection methods used to develop the evidence base on the impacts of the different options. Secondly, it outlines the interpretation of scenarios that refer to the extension of material and geographical scope of AVMSD. Chapters 1.2 and 1.3 provide “working definitions”, as well as estimates of the approx. no. of service providers that would fall within the scope of AVMSD if its material and geographical scope were extended.

## 1.1. Methods of data collection

The analysis presented within this report is based on evidence gathered from desk research, interviews and responses to public consultations. The subsections below briefly outline how these methods were deployed and what data was collected at each stage.

### Desk research

The aim of the desk research was to take stock of existing information and knowledge of relevance to the study. The findings served two main purposes:

- To inform the formulation of hypotheses to be tested concerning the likely impacts of different options;
- To aid with hypothesis testing and estimation of impacts.

The desk research incorporated the following data sources: research reports and academic papers, EU level and national laws and documents (see references at the end of this report) as well as databases (see Table 1.1.).

**Table 1.1. The databases used for data collection**

Database	Information retrieved
MAVISE <sup>20</sup>	Number of linear and non-linear service providers.
IRIS Merlin <sup>21</sup>	Changes in media legislation in MS.
University of Luxembourg <sup>22</sup>	National legal documents transposing relevant AVMSD Articles.
Eurostat	General social and economic statistics.
AVMSD Radar Study and its Annexes <sup>23</sup>	INDIREG ranking tool, data on national regulators (staff, budget, etc.), assessment of sufficiency of resources of national regulators.
EPRA database <sup>24</sup>	Annual reports of national regulators.
EU infringement cases <sup>25</sup>	National legislation in MS, synthesis, analytical reports.
Freedom of press index	Data on infringement cases related to AVMSD.
AVMS Database <sup>26</sup>	Data on media freedom.
National audiovisual services databases <sup>27</sup>	National legislation transposing specific AVMSD Articles
	Data on market share of audiovisual service providers

Source: Visionary Analytics

<sup>20</sup> European Audiovisual Observatory, “MAVISE database, Operators (all types of companies)”. <<http://mavise.coe.int/>> [Last accessed December 28, 2015]

<sup>21</sup> IRIS MERLING, Ieva Andersone, “Changes to the “Must-Carry” Rules in Latvia”.

<<http://merlin.obs.coe.int/article.php?id=14114>> [Last accessed December 28, 2015].

<sup>22</sup> University of Luxembourg, “Translation of National Execution Measure”. <[http://www.uni.lu/recherche/fdef/droit\\_des\\_medias/audiovisual\\_media\\_services\\_directive/national\\_execution\\_measures](http://www.uni.lu/recherche/fdef/droit_des_medias/audiovisual_media_services_directive/national_execution_measures)> [Last accessed December 28, 2015]

<sup>23</sup> Institute of European Media Law and Université du Luxembourg, “AVMS-RADAR: AudioVisual Media Services-Regulatory Authorities’ InDependence And Efficiency Review. Update on recent changes and developments in Member States and Candidate Countries that are relevant for the analysis of independence and efficient functioning of audiovisual media services regulatory bodies (SMART 2013/0083)”. A study prepared for the European Commission DG Communications Networks, Content & Technology, 2015.

<sup>24</sup> European Platform of regulatory authorities, “About Regulatory Authorities” 2015. <<http://www.epra.org/articles/about-regulatory-authorities>> [Last accessed December 28, 2015].

<sup>25</sup> European Commission, “Infringement procedure”, 2015..<[http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index\\_en.htm](http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index_en.htm)> [Last accessed December 28, 2015].

<sup>26</sup> European Audiovisual Observatory, “AVMSDatabase”. <<http://avmsd.obs.coe.int/cgi-bin/search.php>> [ Last accessed December 28, 2015].

<sup>27</sup>For example, <http://www.tns.it/>, <http://www.tns.lv/>, <http://www.finnpanel.fi/>, <http://www.agtt.at/>, <http://www.kek-online.de/>.

## Interviews

A total of 52 interviews were carried out. Of these, four were exploratory interviews with associations of audiovisual service providers (commercial television, cable providers and journalists). These were used for identifying and further elaborating relevant hypotheses and scoping of the analysis.

The remaining 48 interviews were carried out with regulatory authorities, audiovisual service providers, distribution platforms, NGOs and other stakeholders in six countries: Bulgaria (BG), Hungary (HU), Ireland (IE), Spain (ES), Lithuania (LT) and the United Kingdom (UK). The countries were selected so as to maximise variation in terms of the following criteria:

- *EU entry date.* BG, HU and LT joined the EU after 2004 and therefore have a shorter length of experience in transposing EU regulation in comparison to IE, ES and the UK.
- *Share of TV channels by country of origin.* More than 50% of TV channels available in the country are owned locally in ES and the UK. In the remaining sub-sample of countries (BG, HU, IE and LT) more than half of available channels are owned by firms established outside of the MS.
- *Media freedom.* Two countries in the sample (BG and HU) experience noticeable problems with media freedom, according to the World Press Freedom Index.
- *Accessibility* of audiovisual media services to persons with disabilities. ES, HU, IE and the UK has established legal obligations for providers of audiovisual media services to provide subtitling, captioning, sign language or audio description.
- *Digital inclusion.* This criterion is important for assessment of new and emerging online audiovisual media services. At least 75% of the population frequently (at least once a week) use the internet in ES, IE and the UK.

Table 1.2 details the stakeholders that participated in the interviews and the main issues covered. The study team encountered significant challenges in engaging two groups of stakeholders – producers of connected devices; and representatives of online platforms without editorial responsibility<sup>28</sup>.

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<sup>28</sup> Problems encountered are linked with identifying the right persons to be contacted as well as motivating them to provide information, since they did not feel that AVMSD could be relevant for respective companies.

**Table 1.2. Map of interviewed stakeholders and issues covered.**

Stakeholders	Interviewees	Type and Number		Focus on:							
		Face-to-face	On-the phone	Scoping of analysis, hypotheses	Impact on administration and enforcement costs	Impact of independence of regulators on effective transposition of the AVMSD and preservation of free and pluralistic media	Impact on compliance costs and administrative burden.	Impact on development of new services	Impact of options on preservation of free and pluralist media	Impact on willingness to establish in an EU MS and serve audiences in several MS.	Specific questions under the competence of a respective body.
<b>EU level associations</b>	Commercial television (1), platforms (2), journalists (1) associations.	2	2	✓							
<b>Audiovisual regulatory bodies</b>	National regulators	2	5 <sup>29</sup>		✓	✓					
<b>Service providers</b>	Commercial linear broadcasters	2	1				✓	✓	✓	✓	
	Commercial linear and non-linear broadcasters	5	6				✓	✓	✓	✓	
	Public broadcasters	2	1				✓	✓	✓	✓	
	Association		2				✓	✓	✓	✓	
	VoD operators	1					✓	✓	✓	✓	
	Non-TV like service providers						✓	✓			
<b>Platforms (satellite, IPTV providers)</b>	Platform and non-linear service provider	2	2				✓	✓	✓	✓	
	Only platform	3	1				✓	✓	✓	✓	
	Association	x	1				✓	✓	✓	✓	
<b>NGOs and unions related with audiovisual regulations</b>	Representatives of people with disabilities	2	3					✓	✓	✓	✓
	Media freedom experts	x	4						✓	✓	✓
	Journalists associations	x	2						✓	✓	✓
<b>Producers of connected devices</b>	Producers of smart TVs		1				✓	✓		✓	
<b>Total</b>		21	31								

Source: Visionary Analytics.

<sup>29</sup> Three different interviews were made with the Irish regulator, because different people were responsible for different articles of AVMSD.

### Public consultation analysis

The results of the public consultations on AVMSD-related topics held by the EC between 2013 and 2015 were a valuable source of information on the views of key stakeholders regarding relevant articles of the AVMSD. Secondary analysis of the responses focused on:

- The extent to which different option scenarios were supported by different groups of stakeholders and representatives of MS.
- Arguments for supporting different options and scenarios.
- Specific issues highlighted by respondents.

Table 1.3. maps the articles covered by each consultation.

**Table 1.3. AVMSD articles covered by public consultations**

Consultations	On Media Freedom and Pluralism, 22.03.2013 – 14.06.2013	On Independence of Regulators 22.03.2013 - 14.06.2013	On Convergence (Green paper) 24.04.2013 – 30.09.2013	On a media framework for the 21st century 06.07.2015 – 30.09.2015
Article 30 - independence of audiovisual regulatory bodies	✓ (Questions 4 and 6)	✓ (All questions)		✓ (Part 6.1)
Article 7 - Accessibility of audiovisual content to persons with disabilities			✓ (Recommendations 26 and 27)	✓ (Part 6.3)
Non-AVMSD: Article 31 of the Universal Service Directive - on must carry; Article 5(b) of the Access Directive - on findability.	✓ (Questions 26 and 27)		✓ (Recommendations 2, 3 and 16)	✓ (Part 6.2)
Article 28 - right of reply	✓ (Question 24)		✓ (Recommendations 24, 25)	✓ (Part 6.6)

Source: Visionary Analytics

## 1.2. Scenario: extend material scope

The Terms of Reference define the scenario as an extension of the material scope of AVMSD “to online audiovisual media services which are currently not covered by the AVMSD, as well as to emerging new services. For example, the scope of the AVMSD could be extended to audiovisual services over which the providers have no editorial responsibility or offering audiovisual content which is not “TV like””. This chapter seeks to define what types of services could fall under the scope of AVMSD within this scenario, as well as provide estimates on the scale and nature of parties that are likely to be affected by this.

### Scope and criteria

Currently, linear and TV-like non-linear audiovisual media services fall within the scope of the Directive, although not all Articles of AVMSD apply to non-linear services. It is assumed that the extension of the material scope would mean that:

- The AVMSD as a whole would be extended to audiovisual media services regardless of their duration and format (removal of the “TV like” requirement), under the editorial responsibility of a provider<sup>30</sup>.
- The AVMSD as a whole would be extended to standalone professional audiovisual content available on any website (e.g. a dedicated video section in a newspaper website), under the editorial responsibility of a provider<sup>31</sup>.
- Certain rules to protect consumers, and in particular minors, would apply to online platforms distributing audiovisual media content without editorial responsibility.

Two criteria are particularly important: editorial responsibility and “TV like requirement”. Editorial responsibility refers to the “exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services.”<sup>32</sup> This criterion is particularly important in identifying video sharing platforms (e.g. YouTube, Dailymotion) that provide access to user generated content and therefore do not have full responsibility over selection, organisation and cataloguing of content.

The extent to which services are TV-like: AVMSD (recital 24) defines TV-like services as those that compete for the same audience as television, with their nature and means of delivery being very similar. Research commissioned by Ofcom (UK regulatory agency) outlined ten specific factors that affect viewers’ perceptions. A service is considered to be a close substitute of linear TV when: it seeks to entertain and inform (purpose), it looks reminiscent of a TV channel, it has content that is frequently refreshed, viewers do not have much control over content, content is longer (than approx. 20 minutes), there is a large volume of content, there is a high perceived quality of content and content is familiar to viewers of linear services. Accordingly, viewers perceive on-demand services (e.g. iPlayer, SkyGo, etc.) as a close substitute of linear television. Hence, catch-up TV and online platforms of TV channels generally fall under the definition of non-linear audiovisual services. On the other hand, platforms offering short clips (e.g. music videos on Vevo, video blogs, etc.) or highly specialised content (e.g. web page of a sports club) are not perceived as TV-like. These services would be covered, if the extended material scope of AVMSD included non-TV like services.

The above discussion implies that:

- AVMSD as a whole would apply to non TV-like web-based audiovisual media services under editorial responsibility of a provider. The main implication is that all non-linear services (irrespective of TV-likeness) under editorial responsibility of a service provider

<sup>30</sup>European Court of Justice, “Ruling in New Media Online GmbH case”, <[http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d567c3086a9ec048e79b9bb3570f40f1d7\\_e34Kaxilc3eQc40LaxqMbN4Och4Se0?text=&docid=170123&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=567704](http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d567c3086a9ec048e79b9bb3570f40f1d7_e34Kaxilc3eQc40LaxqMbN4Och4Se0?text=&docid=170123&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=567704)> [Last accessed 19,February 2016]

<sup>31</sup> Ibid.

<sup>32</sup> Article 1 of AVMSD.

would be covered by the Directive. This could potentially also contribute to greater legal certainty.

- Online platforms (e.g. Youtube or Dailymotion) without editorial responsibility would be subject to specific rules to protect consumers.

It is also assumed that the extension of the material scope of AVMSD would not cover services that do not primarily seek to provide audiovisual content with the purpose of informing, entertaining or educating the general public. The services outside the scope of this scenario include:

- Platforms providing audiovisual content not to general public and akin to intermediary services under the e-Commerce Directive (e.g. file hosting, sync and sharing services).
- Pure search engines (e.g. Bing, Google Search, etc.).
- Websites that contain audiovisual content only in an ancillary manner (e.g. social networks, such as Facebook, Twitter, etc.).

### Quantitative estimates

On the basis of the considerations and assumptions outlined above, this sub-section provides an estimate of the number of service providers that are likely to be covered by AVMSD if the material scope is expanded. This is a challenging task. Nevertheless, estimates on the number of affected service providers are important for further analysis of the impacts of options under alternative scenarios (see chapters 2 – 5).

The MAVISE database<sup>33</sup> provides the most comprehensive estimates of the number of service providers. However, its coverage is limited due to a number of factors:

- It does not contain all on-demand service providers and platforms. This is due to: a) the different interpretations adopted by national regulators regarding the scope of non-linear services; b) national registration systems are often voluntary and therefore do not include all players; c) data collection methods (e.g. analysis of line-ups of the distribution platform or internet search) cannot guarantee an exhaustive list of services; and d) difficulties in establishing legal entity providing audiovisual content. We can expect that two types of services are particularly under-represented in the MAVISE database: a) services that do not target particular MS and are available on ad-funded platforms; and b) providers of adult audiovisual services.
- It is virtually impossible to distinguish which on-demand services are TV-like (and therefore already covered by AVMSD) and non-TV-like (and therefore would be affected by extension of material scope).
- The MAVISE database contains information on online platforms. However, it is likely that not all such services are captured.

Table 1.4 details the number of on-demand audiovisual service providers by country of establishment and genre within the EU, as contained within the MAVISE database in December 2015. As discussed above: a) the actual number of on-demand services is likely to be higher, although the extent of this is difficult to estimate; and b) it covers TV-like on-demand services that are already within the scope of AVMSD, as well as non-TV like services that would be affected by extension of the material scope.

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<sup>33</sup> European Audiovisual Observatory, "MAVISE database". <<http://mavise.coe.int/>> [ Last accessed December 28, 2015].

**Table 1.4. Number of on-demand audiovisual service providers by country of establishment and by genre in the EU, as contained in MAVISE database as of December 2015**

	Brand d Chann el	Catch- up TV service	Sport event s	Video news page	Video page of a portal	VoD children / animat.	VoD film	VoD generalis t <sup>34</sup>	VoD lifestyl e and health	Film traile rs	VoD adult	VoD film and TV fiction	VoD gen. interes t	VoD music	VoD TV fictio n	Archive s	VoD with rec. sport events	VoD docum entary	VoD short movies	Search tool <sup>35</sup>	Other / not ident.	Total
<b>AT</b>	4	35	2	8	1	2	6	1	1	0	0	0	0	0	0	0	0	0	0	0	3	<b>63</b>
<b>BE (DE)</b>	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	<b>1</b>
<b>BE (FL)</b>	7	14	1	4	0	1	14	5	0	1	3	1	1	1	1	0	0	0	0	0	2	<b>56</b>
<b>BE (FR)</b>	2	8	1	0	0	0	9	2	0	2	1	5	0	1	1	1	0	0	0	0	2	<b>35</b>
<b>BG</b>	1	10	0	0	0	0	4	5	0	0	0	0	0	1	0	0	0	0	0	0	1	<b>22</b>
<b>CY</b>	2	4	1	0	0	0	15	1	0	0	0	0	0	0	3	0	0	0	0	0	0	<b>26</b>
<b>CZ</b>	4	16	4	7	2	4	2	7	4	1	2	20	0	9	1	1	3	0	0	0	9	<b>96</b>
<b>DE</b>	59	99	1	4	2	12	25	3	5	8	1	10	1	5	27	3	2	5	0	0	4	<b>276</b>
<b>DK</b>	3	16	1	2	0	0	8	1	0	9	0	4	0	0	1	0	0	0	0	0	0	<b>45</b>
<b>EE</b>	2	8	0	0	0	0	2	0	0	0	0	1	0	0	0	0	0	0	0	0	0	<b>13</b>
<b>EL</b>	10	17	0	1	0	0	4	0	0	1	0	0	0	0	1	0	0	1	0	0	0	<b>35</b>
<b>ES</b>	17	13	2	0	0	1	3	5	0	3	0	1	0	2	6	1	0	1	0	0	2	<b>57</b>
<b>FI</b>	1	5	0	0	0	1	10	2	0	0	2	1	0	0	2	1	0	0	0	0	0	<b>25</b>
<b>FR</b>	95	140	3	9	0	20	41	20	11	12	14	3	0	9	16	2	1	9	3	0	11	<b>419</b>
<b>HR</b>	2	4	0	0	0	0	4	1	0	0	0	2	0	0	0	0	0	0	0	0	1	<b>14</b>
<b>HU</b>	5	62	0	3	0	1	5	0	0	0	0	1	0	0	0	0	0	0	0	0	3	<b>80</b>
<b>IE</b>	8	6	0	0	0	1	2	1	0	0	0	0	0	3	0	1	0	0	1	0	0	<b>23</b>
<b>IT</b>	2	36	2	7	3	1	4	0	0	0	0	9	0	0	1	3	0	0	0	0	3	<b>71</b>
<b>LT</b>	5	4	0	0	0	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	<b>14</b>
<b>LU</b>	2	9	0	2	15	3	77	1	0	0	1	3	0	0	0	0	0	0	0	0	0	<b>113</b>
<b>LV</b>	2	15	0	0	0	0	2	0	0	0	0	1	0	0	0	0	0	0	0	0	0	<b>20</b>
<b>MT</b>	1	3	0	0	0	0	2	0	0	0	0	0	0	0	1	0	0	0	0	0	0	<b>7</b>
<b>NL</b>	29	32	2	0	0	3	23	1	0	2	2	21	0	1	3	3	0	0	0	0	0	<b>122</b>
<b>PL</b>	17	38	1	1	1	0	20	9	0	1	1	0	0	2	5	4	0	0	0	0	6	<b>106</b>

<sup>34</sup> Film, TV programme, documentary etc.<sup>35</sup> For on-demand audiovisual content

Study to support Impact Assessment of AVMSD

	Brand d Chann el	Catch- up TV service	Sport event s	Video news page	Video page of a portal	VoD children / animat.	VoD film	VoD generalis t <sup>34</sup>	VoD lifestyl e and health	Film traile rs	VoD adult	VoD film and TV fiction	VoD gen. interes t	VoD music	VoD TV fictio n	Archive s	VoD with rec. sport events	VoD docum entary	VoD short movies	Search tool <sup>35</sup>	Other / not ident.	Total	
<b>PT</b>	2	18	0	0	0	0	4	1	0	0	0	2	0	0	2	0	0	0	0	0	0	0	<b>29</b>
<b>RO</b>	7	23	0	0	0	0	3	9	0	0	0	0	0	0	0	0	0	0	0	0	0	1	<b>43</b>
<b>SE</b>	3	81	5	4	0	2	31	0	0	0	1	11	0	0	0	1	0	0	0	0	0	2	<b>141</b>
<b>SK</b>	3	17	0	2	4	1	2	2	1	0	0	1	0	0	0	0	0	0	0	0	0	2	<b>35</b>
<b>SI</b>	2	5	0	0	0	1	5	2	0	0	3	0	0	0	0	0	0	1	0	0	0	0	<b>19</b>
<b>UK</b>	78	199	13	10	0	28	38	18	0	2	15	3	0	25	37	5	4	10	0	1	11	<b>497</b>	
<b>Total</b>	<b>376</b>	<b>937</b>	<b>39</b>	<b>64</b>	<b>28</b>	<b>82</b>	<b>370</b>	<b>97</b>	<b>22</b>	<b>42</b>	<b>46</b>	<b>100</b>	<b>2</b>	<b>59</b>	<b>108</b>	<b>26</b>	<b>10</b>	<b>27</b>	<b>4</b>	<b>1</b>	<b>63</b>	<b>2503</b>	

Source: MAVISE database, December, 2015.

The growth in audiences of non-linear audiovisual services is already a well-established trend. For example, the UK Department for Culture, Media and Sport <sup>36</sup> estimates that approx. 30% of viewers will switch from linear to non-linear audiovisual services over the next decade. However, it is far from clear how this would affect the number of service providers. On the one hand, the past 10 years have witnessed a proliferation of new players that have occupied market niches, or built new markets where they have not previously existed. On the other hand, the past decade has also witnessed significant market concentration driven by a handful of (mostly US based) corporations<sup>37</sup>. Hence, while it is very likely that the number of services would continue to grow (due to new market niches or localisation of existing global products), the aggregate number of service providers is likely to remain stable.

The expansion of material scope would also have an impact on platforms. Table 1.5 details the number of video sharing platforms contained within the MAVISE database (as of February, 2016). As discussed above, it is likely that the MAVISE database is not complete and therefore the actual number of affected platforms could be higher.

**Table 1.5. The Estimated number of video-sharing platforms**

Video sharing platforms	EU based	Non-EU based	Unidentified*	Total
No. of unique video-sharing platforms contained in MAVISE	13	6	5	24
No of unique video-sharing platforms included in further analysis	11	3**	1	15
No of unique video-sharing platforms excluded from further analysis***	2	3	4	9

Notes: \* -- refers to platforms with unidentified country of establishment. \*\* Large platforms established outside the EU include YouTube. \*\*\* platforms were excluded due to the following reasons: a) no longer provide services (Justin.tv; MyShooting.lu; Mutinee; Twinpic); b) do not primarily seek to provide audiovisual content (Facebook; Google+; mail.ru; MySpace; Pinterest).

### 1.3. Scenario: extend geographical scope

The Terms of Reference define this scenario as an extension of the geographical scope of AVMSD “to cover services established outside the EU but targeting EU audiences. A threshold based on the market share/turnover in the EU could be considered”. This chapter seeks to define what type of services could fall under the scope of AVMSD in this scenario, as well as provide estimates on the number of affected parties.

#### Scope and criteria

Currently, only services that are established in MS fall within the scope of the Directive. Services established within the EU operate under the “country of origin” principle. The latter establishes that service providers are subject only to the regulations in their country of origin and cannot be subject to regulation in the destination country (except in very limited circumstances laid down by Article 3 of the AVMS Directive). The scenario of extending the geographical scope of AVMSD does not imply any changes to the country of origin principle. Therefore, we assume that extension of the geographical scope would imply that all provisions of AVMSD would apply to providers established outside the EU and targeting at least one MS.

It is likely that an extension of the geographical scope would cover only services that meet some thresholds of market share or turnover within the EU. While such data would make the analysis more sophisticated, there are two obstacles in considering the thresholds:

- Data on market share in all MS was collected, but only one service with exact geo-localisation was found to have its market share included in the analysed reports (see Table 1.6)<sup>38</sup>. The thresholds are used in cases where market share is important for

<sup>36</sup> Department for Culture, Media and Sport, “The balance of payments between TV platforms and Public Service Broadcasters and the future of Electronic Programme Guides”, 2015

<sup>37</sup> Christian Grece, André Lange, Agnes Schneeberger and Sophie Valais, “The development of the European market for on-demand audiovisual services”, *European Audiovisual Observatory*, 2015.

<sup>38</sup> Other non-EU channels were not included in reports as they have a very small market share.

estimations of enforcement or compliance costs for both EU-based and non-EU based services (e.g. accessibility for persons with disabilities).

- Data on turnover in the EU was not available.

### Quantitative estimates

This sub-section provides an estimate of the number of service providers that would be covered by the AVMSD if the geographical scope was extended. The MAVISE database provides the most comprehensive estimates on the number of service providers. However, its coverage is limited due to a number of factors:

- Barriers to data collection suggest that the MAVISE database does not contain all of the service providers established outside the EU. This is due to a number of reasons: a) lists of services available to audiences of MS are volatile as platforms are constantly expanding/modifying their services; b) data collection practices (e.g. analysis of line-ups of the distribution platform or internet search) cannot guarantee an exhaustive list of services; and c) regulatory authorities might not have registered all channels available through redistributors.
- Additional difficulties arise in determining countries of establishment and availability: a) services might have wrongly identified their country of establishment because there is a lack of transparent information on company's place of establishment; b) it is estimated that around 40% of on-demand services are established outside the countries in which they are available; c) around one third of services in the MAVISE database are ascribed to a specific country only hypothetically; and d) some online services cannot be geo-localised.<sup>39</sup>

Other challenges include:

- The number of service providers might not be stable, especially in the on-demand sector.
- Rules set by national legislation in the MS limit provision of certain types of content, especially in the adult entertainment sector. This leads to either the service being moved or editorial responsibility being transferred to a unit established outside the MS,<sup>40</sup> and possibly outside the EU. At the same time, material might remain exclusively available to citizens of the MS/EU.

The list of linear services established outside the EU, but that target EU MS was compiled through the following steps:

1. A list of channels available in each MS was created based on data from the MAVISE database.
2. All of the channels established inside the EU were removed from the list.
3. Channels that were not established in EU, but that mainly target EU MS were identified using the MAVISE database. They constitute the final list of channels used in calculating cost. Tables 1.7 and 1.8 provide data on linear services established outside the EU, but that target various MS.

The estimates provided in Tables 1.7 and 1.8 should be interpreted with caution. The actual number of service providers established outside the EU and affected by the extension of geographical scope of the AVMSD is likely to be considerably larger due to the data collection limitations mentioned previously.

Tables 1.7 and 1.8 cover all identified service providers. However, it is likely that only a small proportion of these would pass audience and turnover thresholds. As discussed above, data on turnover is not available. We have also reviewed publicly available reports on market share of service providers in all MS (for complete list of sources, please see Annex 4). The national reports provided data on market share for few services established outside the EU (see Table 1.6). Presumably, national audience reports do not provide data on the market share of other

<sup>39</sup> European Audiovisual Observatory, "MAVISE database". <<http://mavise.coe.int/>> [ Last accessed December 28, 2015].

<sup>40</sup> ATVOD. "Annual Report 2014-2015", 2015.

service providers established outside the EU as the channels do not attract significant audiences.

**Table 1.6. Available data on market share of service providers established outside the EU**

Channel	MS for which market share is reported	Country of establishment	Market share (%)
TV Globo Portugal	Portugal	Brazil	1.1 (2015)

Sources: Comissão de Análise de Estudos de Meios.

**Table 1.7. Number of linear services established outside the EU and available in MS**

MS	Argentina	Brazil	Canada	China	Liechtenstein	Mexico	Norway	Russian Federation	Switzerland	Turkey	United Arab Emirates	United States	Vietnam	Total
BE <sup>41</sup>	0	0	0	0	0	0	0	0	0	0	0	0	0	0
BG	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CZ	0	0	0	0	0	0	0	0	0	0	0	1	1	2
DK	0	0	0	0	1	0	0	0	23	4	0	1	0	29
DE	0	0	0	0	0	0	0	0	1	0	0	1	0	2
EE	0	0	1	0	0	0	0	1	0	0	0	0	0	2
IE	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EL	0	0	0	0	0	0	0	0	0	0	0	1	0	1
ES	1	0	0	2	0	2	0	0	0	0	0	1	0	6
FR	0	0	0	1	0	0	0	1	0	0	0	1	0	3
HR	0	0	0	0	0	0	0	0	0	0	0	0	0	0
IT	0	0	0	0	0	0	1	0	0	0	0	1	0	2
CY	0	0	0	0	0	0	0	1	0	0	0	0	0	1
LV	0	0	0	0	0	0	0	0	0	0	0	1	0	1
LT	0	0	0	0	0	0	0	0	0	0	0	1	0	1
LU	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HU	0	0	0	0	0	0	0	0	0	0	0	1	0	1
MT	0	0	0	0	0	0	0	0	0	0	0	0	0	0
NL	0	0	0	0	0	0	0	0	0	0	0	2	0	2
AT	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PL	0	0	0	0	0	0	0	0	1	0	0	1	0	2
PT	0	3	0	0	0	0	0	0	0	0	0	4	0	7
RO	0	0	0	0	0	0	0	0	0	0	0	1	0	1
SI	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SK	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FI	0	0	3	0	0	0	0	0	0	0	0	1	0	4
SE	0	0	0	0	0	0	0	0	0	0	0	1	0	1
UK	0	0	0	0	0	0	0	1	0	0	1	0	0	2
<b>Total</b>	<b>1</b>	<b>3</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>25</b>	<b>4</b>	<b>1</b>	<b>20</b>	<b>1</b>	<b>70</b>

Source: MAVISE database and distributor websites. Data collected in December, 2015.

<sup>41</sup>Belgium is taken as a single region in this case, because MAVISE database does not provide separate data on platforms established outside the EU and available in BE (DE), BE (FL), BE (FR).

**Table 1.8. Number of non-EU channels that mainly target EU MS**

Country of establishment	Number of channels	Notes on channels
Switzerland	25	92% of channels target Germany and all of these channels contain adult content.
United States	20	80% of channels come from Brigham Young University campus and are religious.
Russian Federation	4	Half of the channels provide high definition simulcast, whereas others are music and news channels.
Canada	4	Three out of four channels belong to the same provider and are contain adult content.
Turkey	4	50% of channels are news channels, whereas another half are news channels.
China	3	All channels belong to Chinese state television.
Brazil	3	Two out of three channels are generalist in nature, one is an international linguistic and cultural channel.
Mexico	2	European versions of Mexican channels
Vietnam	1	Cultural channel that targets Vietnamese population living in EU.
Liechtenstein	1	Shopping channel.
Norway	1	Kurdish news channel.
Argentina	1	International version of an Argentinian channel.
United Arab Emirates	1	Fitness, sport and health channel.

Source: MAVISE database. Data collected in December, 2015.

Estimating the number of on-demand services established outside the EU is even more challenging. The MAVISE database does not contain a comprehensive list of such services and analysis of line-ups offered by platforms is not a viable solution for on-demand. Furthermore, it is very difficult to establish the geo-localisation of service providers. In the absence of better alternatives, we have used grossly incomplete data from the MAVISE database (see Table 1.9). On the one hand, the number of services per country is downwardly biased to an unknown extent, i.e. it is highly likely that residents of a MS do access and enjoy on-demand services from a significantly larger pool of service providers established outside the EU. On the other hand, data in Table 1.9 could over-estimate the number of services that would fall within the scope of Directive if its material scope was extended. Table 1.8 double counts the same services that are available in several MS. Furthermore, it is not clear how many services are actually targeting specific MS and whether they would pass thresholds on market share and turnover.

**Table 1.9. Number of non-linear services established outside the EU and available in MS**

MS	Canada	Egypt	Russian Federation	Switzerland	United States	Total
BE (FL)	0	2	0	1	29	32
BE (FR)	0	2	0	2	32	36
BE (DE)	0	2	0	0	30	32
BG	0	0	0	0	2	2
CZ	0	0	0	0	4	4
DK	0	2	0	0	6	8
DE	0	2	0	4	35	41
EE	0	2	1	1	4	8
IE	0	2	0	2	38	42
EL	0	2	0	0	27	29
ES	3	2	0	1	59	65
FR	3	2	0	2	72	79
HR	0	2	0	0	2	4
IT	0	2	0	2	31	35

<b>CY</b>	0	2	0	0	26	28
<b>LV</b>	0	2	7	1	3	13
<b>LT</b>	0	2	0	1	3	6
<b>LU</b>	0	2	0	1	29	32
<b>HU</b>	0	2	0	0	2	4
<b>MT</b>	0	2	0	0	26	28
<b>NL</b>	0	2	0	1	4	7
<b>AT</b>	0	2	0	3	31	36
<b>PL</b>	0	2	0	1	4	7
<b>PT</b>	0	2	0	0	27	29
<b>RO</b>	0	2	0	0	3	5
<b>SI</b>	0	2	0	0	26	28
<b>SK</b>	0	2	0	0	4	6
<b>FI</b>	0	2	0	0	31	33
<b>SE</b>	0	2	0	1	6	9
<b>UK</b>	3	2	0	4	75	84

Source: MAVISE database; data collected in December, 2015.

There is a lack of comprehensive data on online and emerging audiovisual services (as defined in section 1.2) established outside the EU, but available in MS. According to the MAVISE database, there are only few video sharing platforms (one established in the Russian Federation and four established in the US). This is under-estimation. Furthermore, the four US based platforms include such giants as YouTube, which boasts billions of hours of content. Hence, even if the number of platforms is limited, expansion of material and geographical scope could induce significant administration and enforcement costs as discussed in the next section.

## 2. Independence of Regulators

### 2.1. Regulation and contextual information

Article 30 of the AVMSD stipulates that:

*Member states shall take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4, in particular through their competent independent regulatory bodies.*

The scope of this article is further explained by recital 94 of the Directive:

*In accordance with the duties imposed on Member States by the Treaty on the Functioning of the European Union, they are responsible for the effective implementation of this Directive. They are free to choose the appropriate instruments according to their legal traditions and established structures, and, in particular, the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently. More specifically, the instruments chosen by Member States should contribute to the promotion of media pluralism.*

These provisions do not establish an obligation to create an independent regulatory body, if one does not already exist<sup>42</sup>. In addition, Article 30 does not stipulate how the independence of audiovisual regulatory bodies should be ensured. These issues are left to the discretion of MS. As a result, the requirements established in AVMSD could be seen as considerably weaker in comparison to the mandate for independence as established for other sectoral national regulators (e.g. data protection and electronic communications). Nevertheless, national regulators are obliged to take an impartial and transparent approach to implementation of the AVMSD, as well as the promotion of media pluralism.

Article 30 of the AVMSD is the result of a compromise between the EC and the Parliament on the one side and MS' view in the Council. "According to the initial proposal introduced by the Commission, <...> AVMSD would have imposed on Member States the obligation to "guarantee the independence of national regulatory bodies and ensure that they exercise their powers impartially and transparently". Recital 47 of the draft Amending Directive 2007/65/EC stated that independence in this sense should entail independence from both national governments and audiovisual media service providers. Some Member States, however, claimed that these rules were an inappropriate interference with their national legislative competence. Therefore, and strikingly, the original draft of the provision requiring the setting up of independent regulators was dropped together with the formulation of the Recital due to doubts based on competency and subsidiarity."<sup>43</sup>

Although the concept of "independent regulatory authority" is well established, there is an ongoing discussion regarding the main features of a regulator that guarantee its autonomy<sup>44</sup>. The INDIREG Study suggests that an audiovisual body could be considered independent if it satisfies the following criteria<sup>45</sup>:

<sup>42</sup> Hans Bredow Institute for Media Research/Interdisciplinary Centre for Law & ICT (ICRI), Katholieke Universiteit Leuven/Center for Media and Communication Studies (CMCS), Central European University/Cullen International/Perspective Associates "INDIREG. Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive", Study conducted on behalf of the European Commission. Final Report. February 2011.

<sup>43</sup> AVMSD RADAR study, 30

<sup>44</sup> Koen Verhoest, B. Guy Peters, Geert Bouckaert, and Bram Verschuere, "The study of organisational autonomy: a conceptual review". *Public Administration and Development*, 24(2), 2004, 101-118.. for a discussion. Also, there are debates on EU as a regulatory state (e.g. Giandomenico Majone. 1994. "The Rise of the Regulatory State in Europe." *West European Politics* 17 (3): 77-101.). Furthermore, specific independence criteria are established in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC and Regulation 544/2009.

<sup>45</sup> INDIREG study

- Status and regulatory powers: the body holds exclusive decision-making powers.
- Financial autonomy: the body possesses sufficient financial resources and has control of their use.
- Autonomy of decision makers: the rules on nomination, appointment, tenure and dismissal of the members of the highest decision making body seek to minimise political interference.
- Knowledge: the body is competent i.e. equipped with sufficient human resources.
- Transparency and accountability: the body must function in a transparent manner (e.g. obligations to organise consultation, reporting obligations).

Normative arguments for promotion of the independence of regulators include<sup>46</sup>:

- Credible commitment: an independent regulatory body can serve as a guarantor to companies that their investments will not be influenced by political short-term goals.
- Better regulation: specialized and independent regulatory bodies are well placed to focus on regulation without being affected by political or economic agents. Independent regulators are likely to be more effective in transposing and enforcing AVMSD, as well as setting a level playing field and protecting media freedom and freedom of expression.<sup>47</sup>
- European harmonisation: independence of regulators has been prescribed by the EU regulatory framework in a number of sectors. These include: electronic communications, energy, railways, post and others.

In future, converging media could also create an imperative for the convergence of requirements set for regulatory authorities. For example, “must-carry” and prominence regulation falls within the e-Communications regulatory framework. It holds its own (stricter) requirements for independent national regulatory authorities. As a result, national regulators implementing “must-carry” and prominence regulation face stricter requirements on independence, stemming from the e-communications regulatory framework, than those of the AVMS Directive today. These issues, however, are not within the scope of the present analysis.

## 2.2. Implementation in Member States

All MS (except Estonia)<sup>48</sup> have established separate audiovisual regulatory bodies. In most MS existing legal frameworks implicitly or explicitly recognize the importance of the independence of regulators. However, the legal set-up governing independence and operation of national regulators (see Annex 1 for details) vastly differs<sup>49</sup>:

- **Status and power.** Regulators in 20 MS<sup>50</sup> are entrusted with policy implementation, monitoring and sanctioning powers. In addition to these, regulators in nine MS<sup>51</sup> also have policy setting powers – the power to decide on the general direction of the rules to be followed (e.g. to decide that subtitling should be ensured).
- **Financial autonomy / sources of income.** In 14 MS<sup>52</sup> the audiovisual regulators are mainly funded by the state budget. A further 12 MS<sup>53</sup> regulatory authorities are mainly funded from end-user broadcasting licence fees, spectrum fees, authorisation/license fees paid by broadcasters, fines or market surveillance fees. In the remaining two MS<sup>54</sup> approximately half of funding comes from state budget and half from end-user

<sup>46</sup> INDIREG Study.

<sup>47</sup> Kristina Irion and Roxana Radu, “Delegation to Independent Regulatory Authorities in the Media Sector: A Paradigm Shift through the Lens of Regulatory Theory” in: W. Schulz, P. Valcke, and K. Irion, eds., *The Independence of the Media and Its Regulatory Agencies. Shedding new light on formal and actual independence against the national context*, 15-53, Bristol: Intellect Publ, 2014.

<sup>48</sup> According to AVMSD Radar Study, in Estonia the regulatory and supervisory functions are carried out by the ministry, not by a separate regulatory authority.

<sup>49</sup> INDIREG Study. AVMSD Radar study.

<sup>50</sup> BE, BG, CZ, DK, DE, ES, EL, FR, IT, CY, LT, MT, NL, AT, PL, PT, SI, SK, FI, SE.

<sup>51</sup> EE, HR, HU, IE, LV, LU, RO, UK.

<sup>52</sup> BE, CZ, DK, EE, EL, ES, FR, LV, LT, LU, NL, PL, RO, SK.

<sup>53</sup> DE, IE, HR, IT, CY, HU, AT, PT, SI, FI, SE, UK.

<sup>54</sup> BG, MT.

broadcasting licence fees, spectrum fees, authorisation/license fees paid by broadcasters, fines or market surveillance fees.

- **Autonomy of highest decision-making bodies.** In all MS where information has been provided, the highest decision-making body has the power to determine its own internal organisation and procedures. However, in three MS (EL, ES, and SK) this power is subject to various restrictions. The organisation and procedures in these countries have to be approved by the Parliament or Government. In all Member States (except AT, EL, FI)<sup>55</sup> audiovisual regulators have the power to decide on human resources. The highest decision-making bodies' appointment process is diverse: in five Member States, there is a requirement to have representatives of civil society; two Member States (BE and IE) require inclusion of industry representatives. Some countries include members appointed by the President (e.g. BG, LT, and PL), the government (e.g. DE, ES, and MT) and/or the Parliament (e.g. HU, RO and PT).
- **Knowledge / staffing.** In almost all MS (except LU and CNMC in ES), there is a professional or qualification requirement for board members of regulatory authorities.
- **Transparency.** Regulators in 11 MS<sup>56</sup> publish minutes and agendas of the highest decision-making bodies' meetings.
- **Auditing.** In all MS, the regulators are subject to regular external financial audit. However, only 20 of them are subject to external performance auditing.

*De jure* levels of autonomy could substantially differ from *de facto* practices. Although the results of INDIREG study suggest that *de jure* autonomy is generally a good predictor of *de facto* autonomy, important deviations still exist.

### 2.3. Options and scenarios

#### **Option 1. Leave the AVMSD provision regarding regulatory authorities (Article 30) unchanged**

Status quo regulation is discussed in section 2.1 above. As noted, there is no obligation for MS to create an independent regulatory body, if one does not already exist. Furthermore, the Directive does not stipulate how the independence of audiovisual regulatory bodies should be ensured.

#### **Option 2. Lay down in the AVMSD a mandate for the independence of regulatory authorities, for example by introducing an explicit requirement for the Member States to guarantee the independence of national regulatory bodies and ensure that they exercise their powers impartially and transparently**

This option includes an explicit requirement for MS to guarantee independence of regulators. This would provide legal basis for Commission to take action, if independence of regulators is not *de jure* or *de facto* safeguarded. However, MS would have discretion as to the setting out of the specific requirements that regulatory authorities would be subject to. This option would be complemented by underlining that the independence of regulatory authorities does not prevent institutional set-up in accordance with the national constitutional laws of the MS.

#### **Option 3. Lay down minimum mandatory requirements for regulatory authorities, for example detailed features that national regulatory bodies would need to have in order to ensure their independence**

This option includes both: an explicit requirement for MS to guarantee independence of regulators and specific (minimum) mandatory requirements to safeguard independence, transparency and accountability. At the time of drafting this report, it is not clear what mandatory requirements could be included in the amended directive if this option is selected. We assume that the approach would closely follow the criteria outlined in the INDIREG study and in the requirements set for regulators of electronic communications networks and services

<sup>55</sup> In AT the number of members in a regulatory body is foreseen by law. In EL the decisions concerning human resources lie within the Ministry of Economy and Finance. In FI these powers lie within the Ministry of Transport and Communications.

<sup>56</sup> BG, CZ, EL, HR, IT, LT, HU, NL, RO, SK, UK.

(see Table 2.1.). In such a case, the mandatory requirements would include the following: a) a mandate for an independent national supervisory authority with decision-making powers; b) requirements regarding adequate resources; c) clauses on autonomy of decision makers; and d) requirements on transparency, accountability and impartiality. In MS where prescriptive requirements on the independence of media regulatory authorities are not finding political support, at least the transparency and accountability of national regulators should be envisaged.

**Table 2.1. Assumed mandatory requirements for independent regulators**

Assumed mandatory requirements	Criteria in INDIREG study	Requirements for regulators of electronic communications networks and services*
Mandate for a separate independent body with decision-making powers	Status and regulatory powers: the body must hold exclusive decision-making powers	"Member States shall ensure that each of the tasks assigned to national regulatory authorities in this Directive and the Specific Directives is undertaken by a competent body." "Member States shall guarantee the independence of national regulatory authorities <...>" "<...>regulatory authorities <...> shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies <...> shall have the power to suspend or overturn decisions by the national regulatory authorities."
Adequate resources	Financial autonomy: the body possesses sufficient financial resources and has control over their use. Knowledge: the body is required to be competently equipped with sufficient human resources and adequate expertise.	"Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the task assigned to them."
Autonomy of decision makers	Autonomy of decision makers: nomination, appointment, tenure and dismissal of the members of the highest decision making body should be protected from politicisation	"Member States shall ensure that the head of a national regulatory authority or, where applicable, members of the collegiate body fulfilling that function within a national regulatory authority referred to in the first subparagraph or their replacements may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law."
Transparency, accountability and impartiality	Transparency and accountability	Member States shall ensure that national regulatory authorities exercise their powers impartially, transparently and in a timely manner.

Notes: \* Article 3 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC and Regulation 544/2009 (unofficially consolidated version).

Source: Visionary Analytics, 2015. Source: Visionary Analytics, 2015.

## 2.4. Impacts on administration and enforcement costs

There are two main drivers of administrative and enforcement costs:

- Requirements for the independence of regulators that are directly linked with the options under consideration.
- The number of regulated entities. This number is different under alternative scenarios. The analysis has resulted in three estimates: a) the costs of regulating on-demand services; b) the costs of regulating online platforms that do not exercise editorial responsibility; and c) the costs of regulating service providers established outside the EU (scenario: extend geographical scope). TV-like on-demand services are already

covered by the AVMSD, although these provisions are not universally enforced in MS. Non-TV like on-demand services with editorial responsibility are not currently covered by AVMSD. An expansion of the material scope would affect non-TV like on-demand services with editorial responsibility. The analysis provides combined estimates of the costs of regulating TV-like and non-TV like on-demand services, because available data does not allow distinguishing between the two. Hence, the costs of regulating on-demand services cannot be attributed to the incremental costs of expansion of material scope. These costs are calculated and presented in a separate sub-section.

Table 2.2 summarises the impacts of the various options on the administration and enforcement costs faced by national regulators. It distinguishes between the costs that stem from adoption of each specific Option and change in scenario. The current regulation (Option 1) does not contain regulatory obligations<sup>57</sup> and does not impose additional administration and enforcement costs *per se*. Therefore, it is not further analysed. The sub-sections below provide evidence underpinning the estimates outlined in Table 2.2. The presentation of data is organised as follows:

- Sub-section 2.4.1 assesses the costs of regulating TV-like and non-TV like on-demand services with editorial responsibilities.
- Sub-section 2.4.2 discusses how extension of material and geographical scope would affect administration and enforcement costs faced by national regulators. Sub-section 2.4.3 seeks to assess incremental costs related to implementation of Option 2
- Sub-section 2.4.4 discusses the impacts of Option 3 on administration and enforcement costs.

**Table 2.2. Impacts of options on administration and enforcement costs**

Cost driver	Costs
Option 1. Maintain the <i>status quo</i>	No impact on costs
Option 2. Lay down in the AVMSD a mandate for the independence of regulatory authorities	No impact in 27MS / negligible impact in 1MS*
Option 3. Lay down minimum mandatory requirements for regulatory authorities	The most understaffed nine MS might need in total approx. 160-250 additional employees (in full time units), which implies €7-12 m p.a. additional costs. In addition, transparency and accountability requirements for regulators could impose additional costs for publishing approx. 1 thousand minutes and organizing approx. 25 public consultations.
Costs of regulating TV-like and non-TV like on-demand services with editorial responsibilities	Additional costs between €2.8 m and €97 m p.a. for all MS. The actual costs are likely to be closer to the lower bound.
Costs of regulating online platforms that do not exercise editorial responsibility	Negligible additional costs (less than €1 m p.a. for all MS).
Costs of extended geographical scope	Negligible costs, if extended geographical scope of AVMSD covered services with significant market share (e.g. at least 2 % in any MS). If extended geographical scope covered all linear services established outside the EU, but targeting EU MS, this would imply approx. €2.5 m p.a. additional costs for all MS.

Notes: \* Transitional costs incurred in Estonia due to transfer of functions from Technical Surveillance Authority within the Ministry of Economic Affairs and Communications to an existing or newly established regulatory agency.  
Source: Visionary Analytics, 2015.

All estimates provided in Table 2.2 are based on cost per channel calculations that inherently rely on a number of assumptions. These include: a) the budget of national regulators is directly linked with the number of service providers regulated (i.e. national regulators do not carry out other functions; there are no economies of scale, etc.); and b) the costs of

<sup>57</sup> Article 30 also contains obligation for MS to "take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive". However, the costs of provision such information are beyond the scope of present study.

enforcement are the same across MS (when different price levels are accounted for). Furthermore, estimates of regulating on-demand services and platforms rely on very limited amount of “real life” data. As a result, significant deviations are likely and all estimates should be treated with caution.

#### **2.4.1. Costs of regulating TV-like and non-TV like on-demand services with editorial responsibility**

This sub-section seeks to estimate the administration and enforcement costs of regulating TV-like and non-TV like on-demand services with editorial responsibilities borne by national regulators. All costs assessed in this sub-section are additional to the costs that would be incurred if Option 2 or 3 were adopted.

