



SMART 2018/0066 – Part D: Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD)

Final report

Written by Deloitte and SMIT (part of Vrije Universiteit Brussel and imec)

Internal identification

Contract number: LC-01353325

VIGIE number:

EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Directorate I — Media Policy

Unit I.1 — Audiovisual Media Services Policy

Contact: CNECT-I1@ec.europa.eu

European Commission

B-1049 Brussels

Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD)

Final report

***EUROPE DIRECT is a service to help you find answers
to your questions about the European Union***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you)

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the European Commission is not liable for any consequence stemming from the reuse of this publication. The Commission does not guarantee the accuracy of the data included in this study. More information on the European Union is available on the Internet (<http://www.europa.eu>).

PDF	ISBN	doi:	Catalogue number
	978-92-76-28596-0	10.2759/135983	KK-02-21-010-EN-N

Manuscript completed in December 2020

1st edition

The European Commission is not liable for any consequence stemming from the reuse of this publication.

Luxembourg: Publications Office of the European Union, 2021

© European Union, 2021



The reuse policy of European Commission documents is implemented by the Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents (OJ L 330, 14.12.2011, p. 39). Except otherwise noted, the reuse of this document is authorised under a Creative Commons Attribution 4.0 International (CC-BY 4.0) licence (<https://creativecommons.org/licenses/by/4.0/>). This means that reuse is allowed provided appropriate credit is given and any changes are indicated.

For any use or reproduction of elements that are not owned by the European Union, permission may need to be sought directly from the respective rightholders.

GETTING IN TOUCH WITH THE EU

In person

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: https://europa.eu/european-union/contact_en

On the phone or by email

Europe Direct is a service that answers your questions about the European Union. You can contact this service:

- by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls),
- at the following standard number: +32 22999696 or
- by email via: https://europa.eu/european-union/contact_en

FINDING INFORMATION ABOUT THE EU

Online

Information about the European Union in all the official languages of the EU is available on the Europa website at: https://europa.eu/european-union/index_en

EU publications

You can download or order free and priced EU publications at: <https://publications.europa.eu/en/publications>. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see https://europa.eu/european-union/contact_en).

EU law and related documents

For access to legal information from the EU, including all EU law since 1952 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>

Open data from the EU

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purpose.

Abstract

A revised version of the Audiovisual Media Services Directive (AVMSD), which governs audiovisual media, traditional TV broadcasts and on-demand services, was adopted in November 2018 in order to align with new developments in audiovisual technologies and on audiovisual markets. With a view to implementation of the AVMSD, this study looks at current regulatory and business practices in relation to three topics included for the first time in the EU media framework: video-sharing platforms (VSPs), media ownership and transparency, and signal integrity. In relation to VSPs, the study looks at the extent to which VSPs can and do carry out measures to protect minors and the public, as envisaged by the AVMSD. It also looks at developments in implementation at Member State level and the transnational dimension. The review of media ownership and transparency looks at approaches across the EU to constraining media concentration and promoting transparency, the extent to which current rules are sufficient and enforced, at best practices, and whether action should be taken at EU or national level. The discussion of signal integrity discusses how widespread problems with signal integrity are and the conditions that need to be met for successful implementation of the Directive.

By the European Commission, Directorate-General of Communications Networks, Content & Technology.

The information and views set out in this publication are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein."

© [2020] – European Union. All rights reserved. Certain parts are licensed under conditions to the EU.

Table of Content

EXECUTIVE SUMMARY	7
Video-sharing platforms	7
Media ownership and transparency in the EU	9
Signal integrity	10
RÉSUMÉ ANALYTIQUE	13
Plateformes de partage de vidéos	13
Propriété des médias et transparence dans l'UE	15
Intégrité du signal	17
1 INTRODUCTION	19
1.1 Context of the assignment	19
1.2 Objectives of the study	20
1.3 Methodology and scope	20
1.4 Project team	21
1.5 Structure of the document	23
2 VIDEO-SHARING PLATFORMS	26
2.1 Snapshot of the market situation in the EU	26
2.2 Mapping of relevant measures adopted by VSPs	54
2.3 Mapping of existing and planned legislative and co-regulatory systems	84
2.4 Conclusions	122
3 MEDIA OWNERSHIP AND TRANSPARENCY IN THE EU	128
3.1 How the revised AVMS Directive deals with media ownership rules and transparency ...	128
3.2 Media ownership rules: mapping, implementation and effectiveness	130
3.3 Transparency of media ownership in the EU	185

3.4 Conclusion	231
4 SIGNAL INTEGRITY.....	235
4.1 Introduction	235
4.2 The technological context	239
4.3 The competitive context	248
4.4 Cases	258
4.5 European regulations	290
4.6 National regulations	325
4.7 Stakeholder opinions.....	358
4.8 Understanding the legal implications	363
4.9 Conclusion	365
ANNEX A – FINAL PROGRESS REPORT.....	367
Introduction	367
Progress, status of the activities and their completion.....	367
Risks log and mitigation measures	371
Decision log	372
ANNEX B - METHODOLOGY AND PROJECT MANAGEMENT.....	373
Methodology	373
Challenges and mitigation actions	381
Project planning	381
Additional methodological background	383
ANNEX C - MEDIA LEGISLATION IN THE EU-27 MEMBER STATES + UK	386
ANNEX D – LIST OF REFERENCES	394
Task A references (Chapter 2)	394
Task B references (Chapter 3)	397
Task C references (Chapter 4)	400

ANNEX E – TASK B MEMBER STATE OVERVIEW 405

Austria.....	406
Belgium	408
Bulgaria	410
Croatia.....	412
Cyprus.....	414
Czechia	416
Denmark.....	418
Estonia	420
Finland	422
France	423
Germany	425
Greece.....	427
Hungary.....	429
Ireland.....	431
Italy	433
Latvia	435
Lithuania.....	437
Luxembourg	439
Malta	440
Netherlands.....	441
Poland	443
Portugal	445
Romania	447
Slovakia.....	449
Slovenia.....	451
Spain.....	453

