

## CONSULTATION

on Directive 2010/13/EU on audiovisual media services (AVMSD)

*A media framework for the 21<sup>st</sup> century*

For digital service sectors, such as the online gambling sector, a well-functioning (digital) single market is pivotal to their success. Businesses that are cross-border by nature suffer from a lack of harmonisation. The Audiovisual Media Service Directive is an important piece of the puzzle in the digital single market framework in which businesses operate. At the core of the Directive is the country of origin principle which is essential to the functioning of the digital single market. Without the latter the Directive would lose its purpose and benefits.

The clear regulatory framework provides for legal certainty for companies that offer their services in the EU and for consumers that have access to high quality media services of their choice. The current balance between the general rule and the exceptions is well defined and balanced and should be maintained to avoid fragmenting the regulatory framework.

### Questionnaire

#### General information on respondents

I'm responding as:

- An individual in my personal capacity
- The representative of an organisation/company/institution**

What is your nationality?

- Austria
- Belgium**
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland

- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

What is your name? **EGBA**

Please your email: **egba@egba.eu**

I'm responding as:

- An individual in my personal capacity.
- The representative of an organisation/company.**

Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

- Yes**
- No

Please indicate your organisation's registration number in the Transparency Register.  
**29508582413-52**

Please register in the [Transparency Register](#) before answering this questionnaire. If your organisation/institution responds without being registered, the Commission will consider its input as that of an individual and as such, will publish it separately.

Please tick the box that applies to your organisation and sector.

- National administration
- National regulator
- Regional authority
- Public service broadcasters
- Non-governmental organisation
- Small or medium-sized business
- Micro-business
- Commercial broadcasters & thematic channels
- Pay TV aggregators
- Free and pay VOD operators
- IPTV, ISPs, cable operators including telcos
- European-level representative platform or association**
- National representative association
- Research body/academia
- Press or other
- Other

My institution/organisation/business operates in:

- Austria
- Belgium**
- Bulgaria
- Czech Republic
- Croatia
- Cyprus
- Denmark
- Estonia
- France
- Finland
- Germany
- Greece

- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Spain
- Slovenia
- Slovakia
- Sweden
- United Kingdom
- Other

Please enter the name of your institution/organisation/business.

**European Gaming and Betting Association (EGBA)**

Please enter your address, telephone and email.

**Rue Gray 50, Brussels, Belgium; tel: (+32 2) 554 0890; [egba@egba.eu](mailto:egba@egba.eu)**

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What is your primary place of establishment or the primary place of establishment of the entity you represent?

**The European Gaming and Betting Association (EGBA) is the Brussels-based industry body representing the leading online gaming and betting operators established, licensed and regulated within the EU. On the basis of these licenses EGBA members operate in a large number of Member States.**

Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form. Otherwise the contribution will not be published nor will, in principle, its content be taken into account. Any objections in this regard should be sent to the service responsible for the consultation

Please read the [Specific Privacy Statement](#) on how we deal with your personal data and contribution

### ***Background and objectives***

The Audiovisual Media Services Directive (AVMSD<sup>1</sup>) has paved the way towards a single European market for audiovisual media services. It has harmonised the audiovisual rules of the Member States and facilitated the provision of audiovisual media services across the EU on the basis of the country of origin principle.

Since its adoption in 2007, the audiovisual media landscape has changed significantly due to media convergence<sup>2</sup>. The review of the AVMSD is featured in the Commission Work Programme for 2015, as part of the Regulatory Fitness and Performance Programme (REFIT). In its Communication on a Digital Single Market Strategy for Europe<sup>3</sup>, the Commission announced that the AVMSD would be revised in 2016. Another REFIT exercise is being carried out, in parallel, in the field of telecoms with a view to come forward with proposals in 2016. Some of the issues treated in the current public consultation may have an impact on this parallel exercise and *vice versa*.

In 2013, the Commission adopted a Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values"<sup>4</sup> inviting stakeholders to share their views on the changing media landscape and its implications for the AVMSD.

On the basis of the outcome of this public consultation, the Commission has identified the following issues to be considered in the evaluation and review of the AVMSD:

1. Ensuring a level playing field for audiovisual media services;
2. Providing for an optimal level of consumer protection;

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<sup>1</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. Hereinafter, "the AVMSD" or "the Directive".

<sup>2</sup> <https://ec.europa.eu/digital-agenda/en/media-convergence>

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, a Digital Single Market Strategy for Europe, COM (2015) 192 final, 6 May 2015.