Currently, only TV-like non-linear audiovisual media services fall within the scope of the Directive. Non-TV like on-demand services would be covered by the AVMSD if its material scope was extended. The structure of the data available in the MAVISE database does not allow for a distinction between the TV-like and non TV-like services. Therefore, the costs of regulating all on-demand services are assessed jointly.

The additional costs incurred by national regulators depend on two variables: a) the number of established service providers; and b) costs per service. Two approaches were used to estimate the latter: a) the costs incurred by the Authority for Television on Demand (ATVOD) in the UK per on-demand service provider; and b) the costs incurred by national regulators per linear service provider. The differences between the two approaches represent the differences in the scale and intensity of regulation.

##### **Assumptions:**

- On-demand services are regulated at least to some extent in the following MS: BE (FL), BE (FR), CZ, EE, DK, FR, HR, IT, CY, LT, LU, MT, NL, PL, RO, SL, SK, FI, and UK<sup>58</sup>. However, the breadth and depth of actual enforcement is not known.
- The costs of regulation are attributed to enforcement costs, irrespective of how they are covered. Some regulators, such as ATVOD, cover their expenses with fees collected from the industry. In such cases enforcement costs effectively become compliance costs. The estimates below ignore such nuances.

The first approach to estimating the costs of regulating on-demand services was based on the following steps:

1. Calculation of the average costs per on-demand service. The Authority for Television on Demand (ATVOD) in the UK was a co-regulatory body in charge of commercial non-linear services. To estimate the regulatory costs per service provider, we divided the budget of ATVOD<sup>59</sup> by the number of on-demand services established in the UK. The costs per on-demand service provider amounts to an average of €1,350.
2. Extrapolation of the data to other MS. While not all services might be notified by ATVOD, it is assumed that the ratio of notified and not notified services would be similar across MS. The results were normalized in line with purchasing power standards (relative to the EU28) so that the different costs of living would be accounted for (see table 2.3)<sup>60</sup>. This is based on the assumption that the costs of regulating one non-linear channel would be equal across the EU, if normalized for purchasing power standard.
3. Calculate the aggregate costs for all MS. The results are provided in Table 2.3.

<sup>58</sup> The data was gathered by looking at national laws, regulatory authorities' web pages and Merlin database (whether there was changes in the audiovisual media law regarding on-demand services).

<sup>59</sup> ATVOD, “The 2015-16 Fee Tariff: Regulatory fees for on-demand programme services for the period 1 April 2015 to 31 March 2016”, 2015.

<sup>60</sup> Eurostat, “Comparative price levels (tec00120)”, <<http://ec.europa.eu/eurostat/en/web/products-datasets/-/TEC00120>> [Last accessed December 28, 2015].

**Table 2.3. Approximation of costs for regulating on-demand services**

MS	Number of established on-demand services	Comparative price level correction coefficient (EU28=1)	Annual administration and enforcement costs for regulation of on-demand services (thousand €; rounded)
BE (DE)	1	1.087	1.21
BE (FR)	35	1.087	42.27
BE (FL)	56	1.087	67.63
BG	22	0.479	11.71
CZ	96	0.637	67.94
DK	45	1.391	69.54
DE	276	1.015	311.24
EE	13	0.756	10.92
IE	23	1.223	31.25
EL	35	0.854	33.21
ES	57	0.923	58.45
FR	419	1.077	501.35
HR	14	0.661	10.28
IT	71	1.029	81.17
CY	26	0.901	26.03
LV	20	0.701	15.58
LT	14	0.628	9.77
LU	113	1.204	151.15
HU	80	0.575	51.11
MT	7	0.809	6.29
NL	122	1.098	148.83
AT	63	1.058	74.05
PL	106	0.558	65.71
PT	29	0.818	26.36
RO	43	0.531	25.37
SI	19	0.817	17.25
SK	35	0.678	26.36
FI	25	1.223	33.97
SE	141	1.256	196.75
UK	497	1.215	670.88
<b>Total</b>	<b>2,503</b>	<b>Not applicable</b>	<b>2,843.61</b>

Source: Visionary Analytics, 2015. Based on MAVISE, ATVOD and Eurostat data.

The second approach is based on the premise that the costs of regulating an on-demand channel are the same as the costs of regulating a linear channel. Table 2.4 provides the results that were obtained based on the following steps:

1. Assessment of the average costs per on-demand service. This was based on a ratio between the budget of the national regulator and the number of linear channels established in a MS. Data on budgets of national regulators is available in the AVMSD Radar study and regulators' annual reports. Data on the number of channels established in MS is available from the MAVISE database. This approach could not be applied to cases where: a) the scope of tasks of national regulators goes beyond audiovisual media services (EE, ES, IT, HU, UK); b) multiple regional regulators exist (DE); and c) data was missing (DK). To address these issues, we used estimates based on the median expenditure of regulators and comparative price levels<sup>61</sup>
2. Estimates of the number of on-demand services within each MS based on the MAVISE database (discussed in section 1.2).

<sup>61</sup> We calculated the median and median absolute deviation (MAD) of regulators' expenditures per linear channel where the information was available. We assumed that for the MS with a Comparative price levels (CPL) coefficient (see table 2.3) lower than 0.9, the annual expenditure per linear channel is one MAD lower than the median (€5.5 thousand). The MS with CPL coefficient between 0.9 and 1.1 has the annual expenditures per linear channel equal to the median (€25.6 thousand). For the MS with CPL coefficient higher than 1.1 the annual expenditures per linear channel is one MAD higher than the median (€45.7 thousand).

3. Calculation of expected enforcement costs based on the number of on-demand service providers multiplied by the average cost per service provider. The results from this analysis are shown in Table 2.4.

**Table 2.4. Approximation of costs for regulating on-demand services**

MS	Total expenditure of regulators (thousand €)	Number of linear channels established	Annual expenditures per linear channel (thousand €)	Number of on-demand audiovisual service providers	Annual costs for regulation of on-demand services (thousand€)
BE (DE)	15	1	15	1	15
BE (FR)	2,250.0	31	72.6	35	2 540.3
BE (FL)	2,623.0	62	42.3	56	2 369.2
BG	668.5	163	4.1	22	90.2
CZ	1,980.9	114	17.4	96	1,668.1
DK	NA	61	45.7*	45	2,056.5
DE	NA	447	25.6*	276	7,065.6
EE	NA	17	5.5*	13	71.5
IE	4,721.0	25	188.8	23	4,343.3
EL	2,492.0	110	22.7	35	792.9
ES	NA	298	25.6*	57	1,459.2
FR	35,400.0	485	73	419	30,582.7
HR	2,150.7	78	27.6	14	386
IT	NA	464	25.6*	71	1,817.6
CY	1,500.8	22	68.2	26	1,773.6
LV	445.2	37	12	20	240.6
LT	752.1	21	35.8	14	501.4
LU	590	25	23.6	113	2,666.8
HU	NA	46	5.5*	80	440
MT	1,123.8	35	32.1	7	224.8
NL	684	182	3.8	122	458.5
AT	4,168.0	78	53.4	63	3,366.5
PL	4,897.9	142	34.5	106	3,656.2
PT	3,812.3	103	37	29	1,073.4
RO	1,627.5	149	10.9	43	469.7
SI	681	88	7.7	19	147
SK	1,114.7	84	13.3	35	464.5
FI	789	110	7.2	25	179.3
SE	2,867.2	112	25.6	141	3,609.5
UK	NA	655	45.7*	497	22,712.9
<b>Total</b>		<b>4,245</b>	<b>33.6</b>	<b>2,503</b>	<b>97,242.8</b>

Notes: \* - Estimates of annual expenditures per linear channel are not available. Therefore estimates rely on median or +/- one MAD from median of expenditures of MS where data was available.

Source: Visionary Analytics, 2015. Based on MAVISE, AVMSD Radar, Annual reports of regulators.

The two methods of estimating the costs of regulating non-linear services provide quite different results. Estimations based on the costs borne by ATVOD are significantly lower (€2.8 m) than those based on the costs incurred while regulating linear services (€97.2 m). Both estimates face significant limitations. The remit of ATVOD for directly regulating non-linear services is relatively limited (e.g. in the case of access to persons with disabilities, no monitoring/sanctioning is carried out). Therefore, extrapolation of the costs per-channel on the basis of ATVOD budget produces downward bias, i.e. enforcement costs are likely to be significantly higher if regulation of on-demand encompassed more functions in comparison to those carried out by ATVOD. Estimates based on the cost per linear channel, on the other hand, are upwards biased. This is because national regulators perform a wider range of functions and this is captured by the cost-per-channel estimates. To sum-up, it is likely that the costs of regulating on-demand services with editorial responsibility would be closer to the

lower (€2.8 m p.a.), rather than higher (€97.2 m p.a.) bound, although exact costs would depend on the scope of the regulation as well as specific approaches taken to enforcing it.

#### **2.4.2. Costs driven by an extension of the scope of the AVMSD**

This sub-section estimates how the extension of material scope to online platforms and the extension of the geographical scope of AVMSD would affect administration and enforcement costs borne by national regulators. First, we explore alternative approaches to regulating such platforms. Second, we provide estimates for additional costs of regulating the platforms. All costs assessed in this sub-section are additional to the costs that would be incurred if Option 2 or 3 were adopted.

#### ***Approaches to regulating online platforms without editorial responsibility***

Regulation of online platforms without editorial responsibility would imply a number of challenges, including:

- Establishing regulatory system capable of balancing freedom of expression and protection of consumers;
- Setting-up regulatory mechanisms capable of dealing with huge amounts of content: it is likely that some of the platforms in question (e.g. Dailymotion, YouTube) annually provide more new content than all linear service providers combined;
- Working across borders: platforms have global outreach, whereas regulators focus on clearly delineated jurisdictions. Country of origin principle would imply that regulators in one or few MS would bear disproportionately large responsibility and costs of regulating significant share of all audiovisual content consumed in the EU.

There is a number of approaches in tackling these and other regulatory challenges. Key alternatives at each phase of regulatory cycle are as follows:

1. Standards could be established either by the regulatory agency or through self-/co-regulatory measures. The latter are widely adopted in the area of protection of minors from harmful content. Here co-regulatory system typically implies that national regulators entrust co-regulatory body in establishing rating systems that are used by service providers to inform viewers and parental guidance using symbols and pictograms to classify audiovisual material<sup>62</sup>. International bodies that facilitate provision of age ratings for digital games and mobile apps include International Age Rating Coalition and Pan-European Initiative.<sup>63</sup> Similar co-regulatory bodies could be established (or the scope of existing ones could be broadened), if the material scope of AVMSD was extended to cover online platforms without editorial responsibility.
2. Actions to comply with regulatory requirements are taken by service providers. Since online platforms in question do not exercise editorial responsibility, they share compliance burden with owners and viewers of content. Typically compliance actions include the following: a) owners of content fill in questionnaires while uploading audiovisual content; b) on the basis of responses platforms provide content ratings and make decisions on appropriateness of content to appear on the platform; c) viewers are given a possibility to re-rate the content and/or issue complaints to the platforms requesting its removal; d) platforms make decisions regarding removal of the content. Such system has in-built self-regulatory mechanism, which in "ideal world" should significantly limit the need for intervention from co-regulators or national regulatory authorities.
3. Monitoring of compliance could be based on two broad approaches: a) complaints based; b) ex officio monitoring<sup>64</sup>. The latter can be systematic (continuous monitoring of content) or based on some sampling strategies (e.g. random sampling or focusing on high-risk

<sup>62</sup> Ramboll Management Consulting, Draft Final Report on "Survey and data gathering to support the Impact Assessment of a possible new legislative proposal concerning Directive 2010/13/EU (AVMSD) and in particular the provisions on protection of minors", 2016. The final report was not available at the time of writing and any changes to the information used here have not been reflected

<sup>63</sup> Ibid.

<sup>64</sup> Ramboll Management Consulting, Draft Final Report on "Defining a framework for the monitoring of advertising rules under the Audiovisual Media Services Directive", 2016. The final report was not available at the time of writing and any changes to the information used here have not been reflected.

content). Given the amount of content on platforms, it is not likely that systematic wholesale monitoring would be applied, as this would imply significant additional costs. Hence, it is the most likely that co-regulators or regulatory authorities will adopt complaints driven system or a monitoring system based on some sampling strategies.

4. Sanctions in case of non-compliance are likely to be imposed by a co-regulatory body, national regulator or courts.

Establishment of standards could pose one-off costs (and periodic review is likely to imply additional incremental costs). However, these costs are not likely to be significant, if set-up of standards follows best practices developed elsewhere (e.g. for regulation of linear services, games, mobile apps, etc.). Monitoring of compliance could imply additional costs the scale of which depends on the adopted regulatory approach. This issue is further explored below.

### ***Costs of regulating online platforms without editorial responsibility***

An extension of the material scope of the AVMSD would imply that certain rules to protect consumers, and in particular minors, would apply to online platforms distributing audiovisual media content without editorial responsibility. While the number of such platforms is small (15 EU and non EU-based platforms, according to the MAVISE database), the number of hours of audiovisual content accessible through these platforms is likely to exceed that of all EU linear channels. At first sight, it would seem that the costs of regulating such platforms are likely to be very high given the sheer volume of content. However, the costs of regulating one hour of linear content should not be extrapolated to the costs of regulating a platform that provides billions of hours of content. The main reasons for this are that:

- The platforms in question do not have editorial responsibility over the content. They are therefore likely to be regulated on the basis of “graduated approach” whereby the services in question would be subject to specific regulation (e.g. protection of minors).
- Systematic wholesale monitoring of all content would imply prohibitively high costs, which would not be available even to the best funded regulators. Furthermore, such approach (due to low efficiency) is not applied even for monitoring of linear services that provide considerably smaller amount of audiovisual content.

Adoption of sampling strategies to monitor audiovisual content is more likely than wholesale monitoring. Sampling could be random (this would indicate overall rate of (non)compliance) or targeted at specific types of content that pose higher risk of non-compliance. The costs of sampling based monitoring would largely depend on the size of samples. If sampling strategies follow similar approaches to the ones adopted for monitoring linear services, the costs of monitoring 15 EU and non-EU based platforms would be negligible.

Complaints driven approach provides yet another alternative to monitoring platforms without editorial responsibility. The discussion below seeks to illustrate the likely costs on the basis of publicly available data from YouTube. In 2014, it received 184 requests (see Table 2.5) to remove specific content from national regulators or courts in the EU. The relatively small number (given the volume of content) of requests by public bodies is reportedly due to the following self-regulatory mechanisms: a) inbuilt algorithms that YouTube uses to detect inappropriate content; and b) the ability for users to approach the platform directly with a request to remove content. Typically users approach public bodies (regulators or courts) only in those cases when self-regulatory mechanisms fail.

One could argue that historical data on the number of formal requests from EU MS to remove content from YouTube provides a poor starting point for analysis: the number of requests is low, because material scope of AVMSD has not been extended yet. Nevertheless, the EU does not stand out from the rest of the world in terms of the number of formal request. Between January 2010 and December 2015 there have been 90 court orders and 343 executive orders to remove content from YouTube in the USA. This concerned 2950 units of audiovisual

material<sup>65</sup>. The data suggests that under alternative regulatory environments, the number of requests remains relatively low.

**Table 2.5. Requests by EU MS public bodies addressed to YouTube platform**

	1	2	3	4	5	6	7	8	9	10	Court orders	Agencies	Total
<b>AT</b>	0	0	0	0	0	0	0	0	0	1	0	1	<b>1</b>
<b>BE</b>	1	1	0	1	0	0	2	0	0	0	0	5	<b>5</b>
<b>BG</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>CY</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>CZ</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>DE</b>	7	13	0	15	23	0	1	5	2	5	8	63	<b>71</b>
<b>DK</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>EE</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>EL</b>	2	0	0	0	0	0	2	0	0	0	1	3	<b>4</b>
<b>ES</b>	1	4	0	0	0	0	5	0	4	3	6	11	<b>17</b>
<b>FI</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>FR</b>	5	1	2	1	5	0	9	0	1	3	5	22	<b>27</b>
<b>HR</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>HU</b>	0	0	0	0	1	0	0	0	0	0	1	0	<b>1</b>
<b>IE</b>	1	0	0	0	0	0	0	0	0	0	0	1	<b>1</b>
<b>IT</b>	4	5	2	1	2	2	1	1	2	0	4	16	<b>20</b>
<b>LT</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>LU</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>LV</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>MT</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>NL</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>PL</b>	0	1	0	0	0	0	0	0	0	0	0	1	<b>1</b>
<b>PT</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>RO</b>	0	1	0	0	0	0	0	0	0	0	0	1	<b>1</b>
<b>SE</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>SK</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>SI</b>	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
<b>UK</b>	3	18	0	2	1	0	3	6	2	0	4	31	<b>35</b>
<b>Total</b>	24	44	4	20	32	2	23	12	11	12	29	155	<b>184</b>

Source: "Google Transparency Report".

<<https://www.google.com/transparencyreport/removals/government/data/?hl=en>> [Last accessed February 19, 2016]

Note: 1 – Defamation; 2 – Privacy and security; 3 – Adult content; 4 – Violence; 5 – Hate speech; 6 – Government criticism; 7 – bullying / harassment; 8 – Obscenity / nudity; 9 – Reason unspecified; 10 – Other.

**Assumptions:**

- The number of requests made by Government agencies is dependent on the number of users of platforms.
- Extension of the material scope of AVMSD to online platforms would result in a similar number of cases / requests as historical data from YouTube suggests.

In addition to Youtube, there are 14 other platforms included in the analysis. In total, 11 platforms are established in the EU, whereas the remaining 4 (including YouTube) are established elsewhere. The number of users is available for 7 platforms. Table 2.6 provides estimates of the likely number of removal requests, based on the assumption that the number of requests per user is equal to that reported for Youtube. This results in an estimated total of a little over 300 such requests per year.

**Table 2.6. Estimates of number of requests by public authorities by relevant platforms**

Platform name	Established in	Number of unique users per month in	Estimated number of removal requests
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<sup>65</sup> "Google Transparency Report". <<https://www.google.com/transparencyreport/removals/government/data/?hl=en>> [Last accessed February 19, 2016]

		millions	
Aufeminin.com	EU	NA	NA
Cine Rebelde	EU	NA	NA
Clipfish GMBH	EU	2.1	0.38
Dailymotion	EU	300	55.2
FREE	EU	NA	NA
MyVideo	EU	NA	NA
RuTube	Non-EU	7.5	1.38
Snacktv.de	EU	18	3.31
Tubewatcher	EU	NA	NA
Tu.tv	EU	NA	NA
Videa	EU	NA	NA
Videos Sapo TV	EU	NA	NA
Vimeo	Non-EU	170	31.28
Vine	Non-EU <sup>66</sup>	200	36.8
YouTube	Non-EU	1000	184*

Source: MAVISE data base, video sharing platform websites.

\*The number of removal request for YouTube is not an estimation but the actual value that was reported by Google; NA – no data available.

The estimated costs of regulating all similar platforms (if the material scope of AVMSD was extended) have been developed based on the following steps:

1. Identification of all EU and non-EU based platforms that would be affected by the regulation (see also section 1.2 for criteria for inclusion / exclusion of specific platforms). According to the MAVISE database, there are 15 such platforms – these are listed in Table 2.6.
2. Estimation of the number of requests for content to be removed, based on 2014 data from YouTube and the number of users of different platforms (where such data is available).
3. Estimates of enforcement costs per request. We have assumed that it takes 1 day (low cost scenario), 3 days (medium cost scenario) or 10 days (high cost scenario) to check and file each request. Assumptions for the low and medium cost scenarios are based on the costs of dealing with right of reply (see section 4). Assumptions for the high cost scenario aim to illustrate that the overall results do not significantly depend on the number of days it takes to deal with one request. The key driver of costs is a number of requests to remove content, which is negligible. The wage costs per day are based on average wages in each MS.
4. Extrapolation to all platforms and all MS (where the aggregate number of estimated requests are distributed across the EU based on population size).

Table 2.7 provides estimates of the distribution of costs per MS borne by regulating EU and non-EU based platforms.

**Table 2.7. Estimated regulatory costs of extending AVMSD to online platforms without editorial responsibility**

MS	Population in 2014 millions	Estimated number of requests per year			Regulatory cost thousand €								
					Low cost scenario (1 day)			Medium cost scenario (2 days)			High cost scenario (10 days)		
		EU	Non-EU	Total	EU	Non-EU	Total	EU	Non-EU	Total	EU	Non-EU	Total
AT	8,544	1.02	4.25	5.27	0.03	1.08	1.11	0.06	2.15	2.21	0.32	10.75	11.07
BE	11,157	1.33	5.56	6.88	0.41	1.73	2.14	0.83	3.45	4.28	4.13	17.27	21.40
BG	7,233	0.86	3.60	4.46	0.03	0.11	0.13	0.05	0.21	0.26	0.26	1.07	1.32
CY	0,853	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CZ	10,525	1.25	5.24	6.49	0.09	0.39	0.48	0.19	0.78	0.96	0.93	3.89	4.82
DE	80,983	9.64	40.32	49.96	3.09	12.93	16.02	6.18	25.86	32.04	30.92	129.31	160.22

<sup>66</sup> According to additional data sources Vine is owned by Twitter and is established in USA.

<b>DK</b>	5,643	0.67	2.81	3.48	0.17	0.69	0.86	0.33	1.38	1.72	1.66	6.92	8.58
<b>EE</b>	1,316	0.16	0.66	0.81	0.01	0.05	0.07	0.03	0.11	0.13	0.13	0.53	0.65
<b>EL</b>	10,927	1.30	5.44	6.74	0.15	0.63	0.78	0.30	1.26	1.56	1.50	6.28	7.78
<b>ES</b>	46,464	5.53	23.13	28.67	0.95	3.98	4.93	1.90	7.96	9.86	9.51	39.80	49.31
<b>FI</b>	5,463	0.65	2.72	3.37	0.17	0.71	0.89	0.34	1.43	1.77	1.71	7.15	8.86
<b>FR</b>	66,169	7.88	32.95	40.82	2.15	9.00	11.16	4.31	18.01	22.31	21.53	90.04	111.57
<b>HR</b>	4,233	0.50	2.11	2.61	0.04	0.15	0.19	0.07	0.31	0.38	0.37	1.55	1.92
<b>HU</b>	9,866	1.17	4.91	6.09	0.07	0.28	0.35	0.14	0.56	0.70	0.68	2.82	3.50
<b>IE</b>	4,615	0.55	2.30	2.85	0.13	0.54	0.67	0.26	1.09	1.35	1.30	5.45	6.75
<b>IT</b>	60,795	7.24	30.27	37.51	1.62	6.77	8.39	3.24	13.54	16.78	16.19	67.72	83.92
<b>LT</b>	2,929	0.35	1.46	1.81	0.02	0.08	0.09	0.04	0.15	0.19	0.18	0.75	0.93
<b>LU</b>	0,558	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>LV</b>	1,995	0.24	0.99	1.23	0.01	0.05	0.06	0.02	0.10	0.13	0.12	0.52	0.64
<b>MT</b>	0,427	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>NL</b>	16,864	2.01	8.40	10.40	0.54	2.27	2.81	1.08	4.53	5.62	5.42	22.66	28.08
<b>PL</b>	38,484	4.58	19.16	23.74	0.30	1.26	1.56	0.60	2.52	3.12	3.01	12.59	15.60
<b>PT</b>	10,401	1.24	5.18	6.42	0.13	0.53	0.65	0.25	1.05	1.31	1.26	5.27	6.53
<b>RO</b>	19,909	2.37	9.91	12.28	0.08	0.35	0.44	0.17	0.71	0.88	0.84	3.53	4.38
<b>SE</b>	9,696	1.15	4.83	5.98	0.35	1.48	1.84	0.71	2.96	3.67	3.54	14.82	18.37
<b>SK</b>	5,419	0.65	2.70	3.34	0.05	0.20	0.25	0.10	0.41	0.51	0.49	2.05	2.54
<b>SI</b>	2,062	0.25	1.03	1.27	0.03	0.12	0.15	0.06	0.25	0.31	0.30	1.24	1.53
<b>UK</b>	64,597	7.69	32.16	39.85	1.37	5.75	7.12	2.75	11.49	14.24	13.74	57.46	71.20
<b>Total</b>	<b>506,291</b>	<b>60.27</b>	<b>252.08</b>	<b>312.35</b>	<b>12.00</b>	<b>51.14</b>	<b>63.15</b>	<b>24.01</b>	<b>102.29</b>	<b>126.30</b>	<b>120.03</b>	<b>511.45</b>	<b>631.48</b>

Source: Visionary Analytics estimates.

The analysis suggests that the additional costs for regulating online platforms would be negligible (approx. between €0.1 m and €0.6 m for all MS). This is mainly due to the low number of expected requests by EU MS public bodies. The most popular online platform (YouTube) has more than half of all unique users and is based outside the EU. As a result, the costs of regulating non-EU online platforms are significantly larger than the costs of regulating online platforms established within the EU (see Table 2.7).

### **Scenario: extend geographical scope**

How would an extension of the geographical scope of AVMSD affect administration and enforcement costs borne by national regulators? The answer to this question relies on an estimation procedure similar to the one deployed above for estimating the costs of extending the material scope. It involves three steps:

1. Assessment of the average costs per linear service. This is based on the ratio between the budget of the national regulator and the number of linear channels established within the MS. Clearly, there is significant cross-national variation in costs per channel. Possible reasons behind these differences are discussed in subsection 2.4.3. In cases where this calculation could not be applied, we have used estimates based on the median expenditure of regulators and comparative price levels<sup>67</sup>.

<sup>67</sup> We calculated the median and median absolute deviation (MAD) of regulators expenditures per linear channel where the information was available. We assumed that for the MS with Comparative Price Level (CPL) coefficient (see table 2.3) lower than 0.9, the annual expenditure per linear channel is one MAD lower than the median (€5.5 thousand). The MS with CPL coefficient between 0.9 and 1.1 has the annual expenditures per linear channel equal to the median (€25.6 thousand). For the MS with CPL coefficient higher than 1.1 the annual expenditures per linear channel is one MAD higher than the median (€45.7 thousand).

2. Estimation of the number of services established outside the EU, but targeting audiences in each MS. The estimates are discussed in section 1.3.
3. Estimation of enforcement costs by multiplying the number of relevant service providers by the average costs per service provider. The results are provided in Table 2.8.

**Table 2.8. Approximation of costs for regulation of services established outside the EU**

MS	Expenditures per channel (thousand €)	Number of linear services established outside the EU and that mainly target MS as of February 2016	Annual costs for regulation of services established outside the EU (thousand €)
BE	25.6*	0	0
BG	4.1	0	0
CZ	17.4	2	34.8
DK	45.7*	29	1,325.3
DE	25.6*	2	51.2
EE	5.5*	2	11
IE	188.8	0	0
EL	22.7	1	22.7
ES	25.6*	6	153.6
FR	73	3	219
HR	27.6	0	0
IT	25.6*	2	51.2
CY	68.2	1	68.2
LV	12	1	12
LT	35.8	1	35.8
LU	23.6	0	0
HU	5.5*	1	5.5
MT	32.1	0	0
NL	3.8	2	7.6
AT	53.4	0	0
PL	34.5	2	69
PT	37	7	259
RO	10.9	1	10.9
SL	7.7	0	0
SK	13.3	0	0
FI	7.2	4	28.8
SE	25.6	1	25.6
UK	45.7*	2	91.4
<b>Total</b>		<b>70</b>	<b>2,482.6</b>

Notes: \* - Estimates of annual expenditures per linear channel are not available. Therefore estimates rely on median or +/- one MAD from median of expenditures of MS where data was available.

Source: Visionary Analytics, 2016. Based on MAVISE, AVMSD Radar, Annual reports of regulators.

The above estimates are based on an assumption that all non-EU services targeting EU MS would be regulated. However, if regulation covered only those linear services that pass some thresholds, the results would change dramatically. As discussed in section 1.3, available data suggests that there are no linear channels that have more than 2% market share in any one MS. Hence, regulators would not incur any cost if the material scope was expanded.

Furthermore, the above estimates do not include the costs of regulating on-demand services established outside the EU, but targeting MS. As discussed in section 1.3, the number of such services is not known. Lastly, the above estimates also do not account for possible additional costs incurred due to the need to conclude international agreements.

To conclude, the number of services established outside the EU and targeting EU is relatively low and none of them have a significant market share. If the geographical scope of AVMSD was extended, and all non-EU services were covered, this would lead to a relatively small increase in costs (€2.5 million p.a.). On the other hand, if the extended geographical scope

covered only services with significant market share (e.g. at least 2%), there would be no additional costs.

### 2.4.3. Option 2. Lay down in the AVMSD a mandate for the independence of regulatory authorities

The costs of enforcing this option would largely depend on the extent to which a mandate for independence of regulators would lead to *de jure* and/or *de facto* changes. Available evidence suggests that:

- The independence of regulators is already established in the legislation of nearly all MS<sup>68</sup>. Estonia is the only exception – here, regulatory functions are carried out by the Technical Surveillance Authority within the Ministry of Economic Affairs and Communications. The transitional costs of implementing Option 2 would involve transfer of these functions to a newly established or existing regulatory agency. Once this is achieved, annual costs are not likely to change, since this option per se does not impose new functions.
- The representatives of regulatory authorities, civil society and service providers who were interviewed for this study did not believe that such regulation could lead to substantial changes in national legislation. The main argument was that such an “abstract” requirement would not foster significant changes in legislation and would therefore not deliver actual changes in practice. On the other hand, threat of legal action by the Commission could alter implementation of the national legal framework, safeguarding independence of regulators. This would especially be the case in the Central and Eastern European (CEE) MS.

Hence, Option 2 is likely to impose additional administration and enforcement costs in Estonia, but no additional costs would be incurred in the remaining 27 MS.

### 2.4.4. Option 3. Lay down minimum mandatory requirements for regulatory authorities

The incremental costs related to Option 3 depend on the specific mandatory requirements included in the regulation. Table 2.9 outlines our assumptions regarding such requirements and associated costs. The costs of changing legislation are not included in the administration and enforcement costs. The requirement related to sufficient human and financial resources is likely to be the largest driver of costs, especially in the Central and Eastern European countries. The analysis in Table 2.9 seeks to estimate the necessary additional human and financial resources. Clearly, the term “adequate” is subjective. If the AVMSD obliged national regulators to have “adequate” resources, some MS might not react and provide additional resources. Nevertheless, our analysis assumes that additional resources would be invested to reach some statistical thresholds.

**Table 2.9. Implications of Option 3.**

Assumed mandatory requirements	Key factors driving the costs	Estimated costs
Mandate for separate independent body with decision-making powers	All MS (except Estonia) have established separate regulatory bodies. As discussed under Option 2 transitional costs incurred in Estonia due to transfer of functions between organisations are likely to be minor.	Minor transitional costs in Estonia
Adequate resources	As discussed in the text below, resources available to national regulators differ vastly. It is likely that the most underfunded regulators, mainly in Central and Eastern European countries, would need additional resources,	The most understaffed nine MS might need in total approx. 160 - 250 additional employees (in full time units), which implies €7-12 m p.a. additional costs.

<sup>68</sup> It is in the constitution / high court decision in EL, CY, MT, AT, PL, PT. It is in an act of Parliament in BE, BG, CZ, DE, IE, ES, FR, HR, IT, LV, LT, LU, HU, NL, RO, SL, SK, SE, UK. It is in a secondary act in DK and FI.

Assumed mandatory requirements	Key factors driving the costs	Estimated costs
	even if the current geographical and material scope is maintained.	
Autonomy of decision makers	Several MS <sup>69</sup> could be inclined to align the rules on appointment and dismissal of highest decision makers. This, however, would not impose significant costs under any of the scenarios.	Minor costs
Transparency, accountability and impartiality	Could impose additional costs related to publication of agendas and minutes <sup>70</sup> , organisation of public consultations as well as changes in procedures. However, the additional costs are likely to be minor.	Minor costs: 25 regulators would have to start publishing minutes and agendas. In total they would have to publish approx. 1 thousand minutes p.a. <sup>71</sup> . 13 regulators <sup>72</sup> would have to start organising public consultations. In total they would have to organise approx. 25 public consultation p.a. <sup>73</sup> .

Source: Visionary Analytics, 2015.

### **Analysis of sufficiency of human and financial resources**

The analysis below seeks to: a) identify which national regulators are potentially underfunded; and b) what additional funds might be required. To this end, the analysis relies on several sources of information: a) staffing levels and budgets of national regulators; b) the AVMSD RADAR study<sup>74</sup> and c) ERGA report. We use a subjective measure from the AVMSD RADAR study and ERGA report in order to find the threshold of adequate staffing level per regulator. The AVMSD RADAR study asked country experts whether their national regulatory authority had sufficient human and financial resources. The ERGA report asked the same question to regulators. On the basis of the answers, we formed two binary categorical variables that assign a value of 1 if a regulatory body has sufficient financial/human resources and a value of 0 if the regulatory body lacks financial/human resources. In some cases<sup>75</sup>, the AVMSD RADAR study and ERGA study provided divergent estimates on the sufficiency of human resources. These differences are indicated separately.

#### **Text box 2.1. Measuring funding and staffing of regulatory authorities**

##### **Number of staff in the regulatory authority**

The number of staff in regulatory authorities was collected from the AVMSD RADAR study. Only administrative staff were taken into account – the highest decision making body members were not included within the analysis.

##### **Budget of national regulatory authority**

The budget of regulatory authorities was collected from the AVMSD RADAR study and annual reports of regulators. The year of budget varies from 2013 to 2015. This should not be a problem as the budgets of such organisations are usually incremental and do not change significantly every year under stable economic conditions.

##### **Normalization**

Both of these variables were normalised according to the number of channels established in the

<sup>69</sup> If MS have to comply with the rules as in table 2.1, the following countries would have to align their rules: BE, FL, DK, FR, LU, SI, SE.

<sup>70</sup> According to AVMSD Radar, these regulators would have to comply to them: BE (all communities), CY, DK, EE, ES (CAA and CAC, there is no information about CNMC), FI, FR, DE, IE, IT, LU, MT, NL, AT, PL, PT, SL, SE are currently not obliged to publish agendas and minutes; EL, LT and LV are currently not obliged to publish minutes; CZ are currently not obliged to publish agendas.

<sup>71</sup> We calculated the average number (43.64) of meetings last three year (2012-2014) in MS that has the obligation to publish minutes. The data on the number of meeting were collected from regulators web pages.

<sup>72</sup> According to AVMSD Radar, these regulators would have to comply with them: CZ, EE, EL, ES (CNMC), ES (CAC), ES (CAA), HU, HR, CY, LU, SE, SK, FI.

<sup>73</sup> We calculated the average number (1.93) of public consultations of all regulators during 2010-2014. The data on the number of consultations was collected from AVMSD Radar study. Based on this data the regulators organised two public consultations a year on average during 2010-2014.

<sup>74</sup> AVMSD RADAR study.

<sup>75</sup> BE-FR, CY, LU, PT, SE, SI.

country (dividing the number of staff and the budget by the number of channels established). The number of channels established in each country was collected from the MAVISE data base. The normalisation was done in order to reliably compare staff and budgets between independent regulators that operate in different size markets. In addition, an attempt was made to normalize the data by the population, however this led to very volatile results that did not provide any additional value. This path was therefore not pursued any further.

#### **Justification for removing some MS from analysis**

To make sure that we compared similar agencies, we reviewed the scope of tasks performed by regulators. The standard functions included: licensing, monitoring and rule-making (e.g. codes of practice)<sup>76</sup>. The majority of regulators also covered the radio sector. However, some regulatory authorities carried out more tasks and regulated a larger number of sectors. These regulators had to be removed from the analysis to allow meaningful comparisons. As a result, the following regulators were not included within the analysis<sup>77</sup>:

- Estonia – the regulator is also responsible for electronic communication, transport and industrial safety;
- Spain – the national regulator is also responsible for telecommunications, post, transport and energy sectors. Local regulators were excluded from analysis as there is no available data about number of established channels in Spain regions;
- Italy – the regulator is also responsible for telecommunications and publishing;
- Hungary – the regulator is also responsible postal services, electronic signatures and electronic communications;
- Austria – it is difficult to distinguish between staff of the regulator and employees of RTR<sup>78</sup>. Hence, it would be misleading to include the regulator within the analysis as it is impossible to specify the budget for additional staff from RTR;
- Finland – electronic communications (networks and services in general), post, information security, operations of .fi domain registry;
- UK – the regulator is also responsible for electronic communications networks and services, postal services, consumer protection, promotion of media literacy and copyright infringement;<sup>79</sup>

In addition, there were other data restrictions in some MS. These countries were also excluded from the analysis:

- Denmark was excluded as it did not report its budget in the RADAR study, though according to the same study it has sufficient staff.
- Germany was not included as it has several dozen independent audiovisual regulators that are quite different from each other, and that could not be averaged to represent DE as a whole.
- Belgium (DE) was excluded from as according to the MAVISE data base, they have only one channel, which does not allow us to estimate if independent regulators have enough staff. Belgium (DE) regulator was reported to be understaffed in the AVMSD RADAR study.

#### **Limitations of the analysis**

- Not all MS are included;
- The competence of regulator staff has not been taken into account;
- The on-demand services are not taken into account as some regulators regulate on-demand services, but the extent to which they do this differs and is not clear.
- The local TV channels were not included in the analysis. This should not affect the results as local channels are small, regulators do not pay much attention to them and so the costs to regulate them are minor.

It is difficult to identify which national regulators are underfunded, as it is difficult to know the adequate levels of staffing required. The common way to do it is to set the average number of staff as a threshold<sup>80</sup>. Usually, MS that are more than one standard deviation below the

<sup>76</sup> AVMSD Radar study.

<sup>77</sup> The only exception is Slovenia. Here the regulator is also responsible for electronic communications, postal services, and railway transport. Despite that, Slovenia will be included in the analysis, as there is data available about the budget and staff specifically for AVMS. There are also data about human resources allocated to AVMSD related issues in Finland. However, the number of staff is very low and unrealistic (3-4 people). This means that there are only 0.027 staff per channel while EU average is 0.56. Hence, Finland was excluded from analysis, as a huge outlier.

<sup>78</sup> RTR is the regulatory authority for Broadcasting and Telecommunications. It provides operational support for KomnAustria (audiovisual media regulator) and other regulatory authorities.

<sup>79</sup> AVMSD RADAR study did not provide information if the UK and Hungary regulator has sufficient resources. According to the study the remaining of the excluded MS have sufficient resources.

<sup>80</sup> Dr. Ir. Wolter Lemstra, Drs. Nicolai van Gorp, and Dr. Bart Voogt. "The policy framework for electronic communications: an EU benchmark 2012." 03 April 2014. [http://www.ectaportal.com/en/upload/TCI/TCI%20qualitative\\_final\\_14-04-14.pdf](http://www.ectaportal.com/en/upload/TCI/TCI%20qualitative_final_14-04-14.pdf). & Edwards, Geoff A., and Leonard Waverman. "The Effects of Public Ownership and Regulatory Independence on Regulatory Outcomes: A Study of

average are considered to be facing shortages. This method would not be very reliable due to high heterogeneity of audiovisual media regulators. If we assume that the answers of regulators and country experts regarding understaffing are true, use of the standard deviation method would have resulted in less accuracy<sup>81</sup>.

Our approach to setting a threshold for an adequate number of staff included the following steps:

1. We normalised the number of staff according to the number of channels established in the country (see Text box 2.1 for more information).
2. We ranked the MS according to the number of staff in the regulatory authority per channel established in the country.
3. Based on the indicator showing whether the national regulatory authority had sufficient human resources, we identified a threshold of the adequate levels of staffing, which the most accurately reflected whether the MS below the threshold lacked human resources.

Figure 2.1 suggests that the most appropriate threshold is between France and the Czech Republic. National regulators in countries that have fewer staff per channel established in the country than France (0.6309) are more likely not to have sufficient staff according to country experts. Seven out of ten national regulators after this point do not have enough staff according to the AVMSD RADAR study. Hence, we use France as a threshold point. We assume that the regulator needs at least the number of staff per channel established in the country as France to sufficiently carry out their tasks. According to our analysis, the following countries are likely to lack staff: CZ, EL, SK, SL, BG, BE (FL), LV, NL, SE, HR, and LU.

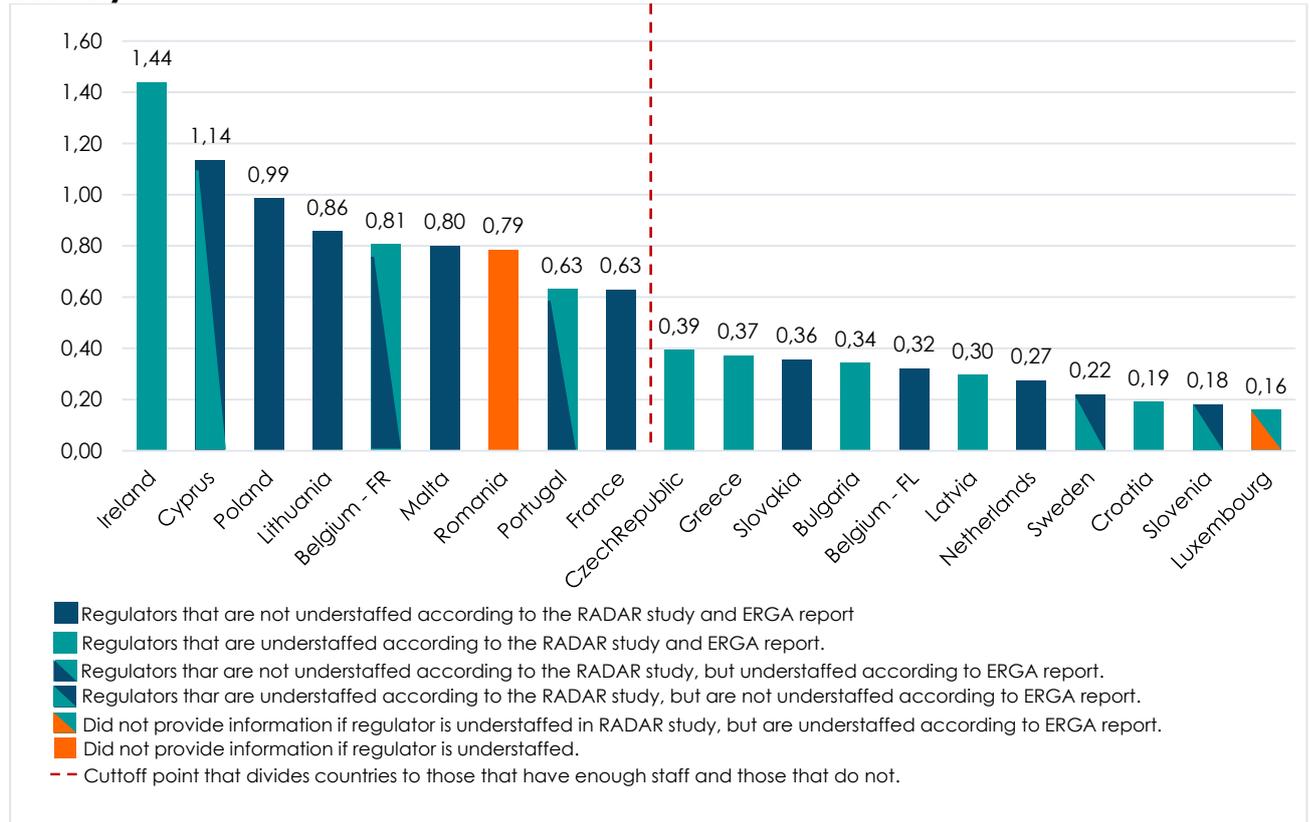
The data in Figure 2.2 suggests that Ireland and Cyprus are potential outliers. Quantitative analysis suggests that they have sufficient staffing, although experts surveyed as part of the AVMSD RADAR study suggested that national regulators in these countries are understaffed. This could be explained by several factors. Firstly, only a small proportion of the channels available in CY and IE are actually established in the respective MS. Secondly, national regulators in both countries carry out a range of additional activities. For example, both regulators have developed extensive research programmes. The regulator in IE is also responsible for the development, management and administration of a financial assistance scheme (Sound and Vision)<sup>82</sup>.

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Interconnect Rates in EU Telecommunications." 2005

<sup>81</sup> 47.4% with results from ERGA report and 50% with results from AVMSD RADAR study) compared to adopting the threshold-based method that we used (57.9% with results from ERGA report and 72.2% with results from AVMSD RADAR study). In addition, if we used median to set the threshold, the accuracy would also be lower (52.6% with results from ERGA report and 66.7% with results AVMSD RADAR study).

<sup>82</sup> Broadcasting Authority of Ireland. "Sound & Vision II: A Broadcasting Funding Scheme". January 2010.

**Figure 2.2. Number of staff in the regulatory authority per channel established in a country.**

Source: AVMSD RADAR study, ERGA report and MAVISE database.

The results of the analysis above have been used to calculate the amount of additional funds required by national regulatory authorities. This was based on the following steps:

1. France was used as a threshold point to identify the smallest number of employees per channel established in the country. The threshold equals 0.6309.
2. Countries below the threshold, but with sufficient staffing levels (according to the AVMSD RADAR study and ERGA report) were removed from further analysis (BE FL, NL, SK).
3. The number of additional personnel required to reach 0.6309 employees per established channel for countries below the threshold was estimated.
4. The additional funds required were calculated by multiplying the number of additional personnel required by the national regulatory by the total cost per member of staff<sup>83</sup>. The estimates included only expenditure on wages and excluded other expenditure (e.g. on infrastructure).
5. Additional overhead costs were also calculated. Overhead costs cover inputs (e.g. office rent, utilities, management inputs) used by staff engaged in regulatory compliance activities. The Better Regulation 'Toolbox'<sup>84</sup> suggests that overhead costs by default should equal 25% of direct labour costs.
6. The final step involved calculation of the total necessary additional funds.

Table 2.10 provides the results of the analysis. It indicates how much additional staff and funding regulators might need in order to have sufficient resources to carry out the functions entrusted to them. The results should be used cautiously as they do not sufficiently account

<sup>83</sup> In some cases (LU, NL, SI) there was no information about expenditures on staff. We calculated the average share of expenditures to staff from the information available and used it to calculate the expenditures for staff in these cases.

<sup>84</sup> European Commission, "Better Regulation Toolbox", 2014. <[http://ec.europa.eu/smart-regulation/guidelines/docs/br\\_toolbox\\_en.pdf](http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf)> [Last accessed December 28, 2015].

for differences in functions performed, as well as regulatory approaches adopted (e.g. it is likely that a co-regulatory regime would imply the need for fewer human resources).