Sweden.....	455
United Kingdom	456

Table of Figures

Figure 1 - Mapping of platforms by user content options and monetisation options as of October 2020....	36
Figure 2 - Placement of in-stream and in-display ads on VSPs (IAB, 2016, p. 7).....	39
Figure 3 - The wider video advertising ecosystem (Broughton Micova S. and Jacques, S., 2020)	40
Figure 4 - Data flows by scenario (open web versus proprietary) - highly simplified (Adshead et al., 2019, p. 15)	43
Figure 5 - Mapping of VSPs by purchase pathway, transaction and data control.....	44
Figure 6 - Hungarian and Italian company registers.....	220
Figure 7 - Digital Broadcasting Chain	239
Figure 8 - Distribution over a private network (DVB-T/C/S, IPTV) and the open internet.....	249
Figure 9 - Global Forecast Ad Spending in 2020.....	250
Figure 10 - Rising share of programmatic advertising.....	251
Figure 11 - Delayed viewing in the EU	252
Figure 12 - Case ADV.1 - Skin ad from online video platform	261
Figure 13 - ADV.6 - Ad triggered when adjusting the volume	264
Figure 14 - Case EPG.1 - EPG with video resizing.....	265
Figure 15 - Case EPG.4 - Transparent overlay carrying EPG	268
Figure 16 - Case EPG.5 - Transparent overlay carrying EPG with promoted channels	268
Figure 17 - Case STV.1 Split Screen.....	269
Figure 18 - Case STV.2 Split Screen.....	270
Figure 19 - Case STV.3 Overlay by social networking app	272
Figure 20 - Cases TVR.5 & 6 - Overlays carrying recommendations and commercial communications....	275
Figure 21 - Cases CLS.5 & 6 - Overlays carrying classifications with previews and commercial communications	278
Figure 22 - Flow of Article 7b (AVMS Directive)	324
Figure 23 - Mapping video platforms on the content control and revenue model axes.....	384

Table 1 - Network of experts.....	22
Table 2 - Pre-record functionality by VSP.....	31
Table 3 - Public/non-public videos by default by VSP.....	32
Table 4 - Functionalities related to protection of minors.....	32
Table 5 - Interaction functionalities VSP	33
Table 6 - Monetisation options afforded by platform functionalities	35
Table 7 - Summary of information on the case study platforms	50
Table 8 - VSP policies and definitions on child sexual exploitation and abuse (CSEA) as of September 2020	59
Table 9 - VSP policies and definitions for terrorism and/or terrorist content as of September 2020	66
Table 10 - VSP policies and definitions on hate speech as of October 2020	71
Table 11 - Key differentiating features of NRA-dependent and industry-intensive co-regulation	89
Table 12 - NRA-dependent and industry-intensive co-regulation, EU-27 + UK	90

Table 13 - Responsibilities and powers of NRAs, EU-27 + UK	91
Table 14 - Analysis of media ownership rules.....	141
Table 15 - Level of regulation and market concentration in the EU's TV broadcasting markets	172
Table 16 - Value indexes for the level of regulation and the market concentration	174
Table 17 - Relationship between section 3.3 and the AVMSD.....	188
Table 18 - Analysis of rules on transparency of media ownership	197
Table 19 - Cases RDS.1, RDS.2 and RDS.3	259
Table 20 - Case IRD.1	260
Table 21 - Case IRD.2	260
Table 22 - Case IRD.3	261
Table 23 - Case ADV.1	262
Table 24 - Case ADV.2	262
Table 25 - Case ADV.3	263
Table 26 - Case ADV.4	263
Table 27 - Case ADV.5	263
Table 28 - Cases ADV.6 & 7	264
Table 29 - Case EPG.1.....	266
Table 30 - Case EPG.2.....	266
Table 31 - Case EPG.3.....	267
Table 32 - Cases EPG.4 and EPG.5.....	269
Table 33 - Case STV.1.....	270
Table 34 - Case STV.2.....	271
Table 35 - Case STV.3.....	272
Table 36 - Case STV.4.....	273
Table 37 - Case TVR.1.....	274
Table 38 - Case TVR.2.....	274
Table 39 - Case TVR.3 & 4	275
Table 40 - Case TVR.5 & 6	276
Table 41 - Case HS.1	277
Table 42 - Cases PVR.1 & 2	277
Table 43 - Case CLS.1.....	279
Table 44 - Overview of cases	281
Table 45 - Mapping of modifications, processes & cases (consent versus no consent, only taking the wording of Article 7b into account).....	293
Table 46 - Mapping between 'modifications', 'processes', Recital 26 'out-of-scope situations' and 'cases which are possibly out-of-scope'	306
Table 47 - Mapping of modifications, processes & cases (consent versus no consent, taking the exceptions prescribed by Recital 26 into account)	310
Table 48 - Scan of legislation in force and under way (based on input and updates until September 2020 by national experts and stakeholders, as well as on own research).....	327
Table 49 - Provisions in force and under way in Belgium	331
Table 50 - Provisions in force and under way in Denmark.....	336
Table 51 - Provisions in force and under way in France	338
Table 52 - Provisions in force and under way in Germany.....	340
Table 53 - Provisions in force and under way in Hungary.....	344
Table 54 - Provisions in force and under way in Spain.....	345
Table 55 - Provisions in force and under way in Canada	346
Table 56 - Provisions in force and under way in the USA.....	353

Table 57 - Rules and regulations in force at the time of reporting (excluding early transpositions of the AVMS Directive)	356
Table 58 - In summary.....	362
Table 59 - Progress of activities*	367
Table 60 - Progress and status of deliverables and meetings.....	370
Table 61 - Risks and mitigation measures	371
Table 62 - Decision Log	372
Table 63 - Approach and Scope	374
Table 64 - List of National Experts	375
Table 65 - Targeted Online Consultation Tracker	378
Table 66 - Focus groups	379
Table 67 - Project Planning	382
Table 68 - Relevant (media and non-media) legislation in the EU-27 + UK Member States	386
Table 69 - Relevant media, competition and other authorities in the EU-27 Member States + UK	389

Executive Summary

The Audiovisual Media Services Directive (AVMSD) governs coordination across EU Member States of national legislation on audiovisual media, traditional TV broadcasts and on-demand services. A revision was adopted on 14 November 2018 that reflects new realities in the rapidly changing AVMS market. Those realities pose challenges in implementation.