<sup>4</sup> Hereinafter, "The Green Paper" (<https://ec.europa.eu/digital-agenda/node/51287#green-paper---preparing-for-a-fully-converged-audi>)

3. User protection and prohibition of hate speech and discrimination;
4. Promoting European audiovisual content;
5. Strengthening the single market;
6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities.

***You are asked to answer a number of questions revolving around these issues. Please reason your answers and possibly illustrate them with concrete examples and substantiate them with data. The policy options identified are not necessarily mutually exclusive, but may sometimes be combined. Please indicate your preferred policy options, if any, and feel free to provide any other comment that you deem useful.***

## QUESTIONS

### 1. *Ensuring a level playing field*

#### Services to which the AVMSD applies

The AVMSD regulates television broadcasts and on-demand services. It applies to programmes that are TV-like<sup>5</sup> and for which providers have editorial responsibility<sup>6</sup>. The AVMSD does not apply to content hosted by online video-sharing platforms and intermediaries.

These platforms and intermediaries are regulated primarily by the e-Commerce Directive<sup>7</sup>, which exempts them from liability for the content they transmit, store or host, under certain conditions.

As a separate exercise, given the increasingly central role that online platforms and intermediaries (e.g. search engines, social media, e-commerce platforms, app stores, price comparison websites) play in the economy and society, the Commission Communication "A Digital Single Market Strategy for Europe" announces a comprehensive assessment of the role of platforms and of online intermediaries to be launched at the end of 2015.

#### ***SET OF QUESTIONS 1.1***

**Are the provisions on the services to which the Directive applies (television broadcasting and on-demand services) still relevant<sup>8</sup>, effective<sup>9</sup> and fair<sup>10</sup>?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

<sup>5</sup> Recital 24 of the AVMSD: "It is characteristic of on-demand audiovisual media services that they are **'television-like'**, i.e. that they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive. In the light of this and in order to prevent disparities as regards free movement and competition, the concept of 'programme' should be interpreted in a dynamic way taking into account developments in television broadcasting."

<sup>6</sup> Article 1(1)(a) of the AVMSD. The Audiovisual Media Services Directive applies only to services that qualify as audiovisual media services as defined in Article 1(1)(a). An audiovisual media service is "a service [...] which is under the **editorial responsibility** of a media service provider and the **principal purpose** of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC". This definition covers primarily television broadcasts and on-demand audiovisual media services.

<sup>7</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

<sup>8</sup> Relevance looks at the relationship between the needs and problems in society and the objectives of the intervention.

<sup>9</sup> Effectiveness analysis considers how successful EU action has been in achieving or progressing towards its objectives.

<sup>10</sup> How fairly are the different effects distributed across the different stakeholders?

COMMENTS:

EGBA believes that the principles set in the current Directive are still relevant and valid. As pointed out in the introduction of this section there is a difference between the liabilities of internet service providers and television stations, which broadcast audiovisual contents. The distinction between the two should remain as it is.

The provision of gambling services is not covered by the current Directive. “*Broadcasts devoted to gambling or games of chance*” (recital 22 of the AVMSD) are covered by the Directive. As explained in the same recital, the websites of gambling providers may contain audiovisual materials but only so in an ancillary manner and are therefore not covered. This is for example true for “*broadcasts devoted to gambling or games of chance*” which would also cover e.g. broadcasts of live casinos or football games.

Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) due to the fact that certain audiovisual services are not regulated by the AVMSD?

YES –  NO (If yes, please explain below)

COMMENTS:

Overall, the Audiovisual Media Services Directive has been successful in creating a single market for audiovisual media services. It strikes the correct balance between the goals of free competition and consumer protection, allowing a single European audiovisual market to flourish, whilst guaranteeing that consumers, in particular the most vulnerable ones, are protected from harmful contents.

The AVMSD also touches upon the freedom to advertise and the freedom of choice. EGBA believes that the freedom of expression and the right of businesses to advertise for commercial purposes play an important role in allowing consumers to be informed. The Directive should therefore ensure that no unjustified advertisement and social media restrictions are imposed.