**Table 2.10. Current staff and annual budget of the regulators and the number of resources the understaffed regulators need**

Member states	Total expenditure of regulators (thousands €)	Total expenditures for staff (thousands €)	Date of data	% of expenditures for staff from total expenditure	Number of staff	Staff expenditures per staff (thousands €)	Number of additional staff required	Additional funds required for staff (thousands €)	Additional overhead costs (thousands €)	Additional total funds required (thousands €)
<b>Total</b>	<b>78,432.6</b>	<b>45,235.1</b>		<b>60%**</b>	<b>56.7*</b>	<b>42.4**</b>	<b>From 160.4 to 245.6<sup>85</sup></b>	<b>9,701.9</b>	<b>2,425.5</b>	<b>From 6,726.9 to 12,127.4<sup>86</sup></b>
<b>BE (DE)</b>	Excluded from the analysis									
<b>BE (FR)</b>	2,250	1,350	2014	N/A*	25	54	0	0	0	0
<b>BE (FL)</b>	2,623	1,747	2014	67%	20	87.4	0	0	0	0
<b>BG</b>	668.5	403.9	2014	60%	56	7.2	46.8	337.6	84.4	422
<b>CZ</b>	1,980.9	1,247.1	2014	63%	45	27.7	26.9	745.5	186.4	931.8
<b>DK</b>	Excluded from the analysis									
<b>DE</b>	Excluded from the analysis									
<b>EE</b>	Excluded from the analysis									
<b>IE</b>	4,721	2,299	2014	49%	36	63.9	0	0	0	0
<b>EL</b>	2,492	1,495.2	2014	N/A*	41	36.5	28.4	1,035.7	258.9	1,294.6
<b>ES</b>	Excluded from the analysis									
<b>FR</b>	35,400	20,788.8	2014	59%	306	67.9	0	0	0	0
<b>HR</b>	2,150.7	827.4	2013	38%	15	55.2	34.2	1,886.4	471.6	2,358.1
<b>IT</b>	Excluded from the analysis									
<b>CY</b>	1,500.8	1,128.6	2008	75%	25	45.1	0	0	0	0
<b>LV</b>	445.2	296.9	2014	67%	11	27	12.3	332	83	415
<b>LT</b>	752.1	484.8	2014	64%	18	26.9	0	0	0	0
<b>LU</b>	590	354	2014	N/A*	4	88.5	11.8	1,044.3	261.1	1,305.4
<b>HU</b>	Excluded from the analysis									
<b>MT</b>	1,123.8	819.7	2013	73%	28	29.3	0	0	0	0
<b>NL</b>	6,734	2,280	2014	34%	50	45.6	0	0	0	0
<b>AT</b>	Excluded from the analysis									
<b>PL</b>	4,897.9	2,916.9	2014	60%	140	20.8	0	0	0	0
<b>PT</b>	3,812.3	2,622.5	2013	69%	65	40.3	0	0	0	0
<b>RO</b>	1,627.5	1,406.9	2012	86%	117	12	0	0	0	0
<b>SI</b>	681	408.6	2015	N/A*	16	25.5	From 0 to 39.5 <sup>87</sup>	1,008.7	252.2	From 0 to 1,260.9 <sup>88</sup>
<b>SK</b>	1,114.7	425.8	2014	38%	30	14.2	0	0	0	0
<b>FI</b>	Excluded from the analysis									
<b>SE</b>	2,867.2	1,811.64	2012	63%	25	72.5	From 0 to 45.7 <sup>89</sup>	3,311.7	827.9	From 0 to 4,139.6 <sup>90</sup>
<b>UK</b>	Excluded from the analysis									

Notes: \* - we used average % of expenditure for staff of all MS where information was available for calculating the expenditures for staff. \*\* - average value is shown.

Source: Authors own calculation based on the data from RADAR study and regulators annual reports.

## 2.5. Impacts on preservation of free and pluralistic media and effective transposition of AVMSD

Interviewed stakeholders generally preferred Option 3 to the other options. The main argument was that only explicit criteria could credibly safeguard independence of national regulators. Changes in geographical or material scope are not likely to have an impact on the ranking of Options.

<sup>85</sup> Depending if we used results from AVMSD RADAR study or from ERGA report. Using data from ERGA report resulted in 160.4 additional staff in FTE. Using data from AVMSD RADAR study resulted in 245.6 staff in FTE.

<sup>86</sup> Depending if we used results from AVMSD RADAR study or from ERGA report. Using data from ERGA report resulted in €6,726.9 thousand costs. Using data from AVMSD RADAR study resulted in €12,127.4 thousand costs.

<sup>87</sup> Depends on source of data used. If analysis relies on data from ERGA report, then additional staff is not necessary. If analysis relies on data from AVMSD RADAR study, then there is a need for additional 39.5 staff in FTE.

<sup>88</sup> Depends on source of data used. If analysis relies on data from ERGA report, then additional staff is not necessary. If analysis relies on data from AVMSD RADAR study, then there is need for additional €1,260.9 thousand.

<sup>89</sup> Depending if we used results from AVMSD RADAR study or from ERGA report. Using data from ERGA report resulted in 0 additional staff in FTE. Using data from AVMSD RADAR study resulted in 45.7 staff in FTE.

<sup>90</sup> Depending if we used results from AVMSD RADAR study or from ERGA report. Using data from ERGA report resulted in 0 costs. Using data from AVMSD RADAR study resulted in €4,139.6 thousand costs.

Higher independence, according to the academic literature, should contribute to better and more effective regulation. The delegation of powers to an independent body enables specialization and grants independence to experts that are better positioned to cope with an increasingly complex regulatory environment<sup>91</sup>. Higher transparency and accountability (in addition to independence) should also contribute to better regulation and reduce informality of regulatory actions<sup>92</sup>. Hence, in the context of the current study, it is important to test whether (formal) independence is related to better transposition of the AVMSD and preservation of free and pluralistic media. The findings presented below tend to support the hypotheses, although the evidence is far from conclusive.

### Evidence

Options 1 and 2 were not preferred by the interviewees. On the one hand, the main argument was that independence is already guaranteed by the existing legal environment and so formal establishment of a mandate for independence would not significantly change the situation in countries with remaining *de facto* weaknesses. On the other hand, Option 2 would provide a legal basis for the Commission to intervene, if existing legal provisions on independence are not implemented in practice. Hence, (threat of) legal action could act as a safeguard of the last resort to *de facto* protect independence of regulators.

The provision of specific minimum mandatory requirements for regulatory authorities (Option 3) was considered the best option by all interviewees. The anticipated impact on transposition of the AVMSD and preservation of free and pluralistic media, in some Western European countries (UK, Ireland) was considered low because, according to interviewees, the necessary requirements were already being met. However, all the interviewees expected that the provision of minimum mandatory requirements would have an impact on improving AVMSD transposition and preservation of free and pluralistic media situation in countries (especially in Central and Eastern Europe (CEE)) facing related weaknesses in their regulatory environment, for example:

- Interviewees in Bulgaria preferred the establishment of minimum mandatory requirements for regulatory authorities, especially regarding its powers and transparency, including public consultations and hearings.
- Interviewees in Hungary preferred Option 3. They emphasised that this is relevant to all CEE countries. The respondents expressed supported further EU-level monitoring of *de facto* and *de jure* independence of national regulators.
- The majority of Lithuanian interviewees were of the view that Option 3 would have the largest positive impact, particularly in the CEE countries. Media concentration was reported to be the largest threat to free and pluralistic media, but the national regulator has no influence on this issue. The interviewees expressed opinion that in practice, the more detailed EU regulation on independence of regulators would result in the better regulation at national level.
- The provision on mandatory requirements of independence was welcomed in Spain, where it was reported that self-regulation would not work as the dominant players would abuse their position.
- EU-level interviewees state that the independence of national regulators has a direct impact on free and pluralistic media.

The majority of respondents to the public consultation indicated that a lack of independence of regulatory bodies has significant or moderate negative effects on media freedom (66% of respondents), media pluralism (66% of respondents) and market conditions (56% of respondents).

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<sup>91</sup> Indireg study, 25.

<sup>92</sup> Ibid.

Analysis also explored whether there is substantive historical data on the links between independence of regulators and (non) transposition (or incorrect transposition) of AVMSD. Table 2.11 provides information on the content of relevant infringement cases. Information on some cases is not public as they have not yet reached the stage<sup>93</sup> where the Commission provides a press release with information about the procedure. On the one hand, we found weak statistically significant relationships between several dimensions of independence (particularly, status and powers and autonomy of decision makers) of regulators and likelihood of infringement case. On the other hand, the logical links between the two variables are not straightforward, i.e. it is not clear whether infringements would have been avoided if national regulators had enjoyed different level of autonomy.

**Table 2.11. Infringement cases and their impacts for the evidence of hypothesis**

Infringement case	MS	Stage reached	About the case
Non-communication of measures transposing the Directive amending the Audiovisual Media Services Directive <sup>94</sup>	BE	Reasoned opinion	The Belgian federal state has not transposed AVMSD into law and on-demand services provided in Brussels in other languages than French and Dutch are not yet regulated, because audiovisual media services established in Brussels fall outside the competence of the linguistic Communities and remain under the competence of the federal authorities. This infringement is not a result of a lack of regulator's independence.
Non-communication of measures transposing the Directive amending the Audiovisual Media Services Directive <sup>95</sup>	UK	Reasoned opinion	The UK implemented AVMSD into national law, but this law does not cover audiovisual services in Gibraltar. This infringement is not a result of a lack of regulator's independence.
Independence of NRA <sup>96</sup>	SI	Formal notice + press release	The SI government dismissed the director of regulator*. The EC is concerned that the rules by which it was done may not guarantee the independence of regulators. The lack of regulator's independence directly resulted in infringement.
Independence of NRA - structural separation <sup>97</sup>	EE	Referral to Court	The EE national law does not guarantee impartiality of the telecoms regulator. Despite regulatory tasks, the regulator exercises control of the state-owned TV and radio broadcast network operator company Levira Ltd. This infringement is not a result of a lack of regulator's independence.
Discretionary powers of the NRA <sup>98</sup>	IT	Reasoned opinion	The IT law directly regulates ancillary services. This in practice has pre-empted the margin of discretion of the national regulator*. The lack of regulator's independence directly resulted in infringement.
Powers of the NRA to impose penalties	BG	Formal notice	Confidential information
Transposition of audiovisual media services directive	BE	Formal notice	Confidential information
Transposition of audiovisual media services directive	UK	Formal notice	Confidential information
Copyright regulations in respect of must carry cable distribution in Finland	FI	Formal notice	Confidential information

<sup>93</sup> European Commission, „Applying EU Law: Infringements”, 2015 <[http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index\\_en.htm](http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index_en.htm)> [Last accessed February 18, 2016].

<sup>94</sup> European Commission, "Digital Agenda: Commission requests Belgium and UK to implement Audiovisual Media Services Directive in Brussels and Gibraltar", 2011

<sup>95</sup> Ibid

<sup>96</sup> European Commission, "Telecoms: Commission requests information from Slovenia and Latvia over independence of telecoms regulators", 2010.

<sup>97</sup> European Commission, "May infringements package: main decisions", 2013.

<sup>98</sup> European Commission, "February infringements package: main decisions", 2013.

Independence, tasks and responsibilities of the NRA <sup>99</sup>	NL	Reasoned opinion	The NL law limits regulator opportunities to regulate market in terms of must carry and must offer rules. The infringement is related only to telecom regulator and not AVMS regulator.
Conformité de la législation belge relative à l'indépendance du régulateur <sup>100</sup>	BE	Reasoned opinion	According to BE law, the Belgian Council of Ministers can under certain circumstances suspend decisions of the Belgian telecoms regulator. This is contrary to EU law, which guarantees independence of regulators. The infringement is related only to telecom regulator and not AVMS regulator.
Transposition of Directive 2007/65/EC amending Directive 89/552/EEC (Audiovisual Media Services Directive) in Malta	MT	Formal notice	Confidential information
Transposition of Directive 2007/65/EC amending Directive 89/552/EEC (Audiovisual Media Services Directive) in Sweden	SE	Formal notice	Confidential information
Transposition de la Directive 2007/65/CE au Luxembourg	LU	Formal notice	Confidential information
Transposition of Directive 2007/65/EC amending Directive 89/552/EEC (Audiovisual Media Services Directive) in Lithuania	LT	Formal notice	Confidential information
Transposition of Directive 2007/65/EC amending Directive 89/552/EEC (Audiovisual Media Services Directive) in Latvia	LV	Formal notice	Confidential information

Notes: \* - both in the sphere of AVMSD and telecoms.

Source: Authors own compilation.

To conclude, higher *de jure* and *de facto* independence and transparency of regulators should contribute to better regulation and thus preservation of free and pluralistic media. In this regard, setting of explicit minimum mandatory requirements (Option 3) is preferred to mandate for independence of regulators (Option 2), which is preferred to status quo (Option 1).

## 2.6. Impacts on providers' willingness to establish in an EU MS and serve audiences in several MS

Available evidence suggests that the independence of regulators does have an impact on service providers' willingness to establish within a MS (if the service provider serves more than one MS). However, independence *per se* does not significantly affect providers' willingness to serve audiences in other MS. This is because: a) service providers that serve only national markets do not view "migration" as a viable option; and b) service providers serving more than one MS do not intensively interact with other regulators due to the country of origin principle. Hence, Option 3 is preferable to the other Options in terms of the extent that it provides the most credible safeguards for independence of regulators. The ranking of options is not likely to change under alternative scenarios. Discussion below provides the supporting evidence.

### Evidence

<sup>99</sup> European Commission, "April Infringements package: main decisions", 2013 April 25

<sup>100</sup> European Commission, "Telecoms: Commission refers Belgium to Court over independence of national regulator", Brussels: 16 October 2014

Representatives of service providers that serve more than one MS reported that the willingness to establish in a MS and serve audiences in several MS is mostly determined by taxation levels, availability of a skilled workforce, good infrastructure, high quality and consistency of regulation, and independence of regulators. Interviewees also argued that the strictness of national regulation is of secondary importance, as long as regulation is applied consistently and predictably. Furthermore, interviewed representatives emphasised the importance of the country of origin principle. It significantly reduces the costs of serving several MS and also diminishes the need to interact with national regulators in MS other than country of origin.

Broadcasters serving only national markets do not consider “migration” to other MS as a viable option. Representatives of civil society and service providers (particularly the ones operating in Central and Eastern Europe) emphasised the importance of EU level regulation in strengthening the independence of regulators. This is viewed as an important safeguard against possible influences from national political or economic actors.

We also used statistical analysis to test the hypothesis that the independence of a regulatory authority has an effect on audiovisual media service providers’ willingness to establish in an EU MS and serve audiences in several MS. Independence of regulators was measured using the INDIREG ranking tool. The willingness to establish is measured as the number of broadcasters that are established in different EU MS (see Text box 2.2).

### **Text box 2.2. Measuring broadcasters’ willingness to establish in MS**

**Dependent variable: Number of broadcasters established in each MS and serving in at least 3 other MS**

Information about all broadcasters was gathered from the MAVISE database<sup>101</sup>. The number of broadcasters in each MS, which have a channel that is broadcast in 3 or more other MS, were counted. The “3 or more other MS” threshold was chosen in order to exclude the regional broadcasters (e.g. Balkans or Benelux).

**Independent variable: Independence rating based on INDIREG tool**

The study “Indicators for independence and efficient functioning of audiovisual media services regulatory bodies” (INDIREG) developed a ranking tool for measuring the independence of regulatory authorities. The tool enables the measurement of the risk of influence by external players in five categories: status and powers; financial autonomy; autonomy of decision makers; knowledge; transparency and accountability mechanisms.

The methodology suggested in the INDIREG study<sup>102</sup> was used to measure the independence ranking of all regulatory authorities in the MS. Only *de jure* independence was measured as it would be subjective to measure *de facto* independence. The AVMSD RADAR study was used as a base for the data collection needed. Important limitation: data for four indicators were missing and these indicators<sup>103</sup> were excluded from the analysis.

While implementing the statistical analysis, the five aggregated categories of the INDIREG ranking tool were used (status and powers; financial autonomy; autonomy of decision makers; knowledge; transparency and accountability mechanisms). We could not use indicators comprising categories separately as their variance was low. More specifically, a disproportionately large number of countries received the same scores on almost all indicators (unbalanced classes). Use of such data would result in biased results.

In addition, as some indicators may be more politically sensitive, and leave space for interpretation, we formed an additional (second) dataset without such indicators. Finally, we discovered that some of the remaining indicators did not have variation between MS. Hence, we formed a third dataset without these indicators, as leaving them in could result in biased results. However, we performed a statistical analysis with all three data sets in order to get more robust results.

<sup>101</sup>European Audiovisual Observatory, “MAVISE database”. <<http://mavise.coe.int/>> [ Last accessed December 28, 2015].

<sup>102</sup> INDIREG report.

<sup>103</sup> 1) Are requirements for professional expertise specified in the law? For senior staff? 2) Are requirements for qualifications specified in the law? For senior staff? 3) Does the law foresee that the regulatory body can seek external advice? 4) Is the regulatory body required to organise these consultations as open or closed consultations?

In addition, it must be noted that the INDIREG tool calculations were done for all the regulatory authorities. However, the analysis is implemented at country level and so for Belgium, Germany and Spain we used average values based on their regulatory authorities.

**Control variables: Population of the MS**

Audiovisual service providers' willingness to establish in an EU MS and serve audiences in several MS can be highly influenced by the general investment environment of a specific MS. In addition to the media regulation environment (measured with INDREG tool), market size is a key condition for investment. The population of a MS is used as a measure of market size (Eurostat data 2015).

Source: Visionary Analytics, 2015.

The results of linear regression analysis using all three datasets (see Text box 2.2 for a description) of INDIREG categories data (see Table 2.12) show that one factor of independence - financial autonomy - has a statistically significant effect<sup>104</sup> on the number of broadcasters in MS that are established in the EU and serve in at least 3 other MS. In addition, models with this data have the highest predictability (R square is highest with the third dataset). However, these results should be interpreted with caution as other dimensions of the independence of regulatory authorities provided no statistically significant evidence. Furthermore, the results barely pass statistical significance threshold and other factors are not controlled for. Also, due to small sample sizes, the coefficients are sensitive to minor changes in the model - e.g. the coefficient for financial autonomy decreased by more than two points between the first and second data set.

**Table 2.12. Results of the regression (OLS) analysis: number of companies that are established in EU MS and serve three or more countries other than the country in which they were established**

<b>Number of broadcasters that are established in EU MS and serve in at least 3 other MS (first dataset)</b>			
<b>Criteria</b>	<b>Coefficient</b>	<b>Standard error</b>	<b>p-value</b>
Constant	-7.09076	3.27429	0.0401**
Financial autonomy	7.79384	4.25199	0.0787*
Population in millions	0.490105	0.126354	0.0007***
Adjusted R-squared = 0.623121			
<b>Number of broadcasters that are established in EU MS and serve in at least 3 other MS (second dataset)</b>			
<b>Criteria</b>	<b>Coefficient</b>	<b>Standard error</b>	<b>p-value</b>
Constant	-4.72115	2.37605	0.0580*
Financial autonomy	5.37802	2.92324	0.0777*
Population in millions	0.498895	0.122819	0.0004***
Adjusted R-squared = 0.630805			
<b>Number of broadcasters that are established in EU MS and serve in at least 3 other MS (third dataset)</b>			
<b>Criteria</b>	<b>Coefficient</b>	<b>Standard error</b>	<b>p-value</b>
Constant	-4.69310	2.33255	0.0551*
Financial autonomy	5.37503	2.87369	0.0732*
Population in millions	0.498617	0.122763	0.0004***
Adjusted R-squared = 0.631121			

Notes: N=28; Robust standard error was used in order to correct for heteroscedasticity; Residuals are not normal, thus p-values should be interpreted very carefully; Variance Inflation Factor indicates that there are no collinearity problems. \* shows that statistical significance is between 0.1 and 0.05. \*\* shows that statistical significance is between 0.05 and 0.01. \*\*\* - shows that statistical significance is less than 0.01.

Source: Visionary Analytics, 2015.

<sup>104</sup> Statistical significance at 10%.

## 3. Accessibility for Persons with Disabilities

### 3.1. Regulation and contextual information

Article 7 of the AVMSD stipulates that:

*Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.*

Article 7 establishes a political commitment to gradually making audiovisual media services more accessible. Increased use of captioning or subtitling, sign language, audio description as well as other means<sup>105</sup> could contribute to this end. However, Article 7 does not set legal obligations on the MS or on the service providers<sup>106</sup>. It also refers to disabilities in a narrow sense (visual and hearing disabilities) and not to other disabilities (e.g. intellectual or dexterity disabilities) that could limit access to audiovisual services. It should be noted that other disabilities are also not taken into consideration in the national regulations examined, except in Spain. Therefore, even if access services for persons with non-sensory disabilities are of great importance as well<sup>107</sup>, due to natural limitations of scope of analysis, further discussion focuses only on hearing and visual disabilities. Nevertheless, it is worth mentioning that the access services can be beneficial to more than one kind of impairment (e.g. spoken subtitles for the visually impaired, but also dyslexic people), and are also used by non-disabled people (e.g. captions are useful for non-native speakers) and people affected by functional limitations due to age-related issues.

Article 7 (Recital 46 before codification) was included only in the new AVMSD adopted in 2007. The decision to include an accessibility clause was heavily influenced by the drafting process of the UN Convention on the Rights of Persons with Disabilities (CRPD). Accessibility is one of the general principles of the UN Convention (article 3), as well as a standalone article (art.9) which also covers accessibility of ICT. Article 30 on participation in cultural life provides, *inter alia*, that State's Parties shall take appropriate measures to ensure that persons with disabilities enjoy access to television programmes, films, etc. in accessible formats. The CRPD reflects a predominantly social model of understanding disability, within which disability is created by physical, societal, attitudinal and technological barriers, and not by the impairment itself. All 28 EU Member States have signed, and 25 have ratified, the CRPD. The EU became the first regional organisation to ratify it as a legal body. Recently, the EU created a proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the MS as regards the accessibility requirements for products and services<sup>108</sup>, known as the European Accessibility Act, which includes in its scope audiovisual media services and related consumer equipment.

Audiovisual content can be made accessible to persons with hearing or visual disabilities in several ways depending on specific needs<sup>109</sup>:

<sup>105</sup> For example, clear sound systems, teletext, easily understandable menu navigation, etc.

<sup>106</sup> Cristina Bachmeier, ", "Barrier-free access to audiovisual content: A fundamental human right" in IRIS plus 2014-3 *Enabling Access to the Media for All, European Audiovisual Observatory, Strasbourg (France), 2014.*

<sup>107</sup> Elisa Varney, "Disability and Information Technology: A Comparative Study in Media Regulation", *Cambridge University Press, 2013.*

<sup>108</sup> The European Parliament and the Council of the European Union, "Proposal for a directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services", COM/2015/0615 final - 2015/0278 (COD), 2015

<sup>109</sup> Cristina Bachmeier, ", "Barrier-free access to audiovisual content: A fundamental human right" in IRIS plus 2014-3 *Enabling Access to the Media for All, European Audiovisual Observatory, Strasbourg (France), 2014.*

- Subtitling. Spoken words are provided in written form and may be either verbatim (text is reproduced directly) or edited (modifications are made to ensure easier reading). Subtitles are usually provided on screen, but can also be provided on another medium. When they are provided on screen, subtitles can be either visible continuously (open subtitles), or just visible when the user selects to see them (closed subtitles)<sup>110</sup>. Additionally, captions are used to ensure better depiction of what is being heard on the media content, meaning the speech and also the relevant non-speech audio information. They provide a more complete access service than subtitles. Subtitling and captioning are beneficial not only to persons with hearing disabilities but also to foreign language speakers, etc.
- Sign language. Audiovisual content is translated into natural sign language. A person using gestures, posture and mouthed sounds communicates spoken text or other important information. Sign language is aimed at increasing the accessibility of audiovisual content to persons with hearing disabilities.
- Audio description. In addition to the spoken dialogue or monologue in the audiovisual content, additional visual information concerning happenings on the screen is narrated by voice-over. Audio description increases the accessibility of audiovisual content to persons with visual disabilities.
- Additionally, in some cases audio subtitles are used together with audio description (sometimes they are used separately as well). Audio subtitles provide a spoken reading of subtitles. This may be used when spoken language is in a non-native language and subtitles provide translation. The provision of spoken subtitles can be provided both via human reading, or basic text-to-speech technology. However, we do not include audio subtitling in our further analysis as a separate access service due to it being closely related to audio description and rare usage.

Although Article 7 of the AVMSD does not mention any specific ways to ensure accessibility to persons with disabilities, Recital 46 states that “[t]he right of persons with a disability and of the elderly to participate and be integrated in the social and cultural life of the Union is inextricably linked to the provision of accessible audiovisual media services. The means to achieve accessibility should include, but need not be limited to, sign language, subtitling, audio-description and easily understandable menu navigation.” Therefore, while not explicit, all three above-discussed means of providing accessible audiovisual could be inferred from the provisions of the AVMSD.

### 3.2. Implementation in Member States

The Commission’s First Report on the application of the AVMSD suggested that “all Member States have introduced rules” to implement Article 7<sup>111</sup>. However, the approaches to implementation are very diverse: from concrete targets to consultations and raising awareness. Targets can be specified according to ways in which content is made accessible (also see Annex 2):

- Subtitling/captioning. This is by far the most common way of providing content that is accessible to persons with disabilities. Therefore, it is not surprising that the majority of MS have specific targets for broadcasters concerning subtitled/captioned content. Subtitling targets for linear public service broadcasters are present in BE (FL), BE (FR), CZ, DK, IE, EL, ES, FR, HR, IT, CY, HU, NL, AT, PT, RO, SK, FI, SE, UK. Targets for private linear services are set in BE (FL), IE, EL, ES, FR, HU, NL, PT, RO, SK, FI, SE, UK. Targets for non-linear services are used only in BE (FL) and EL. However, for

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<sup>110</sup> This distinction is important as users may also be able to personalise the closed subtitles according to their needs or preferences, i.e. change colour of the font, contrast, position, etc. Such personalisation is not possible with open subtitles.

<sup>111</sup> The European Parliament and the Council of the European Union, “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 (Audiovisual Media Services Directive)”, *Official Journal of the European Union*, L 95, 2010.

example, in the UK providers of such services might need to prepare plans to facilitate access to on-demand services even if specific quotas are not set.

- Sign language. This is used less frequently than subtitling. Targets for content with sign language are found in the majority of MS, however the share of such content is usually lower than the share of subtitled content. Sign language targets for linear public service broadcasters are present in BE (FL), BE (FR), CZ, DK, IE, EL, ES, FR, HR, IT, CY, HU, MT, PT, RO, SK, SE, UK. Targets for private linear services are set in BE (FL), IE, EL, ES, FR, CY, HU, MT, PT, RO, SK, UK. Targets for non-linear services are used only in BE (FL) and EL. Audio description. Several MS have introduced specific requirements concerning audio description. Audio description targets for linear public service broadcasters are present in BE (FL), BE (FR), DK, IE, ES, FR, CY, AT, PT, SK, SE, UK. Targets for private linear services are set in BE (FL), IE, ES, FR, SK, UK. Targets for non-linear services are used only in BE (FL).

MS also significantly differ in terms of changes in legislation in ensuring accessibility to people with disabilities in recent years (for more extensive analysis see Annex 3):

- Changes in legislation. Although factual progress can be achieved without legal requirements, regulatory obligations play a significant role in determining the share of audiovisual content available to people with disabilities. Since 2012, legal changes have occurred in the following countries: BE (FL), BE (FR), DE, EE, IE, HU, AT, PT, RO, SK, FI, SE, UK. Some changes in legislation have also occurred in DK, EL, FR, HR, IT, CY. It should also be noted that absence of recent changes in legislation regarding accessibility does not necessarily mean that legal acts in a particular country are unfavourable to access services (e.g. ES had no recent changes in legislation, but it has high accessibility requirements).
- Factual progress. Changes in legislation do not automatically lead to factual progress. By factual progress, we mean changes in the amount of access services provided, as well as enforced commitments by service providers regarding accessible content. Without instruments or resources, changes in legislation may not necessarily result in factual changes. Indeed, factual progress may happen without changes in legislation (e.g. MT) or changes in legislation may not necessarily lead to factual progress (e.g. CY). Nonetheless, there is stronger correlation between countries which introduce regulatory obligations and those which achieve factual progress. See table 3.1 for an overview of factual progress in the MS.

**Table 3.1. Changes in legislation and factual progress in proportion of audiovisual media services since May, 2012<sup>112</sup>**

Level	Changes in legislation	Factual progress
None	BG, CZ, ES, LV, LT, LU, MT, NL, PL, SI	BG, CZ, CY, LV, LT, NL
Some	DK, EL, FR, HR, IT, CY,	DK, EL, MT
Significant	BE (FL), BE (FR), DE, EE, IE, HU, AT, PT, RO, SK, FI, SE, UK	BE (FL), BE (FR), DE, EE, IE, ES, FR, HU, AT, PL, PT, SK, FI, SE, UK

Source: Visionary analytics, based on data sources outlined in Annex 3.

### 3.3. Options and scenarios

The Terms of Reference outlined three options to be assessed. In this sub-section, we discuss the implications of these under different scenarios.

<sup>112</sup> More extensive information is provided in Annex 3.

**Option 1. Maintain *status quo*, i.e. keep in place the current EU rules on accessibility for persons with disabilities.**

As discussed in section 3.1 above, the *status quo* regulation at EU level does not impose regulatory obligations. It is therefore not subject to in-depth analysis.

**Option 2. Strengthen EU-level harmonisation of existing rules. The MS would be required to ensure gradual accessibility of audiovisual works for people with visual and hearing impairments. This obligation could be implemented by the MS through either legislation or co-regulation.**

Implementation of this option is likely to lead to the establishment of specific targets for MS. The targets could outline what proportion of audiovisual media services should be made accessible through subtitling / captioning, sign language and audio description. We also assume that the targets would be obligatory. As a result, MS would be affected in all three scenarios:

- *Leave material and geographical scope unchanged* – under this scenario, targets would be established for linear and non-linear service providers. With respect to on-demand services, unchanged scope should include only TV-like services. However, since there is no available data on which on-demand services are TV-like and which ones are non-TV like, we have included all on-demand services under this scenario. Depending on the specific targets already established in national legislation, audiovisual media service providers in some MS would be more affected than others. Although, currently Article 7 of AVMSD also covers non-linear services and, due to the non-binding nature of accessibility regulation, on-demand service providers would face a regulatory shock, since only two of the MS have established targets for this group. All in all, it is considered that under this scenario both linear and on-demand service providers would be affected.
- *Extend material scope* – under this scenario, targets would also be established for online platforms without editorial responsibility as defined in section 1.2.
- *Extend geographical scope* – under this scenario, targets would be imposed on service providers established outside the EU, but targeting EU MS. We further assume that only channels with significant market share (at least 2%) would be affected.

The formulation of option 2 does not suggest specific targets. Therefore, we assume that:

- Harmonisation of gradual accessibility of audiovisual works for people with visual and hearing impairments would lead to a target increase of 10% in the share of accessible content via each covered access service (subtitling, signing and audio-describing) that a specific channel broadcasts (this makes approx. 2 hours of additional audiovisual services per day). We also assume that harmonisation would affect only those linear channels which have at least 2% market share in their respective MS. Concerning non-linear services, only those which are owned by large linear service providers would be affected. Due to the different costs of providing subtitles/captions, sign language and audio description, these are calculated as different cases. Data provided for the analysis in section 3.5 also allows for the calculation of compliance costs for different amounts of accessible content, due to linear relationship between time and costs.
- Service providers will not be required to make more than 80% of their content accessible, i.e. regulation would not apply to broadcasters that already provide accessibility services for at least 80% of content.<sup>113</sup> This is an arbitrary assumption made to reflect the fact that some of the content (e.g. music videos) is less likely to bring benefits from increased accessibility.

**Option 3. Introduce self and co-regulation measures. This could include measures related to subtitling or sign language and audio-description.**

This option involves an obligation for the setting-up of self-regulatory and co-regulatory instruments for ensuring the accessibility of audiovisual content for people with disabilities. In both cases, costs would be incurred in countries where such instruments do not yet exist, and

<sup>113</sup> Such threshold was chosen on the basis of regulation in the UK, where largest share of accessible content required is 80%.

different countries could set different targets for access services. Under different scenarios, *Option 3* would unfold as follows:

- *Leave material and geographical scope unchanged* – MS would create a legal environment or bodies that would be responsible for enforcing self- and co-regulation measures for linear and on-demand service providers.
- *Extend material scope* – self- and co-regulation measures would also have to cover other types of audiovisual media services as defined in section 1.2.
- *Extend geographical scope* – self- and co-regulation measures would have to include service providers that are established outside the EU and target at least one MS.

### 3.4. Impacts on administration and enforcement costs

Table 3.2 summarizes the impacts of the options on administration and enforcement costs borne by the national regulators. Since Article 7 does not set specific regulatory obligations, the costs of *Option 1* under different scenarios equal zero. The subsections below discuss the underlying logic behind the assessment of the costs for the other options.

**Table 3.2. Impacts of options on administration and enforcement costs.**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope	Scenario: extend geographical scope
Option 1. Maintain the <i>status quo</i>	No impact	No impact	No impact
Option 2. Strengthen EU-level harmonisation of existing rules	Low cost scenario: €0.69 m p.a. for all national regulators in the EU. High cost scenario: €1.76 m p.a. for all national regulators in the EU. The costs are relatively low because a number of MS already regulate accessibility services.	Negligible costs, i.e. less than €0.1 m p.a. for all national regulators in the EU.	Costs if material scope is unchanged are zero due to there being no service providers that would pass 2 % market share threshold. If material scope is also extended costs are negligible due to small number of non-EU online platforms.
Option 3. Introduce self- and co-regulatory measures	Negligible	Negligible	Negligible

Source: Visionary Analytics, 2015. For more detailed information on costs and their calculation see table 3.3 and explanations that follow.

Monitoring and (to a lesser extent) sanctioning activities comprise the main drivers of administration and enforcement costs<sup>114</sup>. Legislative processes related to changes of legislation could also impose additional one-off costs. However these are likely to be negligible and are not included under administration and enforcement costs.

#### **Option 1. Maintain *status quo*.**

Article 7 does not set out specific obligations to make a share of audiovisual content accessible to people with disabilities. Therefore, maintaining the *status quo* would not create any administration and enforcement costs under any of the scenarios. This information is provided in table 3.2.

#### **Option 2. Strengthen EU-level harmonisation of existing rules.**

<sup>114</sup> The process of changing national regulation could also imply additional costs. However, these are likely to be negligible.

**Scenario: maintain the current material and geographical scope**

The costs of monitoring are dependent on two variables: a) the number of channels to be monitored; and b) the costs of monitoring one channel. The latter depends on the type of monitoring performed:

- **Passive monitoring.** In this scenario, the regulator enforces accessibility regulation based on self-reports prepared by the service provider. Annual costs are derived from the data provided by the national regulator of a MS during interviews. The result was €1,691 (for EU28, corrected for CPL<sup>115</sup>) per channel per year.
- **Active monitoring.** In this scenario, the national regulator actively monitors service providers to check whether they comply with accessibility obligations. This means that a sample of broadcasts would be followed periodically by the regulator. The costs borne by the regulator are higher as this scenario is more labour-intensive. Annual costs were derived from the data provided by the national regulator of a MS during the interviews. The result was €4,307 (for EU28, corrected for CPL) per channel per year.

Assessment of the number of channels to be monitored was based on the following logic:

- All linear broadcasters registered in a MS were identified and data was collected on: a) their market share; and b) whether they were already monitored due to national legislation.
- It is likely that accessibility obligations will apply only to channels that have at least 2% of market share. This assumption is based on the existing arrangements in several MS. Hence, channels that do not reach 2% of market share are excluded from further analysis.
- There is a significant number of on-demand services (2,503 were established in EU28 as of December 2015<sup>116</sup>) and only BE (FL) and EL have established targets for on-demand service providers (see Table 3.4). Data on market share of non-linear services is not available. Therefore, the analysis includes only those on-demand services that are owned by a linear service which has a market share of 2% or higher, assuming that only they would be regulated.
- Obligations at the EU level will not impose additional costs if the channels are already monitored due to national legislation. Hence, from the total number of channels registered in the country we subtracted the number of channels that already face targets set in the national legislation.

Costs per MS were calculated by applying the following formula:

$$TC_i = N_i * TC_c * CPL$$

Here:

- $TC_i$  denotes total costs borne by regulator in country  $i$ .
- $N_i$  represents the number of relevant channels in a country  $i$ . As discussed above, number of relevant channels = all channels registered in a MS – channels with less than 2% market share (or non-linear channels not owned by linear service providers with at least 2% market share) – channels that are already monitored due to national accessibility legislation.
- $TC_c$  is the total costs of regulating one channel, as calculated from known cases. Costs for each country were then calculated separately based on the estimates from passive and active monitoring scenarios.
- $CPL$  – comparative price level coefficient.

Additionally, it was assumed that:

- In all MS, *Option 2* would be enforced by the national regulator instead of co-regulatory or self-regulatory bodies (see *Option 3* for costs in such case);
- An increase in the share of subtitled, signed and/or audio-described content should not significantly increase labour time if the channels are already being monitored.

<sup>115</sup> Comparative price levels of consumer goods and services reflect price differences among EU MS. It is taken into account to regard for differences in costs would follow similar pattern in MS, assuming that pattern among MS would be similar.

<sup>116</sup> MAVISE database.

Therefore, it is assumed that countries where national regulation already requires at least some form of monitoring would not bear additional costs. In addition, if monitoring takes place for at least one of the accessibility services, then monitoring of the other services will not lead to additional costs. For example, if a country already monitors provision of subtitling, additional regulation on audio description will not imply additional enforcement costs (see annex 2 for data on MS);

- There is no data on market shares of non-linear services. Therefore, it is assumed that regulation would apply to those non-linear services which are owned by linear broadcasters with a market share of at least 2% for their linear services.

The results are provided in Table 3.3. According to the low cost scenario (passive monitoring), the costs of monitoring would be €0.69 m p.a. for all national regulators in the EU. If an active monitoring strategy is adopted (high cost scenario), additional enforcement costs would total approx. €1.76 m p.a. for all national regulators in the EU.

**Table 3.3. Administration and enforcement costs for Option 2 under keep current scope unchanged scenario.**

MS	Additional linear services to be monitored*		Passive monitoring costs scenario (thousands €; rounded)				Active monitoring costs scenario (thousands €; rounded)			
	Public	Private	Public linear	Private linear	Non-linear	Total	Public linear	Private linear	Non-linear	Total
BE (FL)	-	-	0	0	0.00	0.00	0	0	0.00	0.00
BE (FR)	-	1	0	1.84	9.19	11.03	0	4.68	23.41	28.09
BE (DE)	1	0	1.84	0	0.00	1.84	4.68	0	0.00	4.68
BG	1	5	0.81	4.05	3.24	8.10	2.06	10.32	8.25	20.63
CZ	-	7	0	7.54	6.46	14.00	0	19.2	16.46	35.66
DK	-	0	0	0	37.63	37.63	0	0	95.86	95.86
DE	5	6	8.58	10.3	77.24	96.12	21.86	26.23	196.72	244.81
EE	2	3	2.56	3.84	11.51	17.91	6.51	9.77	29.30	45.58
IE	-	-	0	0	18.61	18.61	0	0	47.41	47.41
EL	-	-	0	0	0.00	0.00	0	0	0.00	0.00
ES	-	-	0	0	14.05	14.05	0	0	35.78	35.78
FR	-	-	0	0	103.81	103.81	0	0	264.40	264.40
HR	-	5	0	5.59	4.47	10.06	0	14.23	11.39	25.62
IT	-	4	0	6.96	50.46	57.42	0	17.73	128.53	146.26
CY	-	-	0	0	10.67	10.67	0	0	27.16	27.16
LV	2	5	2.37	5.93	15.41	23.71	6.04	15.1	39.25	60.39
LT	1	8	1.06	8.5	7.43	16.99	2.7	21.64	18.93	43.27
LU	0	1	0	2.04	4.07	6.11	0	5.19	10.37	15.56
HU	-	-	0	0	3.89	3.89	0	0	9.91	9.91
MT	-	-	0	0	2.74	2.74	0	0	6.97	6.97
NL	-	-	0	0	37.13	37.13	0	0	94.58	94.58
AT	-	5	0	8.95	7.16	16.11	0	22.78	18.23	41.01
PL	3	6	2.83	5.66	24.53	33.02	7.21	14.42	62.49	84.12
PT	-	-	0	0	6.92	6.92	0	0	17.62	17.62
RO	-	-	0	0	15.26	15.26	0	0	38.88	38.88
SI	3	3	4.14	4.14	6.91	15.19	10.56	10.56	17.59	38.71
SK	-	-	0	0	11.46	11.46	0	0	29.20	29.20
FI	-	-	0	0	8.27	8.27	0	0	21.07	21.07
SE	-	-	0	0	42.48	42.48	0	0	108.19	108.19
UK	-	-	0	0	51.36	51.36	0	0	130.83	130.83
<b>Total EU</b>	<b>18</b>	<b>59</b>	<b>24.19</b>	<b>75.34</b>	<b>592.37</b>	<b>691.89</b>	<b>61.62</b>	<b>191.85</b>	<b>1,508.78</b>	<b>1,762.25</b>

Source: Visionary Analytics, 2015. Based on data from interviews, regulatory authorities reports, Eurostat, MAVISE. For data sources on market share refer to Annex 4.

Notes: Full data set of service providers included in the analysis is provided in Annex 5. Assessment of costs includes

linear services that: a) have at least 2 % market share; b) are not currently regulated. Dashes (-) represent cases where national regulator already sets targets for specific types of services, meaning that additional costs would not be borne by the

### **Scenario: extend material scope scenario**

It is assumed that this scenario includes online platforms, as defined in section 1.2. Assessment of the costs of regulating platforms /online services is not straightforward. It is likely that regulators will seek to contain enforcement costs and adopt some sampling strategies, i.e. monitor only a sample of content. As a result, the costs per platform should be similar to the costs of monitoring other types of service providers. Furthermore, it is also assumed that thresholds of 2% of market share will not be applied for monitoring online platforms. Hence, in contrast to on-demand services with editorial responsibility, estimates for online platforms without editorial responsibility cover all 11 platforms established in the EU. Extension of the material scope under Option 2 would create costs of €0.017m p.a. under low costs scenario and €0.044m p.a. under high costs scenario.

**Table 3.4. MS that do not set accessibility targets for specific services.**

Linear public service broadcasters (9)	Private linear services (15)	Non-linear services (26)
BE (DE), BG, DE, EE, LV, LT, LU, PL, SI	BE (FR), BE (DE), BG, CZ, DK, DE, EE, HR, IT, LV, LT, LU, AT, PL, SI	BE (FR), BE (DE), BG, CZ, DK, DE, EE, IE, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, NL, AT, PL, PT, RO, SI, SK, FI, SE, UK

Source: Visionary Analytics, 2015. Based on: Agency for Fundamental Rights. "Accessibility standards for audio-visual media: Indicators on political participation of persons with disabilities", 2014; Agency for Fundamental Rights. Background reports on the right to political participation for persons with disabilities, 2014; Informal submissions by the National Regulators to the EU Commission, 2015; Machet, Emmanuelle. Comparative background document "Round Table on Access to Audiovisual Media Services for Persons with Disabilities." Revised public version. EPRA Secretariat, 8 July 2013.

### **Scenario: extend geographical scope**

None of the service providers covered by the extension of the geographical scope scenario pass the 2% threshold. Therefore, administration and enforcement costs for this scenario are equal to zero. Under the *extend material and geographical scope* scenarios, one could also add the costs of monitoring platforms (e.g. YouTube) established outside the EU. If an active monitoring strategy focused on monitoring all content provided by such platforms, it would result in huge administration and enforcement costs. However, it is more likely that the monitoring would be based on analysis of a sample of the content. In this case, the costs of monitoring per platform should be similar to the costs of monitoring linear and non-linear service providers. Our sample includes four platforms which are established outside the EU or which have unidentified country of establishment. Average administration and enforcement costs (for EU28) in a single MS would be €0.007m under the passive monitoring scenario and €0.02m under the active monitoring scenario.

### **Option 3. Introduce self and co-regulation measures.**

As outlined in the Better Regulation Toolbox, self-regulation and co-regulation generate smaller costs for public bodies and transfer some of the costs to the industry<sup>117</sup>. Indeed, costs generated by self-regulation or co-regulation might be covered by the industry, as was the case with Authority for Television on Demand (ATVOD) in the UK, which covered its expenses from resources collected from industry. This means that there are no costs borne by the regulator itself, and administrative and enforcement costs are transferred to industry and therefore become compliance costs. Whilst some additional costs might be borne by the regulator, especially when setting up the system initially, subsequent costs should be marginal. Therefore, it can be held that national regulators would suffer only negligible costs

<sup>117</sup> European Commission, "Better Regulation Toolbox", 2014. <[http://ec.europa.eu/smart-regulation/quidelines/docs/br\\_toolbox\\_en.pdf](http://ec.europa.eu/smart-regulation/quidelines/docs/br_toolbox_en.pdf)> [Last accessed December 28, 2015].

incurred by the introduction of self and co-regulation measures. This applies to all three considered scenarios. Compliance costs are discussed in section 3.5 under Option 3.

### 3.5. Impacts on administrative burden and compliance costs

Table 3.5 summarizes the likely impacts of the options related to increasing accessibility for people with disabilities on the administrative burden and compliance costs for economic operators. Since Article 7 of the AVMSD does not impose regulatory obligations, Option 1 does not imply any costs under any of the three scenarios, while adoption of the remaining two options would impose compliance costs. Assessment of costs under Option 2 focuses on the costs of complying with the EU level targets. Estimates provided under Option 3 capture the costs of setting up and running a self- or co-regulatory body, but not the provision of access services. If it decided to set accessibility targets, this would impose additional costs that are not directly captured by the estimates under Option 3, but could be estimated to be similar to the costs under option 2.

**Table 3.5. Impacts of options on administrative burden and compliance costs**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope	Scenario: extend geographical scope
Option 1. Maintain the <i>status quo</i>	No impact	No impact	No impact
Option 2. Strengthen EU-level harmonisation of existing rules.  Note: the costs are calculated for a case where services would have to make approximately 10% additional content accessible (two additional hours per day of subtitling, sign language interpretation and audio description). See 3.3 for broader explanation.	Low cost scenario: €52.02 m p.a. for all linear EU providers Medium cost scenario: €128.37 m p.a. for all linear EU providers High cost scenario: €280.87 m p.a. for all linear EU providers  No estimates for costs borne by on-demand service providers are available due to differences in technology.	No estimates are available due to differences in technology used.	Negligible costs, since there are no linear services that would pass 2 % market share thresholds
Option 3. Introduce self- and co-regulatory measures	Low cost scenario: €0.17 m p.a. for all linear EU providers Medium cost scenario: €1.08 m p.a. for all linear EU providers High cost scenario: €2.35 m p.a. for all linear EU providers  For on-demand service providers the costs would be as follows: low cost scenario: €0.33 m p.a. for all EU providers; medium cost scenario: €2.11 m p.a. for all EU providers; high cost scenario: €4.6 m p.a. for all EU providers.	Negligible costs. Only in high cost scenario they would be above €0.1 m p.a. for all EU-based platforms (€0.12 m p.a.).	Negligible costs, since there are no linear services that would pass 2 % market share thresholds For online platforms established outside the EU incremental costs would be negligible

Source: Visionary Analytics, 2015.

#### Option 1. Maintain the *status quo*

Maintaining the *status quo* would create no administrative burden or compliance costs due to the non-binding nature of the current formulation of Article 7 of the AVMSD. Therefore, any costs resulting from administrative burden or compliance are generated by national legislation, rather than the AVMSD. This is the case for all three scenarios.

## Option 2. Strengthen EU-level harmonisation of existing rules

### **Scenario: maintain the current material and geographical scope**

Strengthening EU-level harmonisation of existing rules and the setting of specific targets would create additional administrative burden and compliance costs. However, service providers vary significantly with respect to what share of content they already make accessible for people with disabilities. Therefore, it is next to impossible to assess the potential impact of setting a specific target for service providers across the EU. Thus, for linear service providers, we estimate the incremental costs of making an additional 10% of content accessible. This translates into an additional 2 hours of subtitling, signing and audio description per channel per day. To arrive at these estimates, we have made several assumptions:

- Channels with a market share of less than 2% will not be obliged to follow specific accessibility targets. This threshold was chosen as there are MS (BE (FL), FR) which use a similar threshold.
- Two hours of content represents approx. 10% of the daily content of programmes.
- If national regulation already requires 80% of content to be subtitled/signed/audio described by service providers, it was assumed that additional requirements would not be set by the AVMSD, leading to zero additional costs for such channels. For example, if there are 12 channels in a MS and eight channels already subtitle more than 80% of content, additional costs are calculated only for the remaining four.
- Average costs per hour of content for low, medium and high cost scenarios for subtitling, sign language and audio description are constant across the EU. They are based on information gathered from interviews (see table 3.6). Since the costs are rather uniform across MS, and there seems to be no relationship between purchasing power and the costs of provision of accessibility services, no corrections for CPL are made. However, it is likely that, due to the development of technologies such as automatic live captioning, the costs will decrease over time. For example, the current cost of such captioning in Spain is €60 per hour, which is lower than the costs borne by services using other means of subtitling (see Table 3.6). Furthermore, some of these costs might be borne not only by service providers, but also by content creators as well (e.g. when broadcasters acquire audiovisual content from other sources which have already made this content accessible).