This **Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD)** was carried out by Deloitte and SMIT (part of Vrije Universiteit Brussel and imec) at the request of the Directorate-General for Communications Networks, Content and Technology (DG CNECT). It looks at three areas where the audiovisual media environment has changed significantly since the previous revision in 2010: **video-sharing platforms, legislation on transparency of media ownership, and signal integrity.**

The purpose of the assignment was to describe, analyse and to some extent evaluate the existing regulatory and business practices in these three areas. The study looks at the existing and emerging approaches of the authorities in the EU-27 and the UK, and audiovisual media companies. Parts of the study also include insights from regulatory practices in the US and Canada.

The study contextualises and analyses developments in the light of what is happening in the market. The requisite data was collated by the contractor through desk research, focus groups, online consultations and interviews with stakeholders. The contractor was able to call on a network of national experts across the Member States to support this work.

Video-sharing platforms

The importance of video-sharing platforms (VSPs), of which YouTube is the largest, in the audiovisual landscape has grown rapidly over the last ten years. Consequently, the revised Directive brings them into scope and contains, for the first time, provisions on VSPs (Articles 28a and 28b).

These new provisions in the Directive require Member States to ensure that VSPs protect minors from harmful content and the general public from incitement to violence or hatred and enforce qualitative advertising standards. Member States must also ensure that VSPs protect users from child sexual exploitation and abuse (CSEA) or terrorist material and any other content the dissemination of which constitutes an activity which is a criminal offence under Union law. In addition, the Directive highlights the role of co-regulation or self-regulation.

The extent to which VSPs can and do exercise control

The requirements imposed on VSPs under the Directive raise the question of how much control VSPs actually have over dissemination and consumption of the material uploaded onto their platforms, and how much control they have over the content of advertising on their platforms. The degree of control over advertising is important because 12 of the 15 VSPs examined in this study rely on advertising for their revenue at least in large part.

In terms of the action the VSPs themselves take to **protect users from illegal and harmful content**, there is consistency in policies banning child sexual exploitation and abuse (CSEA) and terrorism, albeit

great variation in the extent and nature of relevant definitions and guidance given. CSEA and terrorist content are overwhelmingly dealt with through automated means (artificial intelligence - AI) and before any user sees any. The VSPs are less consistent in their approach to controls on hate speech as definitions and guidance for users vary widely, but most of those studied are moderating and removing it, either using automatic tools or manually. There are significant differences of approach to the protection of minors.

As the platforms report differently on the action they take and there is little external monitoring, the information in the public domain on the outcomes and impact of the actions they take is inadequate.

VSPs can exercise **control over advertising content** through their terms and conditions. They can only do this fully where they deal with advertisers directly or where advertisers use tools for which the VSPs set the terms of use. When the users produce commercial communication, such as influencer marketing or brands' own content, VSPs also require compliance with their terms. However, they have little or no control when advertising is served on their platforms via independent programmatic intermediaries on the open web. Consequently, implementation of the AVMSD is likely to require involving the advertising intermediaries in some way.

The platforms analysed fall into two broad groups: a high functionality group and a low functionality group. The first group offer users controls both as creators and as consumers of content that either already constitute the protection measures called for in the Directive or appear to be in a position to introduce such measures. The second group do not currently have the necessary functionality. Differences in functionality will have implications for the ability of some VSPs to meet the expectations of the Directive and may mean these smaller platforms face a more significant additional compliance burden than the high functionality ones.

The future shape of implementation at Member State level

In Member States where the systems for regulation under the Directive are in place or are taking shape, there are already forms of co-regulation. Within this landscape, there are two broad categories: either the system is more dependent on the national regulatory authority (NRA) to be responsible for implementation or relies more on industry initiative.

There are some significant differences within categories, however. Where the NRAs are set to bear most of the responsibility for enforcing the provisions of the AVMSD, some are granted extensive monitoring and sanctioning powers, while in other cases, the NRAs are much more limited in terms of what they will be able to draw upon in order to investigate, assess and sanction.

Member States with long histories of co-regulation and with well-resourced and experienced NRAs might be better placed to enforce the new provisions effectively as their monitoring and sanctioning powers are already comprehensive and developed. In other cases, there appear to be gaps, such as limited information-gathering powers, or imprecise allocation of responsibility for generating codes of conduct.

The transnational dimension

The study also looks at transnational mechanisms used to provide the types of protections envisaged by the Directive, since transnational and multi-stakeholder cooperation can be critical in tackling these issues effectively.

There are two key conclusions in this area. First, the high functionality VSPs are already engaging internationally and are already implementing many of the protection measures foreseen in the Directive. They are setting the standards and investing in technological solutions. Second, international cooperation

among VSPs, regulatory bodies, government (including law enforcement), and civil society is patchy. There are advanced mechanisms in some areas, with evidence of effectiveness that can serve as models for other areas, but there are still gaps in terms of who is involved.

There is already well established co-ordinated self-regulation of commercial communications (advertising) in Europe. There are transnational models of co-enforcement in dealing with CSEA and terrorism. There is a form of European co-regulation for illegal hate speech. However, smaller VSPs are not participating transnationally to the same or even a comparable extent as larger ones, and some important players are missing. These include, for example, advertising intermediaries not included in the mechanisms on commercial communications and freedom of expression advocacy groups that are not involved in cooperative efforts to monitor VSP handling of hate speech.

Media ownership and transparency in the EU

As the revised Directive clearly states, there is a direct link between transparency of media ownership and freedom of expression. Freedom of expression is strengthened if audiovisual media services users have access to information on who is responsible for the content of those services (Recital 15). It is the responsibility of Member States that users have easy and direct access to such information (Recital 16). Article 5 defines the requirements of basic information about providers that must be readily accessible to users.