In the area of advertising for gaming and betting services, the margin of appreciation for the national authorities to impose restrictions depends on the objectives pursued by national legislation which usually concerns consumer protection and the protection of public order. In a number of cases however, the ECtHR has confirmed that so-called “commercial speech” is also protected by article 10 ECHR<sup>11</sup>. The Court found that “*Article 10 is applicable, without needing*

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<sup>11</sup> Article 10 provides that:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

*to inquire in the present case whether or not advertising as such comes within the scope of the guarantee under this provision.”<sup>12</sup>*

**Preferred policy option:**

- a)  **Maintaining the status quo**
- b)  *Issuing European Commission's guidance clarifying the scope of the AVMSD. No other changes to Union law would be foreseen.*
- c)  *Amending law(s) other than the AVMSD, notably the e-Commerce Directive. This option could be complemented by self and co-regulatory initiatives.*
- d)  *Amending the AVMSD, namely by extending all or some of its provisions for instance to providers offering audiovisual content which does not qualify as "TV-like" or to providers hosting user-generated content.*
- e)  *Other option (please describe)*

**PLEASE EXPLAIN YOUR CHOICE:**

**The current rules are sufficiently clear and provide for a solid framework that allows for (online) gambling operators to advertise their services to consumers in a responsible way.**

**It is important to note that the European Commission concluded that the existence of, and access to legal gambling opportunities is key to ensure that consumers (who access online gambling services irrespective of any regulatory framework) are channelled to the regulated offer: *“Improving the protection of consumers and the regulatory environment is in the interest of all Member States and all stakeholders. The development of an attractive range of legal gambling opportunities is also key to effectively prevent consumers from going on unregulated sites.”*<sup>13</sup>**

**Advertising and commercial communications are essential elements in channelling the consumers to the regulated websites. Both in the aforementioned Communication and in the subsequent *“Recommendation on principles for the protection of consumers and players of online***

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*This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

<sup>12</sup> ECtHR 25 March 1985, NJ 1987, 900 (Barthold), r.o. 42.

<sup>13</sup> COMMUNICATION FROM THE COMMISSION “Towards a comprehensive European framework for online gambling” COM/2012/0596 final, page 6

*gambling services and for the prevention of minors from gambling online” (see [link](#)) the Commission identified the importance of commercial communications in channelling the consumer to the regulated offer: “At the same time, commercial communication of online gambling services can play an important role in directing consumers to an offer which has been allowed and is supervised.” (recital 11).*

**The Commission herein follows the CJEU, which already in 2007 concluded that regulated operators should “represent a reliable, but at the same time attractive, alternative to a prohibited activity. This may as such necessitate the offer of an extensive range of games, advertising on a certain scale...”<sup>14</sup>**

#### Geographical scope of AVMSD

The AVMSD applies to operators established in the EU. Operators established outside the EU but targeting EU audiences with their audiovisual media services (via, for instance, terrestrial broadcasting satellite broadcasting the Internet or other means) do not fall under the scope of the Directive<sup>15</sup>.

#### **SET OF QUESTIONS 1.2**

**Are the provisions on the geographical scope of the Directive still relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**EGBA considers that the current provisions are still relevant and effective but that the Directive does not address the unfair competition from operators which conduct their business from outside the EU and who do not apply the same high standards as EU-based operators.**

**Are you aware of issues (e.g. related to consumer protection problems or competitive disadvantage) caused by the current geographical scope of application of the AVMSD?**

YES –  NO (If yes, please explain below)

COMMENTS:

**See our response above.**

<sup>14</sup> CJEU 6 March 2007, *Placanica et al* (C-338/04 et al), ECR 2007 I-01891, paragraph 55. *Emphasis added.*

<sup>15</sup> Article 2(1) AVMSD – “Each Member State shall ensure that all audiovisual media services transmitted by media service providers **under its jurisdiction** comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State.” (emphasis added)

***Preferred policy option:***

- a)  *Maintaining the status quo*
- b)  *Extending the scope of application of the Directive to providers of audiovisual media services established outside the EU that are targeting EU audiences.*

*This could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.*

- c)  *Extending the scope of application of the Directive to audiovisual media services established outside the EU that are targeting EU audiences and whose presence in the EU is significant in terms of market share/turnover.*

*As for option b), this could be done, for example, by requiring these providers to register or designate a representative in one Member State (for instance, the main target country). The rules of the Member State of registration or representation would apply.*

- d)  *Other option (please describe)*

**PLEASE EXPLAIN YOUR CHOICE:**

**We consider that the Directive has achieved its purpose of creating a single market for audiovisual services.**

**However, the offering of gambling services by companies established in non-EU jurisdictions can pose a serious threat to European consumers, and places EU licensed operators in a position of competitive disadvantage.**