**Table 3.6. Costs of providing subtitling, sign language and audio description for linear service providers in selected countries.**

MS	Subtitling costs (1 hour)	Sign language cost (1 hour)	Audio descriptions (1 hour)
<b>Costs for scenarios</b>	Low costs scenario: €80 Medium costs scenario: €135 High costs scenario: €360	Low costs scenario: €150 Medium costs scenario: €400 High costs scenario: €860	Low costs scenario: €120 <sup>118</sup> Medium costs scenario: €320 High costs scenario: €660
<b>BG</b>	€50-114	No information	No information
<b>IE</b>	€100-200 for pre-recorded content €300-500 for live content	No information	No information
<b>ES</b>	€60 for live subtitling using automatic live captioning €80-100 for pre-recorded content	€300	€220
<b>LT</b>	€80-120	No information	No information
<b>HU</b>	No information	No information	No information

<sup>118</sup> According to information on accessibility cost for Spanish broadcasters and the 2009 OFCOM review of Television Access Services, the cost for audio descriptions is around 80% of sign language costs.

<b>UK</b>	€70-360	€150-860 (€585)	€660 (€483)
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Source: Visionary Analytics, 2015. Based on data from interviews with service providers and other stakeholders. Data in brackets for the UK: OFCOM. Review of Television Access Services, 2009. Note: value of €50 (in Bulgaria) was removed since it is an outlier in an otherwise quite homogenous sample.

Based on the above assumptions, Table 3.7 provides aggregate estimates of the costs of providing an additional two hours of accessibility services. The costs were estimated according to the following formula: costs per hour x 2 hours x no of relevant channels x 365 days per year. Under the low cost scenario, total costs for providing all services would be €52.02 m p.a. for all linear EU providers, while under the high scenario this number would increase to €280.87 m.

**Table 3.7. Annual costs of providing 2 additional daily hours of subtitling, sign language and audio description for linear broadcasters in all MS.**

	No of relevant linear channels established in the country with a market share of at least 2%		Annual costs of subtitling additional 2 hours of content for channels (thousands €; rounded)			Annual costs of signing additional 2 hours of content for channels (thousands €; rounded)			Annual costs of audio description of additional 2 hours of content for channels (thousands €; rounded)		
	Public	Private	Low	Medium	High	Low	Medium	High	Low	Medium	High
<b>BE (FL)</b>	3	5	467.2	788.4	2,102.4	876	2,336	5,022.4	700.8	1,868.8	3,854.4
<b>BE (FR)</b>	2	1	175.2	295.65	788.4	328.5	876	1,883.4	262.8	700.8	1,445.4
<b>BE (DE)</b>	1	0	58.4	98.55	262.8	109.5	292	627.8	87.6	233.6	481.8
<b>BG</b>	1	5	350.4	591.3	1,576.8	657	1,752	3,766.8	525.6	1,401.6	2,890.8
<b>CZ</b>	4	7	642.4	1,084.05	2,890.8	1,204.5	3,212	6,905.8	963.6	2,569.6	5,299.8
<b>DK</b>	9	0	525.6	886.95	2,365.2	985.5	2,628	5,650.2	788.4	2,102.4	4,336.2
<b>DE</b>	5	6	642.4	1,084.05	2,890.8	1,204.5	3,212	6,905.8	963.6	2,569.6	5,299.8
<b>EE</b>	2	3	292	492.75	1314	547.5	1,460	3,139	438	1,168	2,409
<b>IE</b>	2	3	292	492.75	1314	547.5	1,460	3,139	438	1,168	2,409
<b>EL</b>	3	3	350.4	591.3	1,576.8	657	1,752	3,766.8	525.6	1,401.6	2,890.8
<b>ES</b>	3	8	233.6	394.2	1,051.2	1,204.5	3,212	6,905.8	963.6	2,569.6	5,299.8
<b>FR</b>	4	7	0	0	0	1,204.5	3,212	6,905.8	963.6	2,569.6	5,299.8
<b>HR</b>	3	5	467.2	788.4	2,102.4	876	2,336	5,022.4	700.8	1,868.8	3,854.4
<b>IT</b>	3	4	408.8	689.85	1,839.6	766.5	2,044	4,394.6	613.2	1,635.2	3,372.6
<b>CY</b>	2	3	292	492.75	1,314	547.5	1,460	3,139	438	1,168	2,409
<b>LV</b>	2	5	408.8	689.85	1,839.6	766.5	2,044	4,394.6	613.2	1,635.2	3,372.6
<b>LT</b>	1	8	525.6	886.95	2,365.2	985.5	2,628	5,650.2	788.4	2,102.4	4,336.2
<b>LU</b>	0	1	58.4	98.55	262.8	109.5	292	627.8	87.6	233.6	481.8
<b>HU</b>	3	3	350.4	591.3	1,576.8	657	1,752	3,766.8	525.6	1,401.6	2,890.8
<b>MT</b>	2	2	233.6	394.2	1,051.2	438	1,168	2,511.2	350.4	934.4	1,927.2
<b>NL</b>	3	3	350.4	591.3	1,576.8	657	1,752	3,766.8	525.6	1,401.6	2,890.8
<b>AT</b>	2	5	408.8	689.85	1,839.6	766.5	2,044	4,394.6	613.2	1,635.2	3,372.6
<b>PL</b>	3	6	525.6	886.95	2,365.2	985.5	2,628	5,650.2	788.4	2,102.4	4,336.2
<b>PT</b>	2	2	233.6	394.2	1,051.2	438	1,168	2,511.2	350.4	934.4	1,927.2
<b>RO</b>	1	10	642.4	1,084.05	2,890.8	1,204.5	3,212	6,905.8	963.6	2,569.6	5,299.8
<b>SI</b>	3	3	350.4	591.3	1,576.8	657	1,752	3,766.8	525.6	1,401.6	2,890.8
<b>SK</b>	1	5	350.4	591.3	1,576.8	657	1,752	3,766.8	525.6	1,401.6	2,890.8

	No of relevant linear channels established in the country with a market share of at least 2%		Annual costs of subtitling additional 2 hours of content for channels (thousands €; rounded)			Annual costs of signing additional 2 hours of content for channels (thousands €; rounded)			Annual costs of audio description of additional 2 hours of content for channels (thousands €; rounded)		
	Public	Private	Low	Medium	High	Low	Medium	High	Low	Medium	High
<b>FI</b>	3	7	408.8	689.85	1,839.6	766.5	2,044	4,394.6	876	2,336	4,818
<b>SE</b>	3	8	467.2	788.4	2,102.4	1,204.5	3,212	6,905.8	963.6	2,569.6	5,299.8
<b>UK</b>	4	4	46.72	78.84	210.24	876	2,336	5,022.4	700.8	1,868.8	3,854.4
<b>Total</b>	<b>80</b>	<b>132</b>	<b>10,558.72</b>	<b>17,817.84</b>	<b>47,514.24</b>	<b>22,885.5</b>	<b>61,028</b>	<b>131,210.2</b>	<b>18,571.2</b>	<b>49,523.2</b>	<b>102,141.6</b>

Source: Visionary Analytics, 2015. Based on MAVISE data base, various country media laws. For data on market share refer to annex 4.

Note: Number of channels was divided into public and private as in some countries public channels have to make much more of their content accessible to persons with disabilities. Estimates cover only the channels that: a) enjoy at least 2 % market share (see Annex 4 for data); b) subtitle, sign or provide audio description for less than 80 % of content. Additional corrections were made, if it was known that a channel makes accessible nearly 80% of content (e.g. if a channel provides 73% of its content accessible, only the costs of one additional hour of accessibility services are calculated).

The assessment of costs for non-linear services is more complicated. Data from interviews suggest that the costs vary significantly due to the technology that is employed. The basic two frameworks are as follows:

- Subtitles or signing are mounted directly on to the video (open subtitles and embedded signing), which makes it impossible to turn it off/on. Uploading such content to on-demand platforms does not generate any significant additional costs.
- Subtitles, sign language or audio description are provided as separate tracks. This option creates costs because the technology used to provide the non-linear services must be re-arranged to include the access services in the on-demand platform, particularly for sign language and audio description (most of the platforms allow closed captions functionalities already), as indicated in the data from interviews.

In the first case, costs are non-existent, whilst the costs generated in the second case can be significantly higher (although they are likely to be one-off). Several respondents indicated that high costs prevented the provision of accessible content in on-demand services. Therefore, the costs for a particular service provider could lie anywhere between the two extremes: zero and high costs depending on the technical solution that is used. Since the main costs for non-linear services owned by the same companies that own the largest linear services would be low, as subtitles/sign language interpretation/audio description would be the same as provided in the linear services, the main costs would result from changes in technology.

Furthermore, a number of on-demand services provide content previously transmitted through linear means with accessibility content already made available. Such on-demand services would be less likely to bear the costs due to changes in the AVMSD. Finally, it is not possible to determine a specific threshold (e.g. 10% as in the case of linear services) and translate it into hours of accessible content. Thus, due to the nature of the collected data, it is currently impossible to assess the costs for non-linear service providers.

### **Scenario: extend material scope**

The *Extend material scope* scenario covers online platforms without editorial responsibility. Interview data relating to platforms and redistributors indicates that:

- Most platforms have adopted state-of-art technology that permits the provision of accessibility services. Therefore, it is unlikely that an extension to the material scope of the AVMSD would impose significant additional costs.
- Infrastructure costs (related to the use of bandwidth, storage space, etc.), would have to be borne by redistributors. However, information was not gathered on what these costs could be. Since subtitles take only a small amount of memory and other types of accessible content are significantly rarer, it is safe to assume that costs would be negligible. Although collected data does not allow assessment of the specific costs borne by platforms, they are likely to be negligible.

**Scenario: extend geographical scope**

There are no linear services established outside the EU which have a market share of at least 2% in MS and mainly target at least one MS. This means that non on-demand services (owned by linear services with known market share) would be affected by changes to the AVMSD. Therefore, the *extend geographical scope* scenario would not result in any administrative burden and compliance costs if the material scope remains unchanged. Costs for online platforms established outside the EU were not calculated due to reasons discussed under the *extend material scope* scenario.

**Option 3. Introduce self- and co-regulatory measures****Scenario: keep geographical and material scope unchanged**

The assessment of this option focuses on the additional costs associated with setting up and running a self- or co-regulatory body. If the body established accessibility targets, these would be additional to the ones estimated below.

As discussed in section 3.4 under Option 3, self-regulation and co-regulation might lead to a situation where administration and enforcement costs become compliance costs and are covered by the industry. The UK provides an example of such a situation, where the ATVOD generates income from fees paid by the industry. We take the ATVOD as our basic case when calculating the costs which would be imposed through fees to self-regulatory or co-regulatory bodies. Although the ATVOD also covers other issues (e.g. protection of minors), we assume that irrespective of specific functions, the co-regulatory body would require similar fees from the industry. We also retain our assumption that only the largest linear service providers would participate and that only those non-linear services which are owned by linear providers with at least 2% market share are included.

On-demand service providers in the UK paid the ATVOD between €1,056 and €14,858 (depending on the revenues of the service provider, which is equivalent to €873 and €12,229 for EU28, corrected for CPL) annually. Fees for multiple outlets by the same provider or group caps are different.<sup>119</sup> Hence, we calculate several scenarios to account for variation in the size of providers within different MS. In each scenario, a correction for CPL is made. Furthermore, it is assumed that participating organisations would have to separately pay for each of the outlets that fall under our assumptions. The scenarios are as follows:

- **Low cost scenario:** where the lowest standard rate for a single service outlet (€873) is taken as the basic value for calculation. This is likely to be downward biased, however it partly corrects for the issue of not including group or multiple outlets options.
- **Medium cost scenario:** where the A Rate fee<sup>120</sup> is taken as the base (€5,624). This value might be upward biased in lower income MS, as well as in countries where media groups or multiple outlet services are abundant.
- **High cost scenario:** where the Super A Rate fee<sup>121</sup> is taken as the base (€12,229). This is likely to be significantly upward biased, especially in MS where media groups or multiple outlet services are abundant.

Based on the assumptions above, the aggregate results are provided in Table 3.8. In the scenario *keep geographical and material scope unchanged*, under the low cost scenario compliance costs would total €0.17 m p.a. for all linear service EU providers, while in the high cost scenario this number would increase to €2.35 m. For all non-linear service EU providers the costs would be €0.33 m p.a. under low cost scenario and €4.6 m p.a. under the high cost scenario.

<sup>119</sup> ATVOD, "The 2015-16 Fee Tariff: Regulatory fees for on-demand programme services for the period 1 April 2015 to 31 March 2016", 2015.

<sup>120</sup> A Rate was charged on providers, whose revenue was greater than €8.26m but not more than €32.89m.

<sup>121</sup> Super A Rate was charged on providers, whose revenue was greater than €32.89m.

**Table 3.8. Costs for linear and non-linear service providers transferred to industry under keep current scope unchanged scenario.**

MS	Low costs scenario (thousands €; rounded)		Medium costs scenario (thousands €; rounded)		High costs scenario (thousands €; rounded)	
	Linear services	Non-linear services	Linear services	Non-linear services	Linear services	Non-linear services
BE (FL)	7.59	17.08	48.91	110.04	106.34	239.27
BE (FR)	2.85	4.74	18.34	30.57	39.88	66.46
BE (DE)	0.95	0.00	6.11	0.00	13.29	0.00
BG	2.51	1.67	16.16	10.78	35.15	23.43
CZ	6.12	3.34	39.41	21.49	85.69	46.74
DK	10.93	19.43	70.41	125.17	153.09	272.17
DE	9.75	39.87	62.79	256.88	136.54	558.56
EE	3.30	5.94	21.26	38.27	46.23	83.21
IE	5.34	9.61	34.39	61.90	74.78	134.60
EL	4.47	5.22	28.82	33.62	62.66	73.10
ES	8.86	7.25	57.10	46.72	124.16	101.59
FR	10.34	53.59	66.63	345.25	144.88	750.73
HR	4.62	2.31	29.74	14.87	64.67	32.33
IT	6.29	26.05	40.51	167.83	88.09	364.93
CY	3.93	5.51	25.34	35.47	55.09	77.13
LV	4.28	7.96	27.60	51.25	60.01	111.44
LT	4.93	3.84	31.79	24.72	69.12	53.76
LU	1.05	2.10	6.77	13.54	14.72	29.45
HU	3.01	2.01	19.40	12.94	42.19	28.13
MT	2.83	1.41	18.20	9.10	39.57	19.79
NL	5.75	19.17	37.05	123.50	80.56	268.55
AT	6.47	3.69	41.65	23.80	90.57	51.75
PL	4.38	12.67	28.24	81.59	61.41	177.42
PT	2.86	3.57	18.40	23.00	40.01	50.02
RO	5.10	7.88	32.85	50.77	71.43	110.39
SI	4.28	3.57	27.57	22.97	59.95	49.96
SK	3.55	5.92	22.88	38.13	49.75	82.91
FI	10.68	4.27	68.78	27.51	149.56	59.82
SE	12.06	21.93	77.70	141.27	168.96	307.19
UK	8.49	26.52	54.67	170.83	118.87	371.46
<b>Total EU</b>	<b>167.56</b>	<b>328.12</b>	<b>1,079.46</b>	<b>2,113.79</b>	<b>2,347.21</b>	<b>4,596.27</b>

Source: Visionary Analytics, 2015. Based on data from Eurostat; ATVOD. The 2015-2016 Fee Tariff; for market share data sources refer to annex 4.

In addition to complying with self and co-regulatory measures, specific targets might be set by responsible bodies. For such costs, refer to the discussion of option 2 under section 3.5.

### **Scenario: extend material scope**

This scenario includes online platforms, as they would be involved in self or co-regulation. The costs are estimated to be between €0.009m and €0.12 m p.a. for all and online platforms established in the EU.

### **Scenario: extend geographical scope.**

None of the linear services established outside the EU have market share of at least 2%. Therefore, extension of the geographical scope would not create additional administrative burden and compliance costs if the material scope remains the same. For the four non-EU platforms, average costs of participation in self- or co-regulatory bodies in a single MS would be negligible, i.e. between €0.003 m and €0.049 m p.a.

### 3.6. Social impacts: more accessible audiovisual media services and innovations

The primary objective of accessibility regulation is to make audiovisual media services more accessible. The regulation could also have other positive side-effects. Hence, Table 3.10 summarises comparative benefits of options against three criteria:

- *Increasing accessibility of audiovisual media services.* In 2011, around 1.94% of EU-28 population aged 15-64 had visual disabilities, while around 1.16% of the same population had hearing difficulties (see table 3.9 below). However, the potential group of beneficiaries should not be limited to persons with visual or hearing disabilities. Such services are also highly relevant for people with other disabilities and functional limitations. Ageing population implies that demand for access services will increase in the future.
- Since both subtitling and signing target the same group of people (those with hearing disabilities), it is worth comparing which option would be preferable for them. According to the results of a survey carried out in Poland, subtitling is favoured over signing. (65% of respondents of the paper version of the questionnaire and 91% of respondents of the online questionnaire favored subtitling)<sup>122</sup>. However, respondents also indicated that inclusion of both types of services would be the best option. Subtitling should also be preferred by service providers, as it is significantly cheaper than signing. Comparative merits of Options 2 and 3 depend on the specific targets that would be set. It seems reasonable to assume that service providers would avoid ambitious targets, if given the chance to minimise the costs of provision of accessibility services under self- or co-regulation measures. Hence, Option 2 is likely to have a higher impact on accessibility of services. On the other hand, the targets should not impose an unreasonable burden on service providers. Therefore, the sub-section below discusses what targets are "reasonable" irrespective of how they are set, i.e. irrespective of the options under consideration.
- *Increasing standardization and reducing fragmentation.* Currently, there are many technologies and standards for access services, especially when it comes to on-demand services and online platforms. This boosts the costs for service providers operating in more than one MS due to: a) an absence of economies of scale; and b) the need to adapt services to different standards and technologies. None of the options seek to directly tackle this challenge. However, introduction of national self- or co-regulatory measures could entrench the existing differences in standards and technologies.
- *Development of new services.* There are two prominent innovations that have already evolved from efforts aimed at increasing accessibility. The first focuses on enhancing two-screen technologies to enable users to have content without accessibility elements on the main screen, while the second screen (e.g. a smartphone, a tablet) provides subtitles, audio description, audio subtitles or sign language interpretation. The second innovation enables search within audiovisual material through subtitles. Searching for specific phrases in subtitles could help users to find specific points in the audiovisual material. Options 2 and 3 have similar potential to contribute to further evolution of these and other innovations.

**Table 3.9. Number of persons aged 15-64 with visual and hearing difficulties in EU-28, 2011.**

MS	Persons with disabilities	MS	Persons with disabilities
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<sup>122</sup> Audiovisual Translation Research Lab, "European survey on standards in subtitling for the deaf and hard of hearing" <<http://avt.ils.uw.edu.pl/en/standardy/>> [Last accessed 2 February, 2016]

	Visual (ths.)	Visual, % of population (age 15-64)	Hearing (ths.)	Hearing, % of population (age 15-64)		Visual (ths.)	Visual, % of population (age 15-64)	Hearing (ths.)	Hearing, % of population (age 15-64)
<b>BE</b>	94.89	1.37	48.394	0.70	<b>LT</b>	27.44	1.34	4.80	0.24
<b>BG</b>	100.03	2.06	15.95	0.33	<b>LU</b>	9.64	2.80	2.94	0.85
<b>CZ</b>	77.36	1.07	16.45	0.23	<b>HU</b>	70.20	1.05	32.65	0.49
<b>DK</b>	21.76	0.60	11.80	0.33	<b>MT</b>	4.77	1.65	2.37	0.82
<b>DE</b>	737.19	1.66	262.76	0.59	<b>NL</b>	106.02	0.97	61.12	0.56
<b>EE</b>	46.21	5.12	8.92	0.99	<b>AT</b>	268.13	4.75	110.30	1.95
<b>IE</b>	45.33	1.49	10.61	0.35	<b>PL</b>	319.26	1.24	112.84	0.44
<b>EL</b>	24.03	0.37	10.37	0.16	<b>PT</b>	239.74	3.38	121.37	1.71
<b>ES</b>	446.88	1.56	209.43	0.73	<b>RO</b>	509.73	3.49	49.33	0.34
<b>FR</b>	1,357.965	3.46	1,829.47	4.66	<b>SI</b>	48.04	3.38	13.61	0.96
<b>HR</b>	34.14	1.25	14.24	0.52	<b>SK</b>	62.87	1.63	14.93	0.39
<b>IT</b>	284.07	0.78	102.88	0.28	<b>FI</b>	96.03	2.83	59.40	1.75
<b>CY</b>	3.58	0.63	1.87	0.33	<b>SE</b>	97.74	1.60	72.20	1.18
<b>LV</b>	26.01	1.88	6.41	0.46	<b>UK</b>	927.32	2.34	453.38	1.14
<b>Total</b>	6,086.36	1.94	3,660.76	1.16					

Source: Visionary Analytics, 2015. Based on data from Eurostat.

Note: although numbers here seem to vary among MS, data by World Health Organisation indicates that prevalence of visual impairment for people of all ages was between 2.91% and 3.17% in all MS in 2010. World Health Organisation, "Visual Impairment and Blindness", 2010.

There is a lack of data on what share of people with disabilities would use audiovisual media services if they were more accessible. However, a study relating to an audio description app user trial surveyed 198 persons, out of which 66% identified themselves as blind, 24% as blind with residual vision and 9% as partially sighted. Of these, 65% of respondents indicated that they would use an app for audio-description all or most of the time, and none said that they would not use such app at all<sup>123</sup>. This finding indicates that there is high demand for accessible services by people with disabilities. However, the results likely include self-selection bias and are therefore positively inflated.

Option 1 does not have any impact since accessibility obligations stem from national legislation, rather than EU-level Directive. The relative merits of Options 2 and 3 would not significantly change under alternative scenarios:

- Extension of the material scope of regulation (under Options 2 and 3) would make online platform services more accessible. It is likely that Option 2 would lead to the setting of more ambitious targets in comparison to the ones set by the industry itself. Therefore, Option 2 should be more effective in comparison to Option 3.
- Extension of the geographical scope should theoretically also increase accessibility of audiovisual services. However, due to there being no providers of services that are registered outside the EU and occupy at least 2% of the market in any MS, the scale of changes is likely to be zero.

<sup>123</sup> RNIB Solutions, "Audio description app user trial: Report", 2015.

**Table 3.10. Impacts of options on accessibility of audiovisual media services.**

Options	Increasing accessibility of audiovisual media services	Increasing standardization and reducing fragmentation	Development of new services
Option 1. Maintain the <i>status quo</i>	No impact	No impact	Not relevant
Option 2. Strengthen EU-level harmonisation of existing rules	Higher expected impact on accessibility in comparison to Option 3. It is likely that harmonisation will lead to more ambitious targets on the proportion of audiovisual media services to be made accessible. Increased access services would benefit ~3% of the total EU-28 population. Data also indicates that people with hearing disabilities prefer subtitled over signed content, although combination of the two is considered a still better option.	Low indirect impact, since the option does not seek to tackle fragmentation on standards and technologies. On the other hand, harmonisation could create incentives to seek for cost-efficient solutions (particularly for on-demand services).	Likely indirect positive impact
Option 3. Introduce self- and co-regulatory measures	Lower expected impact on accessibility in comparison to Option 2. It is likely that service providers will seek to avert additional costs and therefore will opt for status quo or un-ambitious changes.	Possibly negative indirect impact: national self- and co-regulation measures could entrench existing fragmentation.	

Source: Visionary Analytics, 2015.

### In search for optimum level of regulation

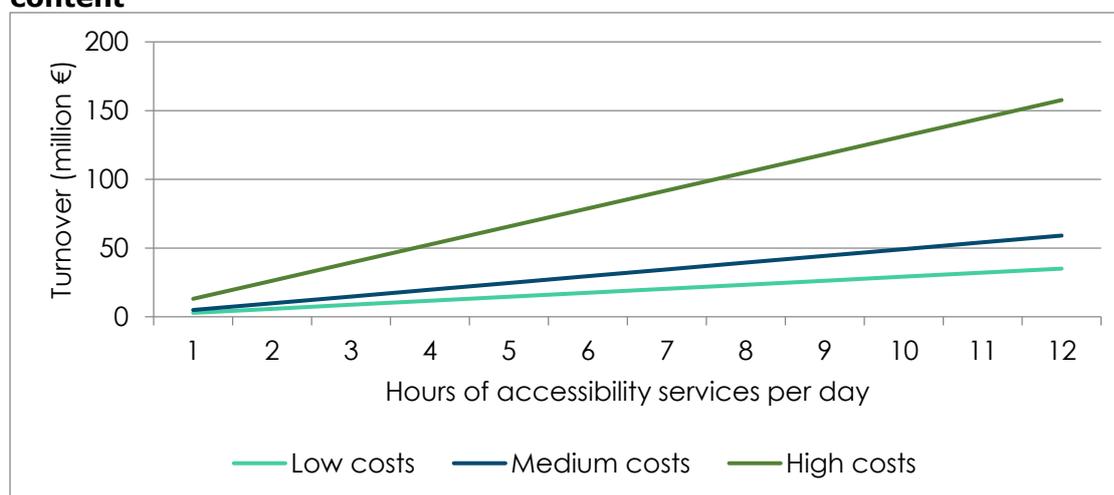
As discussed above, the actual impact of Options 2 and 3 will depend on the specific targets regarding the proportion of audiovisual media services that should be made accessible. Hence, this sub-section focuses on the following question: what are the optimum levels of accessibility targets, given large differences among service providers? The answer to this question does not depend on choices between Options 2 and 3.

In the absence of regulation, incentives to invest in subtitling/captioning, audio description and signing depend on the size of audience that would not view audiovisual content if accessibility services were not provided. Importantly, the costs are fixed (see section 3.5) and do not depend on the size of the audience at the beginning, but it is reasonable to believe that if more accessible content is provided, prices and technological solutions (e.g. automatic live captioning) will become more competitive. Hence, service providers with significant audience share in large MS have economic incentives to provide such services, as they help to attract significant additional audiences. In such cases, the additional income generated from larger audiences is higher than the fixed costs of the provision of access services. Conversely, there are no economic incentives to provide such services if the benefits of attracting additional viewers do not exceed the costs of service provision. The latter is likely to apply to service providers in small MS (irrespective of market share) and service providers with small market share. This implies that regulation should be “smart”, i.e. focus on thresholds where the marginal utility of the provision of an additional hour of accessible services equals marginal costs.

In order to estimate the amount of access services that could be affordable, we use the threshold of 1% of turnover which is used by OFCOM<sup>124</sup> when deciding on services which have to provide accessible content. That is, if expenditure on access services does not exceed 1% of service provider's turnover, it is deemed that it will not be too costly<sup>125</sup>. We take this 1% threshold and use it to determine what the turnover of a service provider must be for it to provide access services.

The next step is to estimate what should be total turnover of a service provider so that she would be required to make certain amount of its content accessible. To achieve this, we use data from table 3.10 to determine different scenarios and related costs per channel per year of providing a certain amount of accessible content. Hourly costs of specific services (i.e. subtitling, signing and audio description) are multiplied by 365 (the number of days) and annual costs for an hour are derived for low, medium and high-costs scenarios. It is then multiplied by 100 (as access services should make no more than 1% of total turnover). By this derive the turnover of a service provider that could make a specific amount of content accessible to persons with disabilities. Results for each type of access services are provided in figures 3.1 – 3.3.

**Figure 3.1. Minimal turnover per year necessary to subtitle different amount of content**

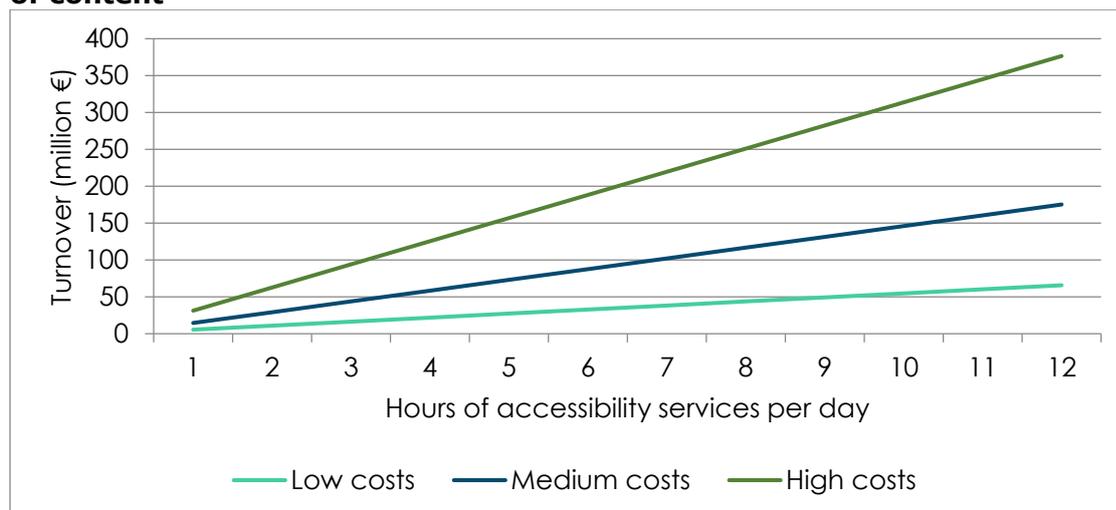


Source: Visionary Analytics, 2015, based on data in Table 3.7.

<sup>124</sup> Ofcom, "Television channels required to provide television access services in 2015", 2014.

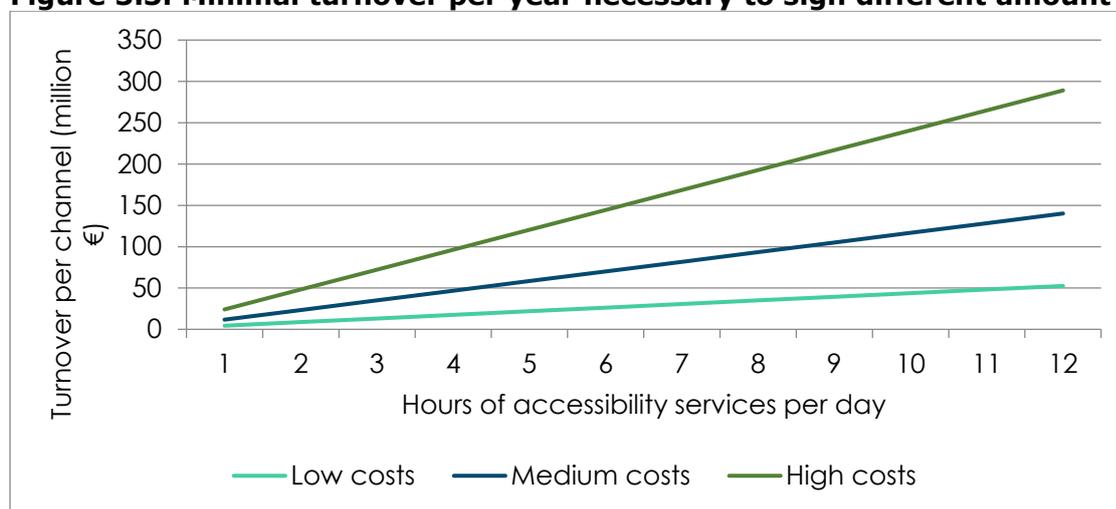
<sup>125</sup> 1 % threshold was set on the grounds of affordability. Ofcom estimated that higher thresholds would imply undue burden for service providers that operate at loss or are marginally profitable. "For example, a channel earning a 5% return on turnover would have to pay out 40% of its profits if the cost of access services accounted for 2% of their qualifying revenues." (p. 41). Such services might fail to comply and / or choose to exit the market, if pushed to comply. This would diminish viewers' choice. See: Ofcom, *Code on Television Access Services, Annex 4. Regulatory Impact Assessment*, 2004.  
<[http://stakeholders.ofcom.org.uk/binaries/consultations/tv\\_access\\_services/statement/statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/tv_access_services/statement/statement.pdf)>

**Figure 3.2. Minimal turnover per year necessary to audio describe different amount of content**



Source: Visionary Analytics, 2015, based on data in Table 3.7.

**Figure 3.3. Minimal turnover per year necessary to sign different amount of content**



Source: Visionary Analytics, 2015, based on data in Table 3.7.

The figures above can be used to estimate whether a particular channel would be able to provide accessible content and how much this would cost under the low, medium and high cost scenarios. However, while this may serve as an approximation for the present time and near future, technological advances are likely to decrease costs over time. Therefore, the slopes in Figures 3.1-3.3 should become flatter, meaning increased capacity to provide more accessible content.

## 4. Right of reply

### 4.1. Regulation and contextual information

Article 28 (1) of the AVMSD establishes that:

*Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.*

AVMSD regulations on the right of reply covers all linear service providers under the jurisdiction of a MS. Article 28 also envisages that each MS “shall adopt measures and determine the procedures, including judicial review, to be followed”. These procedures shall also be applied to people or bodies from other MS. Finally, Article 28 establishes specific conditions when the refusal of the right of reply could be justified<sup>126</sup>.

EU-level regulation on the right of reply in audiovisual services was established by the TVwF Directive in 1986. The adoption of this article was influenced by the emerging Council of Europe (CoE) regulation on the right of reply.<sup>127</sup> In 1974, the CoE adopted a *Resolution on the Right of Reply* with an appendix, which elaborated on the “Minimum Rules”<sup>128</sup>. These rules mainly covered periodical publications. Recently, the European Court of Human Rights recognised the existence of a positive obligation to provide a right of reply under the Freedom of Expression article (Article 10) of the European Convention of Human Rights.<sup>129</sup> Thus, there is an emerging consensus regarding the importance of this right and the State’s responsibility to ensure this right in practice.

The European Court of Human Rights established that the right of reply is a fundamental aspect of freedom of speech.<sup>130</sup> The Court has ruled in several key cases concerning the right of reply (albeit in relation to the press in general, not the audiovisual sector): *Ediciones Tiempo S. A. v. Spain* (app. no. 13010/87, decision of 12 July 1989); *Melnychuk v. Ukraine* (app. no. 28743/03, decision of 5 July 2005) and *Kaperzynski v. Poland* (app. no. 43206/07., decision of 3 April 2012)<sup>131</sup>. In the first case, the Court’s decision stated that the right of reply serves the right to information. In the second case, it was established that the right of reply must be exercised to ensure the freedom of speech of the complainant. Finally, the decision in the third case confirmed the status of the right of reply as a fundamental element of freedom of expression.<sup>132</sup>

The extension of the right of reply to on-line, audiovisual media has also been considered. This is reflected in a Recommendation which was passed on the issue of the protection of minors and human dignity, and on the right of reply in relation to the competitiveness of the European

<sup>126</sup> Article 28 (4) establishes that “right of reply or the equivalent remedies may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil-law proceedings or would transgress standards of public decency”.

<sup>127</sup> Keller, Perry. *European and international media law: liberal democracy, trade, and the new media*. Oxford University Press, 2011.

<sup>128</sup> Council of Europe Committee of Ministers. Resolution (74) 26. On the Right of Reply – Position of the Individual in Relation to the Press.

[http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Res%281974%29026\\_en.asp#TopOfPage](http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Res%281974%29026_en.asp#TopOfPage)

<sup>129</sup> *Melnychuk v Ukraine* (Decision of 5 July 2005) and *Vitrenko v Ukraine* (Decision of 15 December 2008).

<sup>130</sup> Koltay, András, The Right of Reply in a European Comparative Perspective (October 17, 2012). Available at SSRN: <http://ssrn.com/abstract=2162935> or <http://dx.doi.org/10.2139/ssrn.2162935>;

<sup>131</sup> Ibid;

<sup>132</sup> Ibid;

audiovisual and on-line information services industry in 2006<sup>133</sup>. Although the AVMSD referred to this recommendation, obligations concerning right of reply so far do not apply to non-linear services and online platforms. However, national legislature in MS may cover protection of personality rights and defamation and libel. They may not necessarily result in a right of reply as such, but provide for other remedies.

## 4.2. Implementation in Member States

MS have adopted a wide range of measures and procedures to ensure right of reply (see Table 4.1). The main differences lie in the following:

- **Legal status.** Provisions on the right of reply in HR, PT and SI are established in the Constitutional Law. In other countries, this right is contained within media laws, while NL includes it in the Civil Law.<sup>134</sup>
- **Enforcement.** There are two types of institution responsible for enforcement of right of reply in MS – courts<sup>135</sup> and regulatory bodies<sup>136</sup>. The latter approach is dominant in the EU.
- **Broad right of reply vs. right of rectification.**<sup>137</sup> Some countries<sup>138</sup> only provide for the right of rectification of false factual statements or misleading information, while others have a broader right of reply<sup>139</sup>. FI is an interesting case, as it provides right of rectification to legal entities, but right of reply to individuals.
- **Scope.** MS differ in terms of material coverage: in some MS the same laws on rights of reply cover all types of media, including printed press, radio, audiovisual services, etc., whereas in others<sup>140</sup> there are separate laws for different media (e.g. FR has separate laws establishing right of reply in the audiovisual sector and in other types of media). All in all, around half of the countries have separate laws for the broadcasting media sector.
- **Veracity of information.** Some MS<sup>141</sup> maintain that only false or misleading information can be corrected. Other countries<sup>142</sup> do not have such a requirement. In FI, the requirement of veracity is used only when the complaint addresses a factual statement.
- **Type of statements.** Although the majority of countries in the EU only allow correction or reply to statements of a factual nature<sup>143</sup>, others allow a reply to opinions as well<sup>144</sup>.

Overall, there is a wide variety of approaches to the right of reply in MS. While there is a growing consensus regarding the implementation of right of reply in a strict sense (rectification of false facts), there is a diversity of perspectives on when and how negative information or injurious opinions should be regulated. This has considerable implications when exercising such rights: even in similar situations, a person can achieve different outcomes depending on the national legislation of the country where the broadcaster is established.

<sup>133</sup> Recommendation 2006/952/EC of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry.

<sup>134</sup> Koltay, András, *The Right of Reply in a European Comparative Perspective* (October 17, 2012). Available at SSRN: <http://ssrn.com/abstract=2162935> or <http://dx.doi.org/10.2139/ssrn.2162935>;

<sup>135</sup> BE (FR), DE, ES, FR, LT, LU, HU, NL, AT, PL, FI.

<sup>136</sup> BE (FL), BE (DE), BG, CZ, DK, EE, IE, EL, HR, IT, CY, LV, MT, PT, RO, SI, SK, SE, UK.

<sup>137</sup> Right of rectification covers correction of misleading or false information, while broader right of reply also allows complainant to present her/his position in a comprehensive manner.

<sup>138</sup> BE (FL), BE (FR), BE (DE), BG, CZ, DK, IT, CY, LT, HU, NL, AT, PL, SK, SE.

<sup>139</sup> EL, ES, FR, HR, LV, LU, MT, PT, RO, SI, UK.

<sup>140</sup> General legal acts: BE (FR), AT, DK, FI, HR, LT, LU, HU, MT, NL, PL, SI. Legal acts on broadcasting/radio and television/electronic mass media: BE (FL), BE (DE) (also covers cinema), BG, CY, CZ, DE, EE, LV, SK, SE, UK. Legal acts on television/audiovisual content: EL, ES, FR, IT, PT, RO.

<sup>141</sup> BE (FL), BE (FR), BE (DE), BG, DK, EE, IE, IT, CY, LV, LT, HU, NL, AT, PL, RO, SK, SE.

<sup>142</sup> CZ, DE, EL, ES, FR, HR, LU, MT, PT, SI, UK.

<sup>143</sup> BE (FL), BE (FR), BE (DE), BG, CZ, DK, DE, EE, IE, IT, CY, LV, LT, HU, NL, AT, PL, RO, SI, SK, SE.

<sup>144</sup> EL, ES, FR, HR, LU, MT, PT, FI, UK.

**Table 4.1. Right of reply: measures and procedures in Member States**

MS	Factual statements or opinion	Only false or misleading statements?	Separate or general legislation? <sup>145</sup>	Body in charge <sup>146</sup>	Right of rectification or broader right of reply?
BE (FL)	Factual statements	Yes	Separate	Regulatory body	Rectification
BE (FR)	Factual statements	Yes	Separate	Judicial body	Rectification
BE (DE)	Factual statements	Yes	Separate	Regulatory body	Rectification
BG	Factual statements <sup>147</sup>	Yes	Separate	Regulatory body	Rectification <sup>148</sup>
CZ	Factual statements	No	Separate	Regulatory body	Rectification
DK <sup>149</sup>	Factual statements	Yes	General	Regulatory body <sup>150</sup>	Rectification
DE	Factual statements	No	Separate	Judicial body	Rectification
EE	Factual statements	Yes	Separate	Regulatory body	Rectification <sup>151</sup>
IE	Factual statements	Yes	Separate	Regulatory body	Rectification
EL	Opinions and factual statements	No	Separate <sup>152</sup>	Regulatory body	Broader right of reply
ES <sup>153</sup>	Opinions and factual statements	No	Separate	Judicial body <sup>154</sup>	Broader right of reply
FR <sup>155</sup>	Opinions and factual statements	No	Separate	Judicial body	Broader right of reply
HR <sup>156</sup>	Opinions and factual statements	No	General	Regulatory body	Broader right of reply
IT	Factual statements	Yes	Separate	Regulatory body	Rectification
CY	Factual statements	Yes	Separate	Regulatory body <sup>157</sup>	Rectification
LV	Factual statements	Yes	Separate	Regulatory body	Broader right of reply
LT	Factual statements <sup>158</sup>	Yes	General	Judicial body	Rectification

<sup>145</sup> This concerns a question, whether there are separate rules governing right of reply in audiovisual and/or broadcasting services, or general rules, governing right of reply in different mediums apply.

<sup>146</sup> AudioVisual Media Services – Regulatory Authorities’ Independence And Efficiency Review.

<sup>147</sup> Although not expressed clearly in law, Code of Ethics of Bulgarian Media seems to interpret right of reply as applying to factual statements only. Found: <http://www.mediaethics-bg.org/index.php?do=17&lang=bg>

<sup>148</sup> Although not expressed clearly in law, Code of Ethics of Bulgarian Media seems to interpret right of reply as the right of rectification. Found: <http://www.mediaethics-bg.org/index.php?do=17&lang=bg>

<sup>149</sup> The Media Liability Act. Found: <http://www.pressenaevnet.dk/Information-in-English/The-Media-Liability-Act.aspx>

<sup>150</sup> It is under the responsibility of the Press Council instead of Radio and Television Board.

<sup>151</sup> Although not expressed clearly in law, Code of Ethics for the Estonian press seems to interpret right of reply as the right of rectification. Found: [http://ethicnet.uta.fi/estonia/the\\_code\\_of\\_ethics\\_for\\_the\\_estonian\\_press](http://ethicnet.uta.fi/estonia/the_code_of_ethics_for_the_estonian_press)

<sup>152</sup> Presidential Decree 100/2000. Found: <http://www.synigoroskatanaloti.gr/docs/law/gr/PD100-2000.pdf>

<sup>153</sup> Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual. Found: <http://www.boe.es/boe/dias/2010/04/01/pdfs/BOE-A-2010-5292.pdf>

<sup>154</sup> Data from an interview with national regulator.

<sup>155</sup> Loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle. Version consolidée au 06 novembre 2015 Found:

[http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=D24E37C3D872E0FA86CA332AC2C2C343.tpdila14v\\_2?idSecti onTA=LEGISCTA000006089720&cidTexte=JORFTEXT000000880222&dateTexte=20151106](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=D24E37C3D872E0FA86CA332AC2C2C343.tpdila14v_2?idSecti onTA=LEGISCTA000006089720&cidTexte=JORFTEXT000000880222&dateTexte=20151106)

<sup>156</sup> Official Gazette No. 46 of 16 April 2010. [http://www.e-mediji.hr/files/legal/Rules\\_-\\_right\\_to\\_correction\\_332.pdf](http://www.e-mediji.hr/files/legal/Rules_-_right_to_correction_332.pdf)

<sup>157</sup> Νόμος πού ενοποιεί και αναθεωρεί τούς νόμους πού ρυθμίζουν την ίδρυση, εγκατάσταση και λειτουργία ραδιοφωνικών και τηλεοπτικών σταθμών. Found: <http://www.crtac.org.cy/images/users/1/CRTA-LAW7%281%2998%20FINAL%202011.pdf>

<sup>158</sup> Although Article 15 of Law on the Provision of Information to the Public stipulates possibility to reply to biased information in any manner, Article 44 which deals with the right of reply in the same media foresees measures to rectify false factual information only.

MS	Factual statements or opinion	Only false or misleading statements?	Separate or general legislation? <sup>145</sup>	Body in charge <sup>146</sup>	Right of rectification or broader right of reply?
LU <sup>159</sup>	Opinions and factual statements	No	General	Judicial body	Broader right of reply
HU	Factual statements	Yes	General	Judicial body	Rectification
MT	Opinions and factual statements	No	General	Regulatory body	Broader right of reply
NL <sup>160</sup>	Factual statements	Yes	General	Judicial body	Rectification
AT	Factual statements	Yes	General	Judicial body	Rectification
PL <sup>161</sup>	Factual statements	Yes	General	Judicial body	Rectification
PT	Opinions and factual statements	No	Separate	Regulatory body <sup>162</sup>	Broader right of reply
RO	Factual statements	Yes	Separate	Regulatory body	Broader right of reply
SI <sup>163</sup>	Factual statements	No	General	Regulatory body <sup>164</sup>	Broader right of reply
SK	Factual statements	Yes	Separate	Regulatory body	Rectification
FI	Opinions and factual statements	Depends on whether statement is factual or an opinion	General	Judicial body <sup>165</sup>	Both (Broader right of reply for individuals and Rectification for legal persons)
SE <sup>166</sup>	Factual statements	Yes	Separate	Regulatory body	Rectification
UK	Opinions and factual statements	No	Separate	Regulatory body	Broader right of reply

Source: unless indicated otherwise, all information is taken from national laws provided in AVMSD database. Found: <http://avmsd.obs.coe.int/cgi-bin/search.php>

### 4.3. Options and scenarios

The Terms of reference did not indicate any options other than the *status quo*. Therefore, the impacts of right of reply are only considered under specific scenarios (i.e. changes to the scope of the AVMSD), but not policy options. The AVMSD establishes right of reply in the case of broadcast, incorrect facts. It does not specify whether right of elaborate reply should be granted, but rectification is considered an adequate action. Right of reply as currently established under the AVMSD only concerns linear broadcasters. Recital 103 of the AVMSD states that the “*right of reply is an appropriate legal remedy for television broadcasting and could also be applied in the on-line environment.*” Since it only postulates possibility, rather than obligation, the extension of material scope scenario would mean extension of regulation both to on-demand services and online platforms<sup>167</sup>. Impacts on the preservation of free and

<sup>159</sup> Texte coordonné du 30 avril 2010 de la loi du 8 juin 2004 sur la liberté d’expression dans les medias. Found: <http://www.legilux.public.lu/leg/a/archives/2010/0069/a069.pdf>

<sup>160</sup> Burgerlijk Wetboek Boek 6. Found: [http://wetten.overheid.nl/BWBR0005289/Boek6/Titel3/Afdeling1/Artikel167/geldigheidsdatum\\_06-11-2015](http://wetten.overheid.nl/BWBR0005289/Boek6/Titel3/Afdeling1/Artikel167/geldigheidsdatum_06-11-2015)

<sup>161</sup> Prawo prasowe. Found: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19840050024>

<sup>162</sup> Regulatory body is responsible not only for media issues.

<sup>163</sup> Zakon o medijih uradno prečiščeno besedilo (ZMed-UPB1). Found: <https://www.uradni-list.si/1/content?id=76040>

<sup>164</sup> In this case it is not specifically an institutional body, but an inspector under the Ministry of Culture.

<sup>165</sup> Act on the Exercise of Freedom of Expression in Mass Media 460/2003. Found: <http://www.finlex.fi/fi/laki/kaannokset/2003/en20030460.pdf>

<sup>166</sup> Radio and Television Act. Found: <http://www.radioochtv.se/documents/styrdokument/radio%20and%20television%20act.pdf>

<sup>167</sup> However, in such case not all costs would come due to AVMSD. In countries such as Hungary where non-linear services are already subject to right of reply requirements, only extension to online platforms would create enforcement and compliance costs.

pluralistic media are highly relevant for the option of maintaining status quo, as right of reply may be used to silence particular criticisms, even if they are legitimate.

**Option 1. Maintain the *status quo*, i.e. keeping in place the current EU rules on right of reply provisions.**

*Status quo* regulation is discussed in section 4.1 above. The implications of this option in terms of impacts and scenarios are presented in table 4.2 below.