Approaches to constraints on media concentration and promotion of transparency

Globalisation and digitisation are leading to further media concentration: globalisation allows companies to expand beyond their national borders, establish new headquarters and acquire new firms, while digitisation has challenged companies to augment their business models and revenue streams. Regulation of media ownership and of transparency can constrain such trend towards further concentration. Placing limits on media ownership and requirements on transparency may be the result of dedicated regulation or of application of other legislation, in particular competition law.

The review of existing legislation across the EU-27 and the UK shows that audiovisual markets across the EU are very different, whether it be in the way they are regulated (in particular the media-specific legislation), the way regulation is implemented and the actual degree of concentration in a given Member State. Member States also differ in the emphasis put by regulatory authorities and governments on transparency.

There are however common trends. First, there is a trend towards deregulation, notably for media ownership rules. Second, EU legislation tends to harmonise general transparency rules, such as company registers, competition law, the EU's anti-money laundering directives (currently the 5th) and the revised AVMSD.

Media ownership rules are currently not sufficient to prevent concentration

On balance, current media ownership rules are not sufficient. The study provides evidence that there is a corollary between the strength of media ownership rules and a lower degree of market concentration. However, regulation will not be effective if it is too general and the authority cannot evaluate a merger, for example. Moreover, the existence of regulation is not necessarily synonymous with enforcement. Finally, it is crucial to take into account the qualitative factors and contextual elements that could influence market concentration, such as Socio-demographic, historic influences and other regulations.

Transparency is generally perceived as important across the EU, notably to limit concentration and ensure media pluralism. Media ownership rules can be a means of ensuring transparency, but media concentration and pluralism should not be regarded as necessarily mutually exclusive.

Best practices

The best practices for achieving media transparency include constitutional provisions on the transparency of media ownership, general non-media specific transparency requirements in financial disclosure rules, company registries, the Anti-Money Laundering Directive and competition law.

Best practices in media law are specific media ownership transparency acts, obligations to disclose ownership information, to notify the relevant authorities or to disclose information to the public, requirements to disclose the names of ultimate beneficial owners, financial transparency rules.

There are also other useful sources of information, including the European Audiovisual Observatory's MAVISE database, the Media Pluralism Monitor, etc. Self-reporting by media companies, on the other hand, will often not provide sufficient information about media ownership structures.

It is for Member States to regulate media ownership; transparency requires EU-level regulation

It appears from the findings of this study that at this stage there is no need for a uniform media ownership regulatory framework across the EU. There is no legal basis for this. It is for Member States to set regulation that is consistent with EU law, but which will allow them to take the historic and cultural background of each Member State into account.

The best approach to obtaining the maximum amount of transparency, however, is regulation at EU level. It is important that regulators be able to share information among themselves.

Signal integrity

Recital 26 of the revised Directive explains that in order to protect the editorial responsibility of media service providers and the audiovisual value chain it is essential to be able to guarantee the integrity of programmes and audiovisual media services supplied by media service providers. This implies ensuring that programmes and audiovisual media services are not transmitted in a shortened form, altered or interrupted, or overlaid for commercial purposes, without the explicit consent of the media service provider.

Examining the new measure

Without an objective reference framework, assessment of modifications of programmes or audiovisual media services can very quickly become entangled in a web of subjective appreciations. To be able instead to unequivocally establish whether a programme or AVMS has been changed, turning to the processes to which AVMS providers' audiovisual signals are subjected has proven to be the way forward. Services, features or functionalities involving processes that change the signal at information level effectively change the AVMS provider's service or programme. Regardless of any opinions there may be on the degree to which they change the programme or audiovisual media service.

With its exploration of the technological context, and in particular its focus on the processes to which AVMS providers' audiovisual signals can be subjected, the study actually takes a first step in developing a common, normative 'language', using an unambiguously defined 'vocabulary'. With its description of the competitive

context, the study provides a basis for additional elements to further enrich the 'language' that serve to analyse both the new measure as well as a range of cases.

When expressing services, features and functionalities that may modify programmes or audiovisual media services as well as the new measure itself in terms of this same 'language', analysis and conclusions are straightforward.

Contrary to what some stakeholders fear, the new measure is found to be innovation-friendly. This is the case on condition, however, that the innovation is not used as a launching pad for uncalled- for commercial communications. The new measure seems to be unforgiving, on the other hand, of any attempt to edit or interrupt the AVMS provider's service as well as of most situations in which the provider's video is resized.

The extent of the problem

A scan of legislation in the EU-27, the UK, Canada and the US and contributions from national experts and stakeholders suggests that the issue of signal integrity has so far not had much attention from legislators. Only very few countries have or had measures in place ahead of transposition of the revised Directive. Countries that did have rules in force mostly dealt with it from a media law perspective.

The study reveals a tendency among stakeholders to disagree on the actual existence and occurrence of signal integrity issues, on what are considered to be problematic modifications and on the interpretation of the out-of-scope cases provided by Recital 26. Some consensus was detected, however, between distributors and broadcasters on the issue of insertion of ads and on the technologically neutral nature of the new measure.

There is some evidence that the new measure has already had some deterrent effect in older disputes (e.g. on filtering by distributors, on overlay ads by smart TVs), but technological convergence and innovation have already brought new issues (e.g. recommender and classification systems). There is also some evidence that these new issues are of a nature to seriously frustrate the possibilities of ever reaching commercial agreements that are respectful of the integrity of an AVMS provider's signal.

The conditions needed for implementation of the Directive

Consistent application of the new provision across the EU would ideally require prior coordination of several elements. There needs to be agreement on a common normative language using an unambiguously defined 'vocabulary'; there needs to be uniformity in how services, features and functionalities on the one hand, and the new measure on the other, are expressed in this common language; methods to establish unequivocally who initiated or authorised a service, feature or functionality need to be validated, and a common approach to dealing with bias needs to be agreed, e.g. where recommendations and classification systems are driven by AI.