**In terms of consumer protection, gambling services offered by non-EU licensed operators often fail to be compliant with the standards that are set in the EU. As the costs of implementing (fragmented) consumer protection rules (both EU and national) in the EU are significant, the resulting competitive disadvantage is also significant. However, the negative effect is not limited to the competitiveness of the EU licensed operators. By making the regulated offer more expensive compared to the unregulated offer, it also pushes the consumer away to the unregulated but more attractive offer, thus impeding consumer protection.**

**EGBA considers that extending the scope of application of the Directive in order to include non-EU operators (option B) would be an appropriate measure to ensure a level-playing field among operators and to ensure the consumers are channelled to regulated and safe service providers. There are already other areas where non-EU operators need to comply with EU rules when targeting EU customers, which have also been confirmed by settled CJEU case-law.**

## 2. *Providing for an optimal level of consumer protection*

The AVMSD is based on a so-called "graduated regulatory approach". The AVMSD acknowledges that a core set of societal values should apply to all audiovisual media services, but sets out lighter regulatory requirements for on-demand services as compared to linear services. The reason is that for on-demand services the users have a more active, "lean-forward" approach and can decide on the content and the time of viewing.

In the area of commercial communications<sup>16</sup>, the AVMSD sets out certain rules, which apply to all audiovisual media services and regulate, for example, the use of sponsorship and product placement. They also set limits to commercial communications for alcohol and tobacco.

It also lays down other rules that apply only to television broadcasting services and regulate advertising from a quantitative point of view. For example, they set a maximum of 12 minutes of advertising per hour on television, define how often TV films, cinematographic works and news programmes can be interrupted by advertisements and set the minimum duration of teleshopping windows.

### ***SET OF QUESTIONS 2.1***

#### **Are the current rules on commercial communications still relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**EGBA considers that the applying rules are all still relevant, effective and fair. In addition, in order to safeguard a high level of consumer protection in the EU, the European Commission issued a Recommendation in July 2014 on “*principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling online*” (link [here](#)).**

**This EC Recommendation highlights in recital 11 that “*commercial communication of online gambling services can play an important role in directing consumers to an offer which has been allowed and is supervised, for example by showing the identity of the operator and by carrying correct information about gambling including the risks of problem gambling, as well as appropriate***

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<sup>16</sup> "Audiovisual commercial communication" is a broader concept than advertising and it refers to images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement. See Article 1(1) (h) AVMSD.

*warning messages.”*

**When evaluating AVMSD's rules governing commercial communications we recommend, for the field of online gambling services, to take into consideration these rules on commercial communications as laid down in the EC Recommendation.**

**Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) caused by the AVMSD's rules governing commercial communications?**

YES –  NO (If yes, please explain below)

COMMENTS

**We believe that in terms of consumer protection and competitive disadvantage, the Directive has been successful.**

**EGBA, however, regrets that the importance of commercial communications in enabling consumers to make better and more informed choices has not been given proper attention in this consultation. Consumer protection is an important policy objective, but equally adult consumers should be allowed to make their own and informed choices. We consider that this subject should be addressed by the European Commission, as unnecessarily restrictive consumer protection legislation may hinder the consumers' ability to make legitimate and free choices, and ultimately push the consumer to the unregulated but more competitive offer.**

**Advertising is key in any consumer market in the creation of competitive, transparent and efficient markets. Advertising is also crucial for price signals. Transparent and efficient markets can only exist if advertisements are subject to clear and fair rules which have truthfulness and correct representation as core principles.**

**The EC recommendation on online gambling also sets a number of principles which advertisements for online gambling should abide by and which EGBA fully subscribes to. For instance article 41 stipulates that “*Commercial communications should not: (a) make unfounded statements about chances of winning or the return that players can expect from gambling*”.**

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Rendering the rules on commercial communications more flexible, notably those setting*

*quantitative limits on advertising and on the number of interruptions.*

c)  *Tightening certain rules on advertising that aim to protect vulnerable viewers, notably the rules on alcohol advertising or advertising of products high in fat, salt and sugars.*

d)  *Other options (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

**Regarding on demand services requested by adults, consumer protection rules should be focused on guaranteeing that consumers have enough information to make a reasoned choice, instead of restricting the contents that they are able to request. Therefore the Directive should also enshrine the fundamental right of consumers to be properly informed in order to make better choices. EGBA welcomes in that respect the European Parliament report (link [here](#)) on connected TV from 2013 which states that “*the introduction of new, or the extension of existing, advertising bans or other measures which have an impact on advertising as a source of funding should be prevented so that new business models can also be employed in the digital TV sector.*” (article 16)**

**In a sector in which (non-EU) unlicensed operators continue to offer their services, commercial broadcasts advertising the products of EU licensed operators helps channelling the existing demand for online gambling services to the regulated offer. As pointed out in the previous answer, this has been recognized by the CJEU.**

### 3. *User protection and prohibition of hate speech and discrimination*

#### **General viewers' protection under the AVMSD**

The AVMSD lays down a number of rules aimed at protecting viewers/users, minors, people with disabilities, prohibiting hate speech and discrimination.