**Table 4.2. Right of reply under different scenarios**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope	Scenario: extend geographical scope
Option 1. Maintain the <i>status quo</i>	All MS ensure at least the right of rectification, which is in line with the AVMSD. Therefore, all national legislations already ensure right of reply in accordance with European regulation. This scenario reflects status quo costs of implementation of right of reply.	The AVMSD currently covers only linear services, hence, significant changes at the EU level. However, most MS enforce right of reply irrespective of the medium of information. Online platforms without editorial responsibility are not likely to be covered and therefore are not included in the analysis.	This scenario would enable complainants to address service providers based outside the EU.

Source: Visionary Analytics, 2015

#### 4.4. Impacts on administration and enforcement costs

Table 4.3 summarises the impacts of maintaining the *status quo* on administration and enforcement costs faced by national regulators under different scenarios. In eleven MS, the costs of enforcing the right of reply is zero because this issue falls under the jurisdiction of judicial bodies. However, even in MS where right of reply is enforced by a national regulator, the costs should be very small, because:

- Data from the interviews indicates that the use of right of reply in the audiovisual media sector is rare compared to other types of media;
- The role of national regulators is reactive, i.e. only responding to complaints;
- In Hungary, no significant increase in the number of right of reply cases has occurred due to right of reply being extended to non-linear services;
- In Ireland, although a very detailed procedure for the right of reply exists, in no case did the Broadcasting Authority of Ireland have to intervene because the issues were settled between the parties or by the court. Hence, the national regulator has not incurred any costs.

**Table 4.3. Impacts of maintaining *status quo* on administrative and enforcement costs**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope	Scenario: extend geographical scope
Option 1. Maintain the <i>status quo</i>	No impact	Negligible	Negligible

Source: Visionary Analytics, 2015.

If material scope was extended, administration and enforcement costs for national regulators would not increase significantly because:

- In eleven EU MS judicial bodies are responsible for enforcing the right of reply;
- The right of reply already covers non-linear in some MS;
- Most on-demand services provide content which is either already transmitted through linear means and must comply with right of reply requirements, or provide content which should not normally give rise to a right of reply (see table 4.4 in section 4.5);
- The right of reply is enforced reactively, which does not impose continuous costs. Furthermore, right of reply is rarely used in those countries which have been studied,

suggesting that even with extension there should be no significant increase in enforcement costs.

If the geographical scope was extended, the right of reply should not significantly increase administrative and enforcement costs for national regulators because:

- Broadcasters established outside the EU tend to provide content (e.g. movies, adult entertainment) that does not evoke right of reply.
- The right of reply is enforced reactively (which does not impose continuous monitoring costs), and the right of reply is used rarely in the studied countries.

#### 4.5. Impacts on administrative burden and compliance costs

Table 4.4 summarises the anticipated impact of the right of reply regulation on the administrative burden and compliance costs faced by economic operators under different scenarios. All interviewed service providers argued that the costs would be negligible and therefore very difficult to quantify. The main compliance actions include review of complaints, satisfaction of request (if considered legitimate) and legal expenses if a settlement is not reached. The costs of dealing with one request (excluding legal expenses of going to court) range from half an hour to 8 hours. National broadcasters receive between ten and a few hundred requests per year, which require less than one full time equivalent of labour to deal with. Furthermore, the right of reply would most likely be legally ensured even without EU-level regulation. Therefore, the compliance costs borne by broadcasters attributable directly to the AVMSD do not comprise a significant share of service providers' turnover.

**Table 4.4. Impacts of maintaining *status quo* on administrative burden and compliance costs**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope	Scenario: extend geographical scope
Option 1. Maintain the <i>status quo</i>	No impact	Negligible	Negligible

Source: Visionary Analytics, 2015.

Different scenarios should not increase the administrative burden or compliance costs significantly:

- Expansion of the material scope is not likely to lead to significant additional costs because: a) a significant part of the on-demand services and online platforms provide content that has previously been broadcast linearly and therefore must comply with appropriate regulations (see table 4.5); b) a significant part of on-demand services and online platforms provide content which does not normally evoke right of reply (e.g. movies, adult entertainment, etc., see table 4.5); and c) right of reply is not likely to apply to platforms that lack editorial responsibility (because they provide user generated or other third party content).
- In the case of extending geographical scope, the additional administrative burden and compliance costs would be negligible because: a) there are no broadcasters targeting EU MS with significant market share (see section 1.3); and b) compliance costs per service provider established outside the EU should be similar to the costs faced by broadcasters established within the EU MS, i.e. negligible.

**Table 4.5. Right of reply applicability to EU-based on-demand channels based on their genre**

Indicator	On-demand services that do not provide content which could evoke right of reply <sup>168</sup>	On-demand services that mostly provide content from linear services <sup>169</sup>	On-demand services that provide content potentially subject to right of reply <sup>170</sup>	Unidentified services
Number of on-demand services	865	1313	262	63
Expected administrative burden and compliance costs and cost drivers	None	Negligible, main costs would be incurred by placing reply in on-demand medium	Small, main costs would be incurred by complying with right of reply and placing reply in on-demand medium	Unknown

Source: Visionary Analytics, 2015. Based on data from MAVISE database.

#### 4.6. Social impacts: preservation of free and pluralistic media

Regulation of right of reply may impact both freedom and pluralism of media and the creation of a single European audiovisual market. The former issue is discussed in more detail below. Concerning the latter issue, interview data indicate that extension of the geographical scope would positively impact on the creation of a single market by providing a level playing field for service providers established within and outside the EU. On the other hand, extension of the material scope would most likely positively impact on increasing unification of the market in the future, when more non-linear services are established.

Table 4.6 summarises the social impacts of maintaining the *status quo* under different scenarios.

**Table 4.6. Impacts on preservation of free and pluralistic media**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope <sup>171</sup>	Scenario: extend geographical scope
Option 1. Maintain the <i>status quo</i>	Current regulation provides an important safeguard to media freedom and pluralism. However, an extension of right of reply in national legislation, beyond right of rectification, is correlated with lower media freedom.	Low impact in short term, medium impact in long term. It could provide a level playing field for broadcasters and contribute to safeguarding media freedom and pluralism irrespective of the type of service. In the short term, the impact is likely to be small due to the small number of service providers. The importance of the extension of material scope is likely to increase as online audiovisual media sector grows.	Low impact. This could provide a level playing field for broadcasters and contribute to safeguarding media freedom and pluralism irrespective of the place of establishment. However, the impacts are likely to be limited (at least in the short term) due to a low number of potentially affected channels.

Source: Visionary Analytics, 2015.

As shown, no significant impacts on the preservation of a free and pluralistic media are expected from an extension of the right of reply under different scenarios. It is possible that

<sup>168</sup> Includes the following genres: archives, film trailers, children/ animation, documentary, film, film and TV fiction, music, TV fiction, adult, short movies, search tool for on-demand audiovisual content.

<sup>169</sup> Includes the following genres: branded channel, catch-up TV service.

<sup>170</sup> Includes the following genres: recorded sports events, sport events, video news pages, video pages of portals, general interest programmes, generalist, lifestyle and health. However, even with these services it is likely that some of the material would be taken from linear service providers.

<sup>171</sup> Since extension of material scope to services without editorial responsibility would not directly impact media, impacts of such extension on preservation of free and pluralistic media are not considered.

changes of content of the right of reply regulation could have stronger consequences for media freedom. However, the available evidence suggests that simply changing the scope would not influence media freedom and pluralism very much. Furthermore, keeping in mind that right of reply cases in audiovisual media sector are not abundant, the impacts are indeed likely to be negligible.

### **Option 1: maintain *status quo*.**

#### ***Hypotheses***

On the one hand, right of reply is seen as a means to ensure media pluralism and freedom because it:

- Provides a means to challenge the assertion of incorrect facts and biased broadcasting;
- Promotes objectivity and pluralism of media reporting by increasing incentives and discipline, as well as providing broadcast time for opposing opinions;
- Limits prosecution for defamation and provides an easy way to settle disputes, thus decreasing the incentives to strictly self-censor content.

On the other hand, the right of reply may also be seen as a means to infringe on editorial freedom and restrict media from taking certain positions because it:

- Requires publication of certain information. This limits the freedom of expression in media and lead to opportunity costs;
- May be used by various interest groups to harass the media;
- If right of reply is broader than right of rectification, it heavily interferes with editorial freedom because it is required that an elaborate argument is published without the initiative of the media outlet. This leads to self-censorship of media, especially on more controversial issues, because of the requirements to grant right of reply.

Article 19 of Memorandum<sup>172</sup> stresses that it sees the right of reply as an issue that should be voluntary rather than compulsory. In the case where the right of reply is obligatory, it should be interpreted as right of rectification, since otherwise it would impose limits on media freedom.<sup>173</sup> While the dominant opinion is that the right of rectification is fundamental to ensuring free and pluralistic media, the case for a broader right of reply is not so straightforward. Empirical evidence for assessing these positions mostly relates to the type of right of reply which is adopted in national legislations of MS. Since all countries include the right of reply in one way or another, it is impossible to assess the potential effect of abolishing it. If a specific EU Member ensures only right to rectification, it should be expected that the media will be freer than in a MS which interprets right of reply in a broader manner.

#### ***Evidence***

The majority of stakeholders interviewed view the right of reply (conceived in the narrow sense) as an important (albeit rarely used) safeguard of media freedom and pluralism. Not a single interviewee argued for abolishing the relevant provision in the AVMSD. Key challenges, however, stem from the application of the right of reply in national legislation. Broad interpretations can lead to self-censorship and harassment of the media. For example, in HU a journalist is responsible for the veracity of information even if she is quoting a third person. To assess the extent to which broad conceptions are related to media freedom, we have carried out a more in depth analysis.

As discussed in section 4.1, MS have adopted varying approaches to right of reply. In order to understand how such differences impact on media freedom, we have run a cross-sectional

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<sup>172</sup> Article 19 Global Campaign for Free Expression. Memorandum on the draft Council of Europe Recommendation on the right of reply in the new media environment. Found: <https://www.article19.org/data/files/pdfs/analysis/council-of-europe-right-of-reply.pdf>

<sup>173</sup> Ibid.

regression analysis. It includes data for 27 EU Members (with the exception of Finland, see Box 4.1 for causes of omission) for 2015. The results of the regression analysis are estimated using ordinary least squares and are presented in table 4.7.

#### **Box 4.1 Issues in measuring impact of right of reply on media freedom**

##### **Measuring media freedom**

One of the main issues with current indicators of media freedom is that they do not make the distinction between audiovisual and other types of media. While it is true that Freedom House previously published its Freedom of the Press Index, which differentiated between print and broadcast press, it is no longer true from 2001 onwards.<sup>174</sup> Therefore, it is necessary to use measures covering all types of media. Two of the most detailed indices are Freedom of the Press Index published by Freedom House and World Press Freedom Index published by Reporters Without Borders.<sup>175</sup> Out of these two, the World Press Freedom Index is preferred because: a) it collects data from people residing in studied countries; b) more people per country participate in the survey, leading to less bias; and c) it includes a separate category for self-censorship which might be influenced by right of reply rules.<sup>176</sup>

The questionnaire for the 2013 World Press Freedom Index<sup>177</sup> includes questions on right of response, which could lead to problems in measuring the impact of right of reply on this index. However, two of the questions should provide similar answers in all MS: E.18 *Does the law require that an individual have a right of response to a news article concerning him?*, which would be the case in all EU countries. Question E.19 *In practice, do public employees, government officials, politicians or members of religious bodies enjoy a specified right of response?* Also provides a similar negative response in all EU countries. The only question on right of reply which might vary across Member States is E18.1 - *Is this law enforced?* However, this is not directly dependent on *de jure* regulation of right of reply and should not distort results.

##### **Measuring the right of reply**

The scope of the right of reply is measured according to the definition provided in Table 4.1 Where the right of rectification and broad right of reply co-exist (Finland) as discussed in chapter 4.2, the country was removed from the sample so as not to distort results. This variable is a dummy variable (i.e. the only two values are 0 (right of rectification) and 1 (broader right of reply)). It is expected that the relationship between these variables is positive, i.e. broad right of reply leads to high value in World Press Freedom Index.<sup>178</sup> This would mean that the broad right of reply has a negative impact on media freedom, because the higher the value of World Press Freedom Index, the less free the media in the country.

##### **Control variable World Doing Business Report: Distance to Frontier 2015**

Media freedom might be heavily influenced by the environment for doing business, especially in the private media sector, since conditions for overall private media establishment and operation might provide positive/negative effects for alternative media outlets. Data for the analysis is taken from the World Doing Business Report 2015.<sup>179</sup> The Distance to Frontier variable measures how far a particular country is from ideal regulation achieved anywhere since 2005, therefore it serves as a good measure on the overall performance of a country with respect to business regulation. It is expected that a high World Doing Business Distance to Frontier value is associated with a low World Press Freedom Index value, meaning that the easier it is to do business in the country, the freer the media is.

Source: Visionary Analytics, 2015.

<sup>174</sup> Freedom of the Press Data 2015. Found: <https://freedomhouse.org/report-types/freedom-press>

<sup>175</sup> Reporters without Borders. World Press Freedom Index 2015. Found: <https://index.rsf.org/#/index-details>

<sup>176</sup> Schneider, L. (2014). *Media Freedom Indices: What They Tell Us – And What They Don't. A Practical Guidebook*. Edition DW Akademie #01/2014. Found: <http://www.dw.com/popups/pdf/44108938/media-freedom-indices-what-they-tell-us-and-what-they-dont-pdf.pdf>

<sup>177</sup> Reporters without Borders. World Press Freedom Index 2013. Questionnaire. Found: <http://www.rsf.org/index/qEN.html>

<sup>178</sup> With respect to the World Press Freedom Index, the higher the value, the lower the freedom. To increase normality of the variable, log transformation was performed.

<sup>179</sup> World Bank Group. Doing Business. Distance to Frontier. <http://www.doingbusiness.org/data/distance-to-frontier>

**Table 4.7. Results of the regression (OLS) analysis of the impact of right of reply on media freedom.**

World Press Freedom Index			
Criteria	Coefficient	Standard error	p-value
Constant	5.38319	1.02487	2.2005 ***
Broad right of reply	0.318100	0.126049	0.0186**
Doing business	-0.0362122	0.0129472	0.0100**
Adjusted R-squared = 0.376437			

Notes: N=27; Robust standard error was used to correct for heteroscedasticity; Residuals are not normal, thus p-values should be interpreted very carefully; Variance Inflation Factor indicates that there are no collinearity problems. \* shows that statistical significance is between 0.1 and 0.05. \*\* shows that statistical significance is between 0.05 and 0.01. \*\*\* - shows that statistical significance is less than 0.01.

Source: Visionary Analytics, 2015.

First of all, as expected, if a MS ensures a broad right of reply in its legislation, the media is less free. Secondly, the easier it is to do business in a country, the freer the media. Both results are statistically significant at a 5% level. The model explains 37.6% variation in the World Press Media Index. Since the dependent variable was log-transformed, the exact effect of a broad right of reply might be measured by taking the exponent of  $\beta_1$  which is approximately 1.375. This means that if the country has a broad right of reply, its World Press Freedom Index value is inflated by 37.5%, all other things being equal. However, the results are sensitive to variations in data. For example, if Finland were included under the interpretation of a broad right of reply, even if right of reply would retain the same impact direction on media freedom, the result would lose statistical significance.

All in all, there are good indications that current regulation, as established in Article 28 of the AVMSD has a more favourable impact on media freedom than would be the case if the right of reply obligations were broader. This provides support for keeping the right of reply provision as it is rather than broadening it.

Public consultation revealed that stakeholders see current regulation as preferable over possible changes, such as obligations to publish retractions and corrections on simple requests of citizens, if information is shown to be incorrect. The main arguments in favour of the *status quo* were:

- Right of reply is already incorporated into national laws, and specific procedures should fall under the jurisdiction of a MS;
- Setting broader rules of right of reply would limit media freedom and discourage journalists;
- Broadening right of reply would increase its abuse.

In addition to the above discussion, some respondents stressed that the requirement for an apology would be too strong an obligation, would harm the media and be an excessive requirement. Therefore, it seems that stakeholders see the broader right of reply as a threat to free and pluralistic media, but are generally in favour of the EU-level requirement of right of reply as a right of rectification.

### **Alternative scenarios: extension of material and geographical scope**

Additionally, different scenarios might affect media freedom and pluralism. However, no significant changes should be expected. As discussed in section 4.5, if the material scope was extended, it would affect a small number of services. However, this is likely to change in the future, as the number of non-linear service providers continues to grow. In the case of an extension of the geographical scope, impact would be low because services established outside the EU are less likely to create causes for right of reply and therefore the number of cases should not be high.

Additional evidence, concerning the right of reply under different scenarios, comes from interviews with stakeholders conducted in selected MS:

- *Scenario: expand material scope.* On the one hand, the majority of respondents indicated that the effects of extending the material scope on media freedom would be

negligible to zero. Most, though not all, agreed that extension should be limited to those areas where editorial responsibility exists. On the other hand, opinions were expressed that an extension of material scope would be redundant since it is mostly entertainment, music or movies that are available through such means and, therefore, there would be no need for right of reply.

***Scenario: expand geographical scope***

Respondents who commented on this were unanimously in favour of an extension of geographical scope, even given the implementation and enforcement problems. It would support more equal conditions for service providers. It could be argued that this should lead to higher media pluralism as there would be no competitive advantage for specific market players.

## 5. Must-carry and prominence

### 5.1. Regulation and contextual information

"Must carry" regulation is defined in the Article 31 of the Universal Service Directive<sup>180</sup>. It stipulates that:

*Member States may impose reasonable "must carry" obligations, for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcast channels. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.*

The Directive also stipulates that MS should decide if a network provider can receive compensation for hosting channels that fall under the "must carry" regulation.<sup>181</sup> Programmes that most often fall under "must carry" regulation are: (i) public service channels, (ii) cultural channels, (iii) relevant regional channels, and (iv) channels aimed at a particular minority in a country<sup>182</sup>.

The Electronic Program Guide (EPG) regulations of the European Union are defined in Article 5(b) of the Access Directive<sup>183</sup>. It stipulates that access to EPGs may be imposed by national regulatory authorities for electronic communications (NRAs) on fair, reasonable and non-discriminatory terms. Recital 10 of the Access Directive states that Member States can impose additional actions, other than those that foster competition, in order to promote cultural diversity and pluralism in the media.

"Must-carry" regulation and EPG regulations under national legislation address distinct objectives, but can be combined. As stated in the Framework Directive on a common regulatory framework for electronic communications networks and services (recital 5): "The separation between the regulation of transmission and the regulation of content does not prejudice taking into account the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection."<sup>184</sup> In practice, several EU MS require EPGs to ensure e.g. that "must carry" programmes should be shown on the first page of the EPG<sup>185</sup>. In this way, MS may ensure that channels of general interest are not only transmitted and included in cable packages, but can also be easily found.

"Must-carry" and EPGs regulations were introduced to give privilege to general interest channels, with the view of fostering media pluralism and freedom, as well as safeguarding fair

<sup>180</sup> The European Parliament and the Council of the European Union, "Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). Amended by the Directive 2009/136/EC", November 2009

<sup>181</sup> Article 31(2) of Universal Service Directive.

<sup>182</sup> Nico Van Eijk and Bart van der Sloot, "Must-Carry Regulation: A Must or a Burden?", *IRIS-plus* 2012-5, 2013.

<sup>183</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities. Amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009.

<sup>184</sup> The European Parliament and the Council of the European Union, "Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC and Regulation 544/2009", 2009

<sup>185</sup> Art 6(4) of the Access Directive clarifies that conditions applied in relation to conditional access systems are without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities.

competition between channel providers.<sup>186</sup> More specifically, “must carry” regulation in the EU was created to harmonise the scope within which MS are able to ensure that end-users have easy access to general interest channels and that they have a diverse number of programs to choose from. It owes its existence to concerns that privately owned distribution networks may preferably provide commercially successful channels, while not transmitting sufficient general interest channels, if left unchecked. In addition, regulatory requirements were introduced under national media law to ensure pluralism in the media, and to allow every group in society to express its views freely.

The EPG was introduced to make it easier for end-users to find and decide which programs they want to watch. EPG regulation, among other things, seeks to safeguard the notion of fair competition. It does this by preventing EPG affiliated with private networks from giving favourable treatment to specific channel providers with which the network is affiliated or has an agreement<sup>187</sup>. In addition, some MS use this regulation to grant favourable spots on the EPG to channels that fall under the “must carry” obligation (e.g. they are shown on the first page of the EPG). In this way, channels that (according to policy makers in MS) are important to the population are not treated less favourably in comparison with more commercially successful channels.

Currently, EU level provisions on “must-carry” and EPGs apply only to linear services (although MS can extend these rules to on-demand content). It also does not apply to digital platforms offering on-demand content. For example, the regulation does not apply to app stores of smart TVs that often provide a gateway for on-demand content. Increasing popularity of such digital platforms and on-demand content poses a number of challenges related to future relevance, as well as technology neutrality of regulation.

## 5.2. Implementation in the Member States

Most MS have adopted “must carry” regulations in their national legislation (see Table 5.1). However, there is significant variation between them in terms of:

- **Who is covered?** In most cases, public service broadcasters and/or local/regional broadcasters are included under “must carry” rules. Although, in a number of countries (see Table 5.1), additional requirements are also set (e.g. all terrestrial free-to-air channels should be covered) so that private non-PSB<sup>188</sup> channels are also covered.
- **Who pays?** At MS level, here is considerable variation<sup>189</sup> in the regulation of arrangements between broadcasters and platforms in terms of who covers the costs of production and distribution of content. In many cases, zero payment (i.e. neither broadcasters, nor platforms receive payments) agreements have been reached between the involved parties, although significant variation exists.
- **Trends in the number of channels covered.** Although in some MS (e.g. Ireland, Hungary), the number of channels covered by “must carry” rules continues to grow, elsewhere the trends are reversed. Commercial broadcasters (due to changes in regulation or voluntarily) opted out of “must carry” in Sweden (in 2010), Lithuania (in 2011), the Czech Republic and Estonia (2012), Latvia and Slovakia (in 2013), etc.
- **Material scope of regulation.** In most MS “must carry” refers to linear services. However, some MS (e.g. Poland) have extended the scope to include internet-based on-demand services<sup>190</sup>.

<sup>186</sup> Nico Van Eijk and Bart van der Sloot, “Must-Carry Regulation: A Must or a Burden?”, *IRIS-plus* 2012-5, 2013.

<sup>187</sup> Bart van der Sloot, „Walking a Thin Line: The Regulation of EPGs”, *Jipitec*, Vol. 3., 2012.

<sup>188</sup> This can include even shopping TV channels, see ECJ Case C-336/07

<sup>189</sup> As provided for in Art 31(2) of the Universal Service Directive 2002/22/EU

<sup>190</sup> Chris Dziadul, “Poland changes must-carry rules”, 2013.

**Table 5.1. "Must carry" rules in Member States**

Does not apply "must carry" regulation	"must carry" only PSB and local broadcasters	"must carry" covers PSB, local and private broadcasters
CY, EL, ES, IT (except local), LU,	CZ, DK, EE, FI, FR, HR, HU, LV <sup>191</sup> , LT, NL <sup>192</sup> , SE, SK <sup>193</sup> , UK*.	AT, BE (FR and NL) <sup>194</sup> , BG <sup>195</sup> , DE, IE, MT, PL, PT <sup>196</sup> , RO, SI.

Source: Organization for Security and Co-operation in Europe Office of the Representative on Freedom of the Media, Best practices regarding "must carry" and "must offer" rules for cable operators and broadcasters, 2015. Note: although several PSB channels in the UK are privately owned.

A number of MS have regulations on presentational aspects of EPGs (see Table 5.2 below). Typically, EPG regulation establishes general principles on fairness and non-discrimination. These provide a backstop against low prominence of PSBs, rather than stipulate the specific position of PSBs on the EPG. For example, the Broadcasting Act (Article 74) in Ireland entitles the regulatory authority to sign EPG contracts that prioritise general interest content. However, so far, there has been no need to do so since platforms ensured appropriate prominence of designated channels even without explicit intervention from the regulator. Regulation adopted in the UK requires EPG providers to give appropriate prominence to public service channels. Regulation also requires that the adopted approach for ensuring prominence should be objectively justifiable. This led to the evolution of self-regulatory mechanisms that ensure that PSBs are positioned no more than one click from the EPG homepage.<sup>197</sup>

**Table 5.2. EPG regulation in Member States**

No regulation on findability/ no explicit reference to EPG regulation in the legislation.	Regulations on findability/ EPG in place.
CZ, DK, EE <sup>198</sup> , EL, ES <sup>199</sup> , FI, HR, LT, LU, LV, MT, RO, SE, SK, SI.	AT <sup>200</sup> , BE (FR and NL) <sup>201</sup> , BG, CY, DE, FR, HR, HU <sup>202</sup> , IE, IT, NL <sup>203</sup> , PL, PT <sup>204</sup> , UK.

Source: Bart van der Sloot, Walking a Thin Line: The Regulation of EPGs, 3 (2012) JIPITEC 138, para. 1 and OECD, Communications Outlook 2009.

### 5.3. Options and scenarios

A total of five options will be assessed and the implications of each are outlined below. It should be noted that not all options are feasible and relevant under alternative scenarios. Since options 1 and 2 explicitly refer to linear broadcasting, alternative scenarios are not relevant. Options 3 and 4 refer to the extension of material scope and are therefore not relevant under the *maintain current material and geographical scope* scenario.

<sup>191</sup> IRIS MERLING, Ieva Andersone, "Changes to the "Must-Carry" Rules in Latvia". <<http://merlin.obs.coe.int/article.php?id=14114>> [Last accessed December 28, 2015].

<sup>192</sup> "Law of December 29, 2008 Establishing a new Media Law (Media Act 2008)", Section 6.3.1.2.

<sup>193</sup> "Slovakia Act No. 308 of 14th September 2000 on Broadcasting and Retransmission and on Amendments of Act No. 195/2000 Coll. on Telecommunications", section 17.

<sup>194</sup> Although due to stringent criteria applied to private broadcasters de facto only PSB and local broadcasters are currently covered by must-carry.

<sup>195</sup> Centre for Media Pluralism and Media Freedom, "Monitoring Media Pluralism in Europe - Testing and Implementation of the Media Pluralism Monitor", 2014.

<sup>196</sup> ANACOM (PT), "Portugal Law of Electronic Communications", 2015, Article 43.

<sup>197</sup> Bart van der Sloot, "Walking a Thin Line: The Regulation of EPGs", *jipitec*, Vol. 3., 2012.

<sup>198</sup> In Estonia, there is only a regulation that stipulates that EPGs should include all the relevant information about broadcasts and programmes. Estonian Median Service Act, Article 16.

<sup>199</sup> Regulation in Spain only requires that broadcasters should provide information about their programmes to the EPG providers.

<sup>200</sup> EPGs in Austria should be arranged under fair, equal and non-discriminative conditions. Austrian Federal Act on Audio-visual Media Services, Article 27a.

<sup>201</sup> Government may regulate <...> presentational aspects of EPGs, if this is necessary to ensure accessibility.

<sup>202</sup> EPGs are not regulated directly in Hungary, however network providers must put must-carry channels first in the TV programme guide. Hungarian Media Act, Section 74.

<sup>203</sup> EPG regulations are mentioned in law however, they are sparse, and thus are never applied.

<sup>204</sup> EPGs in Portugal should be arranged under fair, equal and non-discriminative conditions. Portugal Law of Electronic Communications, Article 77.

**Option 1. Maintain the status quo, i.e. keeping in place the current EU rules on "must carry"/ EPG related provisions (i.e. no extension of the right of EU MS to cover services other than broadcast).**

*Status quo* regulation is discussed in section 5.1. Since this option does not foresee extension of the scope of regulation, the two scenarios – *extend material and geographical scope* – are not relevant in this case and will not be assessed in greater depth.

**Option 2. Remove "must carry" /EPG related obligations at national level/ EU level.**

This would involve amendment of the Universal Service and Access Directive with a view to repealing existing provisions allowing MS to impose "must carry" rules, and NRAs to impose access to EPGs. The two alternative scenarios – *extend material and geographical scope* – are not relevant in this case (since extension of scope would "automatically" imply choice of other options) and will not be assessed in greater depth.

**Option 3. Extend existing "must carry" rules to on-demand services and/ or further services currently not covered by the AVMSD<sup>205</sup>.**

This option involves an extension of the material, and possibly also geographical<sup>206</sup>, scope of the EU regulation on "must carry" rules<sup>207</sup>. This is likely to:

- Entitle MS to impose reasonable "must carry" obligations for a range of platforms that provide access to on-demand services, user generated content as well as accesses to applications (apps). The regulation could either oblige platforms to carry audiovisual content that is designated to be of general interest or apps of PSBs that provide access to general interest audiovisual content.
- Oblige MS to ensure that such obligations shall only be imposed where they are necessary to meet general interest objectives, as clearly defined by each MS, and shall be proportionate and transparent.

An extension of the material scope would primarily apply to OTT content aggregators and digital distribution platforms, such as app stores, services provided through set-top-boxes, as well as smart TVs. It is not likely to apply to social networks (e.g. Facebook) and other services that would not be covered if the material scope of AVMSD was extended (see Chapter 1.2).

The scenario - *leave the material and geographical scope unchanged* – is ruled out by this option and therefore will not be analysed, i.e. unchanged scope would "automatically" imply option 1 or 2.

**Option 4. Amend the AVMSD to include rules related to the "discoverability" of general interest content (for instance rules relating to the prominence of "general interest" content on distribution platforms for on-demand audiovisual media services).**

This option entails the introduction of new provisions that would extend the material, and possibly also geographical, scope of the EU level regulation on prominence / findability / discoverability<sup>208</sup>. This is likely to:

- Entitle MS to secure appropriate prominence for general interest content on a range of platforms that provide on-demand services, user generated content, access to applications, etc. Regulation could focus either on due prominence of content (for e.g.

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<sup>205</sup> Such as digital press.

<sup>206</sup> To include platforms established outside the EU, but targeting at least one EU MS.

<sup>207</sup> This could involve legislative changes (for e.g. inclusion of extended must-carry regulation in AVMSD). Extension of material scope of Article 31 of the Universal Service Directive would fall into the potential remit of the impact assessment for the ECNS review and would therefore not have to be covered here.

<sup>208</sup> These terms are used interchangeably as synonyms.

requiring specific content to be shown at the top of search or recommendation pages) or prominence of apps that provide access to general interest content.

- Oblige MS to ensure that prominence obligations shall only be imposed in fair, reasonable and non-discriminatory terms.

In the case of an extension of the material scope, such regulation would apply to:

- Broadcast and IPTV platforms, as well as over-the-top (OTT) content aggregators. In addition to prominence on "traditional" EPGs, discoverability clauses could also include: prominence on the default mode of "new generation" EPGs that can be customised by the consumer; ensuring non-discrimination of general interest content in filtering, search and recommendation engines, etc.
- Platforms run by connected TVs and other devices that deliver audiovisual content and services. Prominence legislation could also include obligations to pre-install designated apps on newly sold devices.

As in the case of option 3, the scenario regarding leaving current material and geographical scope unchanged will not be assessed since it is ruled out by the option, i.e. no changes in scope would "automatically" imply option 1 or 2.

***Option 5. Address potential issues only in the context of the comprehensive assessment related to the role of online platforms and intermediaries to be launched at the end of 2015, as announced in the Digital Single Market Strategy for Europe.***

The Digital Single Market Strategy for Europe recognises the importance of online platforms in enabling consumers' access to online content and growth of e-service providers. Despite the critical role of online platforms, their activities may lack transparency, they control and actively use sensitive information on consumers, and in cases where they have market power they may have the possibility to abuse it in dealing with other businesses. To address these, and other issues, the Commission has envisaged a comprehensive "assessment of the role of platforms, including in the sharing economy, and of online intermediaries, which would cover issues such as (i) transparency e.g. in search results (involving paid for links and/or advertisement), (ii) platforms' usage of the information they collect, (iii) relations between platforms and suppliers, (iv) constraints on the ability of individuals and businesses to move from one platform to another and will analyse, (v) how best to tackle illegal content on the Internet."<sup>209</sup>

This is a "fall-back" option that would potentially have to be analysed in close context with other policy options in the area of platform regulation and therefore its impact is not analysed here in greater depth.

#### **5.4. Impacts on administration and enforcement costs**

Table 5.3 summarises the direct impacts of each of the options on administration and enforcement costs faced by national regulators. Importantly, the Universal Service Directive and Access Directive establish the right of MS to regulate on "must carry" / EPGs, but the directives do not oblige MS to do so. Hence, the costs borne by the national regulators in enforcing "must carry" / findability regulations are incurred due to legislation adopted by MS, rather than due to the said Directives. The same logic would apply if the material and/or geographical scope of "must carry"/findability regulation was extended. Removal of "must carry" / EPG related regulations (option 2) could imply a need to establish alternative arrangements. However, administration and enforcement costs of such actions would be one-off costs, and are likely to be negligible.

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<sup>209</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Digital Single Market Strategy for Europe*, Brussels, 6.5.2015, COM(2015) 192 final, p. 12.

**Table 5.3. Impacts of options on administration and enforcement costs**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope	Scenario: extend geographical scope
Option 1. Maintain the <i>status quo</i>	No impact	Not applicable	Not applicable
Option 2. Remove "must carry" /EPG related obligations at national level/at EU level	Negligible impact	Not applicable	Not applicable
Option 3. Extend existing "must carry" rules to on-demand services/and or further services currently not covered by the AVMSD	Not applicable	No impact	No impact
Option 4. Amend the AVMSD to include rules related to the "discoverability" of general interest content	Not applicable	No impact	No impact

Source: Visionary Analytics, 2015

Since EU-level regulation does not directly result in significant administration and enforcement costs, we also explored the costs that would arise due to national legislation. Interviews with representatives of national regulators suggested that the costs would be negligible. All interviewed regulators have adopted a complaints-driven system. The number of complaints per year per country is between zero and ten. The number of complaints tends to be higher in countries that include regional channels under "must carry" regulation. If the complaints driven model was adopted under alternative scenarios (extend material and geographical scope), the national regulators should not experience a significant increase in administration and enforcement costs.

## 5.5. Impacts on administrative burden and compliance costs

Table 5.4 summarises the impacts of options on administrative burden and compliance costs. As discussed above, the Universal Service and Access Directives do not establish regulatory obligations. Therefore, administrative burden and compliance costs arise due to national rather than EU-level legislation. The same logic applies to options 3 and 4 – extension of material and geographical scope of "must carry"/ findability regulations at the EU level would not *per se* impose administrative burden and compliance costs to service providers, unless relevant legislation was adopted by MS.

Removal of "must carry" / prominence related regulation (option 2) would create additional costs to service providers due to:

- The need to review / renegotiate contractual arrangements between service providers. However, this can be viewed as a standard business practice and should not be attributed to compliance costs.
- Redistribution of resources between broadcasters and platforms. These economic effects are likely to be significant and are discussed in more depth in section 5.6.

**Table 5.4. Impacts of options on administrative burden and compliance costs**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope	Scenario: extend geographical scope
Option 1. Maintain the <i>status quo</i>	No impact	Not applicable	Not applicable
Option 2. Remove "must carry" /EPG related obligations at national level/at EU level	No Impact	Not applicable	Not applicable
Option 3. Extend existing	Not applicable	No Impact	No Impact

"must carry" rules to on-demand services/and or further services currently not covered by the AVMSD			
Option 4. Amend the AVMSD to include rules related to the "discoverability" of general interest content	Not applicable	No Impact	No Impact

Source: Visionary Analytics, 2015

### **Impact on compliance costs of national regulation: maintain or remove "must carry" and EPG regulation (Options 1 and 2)**

What are the compliance costs and administrative burdens arising due to national legislation under the *no change* scenario? The available evidence suggests that national regulation does not impose significant costs. On the one hand, if new channels were covered by EPG regulation, reprogramming of digital EPGs to change the sequence of channels could require from 2 to 20 hours of work (depending on the technology used) per provider of EPG. On the other hand, if EPG regulation was removed, this could lead to significant re-positioning of channels in countries that at present apply prominence regulation. However, the resulting transaction costs should not be attributed to compliance costs, since reprogramming of EPGs would indicate an outcome of commercial negotiations between platforms and broadcasters.

"Must carry" regulation (and its removal) imposes three types of costs. Firstly, regulation redistributes resources between broadcasters and platforms (see section 5.6). Secondly, platforms transmitting "must carry" channels in some cases cover the costs related to transmission of copyrighted material. Third, regulation could impose costs related to transmission of additional channels that fall under "must carry". The scale of the costs depends on the technology used. The marginal costs for providers of digital platforms are very low (one-off costs of around €0.01 m per channel). However, providers that rely on analogue technology claim that the one-off costs of including an additional channel could range from €0.01 to €0.1 m (the costs might exceed €0.1m, if significant expansion of capacity and infrastructure is required).

### **Impact on compliance costs of national regulation: extend material scope of "must carry" rules (Option 3)**

The scale of compliance costs depends on specific nuances of the adopted regulation. On the one hand, "must carry" regulation could oblige online platforms that distribute on-demand and other audiovisual content to bear the full cost of storing and distributing "must carry" content. In this case, platforms would incur significant costs related to acquisition of new hardware for increasing data storage capacity. While some platforms (e.g. YouTube) have voluntarily incurred these costs, we would consider such regulation to be highly unlikely. It would result in a number of legal, technical and financial problems between platforms and providers of content (e.g. who pays the copyright fees? Who retains income from advertising?).

On the other hand, "must carry" regulation could oblige platforms and distributors of equipment to carry only the apps of "must carry" content (whereas the actual content would be stored by content providers rather than platforms). The compliance costs of such regulation are likely to be low. The most popular platforms (including the ones operated by manufacturers of smart-TVs) already provide opportunities for distribution apps (in many cases free of charge).

### **Impact on compliance costs of national regulation: extend material scope of "discoverability" rules (Option 4)**

The compliance costs of extending the material scope of "discoverability" rules also depend on the specific type of regulation adopted. On the one hand, regulation could establish obligations for smart recommendation tools or search engines to give prominence to specific content or apps. The compliance costs of such regulation could be significant as it may require companies to: a) develop different search and recommendation algorithms for the EU market; and b) develop country-specific extensions to ensure prominence of country-specific content. Implementation of this option in the area of search and recommendation engines could face

unsurpassable challenges related to disclosure of search and recommendation algorithms that constitute trade secrets.

Alternatively, “discoverability” regulation could oblige manufacturers of equipment to pre-load specific apps that could make general interest content easily accessible. Currently, all retailers of relevant devices provide pre-loaded apps that typically cannot be removed by the consumer. Selection of the pre-loaded apps is highly localised: approximately 30%<sup>210</sup> of apps are local, i.e. preloaded only on devices sold in a specific MS. Furthermore, some retailers of devices also pre-load their own apps. For the majority of smart-TV brands, apps are preloaded after purchase of the device, i.e. once a consumer chooses a country and connects the device to the internet, the system then downloads default apps. Availability of such services implies regulatory obligations within the pre-load country – specific apps would not imply very high compliance costs.

## 5.6. Economic impacts: transfers of resources between service providers and investment in new services

Table 5.5 summarises the economic impacts of options under different scenarios. The most significant economic impacts of the options under comparison include transfer of resources between platforms and providers of audiovisual media content. This is because “must carry” and findability regulation affects commercial negotiations between the two parties. Other significant economic impacts refer to incentives to invest in new services and content. The analysis does not cover administrative burden and compliance costs that are analysed above (see chapter 5.5.).

**Table 5.5. Economic impacts of options**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope	Scenario: extend geographical scope
Options 1a and 2a: maintain or remove “must carry” regulation	“Must carry” regulation does affect the outcomes of negotiations between platforms and broadcasters. However, due to the variety of current arrangements, different market powers of parties and nuances of existing national regulation, it is difficult to predict the direction and scale of transfers between platforms and broadcasters if “must carry” regulation was or removed.	Not applicable	Not applicable
Options 1b and 2b: maintain or remove EPG related obligations	Mixed evidence on economic impacts. Removal of EPG regulation could lead to a significant one-off transfer of value from PSBs to platforms in the MS with large audiovisual media markets. Countries with smaller audiovisual markets are likely to be less affected.	Not applicable	Not applicable
Option 3. Extend existing “must carry” rules to on-demand services/and or	Not applicable	“Must carry” of apps is not likely to have significant impacts, since apps are already carried by platforms. If “must carry” encompassed specific content, it would be difficult to enforce due to low incentives <sup>211</sup> of	

<sup>210</sup> Own calculations based on information provided by retailers or platforms. However, there are significant differences between providers of devices and MS.

<sup>211</sup> In contrast to linear services and distribution of on-demand content through own platforms (for e.g. accessible

further services currently not covered by the AVMSD		content owners to provide the content to online platforms.
Option 4. Amend the AVMSD to include rules related to the "discoverability" of general interest content	Not applicable	Introduction of regulation is likely to result in redistribution of economic value from platforms to selected providers of content, hinder innovation and distort competition.

Source: Visionary Analytics, 2015

## **Option 1a and 2a: maintain status quo or remove "must carry" obligations at national / EU level**

### ***Hypotheses***

The primary objective of "must carry" regulation is to ensure access to general interest content. Analogue technology imposed natural limits on the number of channels that platforms could broadcast. Therefore, regulation was introduced to ensure that platforms reserved some of this limited capacity to providers of general interest content. Switchover to digital broadcasting has largely overcome the limitations that existed in the "analogue era". As a result, the primary problem that regulation sought to tackle has to a large extent been alleviated.

The regulation, however, also has important side effects – it effectively influences the outcomes of negotiations between broadcasters and platforms. Overall, "must carry" strengthens the negotiating position of a broadcaster that benefits from it vis-à-vis a platform, since it imposes obligations on the latter, not on the former. However, specific effects of "must carry" depend on a range of factors: national regulation on conditions for "must carry", relative market power of a broadcaster and a platform, existence of "must offer" obligations, etc. Although there is significant variation, in most cases that the analysis covered, there are zero payments– the broadcaster does not pay platforms for transmission services and platforms do not pay the broadcasters for the content provided<sup>212</sup>.

Due to the above discussed factors, it is not possible to predict the outcomes of negotiations if "must carry" obligations were removed. The range of possible outcomes include:

- A. Breakdown in negotiations and resulting "blank screens" for consumers. This is an unlikely outcome, in particular for popular general interest content, since the incentives of broadcasters and platforms are well aligned to provide the content to consumers. Furthermore, both parties would incur significant costs if agreements were not reached: broadcasters would fall short of forecast advertising audiences, while platforms would be obliged to review contractual agreements with consumers. However, there are historical examples of short term breakdowns and "blank screens"<sup>213</sup>.
- B. No change, i.e. contracts between broadcasters and platforms are not renegotiated after removal of "must carry" regulation.
- C. A transfer of resources from PSB broadcasters to platforms. Removal of "must carry" should strengthen the negotiating position of platforms as this would allow the latter to stop retransmission of a channel if negotiations broke down. However, it is not clear whether this would be sufficient to tip the balance of bargaining power. The threat of blank screen is not likely to be credible when negotiating with national broadcasters

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through apps), provision of content to third party online platforms implies loss of exclusive control over income from advertising and subscriptions.

<sup>212</sup> However, there are significant variations. For example, the platform may be required to make on-the-top payments to cover the costs of copy-right of retransmitted intellectual property that belongs to third party.

<sup>213</sup> In 2011 a group of privately owned channels in Lithuania left "must carry" list, but failed to reach an agreement with one of the cable service providers. As a result, the channels were not transmitted for few weeks until an agreement was reached.

that occupy a significant market share. Hence, it is more likely that removal of “must carry” regulation would result in outcome C in cases where negotiations involve a nation-wide or even global platform and a small regional channel.

- D. A transfer of resources from platforms to broadcasters. However, changes in “must carry” regulation should not *per se* increase the bargaining power of broadcasters (as discussed above, the reverse is more likely).

The available evidence on the outcomes of negotiations between broadcasters and platforms is reviewed below.

### **Evidence on transfer of resources**

Typically, negotiations between platforms and broadcasters unaffected by “must carry” and “must offer” regulation result in some payment by platforms to broadcasters. Table 5.6 provides lower and upper bounds of transfers to broadcasters that are not covered by “must carry”. This data was collected during interviews with broadcasters and platforms. The large variations within countries can be explained by: a) the share of audience of a channel; b) strategies used for packaging a group of channels; and c) other contractual agreements (for e.g. position on EPG)<sup>214</sup>.

Limited historical data suggests that the termination of “must carry” status has favoured broadcasters rather than platforms. Private broadcasters have left “must carry” in 2011 and 2012 in LT and EE. Prior to that, regulation required that all “free to air” channels “must be carried” by cable operators. Abolition of the latter provision resulted in protracted negotiations (several months of blank screens in two instances) and a shift from zero payment agreements to the transfer of resources from platforms (cable operators, but not terrestrial networks) to broadcasters. On the one hand, all broadcasters in question had significant market shares, which could explain the strength of their negotiating position. On the other hand, it is not clear whether this outcome is the direct result of a change in regulation: we would expect that exit from “must carry” should strengthen the negotiating position of platforms, not the reverse.

An impact assessment<sup>215</sup> carried out in the UK focused on the scale of transfers between two dominant cable operators and three commercial PSBs, if “must carry” and “must offer” were removed. According to the central estimate, removal of the “must carry/must offer” obligation would result in a flow of £42.3 m (€60 m) annually from TV platforms to commercial PSBs. This equals approx. €1,380 p. a. per 1,000 subscribers. These results, however, cannot be directly extrapolated to other countries that have only “must carry” regulation.

**Table 5.6. Average payments from platforms to commercial broadcasters**

<b>Countries</b>	<b>Payments by platforms to broadcasters per channel per 1,000 subscribers p.a.</b>
Country A	- From €0 to €8,000
Country B	- From €0 to €1,800
Country C	- From €0 to €7,680
Country D	- From €0 to €1,800

Source: Visionary Analytics, 2015. Note: due to sensitivity of data, the names of specific MS are not provided. As a rule larger channels tend to receive higher payments, whereas niche, small channels receive significantly smaller payments or do not receive them at all.

### **Other impacts**

Depending on the direction of transfer of resources, removal of “must carry” regulations could also potentially have other impacts:

<sup>214</sup> There are examples when broadcasters waive fees as long as they maintain top EPG positions.

<sup>215</sup> Department for Culture, Media and Sport, “The balance of payments between TV platforms and Public Service Broadcasters and the future of Electronic Programme Guides”, 2015.

- Effects on consumers: if changes in regulation leads to the transfer of resources from platforms to broadcasters, the former are likely to transfer part of the additional costs to consumers (e.g. subscribers to cable TV services).
- Transfer of resources (in either direction) is likely to affect broadcasters' capacity to invest in new content and technologies.
- Removal of "must carry" obligations could strengthen the single audiovisual market. Current regulations impose barriers for platforms providing services in multiple MS, as the offered package of channels has to be adapted to different national and regional regulations, in addition to any adaptation which may be necessary anyway due to differences in viewing behaviour across different national markets caused i.a. by different mother tongues, different average levels of knowledge of foreign languages, cultural differences and preferences for national/regional/local content.

### **Options 1b and 2b: maintain status quo or remove EPG related obligations**

#### ***Hypotheses***

The prominent position of audiovisual content has economic value in that it generates larger audiences and therefore greater advertising revenue. Hence, regulation on EPG prominence could be viewed not only in terms of securing findability of general interest content, but also in terms of transferring of market value from platforms to broadcasters that are covered by prominence regulation. In the absence of regulation platforms could sell the prominent position to the highest bidders and/or ensure a better match of EPG positions with viewer preferences to increase audience for the platform. The magnitude of economic impacts depends on the extent to which:

- Users continue to rely on traditional EPGs for finding the desired content. If users continue to rely on EPGs for finding content, this would imply the significant economic value of prominent positions. Conversely, the economic value of prominence is low if viewers adopt alternative ways for finding content (for e.g. by relying on personalised recommendations or going directly to the preferred channel).
- Platforms would not provide prominent positions for broadcasters of general interest content in the absence of regulation. On the one hand, platforms could maximise short term income by auctioning the prominent positions to the highest bidder. In this case providers of general interest content could lose prominent position. On the other hand, platforms could focus on satisfaction of clients by arranging channels according to the historically held position or according to audience shares. In such case popular PSB channels can be expected to maintain prominent positions.
- Audiences have shifted (and are likely to shift) from linear to alternative (non-linear, non-TV like) mediums of audiovisual services. To the extent that this trend has gained traction, regulation of prominence on traditional EPGs not extending to such mediums have decreasing economic (and social) impact.