In view of the different, opposing interests and incentives of the stakeholders involved, as well as reports of significant differences in negotiating power between those stakeholders, none of these elements seem to be ready for self-regulation and only a few could be considered for more involvement by industry, e.g. in order to identify and agree on methods to establish initiation/authorisation unequivocally.

By the European Commission, Directorate-General of Communications Networks, Content & Technology.

The information and views set out in this publication are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein."

© [2020] – European Union. All rights reserved. Certain parts are licensed under conditions to the EU.

Résumé analytique

La directive sur les services de médias audiovisuels régit la coordination de la législation nationale sur les médias audiovisuels, les émissions de télévision traditionnelles et les services à la demande au sein des États membres de l'UE. Une révision de la directive a été adoptée le 14 novembre 2018 afin de refléter les nouvelles réalités du marché, en évolution rapide, des services de médias audiovisuels, réalités qui posent des défis dans la mise en œuvre de la directive.

Cette **étude sur la mise en œuvre des nouvelles dispositions de la directive modifiée sur les services de médias audiovisuels** a été réalisée par Deloitte et SMIT (partie intégrante de la Vrije Universiteit Brussel et imec) à la demande de la direction générale des réseaux de communication, du contenu et des technologies (DG CONNECT). Elle examine trois domaines pour lesquels l'environnement des médias audiovisuels a considérablement changé depuis la précédente révision en 2010: **les plateformes de partage de vidéos, la législation sur la propriété et la transparence des médias, et l'intégrité du signal**.

L'objectif de cette étude est de décrire, analyser et, dans une certaine mesure, évaluer les pratiques réglementaires et commerciales existantes dans ces trois domaines. L'étude examine les approches existantes et émergentes des autorités de l'UE-27 et du Royaume-Uni, ainsi que des entreprises de médias audiovisuels. Certaines parties de l'étude comprennent également des éléments tirés des pratiques réglementaires aux États-Unis et au Canada.

L'étude contextualise et analyse les évolutions législatives et réglementaires à la lumière du marché actuel. Les données requises ont été recueillies au moyen de recherches documentaires, de groupes de discussion, de consultations en ligne et d'entrevues avec les intervenants. Le prestataire de l'étude a également fait appel à un réseau d'experts nationaux dans les États membres pour soutenir ses recherches.

Plateformes de partage de vidéos

L'importance des plateformes de partage de vidéos, dont YouTube est la plus importante, dans le paysage audiovisuel, a connu une croissance rapide au cours des dix dernières années. Par conséquent, les modifications apportées à la directive les intègrent et contiennent pour la première fois des dispositions relatives aux plateformes de partage de vidéos (articles 28bis et 28 ter).

Ces nouvelles dispositions exigent des États membres qu'ils veillent à ce que les plateformes de partage de vidéos protègent les mineurs contre les contenus préjudiciables et le grand public contre l'incitation à la violence ou à la haine et appliquent les normes concernant la publicité. Les États membres doivent également veiller à ce que les plateformes de partage de vidéos protègent les utilisateurs contre l'exploitation et les abus sexuels sur les enfants ou les contenus terroristes et autres contenus dont la diffusion constitue une infraction pénale en vertu du droit de l'Union. En outre, la directive souligne le rôle de la corégulation ou de l'autorégulation.

Mesure dans laquelle les plateformes de partage de vidéos peuvent et doivent exercer un contrôle

Les exigences imposées aux plateformes de partage de vidéos en vertu de la directive soulèvent deux points : la mesure dans laquelle celles-ci contrôlent réellement la diffusion et la consommation du matériel téléchargé sur leurs plateformes, et le degré de contrôle qu'elles exercent sur le contenu publicitaire diffusé

sur leurs plateformes. La question du degré de contrôle sur la publicité est d'autant plus importante que 12 des 15 plateformes de partage de vidéos examinées dans cette étude reposent sur la publicité pour générer en grande partie leurs revenus.

En ce qui concerne les mesures prises par les plateformes de partage de vidéos pour **protéger les utilisateurs contre les contenus illégaux et nuisibles**, il existe une cohérence dans les politiques interdisant l'exploitation et l'abus sexuels sur les enfants et le terrorisme. Cependant l'étendue et la nature des définitions et des orientations données varient grandement. Les contenus relatifs à l'exploitation et l'abus sexuels sur les enfants et le terrorisme sont traités en grande partie par des moyens automatisés (intelligence artificielle - IA) avant que tout utilisateur ne puisse les voir. Les plateformes de partage de vidéos sont moins cohérentes en ce qui concerne leur approche du contrôle sur les discours haineux car les définitions et les conseils pour les utilisateurs varient considérablement. Cependant, la plupart des plateformes de partage de vidéos examinées les modèrent ou les suppriment, soit à l'aide d'outils automatiques, soit manuellement. Il existe d'importantes différences d'approche en matière de protection des mineurs.

Cependant, il existe peu d'information sur les résultats et l'impact de ces mesures puisque les plateformes rendent compte différemment des mesures qu'elles prennent et qu'il y a peu de monitoring externe.

Les plateformes de partage de vidéos peuvent exercer un **contrôle sur le contenu publicitaire** grâce à leurs conditions générales. Elles ne peuvent le faire pleinement que lorsqu'elles traitent directement avec les annonceurs ou lorsque les annonceurs utilisent des outils pour lesquels les plateformes de partage de vidéos fixent les conditions d'utilisation. Elles exigent également le respect de leurs conditions lorsque les utilisateurs produisent eux-mêmes des communications commerciales, telles que le marketing d'influence ou le contenu de leurs marques propres. Cependant, elles n'ont que peu ou pas de contrôle lorsque la publicité est diffusée sur leurs plateformes par des intermédiaires programmatiques indépendants sur l'open web. Par conséquent, la mise en œuvre de la directive sur les services de médias audiovisuels est susceptible d'exiger la participation d'intermédiaires publicitaires d'une manière ou d'une autre.