#### ***SET OF QUESTIONS 3.1***

**Is the overall level of protection afforded by the AVMSD still relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

N/A

**Are you aware of issues (e.g. related to consumer protection or competitive disadvantage) stemming from the AVMSD's rules?**

YES –  NO (If yes, please explain below)

COMMENTS:

N/A

#### Protection of minors

The system of graduated regulation applies also to the protection of minors: the less control a viewer has and the more harmful specific content is, the more restrictions apply. For television broadcasting services, programmes that “might seriously impair” the development of minors are prohibited (i.e., pornography or gratuitous violence), while those programmes which might simply be "harmful" to minors can only be transmitted when it is ensured that minors will not normally hear or see them. For on-demand services, programmes that "might seriously impair" the development of minors are allowed in on-demand services, but they may only be made available in such a way that minors will not normally hear or see them. There are no restrictions for programmes which might simply be "harmful".

#### ***SET OF QUESTIONS 3.2***

**In relation to the protection of minors, is the distinction between broadcasting and on-demand content provision still relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**All Member States of the EU strictly prohibit underage gambling as well as commercial communications aimed at minors. All EGBA members strictly abide by these rules and have zero tolerance policies for underage gambling and advertising directed at underaged people.**

**All EGBA members comply with the CEN Workshop Agreement on [Responsible Remote Gambling Measures](#) (CWA 16259: 2014), the first set of pan European consumer protection measures for online gambling. The CWA contains 134 self-regulatory implementing measures aimed at 9 policy objectives, including “*responsible marketing*”. For example principle 7.02 stipulates that: “*Advertisements should not entice underage individuals to gamble, and should not be displayed in media that is clearly targeted at underage individuals.*”**

**EGBA members also fully subscribe to the provisions of the aforementioned Commission recommendation, which inter alia includes article 11: “*Member States should ensure that commercial communications for online gambling services do not harm minors or induce them to view gambling as a natural element of their leisure time activities.*” and that “*Commercial communications should carry a clear ‘no underage gambling’ message indicating the minimum age below which gambling is not permissible.*”**

**As part of their core operations, EU-licensed operators have and continue to invest in advanced systems that allow them to identify their customers (KYC – Know Your Customer). KYC is essential to the operations of EU-licensed operators in preventing fraud by customers against the operator or other customers, to prevent problematic gaming behaviour and importantly to prevent minors from gambling online.**

**Several EGBA operators are members of the “Forum of the ICT Coalition for Children Online” (see [link](#)) which includes a broad range of digital service providers from across the information and communications technology (ICT) sector. As EGBA operators have a strict no-underage gambling policy and have acquired significant experience in this area over the years, they share their best practices in this area with the other members of the ICT Coalition.**

**Has the AVMSD been effective in protecting children from seeing/hearing content that may harm them?**

YES –  NO –  NO OPINION

COMMENTS:

As answered to the previous question EGBA considers that the AVMSD has been effective in helping to prevent children from seeing content that may harm them in relation to gambling.

**What are the costs related to implementing such requirements?**

Costs:

COMMENTS:

There are significant costs involved in developing and maintaining the KYC systems, which are essential for inter alia protecting under aged persons.

Although all Member States have a prohibition to provide gambling services to minors as well as aiming advertising at minors, the requirements are formulated differently. Also in this area, multi-licensed operators are confronted with 28 different sets of legislation which are similar in their objectives but fragmented in their implementation. In its 2014 Cost of non-Europe study, the European Parliament specifically calculated that the harmonisation of the European online gambling sector would be beneficial for operators and for consumers. The study points out that harmonisation would not only lead to substantial increases in welfare (5.6 billion Euros annually) but importantly also to better and more equal consumer protection throughout the EU (see [link](#), inter alia page 31).