#### ***Evidence***

Available evidence (see Table 5.7.) suggests that linear TV remains the dominant medium in terms of overall viewing time. Furthermore, users continue to rely on channel selection methods (e.g. navigate from the first EPG page or use channel scrolling) that favour the most prominent channels on EPG. However the number of users of on-demand and non-TV like services continues to grow. Over time this shift would erode the economic value of prominence on traditional EPGs (see discussion on option 4 below).

**Table 5.7. Results of previous studies: changing viewers' habits?**

Study	Countries covered	Results
Studies on audience of linear and other audiovisual media services		
Communications Market Report <sup>216</sup>	UK	Live TV accounts for 69% of adult media viewing time, although the number of users and viewing time of on-demand and non-TV like services continues to grow.
Electronic Communications Report <sup>217</sup>	LT	In the second quartile of 2015 pay-TV had around 718.5 thousand subscribers, i.e. around 55.7% all the households.
Television Analysis 2014 <sup>218</sup>	ES	Television consumption in 2014 was 239 min per day per person, which is 5 minutes less than the previous year.
TAM Ireland Viewing Habits <sup>219</sup>	IE	"The TV set accounts for 181 (83%) of the 217 minutes consumed in an average day" (p. 2; 1000 person survey results)
Gilles Fontaine and Christian Grece <sup>220</sup>	EU	"SVoD is a fast growing market with a year-to-year increase of +93% to €844 m in 2014, however with high disparities in the EU 28" (p. 3)
Christian Grece, André Lange, Agnes Schneeberger and Sophie Valais <sup>221</sup>	EU	"The number of European subscribers to SVoD services rose from 2 million in 2010 to nearly 18 million in 2014 and is projected to rise to 59 million by 2020" (p. 132)
Territoriality and its impact on the financing of audiovisual works <sup>222</sup>	Global	"Only 72% of the 15 to 24-year-olds claim to watch traditional television at least once per week, whereas 40% of the same age group watch TV on the internet. By contrast, 93% of 55 years and over, watch traditional TV at least once a week, and only 8% of the same age group claim to do so on the Internet" (p. 16) "Between 2010 and 2014 TV's share of overall consumption fell from 42.4% to 37.9 %." (p. 16)
Studies on users habits of finding content		
Technologia <sup>223</sup>	UK	"The majority of viewers use channel selection methods that favour top channels in the EPG" (p. 33)
Dr Farid El-Husseini <sup>224</sup>	UK	For channels on Freeview platforms a loss of prominence on EPGs results in around 10-20% viewer share reduction.
The DR Media Research Department's annual report on the use of electronic media in Denmark <sup>225</sup>	DK	38 % of households in Denmark use pre-programmed order of channels. Choice of content is increasingly affected by internet and apps, which provide more than 45 % of households with the most important point of entry to their TV programmes. 90 % of households have DR1 channel as no. 1 in EPGs (p. 66).

Source: Visionary Analytics, 2015

There is strong evidence that prominent positions on EPGs do carry significant market value. All interviewed representatives of broadcasters and platforms argued that prominence plays an important role in negotiations. Some broadcasters even waive their fees in exchange for a prominent position. Furthermore, an impact assessment carried out in the UK estimates that

<sup>216</sup> Ofcom, "The Communications Market", 2014.

<sup>217</sup> Communication Regulatory authorities of Lithuania, "Electronic Communications Report", 2015.

<sup>218</sup> Barlovento Communication, "Television Analysis 2014", 2015.

<sup>219</sup> IPSOS, "Total Viewing Habits Study 2015", 2015.

<sup>220</sup> Gilles Fontaine and Christian Grece, "The EU Subscription video-on-demand market in 2014 (An update)", European Audiovisual Observatory, 2015.

<sup>221</sup> Christian Grece, André Lange, Agnes Schneeberger and Sophie Valais, "The development of the European market for on-demand audiovisual services", European Audiovisual Observatory, 2015.

<sup>222</sup> Francisco Javier Cabrera Blázquez, Maja Cappello, Christian Grece and Sophie Valais, "Territoriality and its impact on the financing of audiovisual works", A publication of the European Audiovisual Observatory, 2015.

<sup>223</sup> Technologia, "The value and optimal management of channel position and prominence on electronic programme guides", Report for the Department of Culture, Media and Sport, 2012.

<sup>224</sup> Dr Farid El-Husseini, "An Analysis of the Audience Impact of Page One EPG Prominence", A report for Ofcom, 2010.

<sup>225</sup> DR Media Research Department, "Media Development 2014", Copenhagen: 2015.

“the total value of the top 5 slots across all traditional EPGs (including Sky, Virgin, BT, Freeview, etc.) is £250m (in 2012 prices)”<sup>226</sup>.

The evidence discussed above does not necessarily imply that general interest content, notably PSBs would lose prominence and related economic value in the absence of EPG regulation. In five of the six countries where we conducted interviews (all except BG) PSBs were given prominent positions despite significant variation in regulation (IE, HU<sup>227</sup> and UK has prominence regulation). Results from the interviews suggest that:

- Platforms are willing to maintain prominent position of one or several PSB channels with the largest market share. This is motivated by concerns that changes would reduce discoverability of popular content and annoy elderly viewers. The latter represent an increasing proportion of clients and are not likely to re-programme (individualise) default settings of EPG.
- In the absence of regulation less popular and local / regional channels are likely to lose prominent positions.
- The economic value of prominent positions depends on the size of the market. The smaller the number of (groups of) channels in official language, the smaller the value of prominent positions on EPG, since platforms seek to ensure discoverability of the most popular content.

### **Option 3: extend material scope of “must carry” rules**

As discussed above, “must carry” rules were established in the “analogue era” when there was a natural limit on the number of channels that could be broadcasted, therefore policy makers wanted to make sure that general interest channels were transmitted. While introduction of digital technologies has significantly expanded broadcasting possibilities, the emergence of connected devices have made them infinite (assuming continuous expansion of bandwidth). Hence, the primary problem that regulation sought to tackle – general interest content could be excluded due to capacity limitations – no longer exists.

Monopsony market power of dominant online platforms (including platforms operated by producers of devices) could be (at least in principle) considered to justify an extension of the material scope of “must carry” regulation<sup>228</sup>. If platforms in fact enjoyed monopsony power, this would lead to the transfer of resources from content providers to platforms, lower aggregate social welfare, as well as lower long term investment in content. However, it is not clear whether the introduction of “must carry” regulations could alleviate this market failure (if it existed). Firstly, all content providers would be affected by monopsonistic markets. Therefore, intervention should focus on fostering competition rather than “favouring” the selected few that provide content deemed to be of general interest. Secondly, if regulation concerned the carriage of content and was supplemented by “must offer”, this would further strengthen the market power of platforms in commercial negotiations vis-à-vis content providers (see below). This suggests that there are no economic arguments for an extension of the material scope of “must carry” rules.

However, what would happen if the material scope (for whatever reasons) was extended? In contrast to linear services, on-demand and other emerging audiovisual services focus on content rather than channels. Accordingly, option 3 includes at least two sub-options. Firstly, platforms and producers of devices could be obliged to carry apps that provide access to the content deemed to be of general interest. In this case, regulation should not result in significant impacts. The placement of apps allows content providers to retain control over income from advertising and subscription fees (if any). Furthermore, platforms and producers of devices seek to expand their own ecosystems and therefore may provide placements for apps free of charge. Therefore, it is likely that the apps of the providers of general interest

<sup>226</sup> Department for Culture, Media and Sport, *The balance of payments between TV platforms and Public Service Broadcasters and the future of Electronic Programme Guides*, 2015, p. 19.

<sup>227</sup> Hungary does not have EPG regulations, but it has prominence regulations (“must-carry” channels must be in the beginning of all TV lists).

<sup>228</sup> This is a hypothetical analysis and does not imply that monopsonistic markets exist.

content would be carried by / included in the ecosystems even without regulation (also see section 5.7).

Secondly, platforms could be obliged to carry specific content that is deemed to be of general interest. Carriage of content provides platforms with considerably stronger negotiating power, since content providers lose exclusive control over income from advertising as well as subscription fees<sup>229</sup>. As a result, the most popular platforms already enjoy considerable market power in negotiations with content providers. For example, YouTube pays its contributors approx. half of all income generated from content (see textbox 5.1). While it is not possible to predict the outcomes of negotiations, if the “must carry” rules applied to platforms, unequal bargaining power suggests that the following scenarios are more likely than others:

- To avoid the transfer of value, content owners are not likely to provide this to the platforms. Other strategies for distribution of content (e.g. distribution of content through own apps/platforms; granting of exclusive rights to a single platform in return for a higher income share, etc.) are likely to be more attractive.
- If an extension of the material scope of “must carry” is coupled with “must offer”, this is likely to result in significant transfer of value from content providers to platforms.

Since the outcomes of commercial negotiations and platforms are not public information, there is little data to test the above hypotheses.

### **Text Box 5.1. How much does YouTube pay to content providers?**

YouTube offers several types of services:

- Ad-funded content. Amounts paid to content providers depend on the revenue generated from ads on the content. Owners of content receive approx. 45% of revenue generated by YouTube. Depending on the value of ads, and the number of viewers that click on the ad, owners of content could receive between €1 and €10 per 1000 viewers.
- Paid channels that are not free of charge to the end user. Providers of content receive approx. 55 % of revenue. If the channel costs €5 per month per subscriber, this translates into €2750 per month per 1000 subscribers. So far, this service is only for providers of audiovisual content located in FR, IT, PL, PT, ES, SE and UK.
- YouTube Red channel that offers ad-free content. As of December 2015, this was not available in the EU.

Source: YouTube conditions on monetization of content. <<https://support.google.com/youtube/topic/1115890>> and estimates provided here: <http://www.reelseo.com/youtube-partner-earnings/>> [Last accessed February 19, 2016]

### **Option 4: extend material scope of “discoverability” rules**

#### **Hypotheses**

The emergence and continued growth of on-demand and other audiovisual services has resulted in a vast expansion of audiovisual content. Although this has obvious economic and social net benefits, it has also resulted in higher search costs, i.e. viewers need additional skills, time and effort to find content. The industry has already significantly invested in alleviating consumers’ search costs. The main tools that facilitate the search for content include:

- Apps that facilitate access to and navigation within the content;
- Search tools that rank content according to specific criteria;
- Recommendation tools that suggest content that could be of interest to viewers.

The efficiency (time spent to find content) and effectiveness (satisfaction with search results) of these tools have strong effects on the competitiveness of platforms. Mere availability of content becomes insufficient if viewers cannot find it or do not know that it exists. Hence, platforms have very strong incentives to cater for the interests of consumers.

<sup>229</sup> Platforms retransmitting linear content do not have the possibility to include their own advertising. Such limitations do not exist for on-demand content. This creates information asymmetry between the negotiating parties and strengthens the position of platforms.

On the other hand, exponential growth in the supply of audiovisual content could also create other incentives:

- As the amount of content grows, so does the economic value of its prominence. This creates opportunities and strong incentives for platforms and producers of devices to capture economic gains by putting some services in the most prominent positions. Although this does not constitute a market failure, intervention could be justified on the grounds of general interest, i.e. giving prominence to general interest content. Such regulation would result in transfer of economic value from platforms to selected providers of general interest content.
- Attempts to reduce time and effort in searching for content lead to segmentation of audiences, which implies limiting the number of available alternatives to each segment. This could make some content difficult to discover or access by groups of consumers who are “incorrectly segmented”. From the perspective of platforms, this raises a number of challenges related to finding the right balance between efficiency and effectiveness of search and recommendation tools. However, this could also have broader implications related to free movement of services and people. Consumers that changed country of residence or purchased devices in different MS might not be able to easily discover or access desired content, even though the content provider is in principle willing to serve all relevant MS.

### Evidence

The ecosystem of on-demand and other audiovisual media services is very heterogeneous in terms of key players, adopted business models and technologies. It is also characterised by a very fast pace of change: operating systems, global platforms and standards have gained ground only recently and continue to evolve. It is also quite likely that the dominant players of the next decade have not yet entered the global market. Furthermore, the current ecosystem is highly fragmented (see Table 5.8): there is a large number of operating systems that are used by different producers of devices.

**Table 5.8. Selected ecosystems of smart devices.**

Operating system	Devices	App stores / platforms	No of apps (million) as of July 2015 <sup>230</sup>
Android	Large number of smart phones (e.g. Samsung, Sony, LG), tablets and smart TVs (Philips and Sony among leading producers)	Google Play	1.6
iOS	Smart phones (iPhone), tablets (iPad) and other devices (iPod touch).	Apple App Store	1.5
Windows phone	Smart phones (e.g. Lumia), tablets (e.g. Microsoft Surface, Dell, HP, Lenovo),	Windows phone store	0.3
Tizen	Smart TVs (Samsung) and smart phones (Samsung)	Tizen store	N/A
Amazon FireOS	Smart phones (Fire Phone), Tablets (Kindle), Smart TVs (Fire TV).	Amazon Appstore	0.4
Firefox OS	Smart phones (e.g. Alcatel, Spice Fire One) and smart TVs (Panasonic)	Firefox marketplace	N/A
Xbox OS	Xbox One gaming console	Microsoft Movies & TV	N/A
Orbis OS	PlayStation4 gaming console	PlayStation Store	N/A

Source: Visionary Analytics, 2015 based on official websites of respective operating systems and producers of devices.

Apps provide a convenient gateway for viewers to access, navigate and view audiovisual content. In this regard, the prominence of an app is an important determinant of further viewers' actions. Prominence can be achieved through two main avenues: a) pre-loaded apps

<sup>230</sup> Statistica, “Number of apps available in leading app stores as of July 2015”, 2015

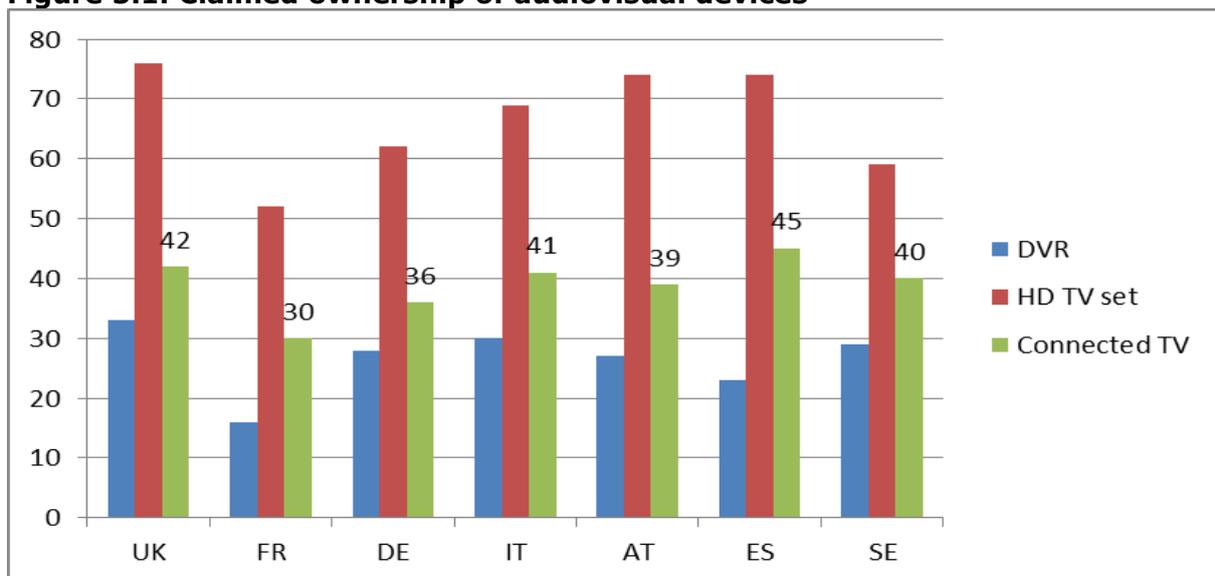
on newly purchased devices; and b) downloaded apps from dedicated app store / platforms. The general trends in terms of pre-loaded apps are as follows:

- All producers tend to pre-load devices with apps. Usually producers pre-load more than 10 apps and distributors (e.g. of smart phones) sometimes include additional apps.
- Usually it is possible to hide, but not delete the pre-loaded apps.
- The mix of pre-loaded apps usually includes the ones targeted at a specific country. Pre-loaded apps also include third party apps.

The two most popular app stores (Google Play and the Apple App Store) contain over a million apps created for smart phones and tablets. They include the apps of all PSBs that have developed them. The number of apps downloadable from app stores dedicated to smart TVs is significantly smaller. The apps available from stores for LG, Philips and Samsung (Tizen platform) smart TVs were analysed. On average, a few hundred apps were available per MS per producer, but never more than one thousand (December 2015). Less than a hundred apps were available for the smaller CEE countries and they did not include the apps of national PSBs. Hence, to date, availability of apps is more significant for smart TVs than prominence.

Limited availability of apps on smart TVs can be explained by two factors. Firstly, the industry is still in its infancy. Sales of smart TVs have gained traction only in recent years. Currently, less than half of EU households own one (see Figure 5.1), although sales of these devices is growing rapidly. The platforms for smart TV apps emerged less than five years ago and are going through substantial changes. For example, Samsung introduced the Tizen operating system on its smart TVs only in 2015. As the sector matures, it is likely that availability of apps will increase.

**Figure 5.1. Claimed ownership of audiovisual devices**



Source: Ofcom, *International Communications Market Report 2015*, p. 33.

The second problem is related to cross-border accessibility of audiovisual services. While some services are provided globally, others are targeted at specific MS and are not available elsewhere. This is due to the marketing strategies of content providers and/or territorial exclusivity of copyright agreements<sup>231</sup>. As a result, the apps of most PSBs, and the content they transmit through connected devices, are not accessible (partially or entirely) in other MS.

Search and recommendation systems provide another important gateway for users to find and interact with audiovisual media content. The basic facts about these systems are as follows:

<sup>231</sup> iMinds (SMIT), "Fragmentation of the single market for on-line video-on-demand services: point of view of content providers", A study prepared for the European Commission DG Communications Networks, Content & Technology, 2014.

- As the amount of content grows, so does the importance of efficient and effective search and recommendation systems. Well-functioning search and recommendation systems are among the core factors behind the competitiveness of platforms and producers of devices.
- All players continue to heavily invest in optimisation and personalisation of search and recommendation systems. For example, Netflix says that it invests \$150 m (approx. €120 m) in improving content recommendations p.a.<sup>232</sup> Currently emerging innovations are based on the availability of “big data” on observed activities of viewers (although this has already caused privacy concerns).
- All search and recommendation systems are based on a combination of observed choices of particular viewers and preferences of the group to which a viewer has been assigned. Although the basic principles are well known, specific algorithms differ and constitute well-guarded commercial secrets.
- Advertised content can usually be distinguished from the results of search or recommendations. However, concerns over transparency arise: since the algorithms are not public, it is not possible to externally verify what drives prominence of content on search and recommendations engines.

What are the implications of the characteristics and trends discussed above in terms of the possible impact of extending the material scope of “discoverability” regulation? The observed trends suggest that:

1. Over time, the audience share of on-demand and other audiovisual media would increase at the expense of linear services. This would erode the economic value of prominence on traditional EPGs.
2. Currently, there is high competition and fragmentation among producers of devices, operating systems (and app stores), OTT content aggregators and other players.
3. Cross-border accessibility of audiovisual media content, as well as transparency in the ways that search and recommendation systems function, are important factors for fostering competition in the European audiovisual market.
4. Regulation on “discoverability” – obligation to pre-load certain apps on devices, to recommend certain content and/ or to make certain content appear at the top of search results – would expropriate the economic gains from platforms / producers of devices to selected providers of general interest content. It is not possible to provide a clear-cut assessment of the scale of the transfer of value due to high fragmentation and low maturity of the industry, as well as a lack of transparency and data. However, given that this constitutes core business for a number of platforms, the scale of transfer of economic value is likely to be very large.
5. Legal obligation to recommend certain content and/ or to make certain content appear on top of search results is also likely to:
  - a. Face significant implementation challenges. Since search and recommendation systems constitute a key pillar of competitiveness, they are continuously evolving and constitute trade secrets. Therefore, enforcement and monitoring of the obligation to favour specific content would appear problematic.
  - b. Hinder investments in innovations by limiting the scope for individualisation of search and recommendation systems and therefore reducing the value of such systems.
  - c. Distort competition. In an era of abundant content, platforms with the most effective and efficient search and recommendation systems have a significant competitive advantage. Regulation would undercut effectiveness of such systems by providing prominence to content that does not necessarily match the habits / needs of consumers. Since an extension of geographical scope of “discoverability” regulation is not feasible, platforms established in the EU would be put at a competitive disadvantage vis-à-vis providers established outside of the EU.

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<sup>232</sup> Janko Roettgers, “Netflix spends \$150 million on content recommendations every year”, 2014.

## 5.7. Social impacts: preservation of free and pluralistic media

Table 5.9 summarises the social impacts of options under the different scenarios. This analysis focuses on the extent to which regulation facilitates /could facilitate access to and consumption of general interest content. Subsections below provide the supporting evidence.

The discussion below does not provide in depth analysis of Option 3 – extend existing “must carry” rules to on-demand services/and or further services currently not covered by the AVMSD. This is due to several reasons. First, apps (that provide access to PSBs’ content) are already carried by major platforms. The introduction of regulation is therefore not likely to have major effects in this respect. Second, an extension of the material scope of Article 31 of the Universal Service Directive (“must carry”) would fall into the potential remit of the impact assessment for the ECNS review and would therefore not covered here in detail.

**Table 5.9. Social impacts of options on preservation of free and pluralistic media**

Options	Scenario: leave material and geographical scope unchanged	Scenario: extend material scope	Scenario: extend geographical scope
Options 1a and 2a: maintain or remove “must carry” regulation	“Must carry” regulation can have a small effect on the audience performance of providers of general interest content. Loss of “must carry” status leads to an estimated 2% decline in audience share. However, the effects significantly differ across channels and countries.	Not applicable	Not applicable
Options 1b and 2b: maintain or remove EPG related obligations	Large audiovisual markets: removal of EPG regulation could lead to significant loss of audience and revenue of PSB. Small markets: impact on revenue and audience of PSB is not significant due to the small number of channels broadcasting in official languages.	Not applicable	Not applicable
Option 3. Extend existing “must carry” rules to on-demand services/and or further services currently not covered by the AVMSD	Not applicable	In depth analysis not performed. It is likely that impact of regulation would be negligible, since apps (that provide access to PSBs’ content) are already carried by major platforms.	
Option 4. Amend the AVMSD to include rules related to the “discoverability” of general interest content	Not applicable	Major PSBs are already highly discoverable and popular in the on-demand market. Regional, small and niche providers of general interest content face challenges in gaining significant online audiences. Currently, there are no market failures that regulation on prominence could tackle, although non-discrimination provisions could safeguard against possible future abuse of dominant positions of the platforms. .	

Source: Visionary Analytics, 2015

### Options 1a and 2a: maintain status quo or remove “must carry” obligations at national / EU level?

#### **Hypotheses**

On the one hand, perfectly competitive markets should foster media freedom and pluralism since the incentives of broadcasters and platforms are well aligned to cater for the diverse needs and tastes of consumers. If this is the case, the introduction or abolition of “must carry” rules:

- Should not, in the short term, affect the audience size of providers of general interest content.
- Could indirectly affect media pluralism in the longer term. As discussed in chapter 5.6, the introduction / abolition of “must carry” rules could affect the direction of payments between broadcasters and platforms. If regulation (or absence thereof) induces transfers of resources, or other value from broadcasters to platforms, the former could reduce investment in higher quality content. However, it is not possible to test this hypothesis empirically.

On the other hand, the introduction of “must carry” regulation is typically motivated by attempts to fix market failures. The most important ones in this respect include:

- Unequal bargaining power. Vertically integrated platforms could abuse their dominant position and impose unfair conditions on providers of general interest content so that the latter face unfavourable competitive conditions vis-à-vis other broadcasters.
- Market frictions. Negotiations between broadcasters and platforms could break down and viewers would be deprived of access to general interest content.

An empirical assessment of the above arguments would require analysis of evidence relating to the impact of “must carry” regulation on the size of the audiences. If market failures are significant, it could be expected that a loss of “must carry” status would result in a decline in market share due to unfavourable competitive position or a breakdown of negotiations. This could serve as an argument for maintaining “must carry” rules for providers of general interest content. Conversely, the impact of regulation is low if the loss of “must carry” status does not affect market shares of relevant channels.

### **Evidence**

Over the past five years at least ten major private channels have lost “must carry” status (due to changes in regulations or voluntarily) on cable platforms in Central and Eastern Europe (CEE). To what extent have such changes affected their market share? The data (see Text Box 5.2.) points to a mixed picture. Since 2008, all channels that lost “must carry” status, and the majority of channels that maintained “must carry” status, have witnessed a decline in audience share. However, in six out of ten cases<sup>233</sup> the loss of “must carry” status coincided with an accelerated decline in audience share in comparison to previous years. Furthermore, in several instances (e.g. LNK in LT and Kanal2 in EE), there were breakdowns in negotiations between broadcasters and platforms. This resulted in approx. one month of “blank screens” after which services resumed. This suggests that the loss of “must carry” status could be related to (at least temporary) decline in market share, although the relationship is not very strong and need not apply to all cases.

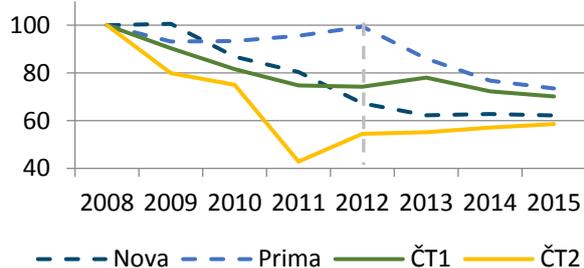
### **Text Box 5.2. “Must carry” status and changes in audience share in selected CEE countries.**

Figures below outline changes in the market share of private channels (blue dashed lines) that lost “must carry” status and PSBs that maintained “must carry” status in selected CEE countries. The Vertical grey dashed line indicates when the regulation in a country changed. Data on market share was normalised so that market share in 2008 = 100.

Czech Republic	Estonia
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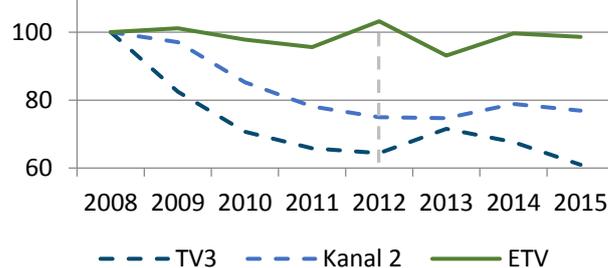
<sup>233</sup> Prima in Czech Republic, TV3 in Estonia, RTL Klub and TV2 in Hungary, TV3 and LNK in Lithuania

In 2012 Nova and Prima lost their “must-carry” status, while PSBs (ČT1, ČT2) maintained the status<sup>234</sup>.



Source: Development of the television market in the years 1997 to 2010 (<http://www.digizone.cz/clanky/vyvoj-televizniho-trhu-v-letech-1997-az-2010/>) and ATO-Mediaresearch.

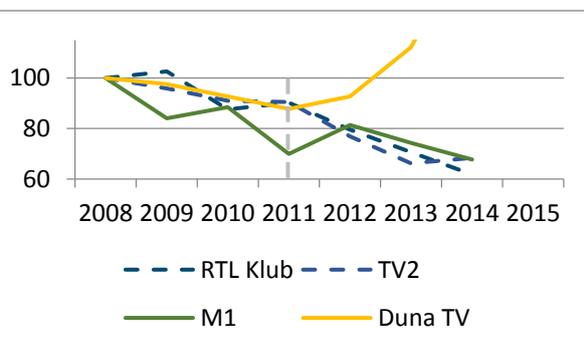
In 2012 TV3 and Kanal2 lost their „must carry”, while PSBs (ETV1 ETV2 and Tallina) maintained the status.



Source: TNS Emor (<http://www.emor.ee/>)

### Hungary

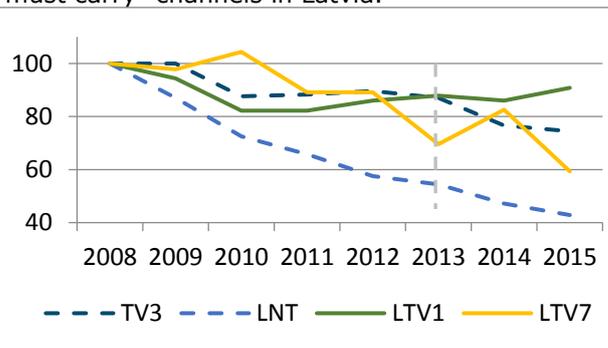
Since 2011 “must carry” covers only PSBs (M1, Duna TV and others) while private channels (RTL Klub and TV2) lost their “must carry” status.



Source: SorozatWiki<sup>235</sup>

### Latvia

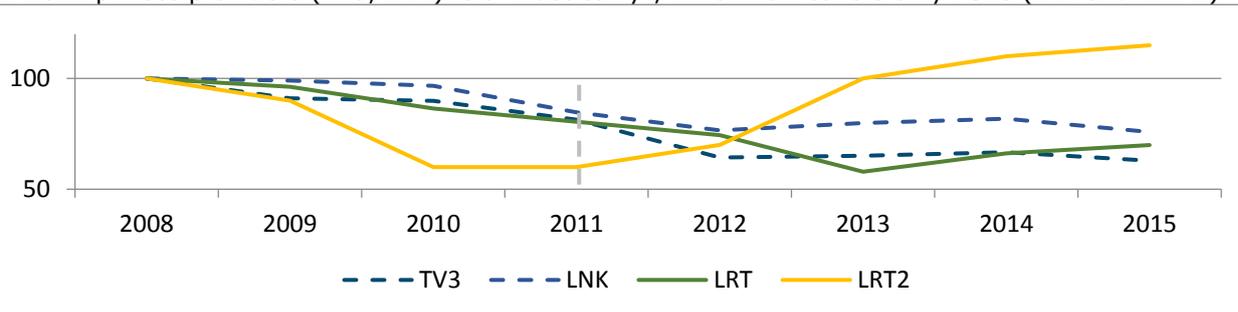
In 2013 private providers (TV3 and LNT) were removed from the “must carry” list in Latvia<sup>236</sup>. Currently, PSBs (LTV 1 and LTV 7) are the only “must carry” channels in Latvia.



Source: TNS Latvia (<http://www.tns.lv/>)

### Lithuania

In 2011 private providers (TV3, LNK) left “must carry”, which now covers only PSBs (LRT and LRT 2)<sup>237</sup>.



Source: TNS Lithuania ([www.tns.lt/](http://www.tns.lt/))

Source: compiled by Visionary Analytics, 2015

To gain a better understanding of the causal relationships underpinning the above trends, a fixed effects regression model with panel data has been constructed (see Table 5.10). This

<sup>234</sup> HIS Technology, “Estonia and Latvia cut must carry list”, 2012

<sup>235</sup> Note: Market shares for 2008 are not available, thus it is represented by the average of the market share of each channel in 2007 and 2009. Duna TV in 2014 had a market share that was 157.56% larger than it had in 2008.

<sup>236</sup> HIS Technology, “Estonia and Latvia cut must carry list”, 2012

<sup>237</sup> Ibid

includes data on the market share of 19 channels reported in Text Box 5.2 in 2008-2015<sup>238</sup>. The independent variable of interest – “must carry” status in 2008-2015: if a channel was part of the “must-carry” list in a particular year, it is classified as a 1; if not, it is classified as 0. As the regression analysis was performed on a panel data set, a time variable had to be included to account for any variation that could be due to the passing of time.

**Table 5.10. Results of fixed effects model: impact of “must carry” on market share**

Classes	Coefficients	Standard error	p-value
Constant	13.6505	0.759853	1.12e-036***
“Must carry” status	2.30708	0.558167	6.45e-05***
Time	-0.533834	0.0969562	1.95e-07***

N=148; Within R-squared = 0.5703; Robust standard error was used in order to account for heteroscedasticity problems; residuals are not normal thus p-values have to be interpreted with caution. \*\*\* - shows that statistical significance is less than 0.01. Source: Visionary Analytics, 2015

The results from the regression suggest that “must carry” does have a small impact on market share. Channels that are part of the “must carry” list have a market share that is on average 2.3% larger than those channels that are not part of “must carry”. These results are statistically significant at all significance levels. However, these results should be interpreted with caution as they do not sufficiently control for effects of other factors on audience share.

### **Options 1b and 2b: maintain status quo or remove EPG related obligations at national / EU level?**

#### **Hypotheses**

EPG regulation may have social value in terms of the promotion of media pluralism. There are two inter-related arguments in favour of regulation. Firstly, if left unchecked, the market forces may fail to provide users with general interest content. Vertically integrated platforms have strong incentives to put their own content in the most prominent positions so as to boost audiences and associated income from advertising. Furthermore, to the extent that higher prominence generates higher audience shares, the platforms may sell top EPG positions to the highest bidders. Hence, the commercial priorities of platforms may collide with social objectives related to the promotion of consumption of general interest content.

The second argument in favour of the EPG regulation is related to a “virtuous circle” of investment in public service content. Higher prominence of general interest content generates larger audiences, which attract additional resources to be invested in the development of new content. This in turn further strengthens the competitive position of producers of general interest content. This virtuous circle could be broken if providers of general interest content lost their current positions on EPGs.

The counter arguments to EPG regulation rest on the role of consumer choice. Consumers are likely to prefer platforms that minimise the costs to search for desired content. This provides the platform with strong incentives to: a) place the most popular content at the top of the user interface (EPG or other); b) ensure findability of any content offered; and c) individualise user interfaces (e.g. by allowing consumers to re-programme EPGs, or providing tailored recommendations). This implies that high quality general interest content could be popular and prominent without EPG regulation.

An empirical assessment of the above arguments would require analysis of evidence regarding the impact of EPG regulation on the size of the audiences. If the impact of regulation is significant, this would support the view that markets left to their own devices are not likely to ensure the prominence of general interest content. Conversely, if the impact is negligible, this would indicate the need to change regulation or abandon it altogether.

<sup>238</sup> Market shares for 2015 were calculated by taking the average market share of the first months of 2015.

## Evidence

Evidence from the UK suggests that EPG prominence does have a significant impact on audience share. A study<sup>239</sup> carried out in 2013 assessed 29 cases of actual EPG reshuffles in 2010-2012. It found that:

- “25 examples (86%) support an argument that EPG positioning affects audience performance, 3 examples are inconclusive, and 1 supports an argument that EPG positioning does not affect audience performance”<sup>240</sup>. The study concludes that, if a major entertainment channel suffered from significant loss of EPG prominence, this would lead to a 10–40% drop in audience share, (depending on platform). A previous study that focused on EPG reshuffles in the UK between 2006 and 2009 found very similar results<sup>241</sup>. This suggests that consumers’ behaviour in searching for audiovisual content, as well as the importance of EPG positioning, has not significantly changed between 2006 and 2012.
- The negative consequences of removing EPG regulation could be mediated by unique content and a strong brand. Considering all of these factors, the central scenario suggests that a loss of prominence could lead to a drop of between 5.9% and 24.3% in the audience for Channel 5 and between 0.2% and 2.3% for ITV.

The above results need not hold for all MS. The UK represents one of the most competitive markets with a large number of channels in native tongue. Smaller MS face a very different market structure, characterised by: a) relatively small number of channels provided in national languages and b) a large number of channels in foreign languages (typically in English, French and German). To the extent that these groups of channels do not directly compete in terms of prominence, the impact of EPG regulation on media pluralism is likely to be considerably smaller (if any). This could explain why smaller MS so far have refrained from extensive use of findability clause.

## Option 4: extend material scope of “discoverability” rules

### Hypotheses

The first group of arguments in favour of extending the material scope of discoverability rules are based on the “filter bubble effect”. The latter refers to the results of highly personalised search and recommendation systems, whereby an algorithm selects what information a user wants to see based on past browsing / viewing behaviour. As Eli Pariser argued<sup>242</sup> this creates an information bubble that prevents exposure to new ideas and conflicting viewpoints. This could have negative effects on consumers (by limiting the potential to expand their horizons) and society at large (by fuelling divides between informationally segmented groups).

On the other hand, search and recommendations systems could lead to an opposite effect. The algorithms used by search and recommendation systems take into account the observed preferences of individual users as well as the preferences of larger groups of consumers. The extent to which these systems provide heterogeneous or homogenous content depends on the balance between the two. A recent study sought to test fragmentation – homogeneity hypotheses by examining the effects of the music recommendation system in the iTunes store. The main result was that “users have more in common after recommendations, as measured by purchase similarity. The increase in commonality occurred for two reasons: the product mix effect, in which users shifted their purchases toward more similar items, and the volume effect, in which users simply bought more under recommendations, increasing the likelihood of co-purchases with others. <...> Personalization thus appears to be a tool that helps users widen their interests and create commonality.”<sup>243</sup> While the current study cannot carry out a

<sup>239</sup> Farid El-Husseini, “An Analysis of the Audience Impact of Page One EPG Prominence”, *FEH Media Insight*, 2013.

<sup>240</sup> *Ibid.*, p. 4.

<sup>241</sup> Farid El-Husseini, “An Analysis of the Audience Impact of Page One EPG Prominence”, *FEH Media Insight*, 2013

<sup>242</sup> Eli Pariser, “The Filter Bubble: What the Internet Is Hiding from You”, Penguin Press, New York, 2011.

<sup>243</sup> Kartik Hosanagar, Daniel Fleder, Dokyun Lee, and Andreas Buja, “Will the Global Village Fracture into Tribes? Recommender Systems and their Effects on Consumer Fragmentation”, *Management Science*, Vol. 60 (4), p. 820.

similar test for audiovisual media content, it can test the fragmentation – homogeneity hypotheses indirectly. If the services offered by public service broadcasters remain prominent in online platforms, it could be concluded that search and recommendation systems do not pose significant challenges in terms of extreme heterogeneity or homogeneity of content.

The second group of *pro et contra* arguments for extending the material scope of “discoverability” regulation are essentially the same as in the case of linear audiovisual media services. It could be argued that in the absence of regulation: a) vertically integrated platforms with significant market power might have incentives to abuse it by not carrying or giving low prominence to general interest content, in particular to items/channels which are not popular; and b) loss of prominence would result in a “vicious circle” whereby providers of general interest content suffer from smaller audiences and loss of revenue and therefore cannot invest further in new content.

On the other hand, it could be argued that regulation would not be effective as platforms have strong incentives to cater for the interests of consumers. Therefore, platforms are likely to carry and provide appropriate prominence to popular content even without regulation. Evidence that viewers are fully engaged with on-demand content of PSBs would support arguments against regulation. Conversely, if evidence points to obstacles in accessing or finding content, this would indicate a potential market failure and would support the argument for policy intervention.

### **Evidence**

With a view to testing the above hypotheses, data collection focused on the extent to which the services offered by PSBs are prominent and popular in the dominant platforms. Firstly, we assessed whether apps offered by PSBs are among the top 10 downloads (news and entertainment categories) in the two most widely used platforms (Google Play and the Apple App Store) on a randomly selected date (December 1<sup>st</sup>, 2015). In total, 32 unique apps of PSBs in 17 MS made it into the top 10. This suggests that, in the majority of MS, apps that provide a gateway to the content offered by PSBs are prominent and popular. In fact, in several MS (AT, CZ, ES, SE, UK) more than one app made it into the top 10 (see Table 5.11).

**Table 5.11. Popularity of apps offered by PSBs.**

Platform Category	Apple App Store		Google Play	
	Entertainment	News	Entertainment	News and magazines
No of apps of PSBs in “national” top 10	6	18	5	16
No of MS, where national PSB apps are in the top 10	6	14	3	13
PSBs with two or more apps in the top 10	-	Österreichischer Rundfunk (AT); Česká televize (CZ); Sveriges Television (SE)	BBC (UK)	Česká televize (CZ); Corporación de Radio y Televisión Española (ES);

Source: Visionary Analytics estimates based on data from App Annie < <https://www.appannie.com/>>.

Note: Popularity of apps was measured on a randomly selected date (December 1<sup>st</sup>, 2015). Only free-to-download apps are included.

Secondly, we focused on the UK on-demand audiovisual market, which is arguably the most competitive in the EU in terms of the number of platforms and providers of on-demand services and content. It is also characterised by the early entrance of PSBs into the on-demand market. Table 5.12 outlines the top-10 video streaming apps by number of downloads from the two most popular app stores. Six of the top ten apps provide access to streaming of PSBs’ content. This is a remarkable achievement given the hundreds of alternatives and strong national and international competitors (e.g. Netflix, Amazon Prime Instant Video, iTunes, NowTV, Blinkbox, etc.). This also suggests that in the absence of prominence regulation for

on-demand services, viewers do not encounter major difficulties in discovering general interest content.

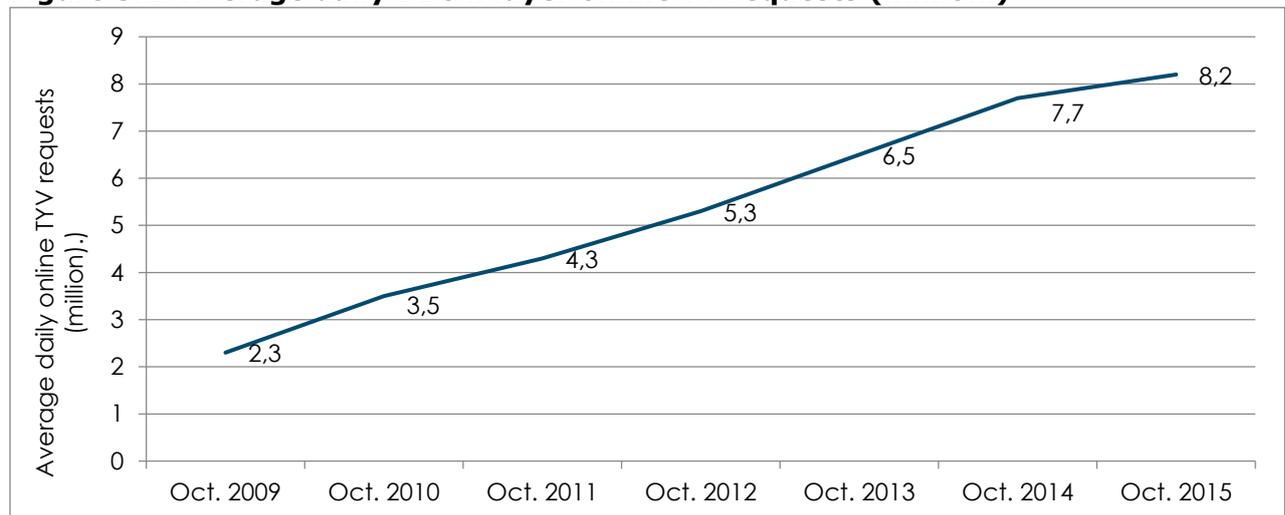
**Table 5.12. Top video streaming apps by downloads (iOS App Store and Google Play combined) in July 2014-July 2015.**

Rank	App	Rank	App
1	YouTube (Google)	6	BBC News (BBC)
2	BBC iPlayer (BBC)	7	Sky Go (Sky)
3	Netflix (Netflix)	8	4oD (Channel 4)
4	ITV Player (ITV)	9	Sky Sports (SKY)
5	BBC Media Player (BBC)	10	BBC Sport (BBC)

Source: App Annie, *Mobile Video Streaming Takes Off Globally*, 2015, p. 12

How do downloads translate into actual usage of services? BBC launched its iPlayer at the end of 2007 and use has increased steadily since (see figure 5.2). On average, it receives more than 8 million online TV requests daily (as of October 2015 – latest available data). Furthermore, as a report by Ofcom suggests: “The BBC iPlayer remains the most popular of the VoD services provided by the major broadcasters and platforms; 31% of GB adults claim to have used it within the past year. It appears that the majority of homes that have access to the service are now using it.”<sup>244</sup>

**Figure 5.2. Average daily BBC iPlayer online TV requests (million.)**



Source: BBC Communications, BBC iPlayer Monthly Performance Pack, October 2015.

To what extent does the success of PSBs in the UK on-demand market shed light on possible future developments in other MS? BBC and other UK-based PSBs were among the first pioneers in developing highly popular on-demand services. On the one hand, it could be argued that the success of PSBs from the UK illustrate possible paths of development for other MS, where on-demand market remain in its infancy. On the other hand, latecomers to on-demand market might face significant impairment and may not be able to copy the success of major PSBs due to stiff competition from well-established international players.

Furthermore, the analysis above covered only major PSBs. Discoverability and popularity of niche, local, regional or small providers of general interest content is significantly lower. For example, the most frequently downloaded apps (see Table 5.11) were provided by national PSBs. The apps offered by regional service providers did not make it into the top 10 (or top 20). This could be due to several reasons. First, diversity of platforms (that rely on different technical specifications and standards) implies that a separate app needs to be developed for each platform. This could impose (relatively) higher burden on niche/regional/small providers

<sup>244</sup> Ofcom, “The Communications market report”, 2015.

of general interest content (in comparison to major PSBs). As a result, some of the smaller providers of general interest content have not yet developed apps or the apps are available only for few of the platforms. Second, niche/regional/small providers of services do not attract significant audiences and as a result the available apps are not highly prominent and popular.

This could potentially pose challenges for media pluralism. However, it is uncertain whether prominence regulation is the best option to tackle this challenge. Firstly, platforms do provide access to all apps that are offered and meet requested standards. This is due to the significant interest of platforms in developing "own" ecosystem of apps so as to boost the market share of devices (smart phones, smart TVs, etc.) that rely on compatible software. Hence, support for the development of apps could be more pertinent<sup>245</sup> in comparison to regulatory obligations regarding the carriage of apps. Secondly, the provided apps do not necessarily appear on the top page of search results. This is, however, caused by the low popularity of apps (and the content offered) rather than by market or government failure. Hence, in this respect it is not clear, whether the regulation on prominence would be the most effective instrument to foster media pluralism and cultural diversity. The current situation could change in the future: as markets mature, well-established platforms might be tempted to exploit their dominant positions. In this regard non-discrimination regulation could provide a safeguard against attempts to abuse market power.

To sum-up, the available evidence suggests that apps of PSBs are carried by major platforms and that they enjoy high popularity (in terms of downloads and usage). "Discoverability" regulation for on-demand services could further strengthen the prominence and size of the PSB audience. However, the evidence suggests that currently there are no market failures (e.g. instances when vertically integrated conglomerates abuse market power and create obstacles for finding and accessing content offered by PSBs) that such regulation could tackle. Non-discrimination regulation could provide a safeguard against such attempts in the future.

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<sup>245</sup> This is not based on extensive analysis of possible market failures that prevent service providers from investment of own resources in development of apps.

## Conclusions

The aim of this study was to collect findings and conduct an assessment of the impacts that different policy options related to four policy areas of interest regulated by the AVMSD would have if implemented under three different scenarios. Chapters 2 to 5 presented the findings of the impact assessment of implementing different policy options in four policy areas: e. 1) independence of regulators, 2) accessibility for persons with disabilities, 3) right of reply, 4) 'must-carry' and prominence, implemented under alternative scenarios, i.e. a) maintain material and geographical scope, b) extend material scope and c) extend geographical scope of the AVMSD.

In this context, a set of overall and specific conclusions can be drawn, which are presented in the following per policy option.

### Independence of Regulators

The current EU rules on the independence of audiovisual media regulators (Article 30 AVMSD) have little to no impact on the actual performance of regulators, which are under the discretion of MS. National legal frameworks in most MS contain provisions safeguarding independence of regulators, although *de facto* implementation in some cases has been problematic. The study investigated the likely impacts related to three policy options, namely: *Option 1 - maintaining the status quo*, *Option 2 - Lay down in the AVMSD a mandate for the independence of regulatory authorities*, *Option 3 - Lay down minimum mandatory requirements for regulatory authorities*. The study also separately analysed the enforcement costs of regulating non-linear service providers and online platforms and assessed the cost-implications of an extension of material scope (scenario b).