Les plateformes analysées se divisent en deux grands groupes: un groupe à fonctionnalités élevées et un groupe à fonctionnalités faibles. Le premier groupe offre aux utilisateurs des contrôles, à la fois en tant que créateurs et en tant que consommateurs de contenus, qui, soit constituent déjà des mesures de protection demandées par la directive, soit semblent être en mesure d'introduire de telles mesures. Le deuxième groupe n'a pas actuellement les fonctionnalités nécessaires. Les différences de fonctionnalité auront des répercussions sur la capacité de certaines plateformes de partage de vidéos à répondre aux attentes de la directive. En effet, il est à prévoir que les plus petites plateformes soient confrontées à une charge de conformité supplémentaire par rapport aux plateformes à haute fonctionnalité.

Future forme de la mise en œuvre au niveau des États membres

Il existe déjà des formes de corégulation dans les États membres où les systèmes de réglementation prévus par la directive sont en place ou prennent forme. Dans ce contexte, il existe deux grandes catégories : soit le système dépend davantage de l'autorité nationale de réglementation pour sa mise en œuvre, soit il s'appuie davantage sur l'initiative de l'industrie.

Il y a toutefois des différences importantes au sein des catégories. Dans le cas où se sont les autorités nationales de réglementation qui portent une grande part de la responsabilité de l'application des dispositions de la directive sur les services de médias audiovisuels, certaines se voient accorder des pouvoirs étendus de surveillance et de sanction, tandis que d'autres sont beaucoup plus limitées pour investiguer, évaluer et sanctionner.

Les États membres ayant une longue histoire de corégulation et dotés d'autorités nationales de réglementation bien équipées et expérimentées pourraient être mieux placés pour appliquer efficacement les nouvelles dispositions, car leurs pouvoirs de contrôle et de sanction sont déjà complets et clairs. Dans d'autres cas, il semble y avoir des lacunes, comme, par exemple, un pouvoir limité pour collecter l'information ou une répartition imprécise de la responsabilité pour générer des codes de conduite.

Dimension transnationale

L'étude examine également les mécanismes transnationaux utilisés pour fournir les types de protections envisagées par la directive, étant donné que la coopération transnationale et multipartite peut être essentielle pour s'attaquer efficacement à ces questions.

Il y a deux conclusions clés dans ce domaine. Tout d'abord, les plateformes de partage de vidéos à haute fonctionnalité s'engagent déjà à l'échelle internationale et mettent en œuvre bon nombre des mesures de protection prévues par la directive. Elles établissent les normes et investissent dans des solutions technologiques. Deuxièmement, la coopération internationale entre les plateformes de partage de vidéos, les organismes de réglementation, le gouvernement (y compris l'application de la loi) et la société civile est inégale. Il existe des mécanismes avancés dans certains domaines, avec des preuves d'efficacité qui peuvent servir de modèles pour d'autres domaines, cependant il existe encore des lacunes quant aux parties prenantes impliquées.

Il existe une autorégulation coordonnée bien établie des communications commerciales (publicité) en Europe. Il existe des modèles transnationaux de co-application de la loi dans le traitement de l'exploitation et des abus sexuels sur les enfants et du terrorisme. Il existe une forme de corégulation européenne pour les discours haineux illégaux. Toutefois, les plus petites plateformes de partage de vidéos ne participent pas transnationalement de la même façon que les plus grandes, et certains acteurs importants manquent à l'appel. Il s'agit, par exemple, d'intermédiaires publicitaires qui ne sont pas inclus dans les mécanismes relatifs aux communications commerciales et aux groupes de défense de la liberté d'expression et qui ne participent pas aux efforts de coopération visant à surveiller la gestion des discours haineux par les plateformes de partage de vidéos.

Propriété des médias et transparence dans l'UE

Comme la Directive modifiée l'indique, il existe un lien direct entre la transparence de la propriété des médias et la liberté d'expression. La liberté d'expression est renforcée si les utilisateurs des services de médias audiovisuels ont accès aux informations sur les responsables du contenu de ces services (Considérant 15). Il incombe aux États membres d'avoir un accès facile et direct à ces informations (Considérant 16). L'article 5 définit les exigences relatives aux informations de base sur les prestataires qui doivent être facilement accessibles aux utilisateurs.

Approches des contraintes sur la concentration des médias et la promotion de la transparence

La mondialisation et la numérisation conduisent à une plus grande concentration des médias: la mondialisation permet aux entreprises de se développer au-delà de leurs frontières nationales, d'établir de nouveaux sièges sociaux et d'acquérir de nouvelles entreprises, tandis que la numérisation a mis les entreprises au défi de changer leurs modèles organisationnels et d'augmenter leurs sources de revenus. La réglementation de la propriété des médias et de la transparence peut limiter cette tendance à une concentration accrue. L'imposition de limites à la propriété des médias et d'exigences en matière de

transparence peut être le résultat d'une réglementation spécifique ou de l'application d'autres lois, en particulier du droit de la concurrence.

L'examen de la législation existante dans l'UE-27 et au Royaume-Uni montre que les marchés audiovisuels dans l'UE sont très différents, que ce soit dans la manière dont ils sont réglementés (en particulier la législation spécifique aux médias), la façon dont la réglementation est mise en œuvre et le degré réel de concentration dans un État membre donné. Les États membres diffèrent également selon l'accent mis par les autorités de réglementation et les gouvernements sur la transparence.

Il y a toutefois des tendances communes. Premièrement, il y a une tendance à la déréglementation, notamment pour les règles relatives à la propriété des médias. Deuxièmement, la législation de l'UE tend à harmoniser les règles générales de transparence, telles que les registres des entreprises, le droit de la concurrence ou les directives de l'UE contre le blanchiment d'argent (actuellement la 5ème) et la directive modifiée.

Les règles de propriété des médias ne sont actuellement pas suffisantes pour empêcher la concentration

Dans l'ensemble, les règles actuelles en matière de propriété des médias ne sont pas suffisantes. L'étude fournit la preuve qu'il existe un corollaire entre la robustesse des règles de propriété des médias et un degré plus faible de concentration du marché. Toutefois, la réglementation ne sera pas efficace si elle est trop générale et si l'autorité ne peut pas évaluer une fusion, par exemple. De plus, l'existence d'une réglementation n'est pas nécessairement synonyme d'application de la loi. Enfin, il est crucial de tenir compte des facteurs qualitatifs et des éléments contextuels qui pourraient influencer sur la concentration du marché, tels que les influences sociodémographiques, historiques et autres réglementations.