**What are the benefits related to implementing such requirements?**

Benefits:

COMMENTS:

**Are you aware of problems regarding the AVMSD's rules related to protection of minors?**

YES –  NO (If yes, please explain below)

COMMENTS:

*Preferred policy option:*

a)  *Maintaining the status quo*

b)  *Complementing the current AVMSD provisions via self- and co-regulation*

The status quo would be complemented with self-/co-regulatory measures and other actions (media

literacy, awareness-raising).

c)  *Introducing further harmonisation*

This could include, for example, more harmonisation of technical requirements, coordination and certification of technical protection measures. Other possibilities could be the coordination of labelling and classification systems or common definitions of key concepts such as minors, pornography, gratuitous violence, impairing and seriously impairing media content.

d)  *Deleting the current distinction between the rules covering television broadcasting services and the rules covering on-demand audiovisual media services.*

This means either imposing on on-demand services the same level of protection as on television broadcasting services (levelling-up), or imposing on television broadcasting services the same level of protection as on on-demand services (levelling down).

e)  *Extending the scope of the AVMSD to other online content (for instance audiovisual user-generated content or audiovisual content in social media), including non-audiovisual content (for instance still images)*

One option could be that these services would be subject to the same rules on protection of minors as on-demand audiovisual media services.

f)  *Other option (please describe)*

PLEASE EXPLAIN YOUR CHOICE:

**As set out above, EGBA considers that the AVMSD has been effective in helping to prevent children being targeted at or enticed by gambling advertising.**

#### **4. Promoting European audiovisual content**

The AVMSD aims to promote European works and as such cultural diversity in the EU. For television broadcasting services, the EU Member States shall ensure, where applicable and by appropriate means, a share of EU works<sup>17</sup> and independent productions<sup>18</sup>. For on-demand services, the EU Member States can choose among various options to achieve the objective of promoting cultural diversity. These options include financial contributions to production and rights acquisition of European works or rules guaranteeing a share and/or prominence of European works. The EU Member States must also comply with reporting obligations on the actions pursued to promote European works, in the form of a detailed report to be provided every two years.

##### **SET OF QUESTIONS 4**

**Are the AVMSD provisions still relevant, effective and fair for promoting cultural diversity and particularly European works?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**In terms of European works, including non-national ones (i.e. those produced in another EU country), the catalogues offered by audiovisual media service providers contain:**

a) the right amount;

b) too much;

c) too little

d) no opinion

COMMENTS:

**Would you be interested in watching more films produced in another EU country?**

YES –  NO –  NO OPINION

COMMENTS:

**Have you come across or are you aware of issues caused by the AVMSD's rules related to the promotion of EU works?**

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<sup>17</sup> For European works: a majority proportion of broadcasters' transmission time.

<sup>18</sup> For European works created by producers who are independent of broadcasters: 10% of broadcasters' transmission time.

YES –  NO (If yes, please explain below)

COMMENTS

**What are the benefits of the AVMSD's requirements on the promotion of European works? You may wish to refer to qualitative and/or quantitative benefits (e.g. more visibility or monetary gains).**

Benefits:

COMMENTS:

**As an audiovisual media service provider, what costs have you incurred due to the AVMSD's requirements on the promotion of European works, including those costs stemming from reporting obligations? Can you estimate the changes in the costs you incurred before and after the entry into force of the AVMSD requirements on the promotion of European works?**

Costs:

COMMENTS:

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Repealing AVMSD obligations for broadcast and/or for on-demand services regarding the promotion of European works. This would entail the removal of EU-level harmonisation on the promotion of European works, which would then be subject to national rules only.*

c)  *Introducing more flexibility for the providers' in their choice or implementation of the measures on the promotion of European works.*

This could imply, for example, leaving more choice both to TV broadcasters and video-on-demand providers as to the method of promoting European works.

d)  *Reinforcing the existing rules.*

For television broadcasting services this could be done, for example, by introducing additional quotas for non-national European works and/or for European quality programming (e.g. for fiction films,

documentaries and TV series) or for co-productions; or by setting a clear percentage to be reserved to Recent Independent Productions<sup>19</sup> (instead of "an adequate proportion"). For on-demand services, further harmonisation could be envisaged: by introducing one compulsory method (among e.g. the use of prominence tools, an obligatory share of European works in the catalogue or a financial contribution – as an investment obligation or as a levy) or a combination of these methods.

e)  *Other options (please describe)*

***PLEASE EXPLAIN YOUR CHOICE:***

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<sup>19</sup> Works transmitted within 5 years of their production.