#### **Option 1. Leave the AVMSD provision regarding regulatory authorities (Article 30) unchanged.**

The current provisions of the AVMSD do not establish an obligation to create an independent regulatory body, if one does not already exist. Furthermore, Article 30 does not stipulate how the independence of audiovisual regulatory bodies should be ensured. As a result, the *status quo* neither imposes administrative and enforcement costs, nor ensures significant social / economic benefits in terms of more effective transposition of the AVMSD, preservation of free and independent media, providers' willingness to establish in the EU or serve audiences in other MS.

#### **Option 2. Lay down in the AVMSD a mandate for the independence of regulatory authorities.**

This option would introduce an explicit requirement for MS to guarantee the independence of regulators. However, MS would have discretion as to the setting out of the specific requirements that the regulatory authorities would be subject to. The analysis suggests that national legal frameworks (with small exceptions) include provisions on independence of regulators, but several MS face challenges in guaranteeing *de facto* independence. Adoption of Option 2 would provide legal basis for the Commission to take action, if independence provisions are not adequately enforced. The costs and benefits of this Option are as follows:

- Option 2 would not lead to additional administration or enforcement costs in 27 MS, and negligible costs in 1 MS (an independent regulator would have to be established in Estonia, where regulatory functions are carried out by a ministerial department).
- It is not likely that adoption of Option 2 *per se* would lead to significant changes in national legal frameworks. However, it could affect actual implementation of independence provisions and thus contribute to safeguarding media freedom and pluralism. This option would have no significant impact on the providers' willingness to establish within an EU MS and serve audiences in several MS. The impact(s) in this regard were found not to change under alternative scenarios.

**Option 3. Lay down minimum mandatory requirements for regulatory authorities, for example detailed conditions for the independence of national regulatory bodies.**

The analysis assumed the following mandatory requirements: a) a mandate for a separate independent body with decision-making powers; b) adequate resources; c) autonomy of decision makers; and d) transparency and impartiality.

- There is strong evidence to suggest that implementation of these requirements would impose administration and enforcement costs. Due to the requirements related to the adequacy of human and financial resources, the most understaffed and under-funded regulators<sup>246</sup> will need in total approx. 160-250 additional employees (full-time units), which would amount to additional costs ranging from €7m to €12m per annum (hereinafter, p.a.). To a lesser extent, obligations to enforce mandatory requirements related to transparency and impartiality would also impose additional costs. 25 regulators<sup>247</sup> would need to start publishing minutes and agendas and 13 regulators<sup>248</sup> would have to start organising public consultations.
- Stakeholders view adoption of Option 3 as the most credible guarantee for independence and transparency of national regulators. In this regard it has the highest potential (in comparison to other Options) to foster better regulation and thus safeguard media freedom and pluralism as well as transposition of the AVMSD. Furthermore, more stringent requirements on the independence of regulators would have a positive impact on providers' willingness to establish in an EU MS. The positive impacts of Option 3 are not affected by the alternative scenarios.

The overall conclusion is that laying down concrete minimum requirements related to the independence of regulatory authorities would lead to increased administrative and enforcement costs, which would be significant for the most understaffed and underfunded regulators. At the same time, establishment of concrete requirements have the largest potential for *de facto* safeguarding independence of regulators and thus more effective transposition of the AVMSD and the preservation of free and pluralistic media.

**Enforcement costs of regulating on-demand services, online platforms and services established outside the EU.**

The analysis assessed the enforcement costs of regulating different audiovisual media service providers:

- Regulation of TV-like and non-TV like on-demand services with editorial responsibilities is likely to result in additional costs of between €2.8 m (if regulation followed the approach adopted by ATVOD<sup>249</sup> in the UK) and €97 m (if regulation of on-demand service providers was the same as per linear service provider) p.a. for MS. The significant differences between these estimates represent divergent assumptions on the scope of regulation as well as approaches taken to enforce it. It is likely that actual costs will be closer to the lower bound. The analysis provides combined estimates of the costs of regulating TV-like and non-TV like on-demand services as the data available does not allow for distinction between the two. TV-like on-demand services are already covered by the AVMSD, although these provisions are not universally enforced in all MS. Non-TV like on-demand services with editorial responsibility are currently not covered by the AVMSD. Hence, the costs of regulating on-demand services cannot be attributed to the incremental costs of expansion of material scope.
- The regulation of online platforms that do not exercise editorial responsibility is likely to impose negligible additional costs, i.e. less than €1 m p.a. for all MS. One could argue that, due to the huge amount of content on online platforms, the enforcement costs would be

<sup>246</sup> CZ, EL, SK, SL, BG, BE (FL), LV, NL, SE, HR, LU.

<sup>247</sup> According to AVMSD Radar, these regulators are: BE (all communities), CY, DK, EE, ES (CAA and CAC, there is no information about CNMC), FI, FR, DE, IE, IT, LU, MT, NL, AT, PL, PT, SL, SE which are currently not obliged to publish agendas and minutes; EL, LT and LV which are currently not obliged to publish minutes; CZ which are currently not obliged to publish agendas.

<sup>248</sup> According to AVMSD Radar, the following regulators do not regularly organise public consultations: CZ, EE, EL, ES (CNMC), ES (CAC), ES (CAA), HU, HR, CY, LU, SE, SK, FI.

<sup>249</sup> Authority for Television On Demand (ATVOD) was a co-regulatory body in charge of commercial non-linear services in the UK.

significantly higher. However, the costs are likely to be limited by two factors: a) since online platforms do not exercise editorial responsibility, they are likely to be subject to thinner regulatory requirements compared to linear service providers; and b) it is likely that regulation will (at least to some extent) rely on self/co-regulatory measures, whereas monitoring will be driven by complaints and/or rely on some sampling techniques – these measures should contain enforcement costs.

- Cost of extended geographical scope: regulation of linear channels established outside the EU, but targeting EU audiences, is likely to impose additional costs of approx. €2.5 m p.a. for all MS. If extended geographical scope of AVMSD covered only services with significant market share (e.g. at least 2% in any MS), the regulation costs would be negligible.

### Accessibility for persons with disabilities

Article 7 of the AVMSD stipulates that MS “shall encourage media service providers [...] to ensure that their services are gradually made accessible to people with a visual or hearing disability”. The available evidence suggests that the implementation at MS level varies both in terms of legal requirements and actual level of accessibility of services. In this context, the study sought to ascertain the potential impacts that three policy options would have, namely: *Option 1 – Maintain status quo*, *Option 2 – Strengthen EU-level harmonisation of existing rule*, *Option 3 – Introduce self and co-regulation measures*. The impact(s) of these policy options were assessed in three alternative scenarios: a) maintain geographical and material scope; b) extend material scope; and c) extend geographical scope.

#### **Option 1. Maintain status quo, i.e. keep in place the current EU rules on accessibility for persons with disabilities.**

The current provisions of the AVMSD do not establish an obligation to provide accessibility services. Therefore, the *status quo* neither imposes costs, nor provides significant social / economic benefits.

#### **Option 2. Strengthen EU-level harmonisation of existing rules. The MS would be required to ensure gradual accessibility of audiovisual works for persons with visual and hearing disabilities.**

The estimates below are based on the following assumptions: a) implementation of Option 2 would lead to the introduction of targets equal to a 10% increase in the share of accessible content; b) linear service providers would not be required to make more than 80% of their content accessible, i.e. service providers that already exceed this threshold would not be affected; and c) linear service providers failing to reach a 2% market share threshold would be exempt from obligations.

- Adoption of Option 2 would impose additional administration and enforcement costs. Monitoring of linear services that currently do not face national accessibility regulations would impose additional costs of between €0.10 m p.a. (passive monitoring) and €0.25 m p.a. (active monitoring) for all EU MS. These costs would be incurred only by the MS that currently do not monitor provision of accessibility services. Monitoring of on-demand service providers<sup>250</sup> would impose additional costs of between €0.59 m p.a. and €1.51 m p.a. for all EU MS, while monitoring of platforms would impose negligible additional costs. An extension of the geographical scope is not likely to impose additional enforcement costs, since there are no service providers that are established outside the EU, but target EU MS and have a market share of at least 2%.
- Option 2 is likely to yield additional administrative burden and compliance costs for the industry. A 10% increase in subtitling, sign language interpretation and audio description aggregated at EU level would result in additional costs of between €52.02 - €280.87 m p.a. for linear EU providers. The available data does not allow for an assessment of the costs for on-demand services due to differences in the technologies used by such service providers. *Extending the material scope* to online platforms without editorial

<sup>250</sup> It is likely that accessibility requirements would be imposed only on non-linear service providers that have significant market share. There is no systemic data on market shares of non-linear service providers. Therefore, the estimates capture only those on-demand services that are owned by linear service providers with at least 2% market share.

responsibility is likely to have negligible technological costs since the platforms are already equipped to provide accessible content. *Extending the geographical scope* would not result in additional costs, since there are no service providers that are established outside the EU, but target EU MS and have a market share of at least 2%.

- In terms of social benefits, the evidence suggests that the adoption of Option 2 is likely to have the most pronounced impact in terms of increasing accessibility, as well as the development of new services (in comparison with the other Options).

### **Option 3. Introduce self and co-regulation measures.**

This option involves obligation for the setting-up of self-regulatory and co-regulatory bodies to ensure accessibility of audiovisual content for people with disabilities.

- The administrative burden and compliance costs related to setting up self- and co-regulatory instruments for linear services would lead to additional costs estimated at between €0.17 m p.a. and €2.35 m p.a. for all linear EU providers with market share of over 2%. These costs are additional to the costs of complying with accessibility targets, should they be introduced (the latter are reflected under Option 2). Self and co-regulation of on-demand services would imply negligible costs. An extension of the scope of regulation to include online platforms as well as an extension of the geographical scope would result in negligible additional costs (due to the presence of a small number of platforms and service providers established outside the EU, but targeting EU MS).
- It is likely that, under a self- or co-regulatory regime, service providers would seek to avert additional costs if expenses are not offset by additional revenue from larger audiences. Therefore, significant departures from the status quo in terms of increased accessibility of audiovisual content are not likely. Furthermore, national self- and co-regulation measures could entrench existing fragmentation in terms of standards and technology for the provision of accessibility services.

The overall conclusion is that gradual harmonisation of existing rules (Option 2) would increase enforcement costs by a small amount, while compliance costs would be substantially higher, depending on what targets would be set. A 10% increase in accessible content with subtitles, audio description and signing would cost linear service providers in the EU between €52 m p.a. and €280.9 m p.a. under assumed requirements (see above). However, Option 2 has the largest potential to improve accessibility of audiovisual content and contribute to the development of new services.

### **Right of reply**

Article 28 (1) of the AVMSD enshrines the right of reply<sup>251</sup> which covers all linear service providers under the jurisdiction of a MS. Overall, the research indicates that there is a wide variety of approaches to the right of reply in MS, *inter alia* in terms of enforcement, the interpretation of broad right vs right of rectification and the types of statements that fall under the provision. No options for changing the status quo are being considered, but the study investigated the impact of the current provisions on right to reply under the extension of the material (scenario b) or geographical scope (scenario c).

### **Option 1. Maintain the status quo, i.e. keep in place the current EU rules on right of reply provisions.**

The available evidence suggests that the current regulation on right of reply provides an important safeguard to media freedom and pluralism. Enforcement costs faced by national regulators and compliance costs faced by businesses are negligible. An extension of the material and/or geographical scope of the AVMSD is not likely to significantly alter the costs and benefits.

### **Must-carry and prominence**

The Universal Service Directive (Article 31) stipulates that the MS may oblige providers of electronic communications networks to transmit specific TV channels ("must carry"). The Access

<sup>251</sup> A right to defend oneself against false facts or criticism on the same media channel.

Directive establishes access to Electronic Programme Guides may be imposed by national regulatory authorities for electronic communications on fair, reasonable and non-discriminatory terms. Recital 10 of the Access Directive states that MS can impose additional actions, other than those that foster competition, in order to promote cultural diversity and pluralism in the media.

**Option 1a and 2a. Maintain or remove "must carry" obligations.**

- Since EU level regulation does not impose regulatory obligations (it permits, but does not require the establishment of "must carry" rules by MS), the status quo does not create enforcement costs for regulators or compliance costs for businesses. The costs arising due to national regulation are negligible. Removal of "must carry" obligations at EU level would result in negligible costs in order to adapt to a changing legal environment for national regulators and service providers.
- "Must carry" regulation does affect the outcomes of negotiations between platforms and broadcasters. However, if "must carry" obligations were removed it would be difficult to predict the direction and scale of transfers between platforms and broadcasters due to the variety of current arrangements, different market power of parties and nuances of existing national regulation..
- There is some (albeit weak) evidence that loss of "must carry" status can lead to an approximate decline of 2% in audience share of respective channels, but the effects are expected to vary.

**Option 1b and 2b. Maintain or remove prominence regulation.**

- The EU level regulation does not impose prominence obligations and therefore does not imply enforcement costs for regulators or compliance costs for businesses.
- Channels given higher prominence (due to national regulation) enjoy significant advantages. The removal of prominence regulation would lead to a significant one-off transfer of value from Public Service Broadcasters (hereinafter, PSBs) that currently enjoy higher prominence, to platforms that could auction the most prominent spots on EPGs. For example, an impact assessment carried out in the UK estimates that the total value of the top 5 slots across all traditional EPGs is £250m or approx. €300m (in 2012 prices)<sup>252</sup>. Across the EU, the scale of the likely transfer of value will depend on the size of the audiovisual market: prominence holds higher value in larger markets with a significant number of directly competing channels.
- The evidence suggests that prominence regulation may have social value in terms of the promotion of media pluralism and in terms of audience shares. Data from the UK suggests that in large audiovisual markets, the removal of EPG regulation could lead to significant losses in audience and revenue of PSBs and other providers of general interest content, which could undercut their financial stability and capacity to invest in high quality public service content. These effects are less pronounced in small markets: since the number of channels broadcasting in official languages is small, PSBs and other major providers of general interest content are likely to be given prominence even without regulation.

**Option 3. Extend existing "must carry" rules to on-demand services/and or further services currently not covered by the regulation.**

- EU level regulation would permit rather than oblige extension of "must carry" rules to on-demand and other online audiovisual services. If this were the case, EU level regulation would not impose additional costs on regulators or businesses. The compliance costs arising from national legislation would depend on the nuances of the respective regulation. If the regulation obliges *carriage of content*, this would impose significant compliance costs on platforms, which would need additional infrastructure for storage and distribution of "must carry" content. However, if the regulation only obliges *carriage of applications* that provide access to general interest content, the costs would be

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<sup>252</sup> Department for Culture, Media and Sport, "The balance of payments between TV platforms and Public Service Broadcasters and the future of Electronic Programme Guides", 2015.

negligible. Even without regulation, most platforms currently carry the apps of PSBs (when they are made available by the PSBs).

- Regulation on “must carry” of apps is not likely to have significant impacts, since the available apps are already carried by platforms. If “must carry” encompassed specific general interest content, it would be difficult to enforce since content owners would not necessarily have the economic incentives to provide the content to online platforms. The evidence collected suggests that there are no economic arguments for extension of the material scope of “must carry” rules.
- There is also little evidence on the potential social benefits of regulation. Available evidence suggests that apps (that provide access to PSBs’ content) are already carried by the major platforms.

***Option 4. Amend the AVMSD to include rules related to the “discoverability” of general interest content (for instance rules relating to the prominence of “general interest” content on distribution platforms for on-demand audiovisual media services).***

- Similar to Option 3, it is not likely that EU level regulation would impose significant costs on regulators and businesses. The compliance costs arising from national regulation would depend on the nuances of the approach adopted. If the regulation focused on prominence of content on smart recommendation tools or search engines, the compliance costs would be significant: platforms would need to adapt search and recommendation tools for each national market. Alternatively, the regulation could oblige manufacturers of equipment to pre-load specific apps that could make general interest content easily accessible. Most manufacturers already pre-load “national” apps and this would not imply very high costs.
- Introduction of regulation is likely to result in redistribution of economic value from platforms to selected providers of content. Furthermore, obligations on prominence of content on search and recommendation systems would hinder innovation and distort competition. Due to the abundance of content, the competitive advantage of the platforms rests on the efficiency and effectiveness of search and recommendation systems. Regulation would undercut the effectiveness of such systems by giving prominence to content that does not necessarily match the needs and habits of consumers. Hence, the platforms established in the EU and subject to such regulation would suffer a competitive disadvantage vis-à-vis providers established outside the EU.
- There is evidence that major PSBs are already successful in the on-demand market. “Discoverability” regulation for on-demand services could further strengthen the prominence and size of the PSB audience. However, the analysis did not identify significant market failures (e.g. instances when vertically integrated conglomerates abuse market power and create obstacles for finding and accessing content offered by PSBs) that such regulation could tackle. Local, regional, small and niche providers of general interest content face challenges in gaining significant online audiences. This is mirrored by the low popularity of the respective apps. At the same time such content can be of significant importance for media pluralism, freedom of speech and cultural diversity. Low audience shares are not caused by market or government failure. While regulation on prominence might not in all cases be the most effective instrument there seems to be merit in ensuring that existing national competences in this area are kept in place as a last resort.

***Option 5. Address potential issues only in the context of the comprehensive assessment related to the role of online platforms and intermediaries launched at the end of 2015 (as announced in the Digital Single Market Strategy for Europe).***

- The Commission has envisaged a comprehensive “assessment of the role of platforms, including in the sharing economy, and of online intermediaries, which will cover issues such as (i) transparency e.g. in search results (involving paid for links and/or advertisement), (ii) platforms’ usage of the information they collect, (iii) relations between platforms and suppliers, (iv) constraints on the ability of individuals and businesses to move from one platform to another and will analyse, (v) how best to tackle

illegal content on the Internet.” Since this option was considered not to have any primary effects, the analysis of the impacts did not go in greater depth.

To sum-up, removal of “must carry” and prominence provisions can lead to significant transfer of value between traditional broadcasters of general interest content and platforms. Furthermore, removal of said regulations can lead to a lower market share for providers of general interest content. For prominence provisions, these impacts are likely to be the most significant for MS with large audiovisual media markets. Currently, the apps that provide access to general interest content are already carried by platforms (if content owners provide such apps). The apps of major PSBs enjoy significant prominence and popularity. There is no evidence to suggest that platforms abuse their market power and thus there is little rationale for regulatory intervention. Regional, niche or small providers of general interest content struggle in developing apps for different platforms and attracting significant on-demand and online audiences. This has negative repercussions for media pluralism, but interventions focused on this challenge should in the first place target the cause (low popularity) while there seems to be merit in ensuring that existing national regulatory competences in this area are kept in place as a last resort. If regulation obliged platforms to display specific content more prominently on search and recommendation systems, this could discourage innovation and distort competition between regulated EU platforms and unregulated platforms *established* in third *countries*.

## Annex 1. Audiovisual media services regulators

MS	Regulatory body	Status: separate body?	Scope of competence	Sources of income	Appointment of highest decision making body	Agency is autonomous in decisions on	Transparency	Performance and financial audits	Powers*
<b>BE (DE)</b>	Medienrat (MRat)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> </ul>	<ul style="list-style-type: none"> <li>• State funding (100%)</li> </ul>	Representatives of civil society (5), Parliament (6), industry (11), experts (4) are appointed by Government	N/A	<ul style="list-style-type: none"> <li>• Minutes and agendas (M&amp;A) not published. Decisions public.</li> <li>• No specific transparency measures</li> </ul>	<ul style="list-style-type: none"> <li>• Performance audit (PA) (continuous)</li> <li>• Financial auditing (FA) (continuous)</li> </ul>	<ul style="list-style-type: none"> <li>• General policy implementation (GPI) (+)</li> <li>• Monitoring</li> <li>• Information collection (+)</li> <li>• Sanctioning</li> </ul>
<b>BE (FR)</b>	CSA	Yes		<ul style="list-style-type: none"> <li>• State funding (100%)</li> </ul>	Appointed by Government and Parliament	<ul style="list-style-type: none"> <li>• Internal organisation and procedures (IPO).</li> <li>• Human resources (HR)</li> </ul>	<ul style="list-style-type: none"> <li>• M&amp;A not published. Decisions public.</li> <li>• Process of decision making is transparent</li> </ul>		
<b>BE (FL)</b>	VRM	Yes		<ul style="list-style-type: none"> <li>• State funding (approx. 58%)</li> <li>• Spectrum fees (approx. 42%)</li> </ul>	Experts, judges and journalist appointed by Government	<ul style="list-style-type: none"> <li>• M&amp;A not published.</li> <li>• No specific transparency measures</li> </ul>			
<b>BG</b>	Council for Electronic Media (CEM)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services);</li> </ul>	<ul style="list-style-type: none"> <li>• State funding (approx. 50%)</li> <li>• Fines</li> <li>• License and registration fees and annual fees</li> </ul>	Appointed by Parliament (3), President (2).	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• Meetings open to public</li> <li>• Public decisions, M&amp;A published</li> </ul>	<ul style="list-style-type: none"> <li>• Annual PA</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
<b>CZ</b>	Council for Radio and TV Broadcasting (RRTV)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> </ul>	<ul style="list-style-type: none"> <li>• State funding (100%)</li> </ul>	Appointed by lower chamber of the Parliament (13)	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• Public decisions</li> <li>• Obligated to publish only minutes</li> </ul>	<ul style="list-style-type: none"> <li>• PA</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI(+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
<b>DK</b>	The Radio And Television Board (RTB)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Spectrum</li> </ul>	<ul style="list-style-type: none"> <li>• State budget (100%)</li> </ul>	Representative of civil society (1) and experts (9) are appointed by the Minister of Culture	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• M&amp;A not published.</li> <li>• The decision making process is not transparent</li> </ul>	<ul style="list-style-type: none"> <li>• Annual FA</li> <li>• No PA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI</li> <li>• Monitoring (+***)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+**)</li> </ul>

MS	Regulatory body	Status: separate body?	Scope of competence	Sources of income	Appointment of highest decision making body	Agency is autonomous in decisions on	Transparency	Performance and financial audits	Powers*
DE <sup>253</sup>	Lander Media Authorities (LMA)	Separate legal entities	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> </ul>	<ul style="list-style-type: none"> <li>• Public broadcasting licence fees</li> <li>• Administrative fees and fines</li> </ul>	Differences between Landers <sup>254</sup>	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	No obligation to publish decisions	<ul style="list-style-type: none"> <li>• Annual PA</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
EE	The Technical Surveillance Authority	No <sup>255</sup>	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> <li>• Spectrum</li> <li>• Electronic communications (networks and services in general)</li> <li>• Transport, industrial safety</li> </ul>	<ul style="list-style-type: none"> <li>• State budget (100%)</li> </ul>	Minister appoints Director general. The latter appoints other members.	N/A	<ul style="list-style-type: none"> <li>• M&amp;A not published.</li> <li>• The decision making process is not transparent</li> </ul>	<ul style="list-style-type: none"> <li>• Annual PA</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• Policy setting (+)</li> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
IE	Broadcasting Authority of Ireland (BAI)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> </ul>	<ul style="list-style-type: none"> <li>• Authorisation/licence fees paid by broadcasters (100%)</li> </ul>	BAI main authority: Representatives of civil society (3), Representatives of industry (2), experts (4). Committee members are nominated by the Minister and BAI main authority (16).	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	The decision making process is transparent. However, M&A not published	<ul style="list-style-type: none"> <li>• FA</li> <li>• PA (frequency determined by the Minister)</li> </ul>	<ul style="list-style-type: none"> <li>• Policy setting (+)</li> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
EL	National Council for Radio and	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> </ul>	<ul style="list-style-type: none"> <li>• State budget (100%)</li> </ul>	Experts nominated by the President of the Hellenic Parliament and	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• Only agendas published</li> <li>• Decision making</li> </ul>	<ul style="list-style-type: none"> <li>• FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information</li> </ul>

<sup>253</sup> In Germany, media issues lie in the competence of the 16 regions (Bundesländer). Each of the region (except two joint regulators) has its own State Media Authority (LMA). PSB are supervised by separate body – Broadcasting Councils.

<sup>254</sup> Expert council or a pluralistic council. Pluralistic councils are composed of: representatives of civil society (the majority of members), members of Parliament, experts and a maximum of one Government representative. The chairman is either elected by the Council/Assembly or by the regional Parliament.

<sup>255</sup> Governmental Authority within the Ministry of Economic Affairs and Communications.

MS	Regulatory body	Status: separate body?	Scope of competence	Sources of income	Appointment of highest decision making body	Agency is autonomous in decisions on	Transparency	Performance and financial audits	Powers*
	Television (NCRTV)				appointed by The Hellenic Parliament's Conference of Presidents		process is transparent		collection (+) • Sanctioning (+)
ES	National Commission on Markets and Competition (CNMC)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> <li>• Spectrum</li> <li>• Electronic Communications (networks and services in general)</li> </ul>	• State budget (100%)	Nominated by Parliament and formally appointed by Government	N/A	N/A	• FA (frequency not defined)	<ul style="list-style-type: none"> <li>• Policy setting</li> <li>• GPI</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
	CONSELL DE L'AUDIOVISUAL DE CATALUNYA (CAC)	Yes	• Audiovisual content (radio/TV, on demand media services)	<ul style="list-style-type: none"> <li>• State budget (main source)</li> <li>• Spectrum fees</li> <li>• Authorisation/license fees</li> <li>• Fines</li> <li>• Market surveillance fee</li> </ul>	Nominated by Parliament and formally appointed by Government	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• M&amp;A published after 5 years</li> <li>• The decision process is not transparent</li> </ul>	• Annual FA	<ul style="list-style-type: none"> <li>• GPI</li> <li>• Monitoring (+)</li> <li>• Sanctioning (+)</li> </ul>
	CONSEJO AUDIOVISUAL DE ANDALUCÍA (CAA)	Yes	• Audiovisual content (radio/TV, on demand media services)	• State budget (100%)	Nominated by Parliament and formally appointed by Government. There is gender quota.	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• M&amp;A published after 5 years.</li> <li>• The decision process is not transparent</li> </ul>	• Annual FA	<ul style="list-style-type: none"> <li>• Monitoring (+)</li> <li>• Sanctioning (+)</li> </ul>
FR	Conseil Supérieur de l'Audiovisuel (CSA)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> </ul>	• State budget (100%)	Nominated by the President of the National Assembly (3) and the President of the Senate (3), after validation by the Parliamentary commission of cultural affairs. All members are formally appointed by President	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• M&amp;A not published</li> <li>• Process not transparent</li> </ul>	• FA (as decided by the Cour des Comptes)	<ul style="list-style-type: none"> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
HR	Agency for	Yes	• Audiovisual content (radio/TV, on	• Market	Experts (7)	N/A	• M&A published	• Annual FA	• Policy setting

MS	Regulatory body	Status: separate body?	Scope of competence	Sources of income	Appointment of highest decision making body	Agency is autonomous in decisions on	Transparency	Performance and financial audits	Powers*
	electronic media		demand media services) • Transmission aspects of audiovisual content (e.g. spectrum)	surveillance fee (main source)			• The decision making process is transparent		• GPI • Monitoring (+) • Information collection (+) • Sanctioning (+)
IT	Agcom	Yes	• Audiovisual content (radio/TV, on demand media services) • Transmission aspects of audiovisual content (e.g. spectrum) • Distribution aspects of audiovisual content (e.g. must carry, EPG, API) • Spectrum • Electronic Communications (networks and services in general) • Publishing	• State budget • Authorisation/license fees • Fines • Market surveillance fee (main source)	Experts (11) nominated by The House and Senate, appointed by the decree of President of the Republic	• IPO • HR	• M&A not published, but available on request • The decision making process is transparent	• Annual financial auditing	• GPI (+) • Monitoring (+) • Information collection (+) • Sanctioning (+)
CY	Cyprus Radio-Television Authority	Yes	• Audiovisual content (radio/TV, on demand media services) • Transmission aspects of audiovisual content (e.g. spectrum)	• Authorisation/license fees • Fines • Market surveillance fees	Members are appointed by Council of Ministers	N/A	• Minutes not published, decisions published • Decision making process is transparent	• Annual FA	• GPI (+) • Monitoring (+) • Information collection (+) • Sanctioning (+)
LV	National Electronic Mass Media Council	Yes	• Audiovisual content (radio/TV, on demand media services) • Transmission aspects of audiovisual content (e.g. spectrum) • Distribution aspects of audiovisual content (e.g. must carry, EPG, API)	• State budget (main source) • Market surveillance fees	Nominated by Parliamentary Commission on Human Rights and Public Affairs and appointed by Parliament.	• IPO • HR	• Transparent decision making process • Minutes not published, agendas and decisions published	• Annual PA • Annual FA	• General policy setting (+) • GPI (+) • Monitoring (+) • Information collection (+) • Sanctioning (+)
LT	Lithuanian Radio and Television Commission	Yes	• Audiovisual content (radio/TV, on demand media services); • Distribution aspects of audiovisual content (e.g. must carry, EPG,	• State budget (main source) • Support funds • Publishing	Appointed by civil society (6), Parliament (3), President (2).	• IPO • HR	• Only agendas published • Meetings are open to the public <sup>256</sup>	• Annual PA • Annual FA	• GPI (+) • Monitoring (+) • Information collection (+)

<sup>256</sup> A meeting may be declared closed by majority voting of not less than two thirds of LRTK members present at the meeting if there is a need to protect the privacy of a person or a state or commercial secret.

MS	Regulatory body	Status: separate body?	Scope of competence	Sources of income	Appointment of highest decision making body	Agency is autonomous in decisions	Transparency	Performance and financial audits	Powers*
	(LRTK)		API)	activities					• Sanctioning (+)
<b>LU</b>	Autorité luxembourgeoise indépendante de l'audiovisuel (ALIA)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services);</li> </ul>	<ul style="list-style-type: none"> <li>• State budget (main source)</li> <li>• Fines</li> </ul>	The actual list of persons is decided by grand-ducal order (5)	N/A	N/A	<ul style="list-style-type: none"> <li>• Annual PA</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• Policy setting</li> <li>• GPI</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+**)</li> </ul>
<b>HU</b>	National Media and Infocommunications Authority (NMHH) and its Media Council	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> <li>• Spectrum</li> <li>• Electronic communications (networks and services in general)</li> <li>• postal services, electronic signatures</li> </ul>	<ul style="list-style-type: none"> <li>• State budget</li> <li>• Spectrum fees (main source)</li> <li>• Authorisation/licence fees</li> <li>• Fines</li> <li>• Market surveillance fees</li> </ul>	Nominated and elected by the Parliament (5)	N/A	<ul style="list-style-type: none"> <li>• M&amp;A published</li> <li>• The explanations of the decisions are often not published</li> <li>• Not all decisions publicly available</li> </ul>	<ul style="list-style-type: none"> <li>• Annual PA</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• Policy setting (+)</li> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
<b>MT</b>	Broadcasting Authority	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> </ul>	<ul style="list-style-type: none"> <li>• State budget (approx. 50%)</li> <li>• Authorisation/licence fees</li> <li>• Fines</li> </ul>	Appointed by Prime Minister (2) and Leader of Opposition (2)	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• M&amp;A not published, decisions published</li> <li>• Meetings are open to the public</li> </ul>	<ul style="list-style-type: none"> <li>• PA (frequency not fixed)</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
<b>NL</b>	Commissariaat voor de Media (CvdM)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> </ul>	<ul style="list-style-type: none"> <li>• State budget (main source)</li> <li>• Surveillance and other fees</li> </ul>	Appointed by the Government	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• Not obliged to publish M&amp;A</li> <li>• Decision making process is transparent</li> </ul>	<ul style="list-style-type: none"> <li>• Annual PA</li> <li>• Twice a year FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
<b>AT</b>	Austrian Communications Authority (KommAustria)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual</li> </ul>	<ul style="list-style-type: none"> <li>• End-user broadcasting licence fees</li> <li>• Funding contributions from market</li> </ul>	Nominated by Government and national assembly, appointed by President (5)	<ul style="list-style-type: none"> <li>• Has power to determine internal organisation and procedures.</li> </ul>	<ul style="list-style-type: none"> <li>• Not obliged to publish M&amp;A</li> <li>• Decisions public</li> <li>• Meetings are open to the public</li> </ul>	<ul style="list-style-type: none"> <li>• PA (frequency not fixed)</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>

MS	Regulatory body	Status: separate body?	Scope of competence	Sources of income	Appointment of highest decision making body	Agency is autonomous in decisions on	Transparency	Performance and financial audits	Powers*
			content (e.g. must carry, EPG, API) • Broadcasting frequencies spectrum • Press and journalism subsidies	players based on percentage of revenues.		• No power to decide on HR			
<b>PL</b>	National Broadcasting Council (KRRiT)	Yes	• Audiovisual content (radio/TV, on demand media services) • Transmission aspects of audiovisual content (e.g. spectrum) • Distribution aspects of audiovisual content (e.g. must carry, EPG, API)	• State budget (main source) • Authorisation/li • License fees • Fines • Fees for registration of programme services retransmitted or broadcast in an IT system	Appointed by Parliament (3) and President (2).	• IPO • HR	• Not obliged to publish M&A • Decisions published	• PA (every five years) • Annual FA	• GPI (+) • Monitoring (+) • Information collection (+) • Sanctioning (+)
<b>PT</b>	Regulatory Entity for the Media (ERC)	Yes	• Audiovisual content (radio/TV, on demand media services) • Distribution aspects of audiovisual content (e.g. must carry, EPG, API)	• State funding • Authorisation/li • License fees • Fines • Market surveillance fees (main source)	Appointed by the Parliament (4). Those members then freely co-opt a fifth member.	• IPO • HR	• M&A not published • Decisions published • Transparent decision making process	• Annual PA • Annual FA	• GPI (+) • Monitoring (+) • Information collection (+) • Sanctioning (+)
<b>RO</b>	National Audiovisual Council of Romania (CNA)	Yes	• Audiovisual content (radio/TV, on demand media services) • Distribution aspects of audiovisual content (e.g. must carry, EPG, API)	• State budget (100%)	Appointed by Government (3), Parliament (6), President (2).	N/A	• M&A published • Transparent decision making process	• Annual/biannual PA • Annual (or ad-hoc) FA	• Policy setting (+) • GPI (+) • Monitoring (+) • Information collection (+) • Sanctioning (+)
<b>SI</b>	Agency for communication networks and services of the Republic of Slovenia (AKOS)	Yes	• Audiovisual content (radio/TV, on demand media services) • Transmission aspects of audiovisual content • Distribution aspects of audiovisual content (e.g. must carry, EPG, API) • Spectrum	• State funding • Authorisation/li • License fees (main source) • Market surveillance fees	Director (1) is appointed by the Government.	• IPO • HR	Decision making process is transparent. Decisions of the director (acts) are published in the general and individual acts.	• Annual FA	• GPI (+) • Monitoring (+) • Information collection (+) • Sanctioning (+)

MS	Regulatory body	Status: separate body?	Scope of competence	Sources of income	Appointment of highest decision making body	Agency is autonomous in decisions on	Transparency	Performance and financial audits	Powers*
			<ul style="list-style-type: none"> <li>• Electronic Communications (networks and services in general)</li> <li>• Postal services, Railway traffic</li> </ul>						
<b>SK</b>	Council for Broadcasting and Retransmission	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> <li>• Spectrum</li> </ul>	<ul style="list-style-type: none"> <li>• State budget (100%)</li> </ul>	Individual MPs, civil and Religious representatives nominated by community of interest, professional organisations expert in the area are appointed by the Parliament.	<ul style="list-style-type: none"> <li>• IPO HR Procedures are approved by the Parliamentary Committee and the Speaker of the Parliament</li> </ul>	<ul style="list-style-type: none"> <li>• M&amp;A published</li> <li>• Transparent decision making procedure</li> <li>• Decisions published</li> </ul>	<ul style="list-style-type: none"> <li>• Annual PA</li> <li>• The Supreme Audit Office can perform random FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
<b>FI</b>	Finnish Communications Regulatory Authority (FICORA)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> <li>• Spectrum</li> <li>• Electronic Communications (networks and services in general)</li> <li>• Post</li> <li>• Information security</li> <li>• Operations of .fi domain registry</li> </ul>	<ul style="list-style-type: none"> <li>• State funding (only when there is a deficit in the budget)</li> <li>• Spectrum fees</li> <li>• Market surveillance fees</li> </ul>	Director-General (1), appointed by the Council of State.	<ul style="list-style-type: none"> <li>• Has power to determine IPO.</li> <li>• No power to decide on HR</li> </ul>	<ul style="list-style-type: none"> <li>• Only the final decisions are published</li> <li>• Decision making process transparent</li> </ul>	<ul style="list-style-type: none"> <li>• Annual PA</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+)</li> </ul>
<b>SE</b>	The Swedish Broadcasting Authority	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> </ul>	<ul style="list-style-type: none"> <li>• End-user broadcasting license fees (main source)</li> <li>• State funding</li> <li>• Authorisation/ license fees</li> <li>• Fines</li> </ul>	Appointed by Government.	N/A	<ul style="list-style-type: none"> <li>• M&amp;A not published;</li> <li>• All decisions are public</li> </ul>	<ul style="list-style-type: none"> <li>• Annual PA</li> <li>• Annual FA</li> </ul>	<ul style="list-style-type: none"> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection</li> <li>• Sanctioning** (+)</li> </ul>

MS	Regulatory body	Status: separate body?	Scope of competence	Sources of income	Appointment of highest decision making body	Agency is autonomous in decisions on	Transparency	Performance and financial audits	Powers*
UK	Office of Communications (Ofcom)	Yes	<ul style="list-style-type: none"> <li>• Audiovisual content (radio/TV, on demand media services)</li> <li>• Transmission aspects of audiovisual content (e.g. spectrum)</li> <li>• Distribution aspects of audiovisual content (e.g. must carry, EPG, API)</li> <li>• Spectrum</li> <li>• Electronic communications (networks and services in general)</li> <li>• Consumer Protection</li> <li>• Promotion of Media Literacy</li> <li>• Copyright Infringement under the Digital Economy Act 2010</li> </ul>	<ul style="list-style-type: none"> <li>• State funding (approx. 2%)</li> <li>• Spectrum fees</li> <li>• Authorisation/ license fees</li> <li>• Fines</li> <li>• Grant-in-aid from Government</li> </ul>	Content Board has statutory requirement for members representing the 4 nations of the UK (9).	<ul style="list-style-type: none"> <li>• IPO</li> <li>• HR</li> </ul>	<ul style="list-style-type: none"> <li>• M&amp;A published.</li> <li>• Declarations of members' interests.</li> <li>• Anti-bribery rules ("Purdah" rules)</li> </ul>	<ul style="list-style-type: none"> <li>• Biannual PA</li> <li>• Biannual FA</li> </ul>	<ul style="list-style-type: none"> <li>• Policy setting (+)</li> <li>• GPI (+)</li> <li>• Monitoring (+)</li> <li>• Information collection (+)</li> <li>• Sanctioning (+**)</li> </ul>

Notes: \* - '+' indicates that these powers were used within the past five years.

\*\* - Only the power to impose deterrent fines.

\*\*\* - Denmark regulatory authority has not used systematic monitoring in the last 5 years. They only implemented ad hoc monitoring. This is because systematic monitoring powers were granted only in 2009.

Abbreviations: M&A – minutes and agendas; PA – Performance audit; FA – Financial Audit; IPO – internal organisation and procedures; HR – human resources; GPI – General policy implementation.

Source: Compiled by Visionary Analytics based on AVMSD RADAR study and INDIREG study.

## Annex 2. Targets for service providers regarding accessibility for people with disabilities

MS	Subtitling/captioning			Sign language			Audio description		
	Targets for linear PBS	Targets for private linear services	Targets for non-linear services	Targets for PBS	Targets for private linear services	Targets for non-linear services	Targets for PBS	Targets for private linear services	Targets for non-linear services
<b>BE (FL)</b> <sup>257</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>BE (FR)</b> <sup>258</sup>	Yes	No	No	Yes	No	No	Yes	No	No
<b>BE (DE)</b>	No	No	No	No	No	No	No	No	No
<b>BG</b> <sup>259</sup>	No	No	No	No	No	No	No	No	No
<b>CZ</b> <sup>260</sup>	Yes	No	No	Yes	No	No	No	No	No
<b>DK</b> <sup>261</sup>	Yes	No	No	Yes	No	No	Yes	No	No
<b>DE</b> <sup>262</sup>	No	No	No	No	No	No	No	No	No
<b>EE</b> <sup>263</sup>	No	No	No	No	No	No	No	No	No
<b>IE</b> <sup>264</sup>	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No

<sup>257</sup> Subtitling targets for private broadcasters are based on their market share (usually if channel's market share is above 2% of all it will have to provide some subtitled content). Similar requirements are set for non-linear services.

<sup>258</sup> PBS must provide 1200 hours of sub-titled programmes per year in 2015. PBS has to audio-describe at least 2 movies per year, from 2014 on (i.e. 3-4 min per week).

<sup>259</sup> Communications Regulation Commission requires ensuring "adequate access", but no specific targets are set.

<sup>260</sup> PBS must to subtitle 70% and provide sign language interpretation for 2% of content.

<sup>261</sup> PBS are required to increasingly provide access to non-linear services. DR (biggest PBS) is required to provide 65% of programme with subtitles, provide sign interpretation for 2 news programmes and to audio describe new productions of Danish Drama and a selection of their own documentaries concerning societal issues.

<sup>262</sup> State Broadcasting Treaty has no obligatory targets.

<sup>263</sup> Media Services Act obliges to make services accessible for people with visual and hearing disabilities; however no concrete requirements are set.

<sup>264</sup> National regulator (BAI) updated broadcasting rules for 2012 - 2016 on subtitling, sign language and audio description, and there are Access Rules with specific targets set for each channel. VoD code of conduct foresees that non-linear services have to be gradually made accessible, however without concrete targets.

MS	Subtitling/captioning			Sign language			Audio description		
	Targets for linear PBS	Targets for private linear services	Targets for non-linear services	Targets for PBS	Targets for private linear services	Targets for non-linear services	Targets for PBS	Targets for private linear services	Targets for non-linear services
<b>EL</b> <sup>265</sup>	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
<b>ES</b> <sup>266</sup>	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No
<b>FR</b> <sup>267</sup>	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No
<b>HR</b> <sup>268</sup>	Yes	No	No	Yes	No	No	No	No	No
<b>IT</b> <sup>269</sup>	Yes	No	No	Yes	No	No	No	No	No
<b>CY</b> <sup>270</sup>	Yes	No	No	Yes	Yes	No	Yes	No	No
<b>LV</b> <sup>271</sup>	No	No	No	No	No	No	No	No	No
<b>LT</b> <sup>272</sup>	No	No	No	No	No	No	No	No	No
<b>LU</b> <sup>273</sup>	No	No	No	No	No	No	No	No	No

<sup>265</sup> Media law of 1995 foresees that once every two weeks 30 min subtitled or sign interpreted entertainment, educational programme and at least 7 min sign interpreted news bulletin must be provided. In 2010 national regulator passed guidelines for all broadcasters to caption at least 3% of programmes and subtitle 3% of programmes broadcasted in foreign language. National regulator's recommendation of 2013 to subtitle in Greek at least 4 hours per week – informational and entertainment programmes. 20% of non-linear content should have Greek subtitles. Those that have news programmes must translate at least 2 minutes length news bulletin into sign language.

<sup>266</sup> PBS targets for subtitling increased from 70% in 2012 to 90% in 2013. Private broadcasters' subtitling obligations increased from 65% in 2012 to 75% in 2013. PBS targets for sign language increased from 7 hours in 2012 to 10 hours in 2013, while private broadcasters' sign language obligations increased from 1.5 hours per week in 2012 to 2 hours per week in 2013. PBS targets for audio-description increased from 7 hours per week in 2012 to 10 hours per week in 2013, while audio-description obligations for private broadcasters increased from 1.5 hours in 2012 to 2 hours in 2013.

<sup>267</sup> PBS are required making accessible all TV programmes except commercials for persons with hearing and visual disabilities. Private broadcasters with an audience share above 2.5% are required to make accessible all TV programmes except commercials for persons with hearing disabilities by 2010. Since 2011, all electoral debates should be made accessible. VoD providers are required to make their services increasingly accessible, this is primarily directed at PBS VoD as well as VoD services of bigger channels.

<sup>268</sup> Electronic media act requires audiovisual services to be made gradually accessible for persons with hearing and vision disabilities. National broadcaster requires issuing special weekly programme for persons with disabilities, subtitled or sign interpreted news and religious programmes. Electronic media act also requires the audiovisual services to be made gradually accessible for persons with visual disabilities – no concrete targets introduced for PBS.

<sup>269</sup> PBS (RAI) is obliged under public broadcasting service agreement to subtitle 70% of broadcasting, with the special attention to news and sport news and to provide sign interpretation to one edition of national news every day on three national channels, and regional news.

<sup>270</sup> Target of increasing accessibility for visually and hearing impaired is increased by 5% each year. However, instruments of ensuring compliance are established. PBS has to provide a special news bulletin of 5 min with sign interpretation. Private broadcasters have to provide a special news bulletin of 5 min every day with sign interpretation.

<sup>271</sup> Electronic mass media law foresees PBS obligation to make services accessible for people with impaired vision or hearing, but no specific targets foreseen.

<sup>272</sup> PBS are subject to legal obligation to provide subtitling and sign language, but no specific targets are set.

<sup>273</sup> There are no provisions for media in the Act on Accessibility of 2001.

MS	Subtitling/captioning			Sign language			Audio description		
	Targets for linear PBS	Targets for private linear services	Targets for non-linear services	Targets for PBS	Targets for private linear services	Targets for non-linear services	Targets for PBS	Targets for private linear services	Targets for non-linear services
<b>HU</b> <sup>274</sup>	Yes	Yes	No	Yes	Yes	No	No	No	No
<b>MT</b> <sup>275</sup>	No	No	No	Yes	Yes	No	No	No	No
<b>NL</b> <sup>276</sup>	Yes	Yes	No	No	No	No	No	No	No
<b>AT</b> <sup>277</sup>	Yes	No	No	No	No	No	Yes	No	No
<b>PL</b> <sup>278</sup>	No	No	No	No	No	No	No	No	No
<b>PT</b> <sup>279</sup>	Yes	Yes	No	Yes	Yes	No	Yes	No	No
<b>RO</b> <sup>280</sup>	Yes	Yes	No	Yes	Yes	No	No	No	No
<b>SI</b> <sup>281</sup>	No	No	No	No	No	No	No	No	No

<sup>274</sup> PBS are required to make all announcement of public interest accessible to persons with hearing disabilities as well as 10 hours of cinematographic works each calendar year from 2014 onwards via subtitling or sign language. Private broadcasters with highest audience share are required to make all announcement of public interest accessible to persons with hearing disabilities as well as 10 hours of cinematographic works each calendar year from 2014 onwards via subtitling or sign language.

<sup>275</sup> Broadcasting act foresees general obligation to provide accessibility, but no specific targets for subtitling are set. The act also foresees that 30 min per week of general interest content (news bulletins) and political communication must be made accessible via sign language.

<sup>276</sup> 95% of Dutch PBS content and 50% of Dutch commercial TV programmes have to be subtitled.

<sup>277</sup> PBS is obliged to gradually increase accessibility under the Act of the Austrian Broadcasting Company (ORF). By 2014, PBS had to reach 60% of subtitling on two main channels (ORF 1 and ORF 2); ORF in total provides 900 hours of subtitling per months (in four channels). PBS VoD is subject to gradually increase the share of subtitled content. In 2014, more than 40% of ORF TVthec was made accessible. In 2014, more than 40% of ORF TVthec was made accessible. PBS audio-described content was included in VoD service (ORF TVthect). No specific targets are set, but there is an obligation to improve accessibility in PBS VoD.

<sup>278</sup> Act on radio and television requires that at least 10% of all TV programmes in PBS and private channels should be made accessible for persons with disabilities. However, this law does not establish the quota for subtitling. PBS made a voluntary pledge to provide quarterly (each 3 months) - 10 hours of sign language in 16 regional channels. In 2013, a voluntary agreement was made by 7 main PBS and private broadcasters foreseen 11 hours of audio description in universal programmes and 6 hours in specialized programmes.