La transparence est généralement perçue comme importante dans toute l'UE, notamment pour limiter la concentration et assurer le pluralisme des médias. Les règles relatives à la propriété des médias peuvent être un moyen d'assurer la transparence, mais la concentration et le pluralisme des médias ne doivent pas être considérés comme nécessairement mutuellement exclusifs.

Meilleures pratiques

Les meilleures pratiques pour assurer la transparence des médias comprennent des dispositions constitutionnelles relatives à la transparence de la propriété des médias, des exigences générales de transparence non spécifiques aux médias dans les règles de divulgation financière, les registres des entreprises, la directive anti-blanchiment d'argent et le droit de la concurrence.

Les meilleures pratiques en droit des médias sont des lois spécifiques sur la transparence de la propriété des médias, l'obligation de divulguer des renseignements sur la propriété, d'aviser les autorités compétentes ou de divulguer des renseignements au public, les exigences de divulguer les noms des bénéficiaires effectifs ultimes et les règles de transparence financière.

Il existe également d'autres sources d'information utiles, notamment la base de données MAVISE de l'Observatoire européen de l'audiovisuel, le Media Pluralism Monitor, etc. Cependant, l'auto-déclaration des entreprises de médias ne fournira souvent pas suffisamment d'informations sur les structures de propriété des médias.

Il appartient aux États membres de réglementer la propriété des médias, mais la transparence exige une réglementation au niveau de l'UE

A la lumière de cette étude, il apparaît qu'il n'est, actuellement, pas nécessaire d'avoir un cadre réglementaire uniforme en matière de propriété des médias dans toute l'UE. Il n'y a pas de base juridique à cet égard. Il appartient aux États membres d'établir un règlement conforme au droit de l'UE, mais qui leur permettra de tenir compte du contexte historique et culturel de chaque État membre.

La meilleure approche pour obtenir le maximum de transparence, cependant, est la réglementation au niveau de l'UE. Il est important que les organismes de réglementation soient en mesure de partager l'information entre eux.

Intégrité du signal

Le considérant 26 de la directive modifiée explique que, pour protéger la responsabilité éditoriale des fournisseurs de services de médias ainsi que la chaîne de valeur audiovisuelle, il est indispensable d'être en mesure de garantir l'intégrité des programmes et services de médias audiovisuels que les fournisseurs de services de médias proposent. Cela implique de veiller à ce que les programmes et les services de médias audiovisuels ne soient pas transmis sous une forme abrégée, modifiés ou interrompus, ou dotés d'un bandeau à des fins commerciales, sans l'accord explicite des fournisseurs de services de médias audiovisuels.

Examen de la nouvelle mesure

En l'absence d'un cadre de référence objectif, l'évaluation des modifications des programmes ou des services de médias audiovisuels peut très rapidement se noyer dans des appréciations subjectives. Se tourner vers les processus auxquels sont soumis les signaux audiovisuels des fournisseurs de services de médias s'est avéré être la voie à suivre pour être en mesure d'établir sans équivoque si un programme ou un service de médias audiovisuels a été modifié. Les services, caractéristiques ou fonctionnalités impliquant des processus qui modifient le signal au niveau de l'information, modifient effectivement le service ou le programme du fournisseur de services de médias, indépendamment des opinions qu'il peut y avoir sur la mesure dans laquelle ils changent le programme ou le service des médias audiovisuels.

L'étude fait un premier pas dans le développement d'un « langage » commun et normatif, utilisant un « vocabulaire » défini sans ambiguïté, grâce à son exploration du contexte technologique, et en particulier son accent sur les processus auxquels les signaux audiovisuels des fournisseurs de services de médias peuvent être soumis. L'étude fournit également une base d'éléments supplémentaires pour enrichir davantage le « langage » qui sert à analyser à la fois la nouvelle mesure ainsi qu'une série de cas grâce à sa description du contexte concurrentiel.

Lorsqu'il s'agit d'exprimer des services, des caractéristiques et des fonctionnalités qui peuvent modifier des programmes ou des services de médias audiovisuels ainsi que la nouvelle mesure elle-même en termes de ce même « langage », l'analyse et les conclusions sont simples.

Contrairement à ce que craignent certaines parties prenantes, la nouvelle mesure s'est avérée favorable à l'innovation. C'est toutefois à condition que l'innovation ne soit pas utilisée comme rampe de lancement pour les communications commerciales non désirées. La nouvelle mesure semble être stricte, d'autre part, en ce qui concerne toute tentative de modifier ou d'interrompre le service du fournisseur de services de médias ainsi que dans la plupart des situations dans lesquelles la vidéo du fournisseur est redimensionnée.

L'ampleur du problème

Une analyse de la législation dans l'UE-27, le Royaume-Uni, le Canada et les États-Unis et les contributions d'experts nationaux et de parties prenantes suggèrent que la question de l'intégrité des signaux n'a pas encore reçu beaucoup d'attention de la part des législateurs. Seuls très peu de pays avaient ou ont mis en place des mesures avant la transposition de la directive modifiée, principalement du point de vue du droit des médias.

L'étude révèle une tendance parmi les parties prenantes à ne pas être d'accord sur l'existence réelle et l'apparition de questions relatives à l'intégrité des signaux, sur ce qui est considéré comme des modifications problématiques et sur l'interprétation des cas non visés par le considérant 26. Toutefois, un certain consensus est identifié entre les distributeurs et les radiodiffuseurs sur la question de l'insertion des annonces et sur la nature technologiquement neutre de la nouvelle mesure.