## 5. *Strengthening the single market*

Under the AVMSD, audiovisual media companies can provide their services in the EU by complying only with the rules within the Member States under whose jurisdiction they fall. The AVMSD lays down criteria to identify which Member State has jurisdiction over a provider. These criteria include where the central administration is located and where management decisions are taken on programming or selection of content. Further criteria include the location of the workforce and any satellite uplink, and the use of a country's satellite capacity. The AVMSD foresees the possibility to derogate from this approach in cases of incitement to hatred, protection of minors or where broadcasters try to circumvent stricter rules in specific Member States. In these cases the Member States have to follow specific cooperation procedures.

### **SET OF QUESTIONS 5**

**Is the current approach still relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**EGBA believes that the balance between the freedom to provide services and the existing number of exceptions to the principles single market is fair and effective.**

**The country of origin principle is essential to the single market and must remain the central principle in the Directive. EGBA considers that the current framework has proved to be sufficiently robust and fit for purpose, in particular due to the legal certainty it offers. There is the possibility to derogate from the generally applicable rules for well-defined and important objectives and according to specific procedures. It is essential not to widen the scope for derogations or loosen the procedures as this will be detrimental to the effectiveness of the Directive for the DSM. The Directive has proven to be an astute tool for innovation and enhancing consumer confidence and choice.**

**Are you aware of problems regarding the application of the current approach?**

YES –  NO (If yes describe and explain their magnitude)

COMMENTS:

**If you are a broadcaster or an on-demand service provider, can you give an estimate of the costs or benefits related to the implementation of the corresponding rules?**

YES –  NO

Estimate of costs:

Estimate of benefits:

COMMENTS:

***Preferred policy option:***

a)  ***Maintaining the status quo***

b)  *Strengthening existing cooperation practices*

c)  *Revising the rules on cooperation and derogation mechanisms, for example by means of provisions aimed at enhancing their effective functioning*

d)  *Simplifying the criteria to determine the jurisdiction to which a provider is subject, for example by focusing on where the editorial decisions on an audiovisual media service are taken.*

e)  *Moving to a different approach whereby providers would have to comply with some of the rules (for example on promotion of European works) of the countries where they deliver their services.*

f)  *Other options (please describe)*

***PLEASE EXPLAIN YOUR CHOICE:***

**EGBA believes that maintaining the current framework offers the best way to safeguard the country of origin principle which should remain at the core of the Directive. It is essential not to widen the scope for derogations or loosen the procedures as this will be detrimental to the effectiveness of the Directive for the DSM.**

**6. Strengthening media freedom and pluralism, access to information and accessibility to content for people with disabilities**

Independence of regulators

Free and pluralistic media are among the EU's most essential democratic values. It is important to consider the role that independent audiovisual regulatory bodies can play in safeguarding those values within the scope of the AVMSD. Article 30 AVMSD states that independent audiovisual regulatory authorities should cooperate with each other and the Commission. The AVMSD does not directly lay down an obligation to ensure the independence of regulatory bodies, nor to create an independent regulatory body, if such a body does not already exist.

**SET OF QUESTIONS 6.1**

**Are the provisions of the AVMSD on the independence of audiovisual regulators relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**Are you aware of problems regarding the independence of audiovisual regulators?**

YES –  NO (If yes, please explain below)

COMMENTS:

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Laying 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.*

c)  *Laying 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.*

Such features could relate to transparent decision-making processes; accountability to relevant stakeholders; open and transparent procedures for the nomination, appointment and removal of Board

Members; knowledge and expertise of human resources; financial, operational and decision making autonomy; effective enforcement powers, etc.

d)  Other options (please describe).

*PLEASE EXPLAIN YOUR CHOICE:*

### Must Carry/Findability

In the context of the regulatory framework applicable to the telecoms operators, under the Universal Service Directive<sup>20</sup>, Member States can in certain circumstances oblige providers of electronic communications networks to transmit specific TV and radio channels ("must-carry" rules). Under the Access Directive<sup>21</sup>, Member States can also set rules on the inclusion of radio and TV services in electronic programme guides (EPGs)<sup>22</sup> and on presentational aspects of EPGs such as the channel listing. Most recent market and technological developments (new distribution channels, the proliferation of audiovisual content, etc.) have highlighted the need to reflect on the validity of the must-carry rules and on whether updated rules would be required to facilitate or ensure access to public interest content (to be defined at Member State level), for instance by giving this content a certain prominence (i.e. ensuring findability/discoverability).