<sup>279</sup> No quotas are foreseen in the Law, but regulatory authority together with persons with disabilities prepare multi-annual plan concerning gradual accessibility. Up to 2012, all free to air channels had to subtitle 8 hours per week and cable/satellite - 2 hours per week, all free to air channels had to audio-describe 30 min per week and all free to air channels had to provide sign language 3 hours per week. Audiovisual law covers VoD. Gradual accessibility requirements are foreseen for VoD providers.

<sup>280</sup> Amendment to Media law in 2014 has introduced an obligation for national and local channels to provide subtitling or sign language for 'public interest' content - news, analysis, debates and to the events of major importance from January 1<sup>st</sup>. Audiovisual law mentions accessibility for persons with visual disabilities, but does not establish any requirements on this.

<sup>281</sup> Audiovisual media law foresees general gradual implementation of accessibility, but PBS act foresees having a Programme committee, where persons with disabilities are represented. Such committee drafts programmes plan and monitors its implementation.

MS	Subtitling/captioning			Sign language			Audio description		
	Targets for linear PBS	Targets for private linear services	Targets for non-linear services	Targets for PBS	Targets for private linear services	Targets for non-linear services	Targets for PBS	Targets for private linear services	Targets for non-linear services
<b>SK</b> <sup>282</sup>	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No
<b>FI</b> <sup>283</sup>	Yes	Yes	No	No	No	No	No	No	No
<b>SE</b> <sup>284</sup>	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No
<b>UK</b> <sup>285</sup>	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No

Source: Visionary Analytics, 2015. Based on: Agency for Fundamental Rights. "Accessibility standards for audio-visual media: Indicators on political participation of persons with disabilities", 2014; Agency for Fundamental Rights. Background reports on the right to political participation for persons with disabilities, 2014; Informal submissions by the National Regulators to the EU Commission, 2015; Machet, Emmanuelle. Comparative background document "Round Table on Access to Audiovisual Media Services for Persons with Disabilities." Revised public version. EPRA Secretariat, 8 July 2013.

<sup>282</sup> PBS audiovisual law establishes quotas. Subtitling quotas differs for digital and non-digital (analogous) PBS: non-digital - 25% of all broadcast programmes must be subtitled. For digital PBS the share is 50% of all broadcasted programmes. Both types of PBS have a possibility to have closed or open subtitling. Private broadcasters have to provide 10% of all broadcasted content in closed or open subtitles and/or sign language. For VOD there are no quotas for accessible content, but there is an obligation to clearly label such services with and to report on the percentage of VoD with subtitling, sign language or audio description. If PBS is non-digital it has to translate 1% of their programme into sign language; if it is digital - 3%. Digital PSB must also provide voice commentary for 20% of all programmes. Private broadcasters have to provide voice commentary for 3% of the whole programme.

<sup>283</sup> PBS must reach target for subtitling and audio-subtitling (combined) from: 80% in 2014, to 100% in 2016. However, this quota only covers 'public interest content', such as news, debates and etc., and excludes music, sports and children programmes. Furthermore, only national broadcasters are obliged to fulfil the quota. Private broadcasters had to reach target for subtitling and audio-subtitling (combined) from: 40% in 2014, to 50% in 2016. This quota only covers 'public interest content', such as news, debates and etc. and excludes music, sports and children programmes. Only national broadcasters are obliged to fulfil the quota.

<sup>284</sup> Stricter requirements are set for PBS – all programmes that are not live, must be subtitled. Subtitling of live broadcasts should increase from 55% in 2014 to 65% in 2016. For sign language PBS should increase accessible content from 0.5% in 2014 to 1.5% in 2016. Three biggest private broadcasters are obliged to make 80% of programming accessible to persons with hearing disabilities by June, 2014 and 90% by June, 2016. For the fourth biggest broadcaster the quota is 70%. It is not specified whether it should be achieved via subtitling or sign language. Smaller broadcasters are obliged to make content accessible, but do not have any specific targets. However, it does not specify whether it should be subtitling or sign language. PBS should increase the share of audio described content from 0.5% in 2014 to 1.5% in 2016. Three biggest private broadcasters are obliged to make 2% of programming accessible to persons with visual disabilities by June, 2014 and 3 % by June, 2016. Fourth biggest broadcaster must audio describe 1% of content. No specific audio description targets are set for smaller broadcasters.

<sup>285</sup> Quotas for PBS are higher. E.g. Channel Four is committed to make 100 % of content subtitled. Public and private channels with an audience share of 0.05% or more are required to subtitle 80% of their programmes within ten years (from 2013). VoD services do not have quotas, but there is a requirement to make plans on how to facilitate accessibility of VoD services. Public and private broadcasters with an audience share of 0.05% or more have to reach 5% of the sign-interpreted programme within 10 years. Broadcasters with an audience below 1% are required to make 30 minutes of sign-translated programming a month, or make alternative arrangements if they are acceptable to Ofcom. Public and private broadcasters with an audience share of 0.05% or more have to audio describe 10% of the programme in 10 years.

## Annex 3. MS changes in legislation and factual progress regarding accessibility for people with disabilities

MS	Legal progress	Comments on legal progress	Factual progress	Comments on factual progress
<b>BE (FL)</b>	Progress	Time frame and quotas introduced 2013 – 2015; Funding for technology foreseen	Progress	N/A
<b>BE (FR)</b>	Progress	PBS (RFTB) co-regulatory rules amended. Public broadcaster was obliged to improve subtitling from 1000 hours in 2013 to 1200 hours in 2015	Progress	Public broadcaster was obliged to improve subtitling from 1000 hours in 2013 to 1200 hours in 2015
<b>BE (DE)</b>	N/A	N/A	N/A	N/A
<b>BG</b>	No changes	N/A	No progress	N/A
<b>CZ</b>	No changes	N/A	No progress	N/A
<b>DK</b>	Some progress	Public service-contract for biggest PBS (DR) for 2015-2018 will strengthen the provisions on accessibility	Some progress	Public service-contract for biggest PBS (DR) for 2015-2018 will strengthen the rules
<b>DE</b>	Progress	New TV licence rules for PBS in 2013. Revised rules on Barrier-Free Information Technology (BITV 2.0) and the Web Content Accessibility Guidelines (WCAG 2.0)	Progress	Factual subtitling increased for PBS (ZDF - from 40% in 2012 to 70% in 2015; ARD – from 49% to 90% respectively) and for some private broadcasters (i.e. RTL Media group). Factual audio-description increased for PBS (ARD: in 2014 – had 43.5% of prime time programmes audio described, which is twice as many as in 2012; ZDF – improved from 4 % in 2013 to 5% in 2014)
<b>EE</b>	Progress	New license for Estonian PBS, in 2014	Progress	Since 2014 PBS makes daily news accessible for persons with disabilities and started audio-description on a voluntary basis
<b>IE</b>	Progress	New access rules for 2012-2016 introduced by national regulator, Code of conduct for VoD, special funding scheme to support broadcasters	Progress	Quantity and quality of subtitles increased, more audio-described programmes and programmes with Irish Sign language
<b>EL</b>	Some progress	In 2013 recommendation from national regulator to informational broadcasters, VoD under e-accessibility act	Some progress	Private broadcasters self-report increased accessibility of their linear and VoD, however, EL persons with disabilities complain about absence of official reporting and monitoring of accessibility
<b>ES</b>	No changes	No new rules since 2010. CESYA – the body monitoring quality of subtitling is issuing new guidelines	Progress	From 2010 to 2013 higher quotas were introduced and their implementation was monitored
<b>FR</b>	Some progress	In 2011, regulation regarding accessibility to electoral debates introduced. A Working Group on accessibility was formed in 2014. This Working Group includes representatives of broadcasters and persons with disabilities representatives	Progress	Monitoring reports of national regulator (CSA) indicate factual improvements from 2012 to 2013
<b>HR</b>	Some progress	State aid foreseen to PBS facilitate accommodation from 2013-2017	N/A	N/A
<b>IT</b>	Some progress	Public service agreement for PBS for 2010 – 2012	N/A	N/A
<b>CY</b>	Some progress	Cyprus Radio and Television Laws, Art. 30 B amended. CY law requires to increase for public and private broadcasters to submit plans how they will increase accessibility by 5%	No progress	CY introduced target of increasing accessibility for visually and hearing impaired by 5% each year. However, it is based on voluntary plans submitted by the broadcasters and no monitoring foreseen by

Study to support Impact Assessment of AVMSD

		however no compliance mechanisms foreseen		regulator
<b>LV</b>	No changes	No new rules introduced	No progress	Except some voluntary actions of PBS and public broadcasters, mainly driven by the role of Russian language in the country
<b>LT</b>	No changes	No new rules introduced	No progress	Except some voluntary actions of PBS and public broadcasters
<b>LU</b>	No changes	No provision on audiovisual media in the Accessibility act of 2001	N/A	N/A
<b>HU</b>	Progress	2010 Media Act introduced increasing quotas for sub-titling/ sign language of cinematographic works until 2015	Progress	Sign language and/or subtitling of cinematographic works has increased for PBS and biggest private broadcasters. Since 2011 six biggest broadcasters are monitored by the national regulator
<b>MT</b>	No changes	No new rules introduced	Some progress	Some progress regarding making weekly 30 min news bulletins accessible via sign language and signing political communication, since 2012, May
<b>NL</b>	No changes	No new rules introduced	No progress	N/A
<b>AT</b>	Progress	PBS action plan of 2012 introduced targets to be reached by 2014	Progress	Increase in PBS accessibility: subtitling - in 2009 -2012 was 35% (6170 hours per year) and in 2012-2014 - 60% (10546 hours per year). Audio description increased from 112 to 752 hours per year respectively
<b>PL</b>	No changes	No new legal provisions, voluntary agreement created among 7 main PBS and private broadcasters	Progress	National regulator's reports shows that broadcasters have gradually increased the accessibility - in 2013 the accessible content was 0.2 higher than required (10%) , self-regulation among 7 main channels has contributed to it
<b>PT</b>	Progress	Audiovisual law was updated in 2011. It foresees Multi-annual accessibility plans, which are made by the regulator and persons with disability representatives	Progress	Since 2011, persons with disabilities organizations were involved in making annual accessibility plans and there was increase in accessibility and expanded the scope of broadcasters covered by these plans - i.e. VoD services
<b>RO</b>	Progress	Romanian audiovisual law amended in 2014 as to include accessibility provisions	N/A	N/A
<b>SI</b>	No change	No new rules introduced	N/A	N/A
<b>SK</b>	Progress	Act No. 373/2013 imposed new reporting obligations for both linear and non-linear broadcasters	Progress	New legislation in 2013 required more information on compliance from linear broadcasters and VoD providers
<b>FI</b>	Progress	Act on Television and Radio Operations was amended in 2010. Amendment introduced targets from 2011 to 2016	Progress	Increased quotas for both public and private broadcasters from 80% and 40% in 2014 to 100% and 50% in 2016 respectively
<b>SE</b>	Progress	In 2013, stricter rules imposed on Swedish PBS. In 2014, government decision regarding general and specific obligations, which introduced quotas for private broadcasters	Progress	Quotas have been increasing for both public and private broadcasters for 2011-2016
<b>UK</b>	Progress	In 2012, December the new OFCOM's Code on Television access services introduced. In 2013, ATVOD published 2014 - 2016 Access service plan, which aimed at VoD	Progress	Imposition of accessibility obligations to 76 broadcasters in the UK, including for 40 non-domestic channels that are broadcasting to other EU countries. ATVOD is actively engaging VoD providers to facilitate accessibility

Source: Visionary Analytics, 2015. Based on: Agency for Fundamental Rights. "Accessibility standards for audio-visual media: Indicators on political participation of persons with disabilities", 2014; Agency for Fundamental Rights. Background reports on the right to political participation for persons with disabilities, 2014; Informal submissions by the National Regulators to the EU Commission, 2015; Machet, Emmanuelle. Comparative background document "Round Table on Access to Audiovisual Media Services for Persons with Disabilities." Revised public version. EPRA Secretariat, 8 July 2013.

## Annex 4. Number of linear service providers established in MS with market share of at least 2%

MS	Public	Private	MS	Public	Private	MS	Public	Private
BE (FL) <sup>286</sup>	3	5	ES <sup>287</sup>	3	8	NL <sup>288</sup>	3	3
BE (FR) <sup>289</sup>	2	1	FR <sup>290</sup>	4	7	AT <sup>291</sup>	2	5
BE (DE)	1	0	HR <sup>292</sup>	3	5	PL <sup>293</sup>	3	6
BG <sup>294</sup>	1	5	IT <sup>295</sup>	3	4	PT <sup>296</sup>	2	2
CZ <sup>297</sup>	4	7	CY <sup>298</sup>	2	3	RO <sup>299</sup>	1	10
DK <sup>300</sup>	9	0	LV <sup>301</sup>	2	5	SI <sup>302</sup>	3	3
DE <sup>303</sup>	5	6	LT <sup>304</sup>	1	8	SK <sup>305</sup>	1	5

<sup>286</sup> CIM TV, "Marktaandelen", 2014. <<http://www.cim.be/fr/television/resultats-publics>>. [Last accessed December 18, 2015].

<sup>287</sup> "l comportamiento de la audiencia televisiva", 2014. <<http://www.barloventocomunicacion.es/>> [Last accessed December 18, 2015].

<sup>288</sup> Jaar Persbericht, "Kijkcijfers per zender 6 jaar en ouder", 2014. <[https://kijkonderzoek.nl/images/Jaarpersberichten/Jaarpersbericht\\_2014.pdf](https://kijkonderzoek.nl/images/Jaarpersberichten/Jaarpersbericht_2014.pdf)> [Last accessed December 18, 2015].

<sup>289</sup> CIM TV, "Parts de marché", 2014. <<http://www.cim.be/fr/television/resultats-publics>> [Last accessed December 18, 2015].

<sup>290</sup> Audiences, "Le grand bilan 2014 des chaînes de télévision gratuites", 2014. <<http://www.ozap.com/actu/audiences-le-grand-bilan-2014-des-chaines-de-television-gratuites/460535>> [Last accessed December 18, 2015].

<sup>291</sup> Marktanteile Agtt, "Sender 2014", 2014. <[http://www.agtt.at/show\\_content.php?sid=23&language=en](http://www.agtt.at/show_content.php?sid=23&language=en)> [Last accessed December 18, 2015].

<sup>292</sup> "Analiza gledanosti televizijskog programa u hrvatskoj", 2014. <<http://www.e-mediji.hr/hr/analiza-gledanosti-televizijskog-programa-u-hrvatskoj/>> [Last accessed December 18, 2015].

<sup>293</sup> Nielsen Audience Measurement, "Powiekszył panel", 2014. <<http://www.wirtualnemedi.pl/artukul/tvp1-i-polsat-liderami-rynku-w-2014-roku-tvp2-ostro-w-dol>> [Last accessed December 18, 2015].

<sup>294</sup> Информационен Бюлетин, "ТВ аудиторията през" 2014. <[http://www.nielsen-admosphere.bg/files/2014/06/MRBG\\_BULETIN-2014.pdf](http://www.nielsen-admosphere.bg/files/2014/06/MRBG_BULETIN-2014.pdf)> [Last accessed December 18, 2015].

<sup>295</sup> Sintesi Annuale "2014 fascia", 2014 <[http://www.auditel.it/media/filer\\_public/ca/df/cadf651c-38c5-4ae1-8b01-2cd233a97ffc/sintesi\\_annuale\\_2014\\_fascia\\_standard.pdf](http://www.auditel.it/media/filer_public/ca/df/cadf651c-38c5-4ae1-8b01-2cd233a97ffc/sintesi_annuale_2014_fascia_standard.pdf)> [Last accessed December 18, 2015].

<sup>296</sup> "Top 30 (SHR% - Universo)", 2015. <<http://caem.pt/images/top30.png>> [Last accessed December 18, 2015].

<sup>297</sup> "Podily televiznich stanic a skupin na celkove sledovanosti v ČR", 2014. <<http://www.mediar.cz/nova-loni-mirne-zvysila-prvenstvi-ve-sledovanosti/>> [Last accessed December 18, 2015].

<sup>298</sup> Nielson Audience Measurement, 2014. <<http://www.agbcyprus.com/>> [Last accessed December 18, 2015].

<sup>299</sup> ARMA, "Audientele statilor TV member", 2014. <<http://www.arma.org.ro/ro/audiente>> [Last accessed December 18, 2015].

<sup>300</sup> TNS- Gallup, "Hvor meget tv ser danskerne?", 2015. <<http://www.tns-gallup.dk/>> [Last accessed December 18, 2015].

<sup>301</sup> TNS-Latvia, "Skatītāko TV programmu TOP 20", 2014. <<http://www.tns.lv/>> [Last accessed December 18, 2015].

<sup>302</sup> "Gledanost TV programov v Sloveniji (tržni delež)", 2015 <<http://www.blog.uporabnastran.si/>> [Last accessed December 18, 2015].

<sup>303</sup> Daten zu den Zuschaueranteilen Zuschaueranteile" 2014. <<http://www.kek-online.de/medienkonzentration/zuschaueranteile.html>> [Last accessed December 18, 2015].

<sup>304</sup> TNS Lietuva, "TV auditorijos tyrimo rezultatai", 2015. <<http://www.tns.lt/lt/top/paslaugos/ziniasklaidos-auditoriju-tyrimai/tv-auditorijos-tyrimas/duomenys-1/>> [Last accessed December 18, 2015].

<b>EE</b> <sup>306</sup>	2	3	<b>LU</b> <sup>307</sup>	0	1	<b>FI</b> <sup>308</sup>	3	7
<b>IE</b> <sup>309</sup>	2	3	<b>HU</b> <sup>310</sup>	3	3	<b>SE</b> <sup>311</sup>	3	8
<b>EL</b> <sup>312</sup>	3	3	<b>MT</b> <sup>313</sup>	2	2	<b>UK</b> <sup>314</sup>	4	4

<sup>305</sup> Market & Media & Lifestyle – TGI, “MML - TGI národný prieskum spotreby, médií a životného štýlu”, 2014. < [http://www.median.sk/na\\_stiahnutie.php?y=2014](http://www.median.sk/na_stiahnutie.php?y=2014)> [Last accessed December 18, 2015].

<sup>306</sup> TNS Emor, Teleauditoriumi ülevaade, 2015, <<http://www.emor.ee/esileht/>> [Last accessed December 18, 2015].

<sup>307</sup> Au Luxembo, “La chaîne TV pour TOUCHER la communauté portugaise”, 2014. <<http://www.ipl.lu/wp-content/uploads/IP-Luxembourg-Performances-2014-RTP-Internacional.pdf>> [Last accessed December 18, 2015].

<sup>308</sup> “Television katselu Suomessa”, 2014. <[http://www.finnpanel.fi/lataukset/tv\\_vuosi\\_2015.pdf](http://www.finnpanel.fi/lataukset/tv_vuosi_2015.pdf)> [Last accessed December 18, 2015].

<sup>309</sup> “Channel Share of Viewing”, 2014. <<http://www.medialive.ie/>> [Last accessed December 18, 2015].

<sup>310</sup> Csatornánézettség, “A 49 legnézettebb hazai tévéadó”, 2014. <<http://sorozatwiki.hu/news.php?readmore=89230>> [Last accessed December 18, 2015].

<sup>311</sup> Årsrapport”, 2014, <[http://mms.se/wp-content/uploads/\\_dokument/rapporter/tv-tittande/ar/%C3%85rsrapporter/%C3%85rsrapporten%202014%20f%C3%B6r%20TV%20och%20Webb-TV.pdf](http://mms.se/wp-content/uploads/_dokument/rapporter/tv-tittande/ar/%C3%85rsrapporter/%C3%85rsrapporten%202014%20f%C3%B6r%20TV%20och%20Webb-TV.pdf)> [Last accessed December 18, 2015].

<sup>312</sup> Nielsen, “Ημερήσιο τηλεβαρόμετρο - Top 10”, 2015. <<http://www.arianna.gr/gr/data/default.htm>> [Last accessed December 18, 2015].

<sup>313</sup> Broadcasting Authority of Malta, “Radio And Television Audience Assessment”, 2014.

<[https://dl.dropboxusercontent.com/u/66372842/B.A.%20Audiences/Audience%20Assessments/2014c-Oct/Audience%20Assessment\\_Oct2014.pdf](https://dl.dropboxusercontent.com/u/66372842/B.A.%20Audiences/Audience%20Assessments/2014c-Oct/Audience%20Assessment_Oct2014.pdf)> [Last accessed December 18, 2015].

<sup>314</sup> Broadcasters Audience Research Board, “Share by channels”, 2014. <<http://www.barb.co.uk/trendspotting/analysis/share-of-viewing-by-channel?s=4>> [Last accessed December 18, 2015].

## Annex 5. Linear, non-linear services and online platforms included in assessment of accessibility costs

MS	Number of linear services with at least 2% market share		Have targets for accessibility services		No. of linear services included in assessment of costs*		Non-linear services		Platforms / online services**
	Public	Private	Public	Private	Public	Private	Total	No of services included in assessment of costs**	
<b>BE (FL)</b>	3	5	Yes	Yes	0	0	56	18	0
<b>BE (FR)</b>	2	1	Yes	No	0	1	35	5	0
<b>BE (DE)</b>	1	0	No	No	1	0	1	0	0
<b>BG</b>	1	5	No	No	1	5	22	4	0
<b>CZ</b>	4	7	Yes	No	0	7	96	6	0
<b>DK</b>	9	0	Yes	No	0	0	45	16	0
<b>DE</b>	5	6	No	No	5	6	276	45	3
<b>EE</b>	2	3	No	No	2	3	13	9	0
<b>IE</b>	2	3	Yes	Yes	0	0	23	9	0
<b>EL</b>	1	6	Yes	Yes	0	0	35	7	0
<b>ES</b>	3	8	Yes	Yes	0	0	57	9	1
<b>FR</b>	4	7	Yes	Yes	0	0	419	57	4
<b>HR</b>	3	5	Yes	No	0	5	14	4	0
<b>IT</b>	3	4	Yes	No	0	4	71	29	0
<b>CY</b>	2	3	Yes	Yes	0	0	26	7	0
<b>LV</b>	2	5	No	No	2	5	20	13	0
<b>LT</b>	1	8	No	No	1	8	14	7	0
<b>LU</b>	0	1	No	No	0	1	113	2	0
<b>HU</b>	3	3	Yes	Yes	0	0	80	4	1
<b>MT</b>	2	2	Yes	Yes	0	0	7	2	0
<b>NL</b>	3	3	Yes	Yes	0	0	122	20	0
<b>AT</b>	2	5	Yes	No	0	5	63	4	0
<b>PL</b>	3	6	No	No	3	6	106	26	0
<b>PT</b>	2	2	Yes	Yes	0	0	29	5	1
<b>RO</b>	1	10	Yes	Yes	0	0	43	17	1
<b>SI</b>	3	3	No	No	3	3	19	5	0
<b>SK</b>	1	5	Yes	Yes	0	0	35	10	0
<b>FI</b>	3	7	Yes	Yes	0	0	25	4	0
<b>SE</b>	3	2	Yes	Yes	0	0	141	20	0
<b>UK</b>	4	4	Yes	Yes	0	0	497	25	0
<b>Total</b>	<b>77</b>	<b>129</b>	<b>21</b>	<b>15</b>	<b>18</b>	<b>59</b>	<b>2503</b>	<b>389</b>	<b>11</b>

Source: Visionary Analytics, 2015. MAVISE database. For data sources on market share please refer to Annex 4, for data sources on monitoring of accessibility services refer to annex 2.

Notes: \* to be included in assessment of costs linear services should satisfy two criteria: a) have at least 2 % market share; b) there should be no targets for accessibility in the MS, where the broadcaster is established.

\*\* The analysis includes only the on-demand services that are owned by the linear service, which enjoys higher than 2 % market share. This is due to the fact that data for market share of on-demand services is not available.

\*\*\* Includes the following categories of platforms: hosts of video sharing platforms and hosts of branded catalogues.

## References

- "Analiza gledanosti televizijskog programa u hrvatskoj", 2014. <<http://www.e-mediji.hr/hr/analiza-gledanosti-televizijskog-programa-u-hrvatskoj/>> [Last accessed December 18, 2015].
- "Årsrapport", 2014, <[http://mms.se/wp-content/uploads/\\_dokument/rapporter/tv-tittande/ar/%C3%85rsrapporter/%C3%85rsrapporten%202014%20f%C3%B6r%20TV%20och%20Webb-TV.pdf](http://mms.se/wp-content/uploads/_dokument/rapporter/tv-tittande/ar/%C3%85rsrapporter/%C3%85rsrapporten%202014%20f%C3%B6r%20TV%20och%20Webb-TV.pdf)> [Last accessed December 18, 2015].
- "Channel Share of Viewing", 2014. <<http://www.medialive.ie/>> [Last accessed December 18, 2015].
- "Daten zu den Zuschaueranteilen Zuschaueranteile" 2014. <<http://www.kek-online.de/medienkonzentration/zuschaueranteile.html>> [Last accessed December 18, 2015].
- "Gledanost TV programov v Sloveniji (tržni delež)", 2015 <<http://www.blog.uporabnastran.si/>> [Last accessed December 18, 2015].
- "Google Transparency Report". <<https://www.google.com/transparencyreport/removals/government/data/?hl=en>> [Last accessed February 19, 2016]
- "l comportamiento de la audiencia televisiva", 2014. <<http://www.barloventocomunicacion.es/>> [Last accessed December 18, 2015].
- "Law of December 29, 2008 Establishing a new Media Law (Media Act 2008)".
- "Podily televiznich stanic a skupin na celkove sledovanosti v ČR", 2014. <<http://www.mediar.cz/nova-loni-mirne-zvysila-prvenstvi-ve-sledovanosti/>> [Last accessed December 18, 2015].
- "Presidential Decree (EL) 100/2000". <<http://www.synigoroskatanaloti.gr/docs/law/gr/PD100-2000.pdf>> [Last accessed December 28, 2015].
- "Slovakia Act No. 308 of 14th September 2000 on Broadcasting and Retransmission and on Amendments of Act No. 195/2000 Coll. on Telecommunications".
- "Television katselu Suomessa", 2014. <[http://www.finnpanel.fi/lataukset/tv\\_vuosi\\_2015.pdf](http://www.finnpanel.fi/lataukset/tv_vuosi_2015.pdf)> [Last accessed December 18, 2015].
- "Top 30 (SHR% - Universo)", 2015. <<http://caem.pt/images/top30.png>> [Last accessed December 18, 2015].
- Agency for Fundamental Rights, "Accessibility standards for audio-visual media: Indicators on political participation of persons with disabilities", 2014. <<http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/political-participation/audiovisual-standards>>
- Agency for Fundamental Rights, "Background reports on the right to political participation for persons with disabilities", 2014. <<http://fra.europa.eu/en/country-data/2014/background-reports-right-political-participation-persons-disabilities>>
- ANACOM (PT), "Portugal Law of Electronic Communications", 2015.
- ARMA, "Audientele statiilor TV member", 2014. <<http://www.arma.org.ro/ro/audiente>> [Last accessed December 18, 2015].
- Article 19 Global Campaign for Free Expression, "Memorandum on the draft Council of Europe Recommendation on the right of reply in the new media environment", 2003.
- ATO, "Mediaresearch", 2015. <<http://www.mediaguru.cz/tag/ato-mediaresearch/>>
- ATVOD, "The 2015-16 Fee Tarif: Regulatory fees for on-demand programme services for the period 1 April 2015 to 31 March 2016", 2015.
- ATVOD. "Annual Report 2014-2015", 2015.
- AU LUXEMBO, "La chaîne TV pour TOUCHER la communauté portugaise", 2014.

<<http://www.ipl.lu/wp-content/uploads/IP-Luxembourg-Performances-2014-RTP-Internacional.pdf>> [Last accessed December 18, 2015].

Audiences, "Le grand bilan 2014 des chaînes de télévision gratuites", 2014.

<<http://www.ozap.com/actu/audiences-le-grand-bilan-2014-des-chaines-de-television-gratuites/460535>> [Last accessed December 18, 2015].

Audiovisual Observatory, "On-Demand Audiovisual Markets in the European Union, study prepared for the European Commission DG Communications Networks, Content & Technology", 2012.

Audiovisual Translation Research Lab, "European survey on standards in subtitling for the deaf and hard of hearing" <<http://avt.ils.uw.edu.pl/en/standardy/>> [Last accessed 2 February, 2016]

Avalpa Digital Engineering Srl, "EPG: Electronic Program Guide", 2011. <<http://www.avalpa.com/assets/freesoft/opencaster/AvalpaBroadcastWebEPGManual-v1.0.pdf>>

Bachmeier, Cristina, "Barrier-free access to audiovisual content: A fundamental human right" in IRIS plus 2014-3 *Enabling Access to the Media for All, European Audiovisual Observatory, Strasbourg (France), 2014.*

BAI, "Sound & Vision II: A broadcasting Funding Scheme" Dublin, 2010. <<http://www.bai.ie/index.php/funding-sectoral-support/sound-vision/>>

Barlovento Communication, "Television Analysis 2014", 2015.

Blázquez, F. J. Cabrera, Maja Cappello, Christian Grece and Sophie Valais, "Territoriality and its impact on the financing of audiovisual works", A publication of the European Audiovisual Observatory, 2015.

Broadcasters Audience Research Board, "Share by channels", 2014. <<http://www.barb.co.uk/trendspotting/analysis/share-of-viewing-by-channel?s=4>> [Last accessed December 18, 2015].

Broadcasting Authority of Malta, "Radio And Television Audience Assessment", 2014. <[https://dl.dropboxusercontent.com/u/66372842/B.A.%20Audiences/Audience%20Assessments/2014c-Oct/Audience%20Assessment\\_Oct2014.pdf](https://dl.dropboxusercontent.com/u/66372842/B.A.%20Audiences/Audience%20Assessments/2014c-Oct/Audience%20Assessment_Oct2014.pdf)> [Last accessed December 18, 2015].

Centre for Media Pluralism and Media Freedom, "Monitoring Media Pluralism in Europe - Testing and Implementation of the Media Pluralism Monitor", 2014.

CIM TV, "Marktaandeelen", 2014. <<http://www.cim.be/fr/television/resultats-publics>>. [Last accessed December 18, 2015].

CIM TV, "Parts de marché", 2014. <<http://www.cim.be/fr/television/resultats-publics>> [Last accessed December 18, 2015].

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A Digital Single Market Strategy for Europe, Brussels", 6.5.2015, COM(2015) 192 final, p. 12.

Communication Regulatory authorities of Lithuania, "Electronic Communications Report", 2015.

Council for Electronic Media (HR), "Rules for the Exercise of the Right to Correction in Programmes of Audio and Audiovisual Media Service Providers", 2010.

Council of Europe Committee of Ministers, "Resolution (74) 26, On the Right of Reply – Position of the Individual in Relation to the Press", <[http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Res%281974%29026\\_en.asp#TopOfPage](http://www.coe.int/t/dghl/standardsetting/media/Doc/CM/Res%281974%29026_en.asp#TopOfPage)> [Last accessed December 28, 2015].

Csatornanézetség, "A 49 legnézettebb hazai tévéadó", 2014.

<<http://sorozatwiki.hu/news.php?readmore=89230>> [Last accessed December 18, 2015].

Delft University of Technology and Ecorys, "The policy framework for electronic communications: an EU benchmark 2012", 2014.

- Department for Culture, Media and Sport, "The balance of payments between TV platforms and Public Service Broadcasters and the future of Electronic Programme Guides", 2015.
- DR Media Research Department, "Media Development 2014", Copenhagen: 2015.
- Dziadul, Chris, "Poland changes must-carry rules", 2013. <<http://www.broadbandtvnews.com/2013/08/09/poland-changes-must-carry-rules/>>
- El-Husseini, Farid, "An Analysis of the Audience Impact of Page One EPG Prominence", *FEH Media Insight*, 2013.
- Eli Pariser, "The Filter Bubble: What the Internet Is Hiding from You", Penguin Press, New York, 2011
- Essential Research, "On-demand services: understanding consumer choices", *A research report for Ofcom*, 2012.
- EthicNew, "The Code of Ethics for the Estonian Press". <[http://ethicnet.uta.fi/estonia/the\\_code\\_of\\_ethics\\_for\\_the\\_estonian\\_press](http://ethicnet.uta.fi/estonia/the_code_of_ethics_for_the_estonian_press)> [Last accessed December 28, 2015]
- European Audiovisual Observatory, "AVMSDatabase"., <<http://avmsd.obs.coe.int/cgi-bin/search.php>> [ Last accessed December 28, 2015].
- European Audiovisual Observatory, "IRIS Merlin". <<http://merlin.obs.coe.int/>> [Last accessed December 28, 2015].
- European Audiovisual Observatory, "MAVISE database, On-demand audiovisual services available in the country". <<http://mavise.coe.int/>> [ Last accessed December 28, 2015].
- European Audiovisual Observatory, "MAVISE database, On-demand audiovisual services established in the country". <<http://mavise.coe.int/>> [Last accessed December 28, 2015].
- European Audiovisual Observatory, "MAVISE database, Operators (all types of companies)". <<http://mavise.coe.int/>> [Last accessed December 28, 2015].
- European Audiovisual Observatory, "MAVISE database, TV Channels available in a country". <<http://mavise.coe.int/>> [Last accessed December 28, 2015].
- European Commission, "April Infringements package: main decisions", 2013 April 25.
- European Commission, "Telecoms: Commission refers Belgium to Court over independence of national regulator", Brussels: 16 October 2014
- European Commission, "Better Regulation Toolbox", 2014. <[http://ec.europa.eu/smart-regulation/guidelines/docs/br\\_toolbox\\_en.pdf](http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf)> [Last accessed December 28, 2015].
- European Commission, "Commission Work Programme 2015. A New Start", 2014
- European Commission, "Digital Agenda: Commission requests Belgium and UK to implement Audiovisual Media Services Directive in Brussels and Gibraltar", 2011.
- European Commission, "February infringements package: main decisions", 2013.
- European Commission, "First Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2010/13/EU "Audiovisual Media Service Directive" Audiovisual Media Services and Connected Devices: Past and Future Perspectives" (SWD(2012) 125 fina), Brussels, 2012.
- European Commission, "Green Paper: Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values", Brussels, 2013
- European Commission, "Infringement procedure", 2015.<[http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index\\_en.htm](http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index_en.htm)> [Last accessed December 28, 2015].
- European Commission, "May infringements package: main decisions", 2013.

- European Commission, "Telecoms: Commission requests information from Slovenia and Latvia over independence of telecoms regulators", 2010.
- European Commission, „Applying EU Law: Infringements", 2015 <[http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index\\_en.htm](http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index_en.htm)> [Last accessed February 18, 2016].
- European Commission. "Infringement database", 2015 <[http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement\\_decisions/?lang\\_code=en](http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en)> [ Last accessed February 18, 2015].
- European Court of Human Rights, "Melnychuk v Ukraine: Application no. 28743/03", *Decision of 5 July 2005*, 2005.
- European Court of Human Rights, "Vitrenko v Ukraine: Application no. 23510/02)", *Decision of 15 December 2008*, 2008.
- European Court of Justice, "Ruling in New Media Online GmbH case". <<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d567c3086a9ec048e79b9bb3570f40f1d7.e34KaxiLc3eQc40LaxqMbN4Och4Se0?text=&docid=170123&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=567704>> [Last accessed 19,February 2016]
- European Platform of regulatory authorities, "About Regulatory Authorities" 2015. <<http://www.epra.org/articles/about-regulatory-authorities>> [Last accessed December 28, 2015].
- European Regulators Group for Audiovisual Media Services, "ERGA Report on the independence of NRAs", 2015.
- Eurostat, "Comparative price levels (tec00120)", <<http://ec.europa.eu/eurostat/en/web/products-datasets/-/TEC00120>> [Last accessed December 28, 2015].
- Fontaine, Gilles and Christian Grece, "The EU Subscription video-on-demand market in 2014 (An update)", *A publication of the European Audiovisual Observatory*, 2015.
- Foster, Robin and Tom Broughton, "PSB prominence in a converged media world", *Communications Chambers*, 2012.
- Freedom House, "2015 Freedom of the Press Data", 2015. <<https://freedomhouse.org/report-types/freedom-press>> [Last accessed December 28, 2015].
- Geoff A. Edwards and Leonard Waverman, "The Effects of Public Ownership and Regulatory Independence on Regulatory Outcomes: A Study of Interconnect Rates in EU Telecommunications", 2005.
- Google Inc., „Transparency Report". <<https://www.google.com/transparencyreport/removals/government/data/?hl=en>> [ Last accessed February 18, 2016].
- Grece, Christian, André Lange, Agnes Schneeberger and Sophie Valais, "The development of the European market for on-demand audiovisual services", *European Audiovisual Observatory*, 2015.
- Hans Bredow Institute for Media Research/Interdisciplinary Centre for Law & ICT (ICRI), Katholieke Universiteit Leuven/Center for Media and Communication Studies (CMCS), Central European University/Cullen International/Perspective Associates "INDIREG. Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive", Study conducted on behalf of the European Commission. Final Report. February 2011.
- HIS Technology, "Estonia and Latvia cut must carry list", 2012.
- Hosanagar, Kartik, Daniel Fleder, Dokyun Lee, and Andreas Buja, "Will the Global Village Fracture into Tribes? Recommender Systems and their Effects on Consumer Fragmentation", *Management Science*, Vol. 60 (4), pp. 805-823.

iMinds (SMIT), "Fragmentation of the single market for on-line video-on-demand services: point of view of content providers", A study prepared for the European Commission DG Communications Networks, Content & Technology, 2014.

Institute of European Media Law and Université du Luxembourg, "AVMS-RADAR: AudioVisual Media Services- Regulatory Authorities' InDependence And Efficiency Review. Update on recent changes and developments in Member States and Candidate Countries that are relevant for the analysis of independence and efficient functioning of audiovisual media services regulatory bodies (SMART 2013/0083)". A study prepared for the European Commission DG Communications Networks, Content & Technology, 2015.

Institute of European Media Law and University of Luxembourg, "AudioVisual Media Services – Regulatory Authorities' InDependence and Efficiency Review, A study prepared for the European Commission", 2015.

International Telecommunication Union, "Technical Report: Part 2: Vocabulary for ITU-T Focus Group on Audiovisual Media Accessibility" (FG AVA), 2013

IPSOS, "Total Viewing Habits Study 2015", 2015.

IRIS MERLING, Ieva Andersone, "Changes to the "Must-Carry" Rules in Latvia". <<http://merlin.obs.coe.int/article.php?id=14114>> [Last accessed December 28, 2015].

ITV Dictionary, "Application Definition", 2015. <[http://www.itvdictionary.com/definitions/itv\\_application\\_definition.html](http://www.itvdictionary.com/definitions/itv_application_definition.html)> [Last accessed December 28, 2015].

Jaar Persbericht, "Kijkcijfers per zender 6 jaar en ouder", 2014. <[https://kijkonderzoek.nl/images/Jaarpersberichten/Jaarpersbericht\\_2014.pdf](https://kijkonderzoek.nl/images/Jaarpersberichten/Jaarpersbericht_2014.pdf)> [Last accessed December 18, 2015].

Jefatura del Estado "Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual", Boletín Oficial Del Estado, 2010.

Koltay, András, "The Right of Reply in a European Comparative Perspective", 2012.

Kristina Irion and Roxana Radu, "Delegation to Independent Regulatory Authorities in the Media Sector: A Paradigm Shift through the Lens of Regulatory Theory" in: W. Schulz, P. Valcke, and K. Irion, eds., *The Independence of the Media and Its Regulatory Agencies. Shedding new light on formal and actual independence against the national context*, 15-53, Bristol: Intellect Publ, 2014

Legifrance (FR), "Loi n° 82-652 du 29 juillet 1982 sur la communication audiovisuelle", 2015.

Lemstra, Dr. Ir. Wolter, Drs. Nicolai van Gorp, and Dr. Bart Voogt, "The policy framework for electronic communications: an EU benchmark 2012", 03 April 2014. <[http://www.ectaportal.com/en/upload/TCI/TCI%20qualitative\\_final\\_14-04-14.pdf](http://www.ectaportal.com/en/upload/TCI/TCI%20qualitative_final_14-04-14.pdf)>.

Machet, Emmanuelle, "Comparative background document "Round Table on Access to Audiovisual Media Services for Persons with Disabilities." Revised public version", EPRA Secretariat, 2013.

Majone, Giandomenico, "The Rise of the Regulatory State in Europe", *West European Politics* 17 (3): 77-101, 1994.

Market & Media & Lifestyle – TGI, "MML - TGI národný prieskum spotreby, médií a životného štýlu", 2014. <[http://www.median.sk/na\\_stiahnutie.php?y=2014](http://www.median.sk/na_stiahnutie.php?y=2014)> [Last accessed December 18, 2015].

Marktanteile Agtt, "Sender 2014", 2014. <[http://www.agtt.at/show\\_content.php?sid=23&language=en](http://www.agtt.at/show_content.php?sid=23&language=en)> [Last accessed December 18, 2015].

Mediatique, "Carriage of TV Channels in the UK: policy options and implications", Report for the Department of Culture, Media and Sport, 2012.

Ministry of Culture (SE), "Radio and Television Act", 2010.

- Ministry of Justice (FL), "Act on the Exercise of Freedom of Expression in Mass Media" (460/2003), 2003. <<http://www.finlex.fi/fi/laki/kaannokset/2003/en20030460.pdf>> [Last accessed December 28, 2015].
- Nielsen Audience Measurement, "Powiększył panel", 2014. <<http://www.wirtualnemedi.pl/artykul/typ1-i-polsat-liderami-ryнку-w-2014-roku-tp2-ostro-w-dol>> [Last accessed December 18, 2015].
- Nielsen, "Ημερήσιο τηλεβάρόμετρο - Top 10", 2015. <<http://www.arianna.gr/gr/data/default.htm>> [Last accessed December 18, 2015].
- Nielsen Audience Measurement, 2014. <http://www.agbcyprus.com/> [Last accessed December 18, 2015].
- Ofcom, "2009 Review of Television Access Services", 2009.
- Ofcom, "Television channels required to provide television access services in 2015", 2014.
- Ofcom, "The Communications market report", 2015.
- Ofcom, "The Communications Market", 2014.
- Organization for Security and Co-operation in Europe Office of the Representative on Freedom of the Media, "Best practices regarding "must carry" and "must offer" rules for cable operators and broadcasters", 2015, p. 3.
- Overheid (NL), "Burgerlijk Wetboek Boek 6", 2015. <[http://wetten.overheid.nl/BWBR0005289/Boek6/Titel3/Afdeling1/Artikel167/geldigheidsdatum\\_06-11-2015](http://wetten.overheid.nl/BWBR0005289/Boek6/Titel3/Afdeling1/Artikel167/geldigheidsdatum_06-11-2015)> [Last accessed December 28, 2015].
- Press Council (DK), "The Media Liability Act", 2013. <<http://www.pressnaevnet.dk/Information-in-English/The-Media-Liability-Act.aspx>> [Last accessed December 28, 2015].
- Purplemath „Box-and-Whisker Plots: Interquartile Ranges and Outliers". <<http://www.purplemath.com/modules/boxwhisk3.htm>  
<<https://flowingdata.com/2008/02/15/how-to-read-and-use-a-box-and-whisker-plot/>> [Last accessed February 19, 2016]
- Ramboll Management Consulting, Draft Final Report on "Survey and data gathering to support the Impact Assessment of a possible new legislative proposal concerning Directive 2010/13/EU (AVMSD) and in particular the provisions on protection of minors", 2016.
- Ramboll Management Consulting, Draft Final Report on "Defining a framework for the monitoring of advertising rules under the Audiovisual Media Services Directive", 2016.
- Reporters without Borders, "World Press Freedom Index 2013: Questionnaire", 2013.
- Reporters without Borders. "World Press Freedom Index 2015". <<https://index.rsf.org/#!/>> [Last accessed December 28, 2015].
- RNIB Solutions, "Audio description app user trial: Report", 2015.
- Roettgers, Janko, "Netflix spends \$150 million on content recommendations every year", 2014.
- Schneider, Laura, "Media Freedom Indices: What They Tell Us – And What They Don't. A Practical Guidebook", Edition DW Akademie #01/2014, 2014.
- Service Central de Legislation (LU), "Texte coordonné du 30 avril 2010 de la loi du 8 juin 2004 sur la liberté d'expression dans les medias", *Journal Officiel du Grand-Duché de Luxembourg*, 2010.
- Sintesi Annuale "2014 fascia", 2014 <[http://www.auditel.it/media/filer\\_public/ca/df/cadf651c-38c5-4ae1-8b01-2cd233a97ffc/sintesi\\_annuale\\_2014\\_fascia\\_standard.pdf](http://www.auditel.it/media/filer_public/ca/df/cadf651c-38c5-4ae1-8b01-2cd233a97ffc/sintesi_annuale_2014_fascia_standard.pdf)> [Last accessed December 18, 2015].
- Sloot, Bart van der, "Walking a Thin Line: The Regulation of EPGs", *Jipitec, Vol. 3.*, 2012.
- Statistica, "Number of apps available in leading app stores as of July 2015", 2015

- Technologia, "The value and optimal management of channel position and prominence on electronic programme guides", Report for the Department of Culture, Media and Sport, 2012.
- The council of ministers (PL), "Prawo prasowe, 1984". <<http://isap.sejm.gov.pl/DetailsServlet?id=WDU19840050024>> [Last accessed December 28, 2015].
- The European Parliament and the Council of the European Union, "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 (Audiovisual Media Services Directive)", *Official Journal of the European Union*, L 95, 2010.
- The European Parliament and the Council of the European Union, "Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC and Regulation 544/2009", 2009.
- The European Parliament and the Council of the European Union, "Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). Amended by the Directive 2009/136/EC", November 2009.
- The European Parliament and the Council of the European Union, "Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities. Amended by Directive 2009/140/EC", 2009.
- The European Parliament and the Council of the European Union, "Proposal for a directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services", COM/2015/0615 final - 2015/0278 (COD), 2015
- TNS Emor, Teleauditooriumi ülevaade, 2015, <<http://www.emor.ee/esileht/>> [Last accessed December 18, 2015].
- TNS- Gallup, "Hvor meget tv ser danskerne?", 2015. <<http://www.tns-gallup.dk/>> [Last accessed December 18, 2015].
- TNS Lietuva, "TV auditorijos tyrimo rezultatai", 2015. <<http://www.tns.lt/lt/top/paslaugos/ziniasklaidos-auditoriju-tyrimai/tv-auditorijos-tyrimas/duomenys-1/>> [Last accessed December 18, 2015].
- TNS-Latvia, "Skatītāko TV programmu TOP 20", 2014. <<http://www.tns.lv/>> [Last accessed December 18, 2015].
- Union of Journalist (BG), "Code of Ethics of Bulgarian Media". <<http://www.mediaethics-bg.org/index.php?do=17&lang=bg>> [Last accessed December 28, 2015].
- University of Luxembourg, "Translation of National Execution Measure". <[http://www.en.uni.lu/recherche/fdef/droit\\_des\\_medias/audiovisual\\_media\\_services\\_directive/national\\_execution\\_measures](http://www.en.uni.lu/recherche/fdef/droit_des_medias/audiovisual_media_services_directive/national_execution_measures)> [Last accessed December 28, 2015].
- Uradni List (SL), "Zakon o medijih uradno prečiščeno besedilo" (ZMed-UPB1). <<https://www.uradni-list.si/1/content?id=76040>> [Last accessed December 28, 2015].
- Van Eijk, Nico and Bart van der Sloot, "Must-Carry Regulation: A Must or a Burden?", IRIS-plus 2012-5, 2013.
- Varney, Elisa, "Disability and Information Technology: A Comparative Study in Media Regulation", *Cambridge University Press*, 2013.
- Verhoest, Koen, B. Guy Peters, Geert Bouckaert, and Bram Verschuere, "The study of organisational autonomy: a conceptual review". *Public Administration and Development*, 24(2), 2004, 101-118.
- World Bank Group, "Doing Business. Distance to Frontier", 2015.

World Health Organisation, "Visual Impairment and Blindness", 2010.

Информационен Бюлетин, "ТВ аудиторията през" 2014. <[http://www.nielsen-admosphere.bg/files/2014/06/MRBG\\_BULETIN-2014.pdf](http://www.nielsen-admosphere.bg/files/2014/06/MRBG_BULETIN-2014.pdf)> [Last accessed December 18, 2015].

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