### **SET OF QUESTIONS 6.2**

**Is the current regulatory framework effective in providing access to certain 'public interest' content?**

Effective?  YES –  NO –  NO OPINION

COMMENTS:

**If you are a consumer, have you faced any problems in accessing, finding and enjoying TV and radio channels?**

YES –  NO (If yes, please explain below)

<sup>20</sup> Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, as amended by Directive 2009/136/EC

<sup>21</sup> Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), as amended by Directive 2009/140/EC

<sup>22</sup> Electronic programme guides (EPGs) are menu-based systems that provide users of television, radio and other media applications with continuously updated menus displaying broadcast programming or scheduling information for current and upcoming programming.

COMMENTS:

**Have you ever experienced problems regarding access to certain 'public interest' content?**

YES –  NO (If yes, please explain below)

COMMENTS:

***Preferred policy option:***

a)  *Maintaining 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 Member States to cover services other than broadcast).*

b)  *Removing 'must carry' /EPG related obligations at national level/at EU level.*

c)  *Extending existing "must-carry" rules to on-demand services/and or further services currently not covered by the AVMSD.*

d)  *Amending the AVMSD to include rules related to the "discoverability" of public interest content (for instance rules relating to the prominence of "public interest" content on distribution platforms for on-demand audiovisual media services).*

e)  *Addressing 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.*

f)  *Other options (please describe).*

***PLEASE EXPLAIN YOUR CHOICE:***

#### Accessibility for people with disabilities

The AVMSD sets out that the Member States need to show that they encourage audiovisual media service providers under their jurisdiction to gradually provide for accessibility services for hearing and visually-impaired viewers.

***SET OF QUESTIONS 6.3***

**Is the AVMSD effective in providing fair access of audiovisual content to people with a visual or hearing disability?**

Effective?  YES –  NO –  NO OPINION

COMMENTS:

**Have you ever experienced problems regarding the accessibility of audiovisual media services for people with a visual or hearing disability?**

YES –  NO (If yes, please explain below)

COMMENTS

**If you are a broadcaster, can you provide an estimate of the costs linked to these provisions?**

YES –  NO

Cost:

COMMENTS:

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Strengthening EU-level harmonisation of these rules.*

Instead of encouraging it, the EU Member States would be obliged to ensure gradual accessibility of audiovisual works for people with visual and hearing impairments. This obligation could be implemented by the EU Member States through legislation or co-regulation.

c)  *Introducing self and co-regulatory measures*

This could include measures related to subtitling or sign language and audio-description.

d)  *Other option (please describe).*

PLEASE EXPLAIN YOUR CHOICE

Events of major importance for society

The AVMSD authorises the Member States to prohibit the exclusive broadcasting of events which they deem to be of major importance for society, where such broadcasts would deprive a substantial proportion of the public of the possibility of following those events on free-to-air television. The AVMSD mentions the football World Cup and the European football championship as examples of such events. When a Member State notifies a list of events of major importance, the Commission needs to assess the list's compatibility with EU law. If considered compatible, a list will benefit from 'mutual recognition'.

***SET OF QUESTIONS 6.4***

**Are the provisions of the AVMSD on events of major importance for society relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**Have you ever experienced problems regarding events of major importance for society in television broadcasting services?**

YES –  NO (If yes, please explain below)

COMMENTS

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE

Short news reports

The AVMSD requires Member States to ensure that broadcasters established in the Union have access, on a fair, reasonable and non-discriminatory basis, to events of high interest to the public for the purposes of short news reports.

***SET OF QUESTIONS 6.5***

**Are the provisions of the AVMSD on short news reports relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**Have you ever experienced problems regarding short news reports in television broadcasting services?**

YES –  NO (If yes, please explain below)

COMMENTS

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE

**Right of reply**

The AVMSD lays down that 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.

***SET OF QUESTIONS 6.6***

**Are the provisions of the AVMSD on the right of reply relevant, effective and fair?**

Relevant?  YES –  NO –  NO OPINION

Effective?  YES –  NO –  NO OPINION

Fair?  YES –  NO –  NO OPINION

COMMENTS:

**Have you ever experienced problems regarding the right of reply in television broadcasting services?**

YES –  NO (If yes, please explain below)

COMMENTS

***Preferred policy option:***

a)  *Maintaining the status quo*

b)  *Other options (please describe).*

PLEASE EXPLAIN YOUR CHOICE

***Conclusions and next steps***

This public consultation will be closed on 30 September 2015

On the basis of the responses, the Commission will complete the Regulatory Fitness and Performance (REFIT) evaluation of the AVMSD and inform the Impact Assessment process on the policy options for the future of AVMSD.