Il apparaît que la nouvelle mesure a déjà eu un certain effet dissuasif concernant d'anciens litiges (par exemple, sur le filtrage par les distributeurs, sur la superposition des annonces par les téléviseurs intelligents), cependant la convergence technologique et l'innovation ont déjà apporté de nouveaux problèmes (par exemple, les systèmes de recommandation et de classification). Il apparaît également que ces nouvelles questions sont de nature à entraver sérieusement les possibilités de conclure des accords commerciaux respectueux de l'intégrité du signal d'un fournisseur de services de médias.

Les conditions nécessaires à la mise en œuvre de la directive

Une application cohérente de la nouvelle disposition dans l'ensemble de l'UE exigerait idéalement une coordination préalable d'un certain nombre d'éléments. Premièrement, s'entendre sur un langage normatif commun utilisant un « vocabulaire » défini sans ambiguïté. Deuxièmement, une uniformité dans la façon dont les services, les caractéristiques et les fonctionnalités, d'une part, et la nouvelle mesure, d'autre part, sont exprimés dans ce langage commun. Troisièmement, des méthodes doivent être validées afin d'établir sans ambiguïté qui initie ou autorise un service, une caractéristique ou une fonctionnalité ainsi qu'une approche commune de traitement des biais, par exemple lorsque les recommandations et les systèmes de classification sont fondés sur l'intelligence artificielle.

Compte tenu des intérêts différents, et parfois opposés, des parties prenantes concernées, ainsi que d'importantes différences dans le pouvoir de négociation entre ces parties prenantes, aucun de ces éléments ne semble prêt à s'autoréglementer et seulement quelques-uns pourraient être envisagés grâce à une plus grande participation de l'industrie, par exemple afin d'identifier et de convenir de méthodes permettant d'établir l'initiation/l'autorisation sans équivoque.

1 Introduction

This document constitutes the Final Report and third deliverable of the **"SMART 2018/0066 - STUDY on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD)"**, that Deloitte and SMIT (part of Vrije Universiteit Brussel and imec) have carried out for the European Commission, Directorate-General for Communications Networks, Content and Technology (DG CNECT).

1.1 Context of the assignment

The EU's Audiovisual Media Services Directive (AVMSD) was put in place to govern coordination of national legislation across Member States regarding all audiovisual media, traditional TV broadcasts and on-demand services. The goals of this coordination are to provide rules to shape technological developments, create a level playing field for emerging audiovisual media, preserve cultural diversity, protect children and consumers, safeguard media pluralism, combat racial and religious hatred and guarantee the independence of national media regulators.¹

In line with the Digital Single Market (DSM) strategy for Europe, the revised AVMSD was officially adopted on 14 November 2018.² The new provisions reflect new realities in the rapidly changing AVMS market and constitute the main subjects of interest for this assignment.

More precisely, the AVMSD has been extended to protect the general public, and minors in particular, against certain content shared on video-sharing platforms³. The proposed rules constitute basic requirements, but the Member States are able to adopt stricter rules and implementation of the new regime via co-regulation will be encouraged.

Transparency of media ownership, and the public knowledge of media owners' identities, can improve the effectiveness of media pluralism.⁴ Moreover, when such information is made available to citizens, media literacy and the ability to evaluate the information they receive is strengthened. The importance of transparency of media ownership is further emphasised in Article 5 of the AVMSD.

The question of signal integrity revolves around the question of who may do what with broadcasters' consent. Audiovisual services are at times overlaid by advertising or messages. This overlay can be originated by the

¹ European Commission, the Audio Visual Media Services Directive (AVMSD), *Policy*. Available at: <https://ec.europa.eu/digital-single-market/en/audiovisual-media-services-directive-avmsd>

² European Parliament, "On the proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities," *Legislative resolution*. (2 October 2018) Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0364+0+DOC+XML+V0//EN>

³ The AVMSD defines a video-sharing platform as a commercial service addressed to the public:

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

⁴ Council of Europe Recommendation Rec (2018/1) on media pluralism and transparency of media ownership, Available at: https://www.coe.int/web/freedom-expression/adopted-texts/-/asset_publisher/m4TQxjmx4mYI/content/recommendation-cm-rec-2018-1-1-of-the-committee-of-ministers-to-member-states-on-media-pluralism-and-transparency-of-media-ownership?inheritRedirect=false

TV manufacturer, the cable operator or by the viewer. Taking on board different stakeholders concerns on this issue, the revised AVMSD contains a provision aiming at protecting the audiovisual value chain and the editorial responsibility of the media service providers.

1.2 Objectives of the study

The purpose of this assignment was to describe, analyse and to some extent evaluate the existing regulatory and legislative practices related to video-sharing platforms, legislation governing media ownership and transparency, and signal integrity. The study devotes attention to Member States' existing and emerging approaches, as well as to the practices of companies themselves. Parts of the study also include insights from regulatory practices in the US and Canada. The UK is considered in all parts of the study, alongside the EU-27. The study does not engage in an exclusively legal account but contextualises and analyses developments in the light of what is happening in the market.

Regarding video-sharing platforms (VSPs), the study aimed to provide an overview of the current situation of the EU market. This includes examining VSPs currently present in the market and their functionalities, advertising models and the measures they apply to protect minors and other users from harmful or illegal content. This analysis was undertaken with a view to contributing to correct transposition of the revised AVMSD.

Regarding media ownership rules and transparency, this study was carried out with the objective of providing a legal analysis of rules governing and limiting media ownership in the European Union. The analytical exercise included all types of media (print to online) and identified key issues at stake, with a view to assist the Commission in analysing new legislation when initiated and provide grounds for future discussions on self-regulation practices and transparency in the European Union.

Lastly, regarding signal integrity, the study had the objective of exploring and documenting technical possibilities for overlaying commercial content over audiovisual media services and their application in the EU, UK, US and Canada. By examining legal implications and regulation, this study aimed to contribute to accurate and correct application of the revised AVMSD.

The study is composed of four main parts:

- 1) Introduction – including objectives, methodology and structure of the study;
- 2) Existing and emerging (self-)regulatory practices related to video-sharing-platforms and their responsibilities post-implementation of the new AVMSD;
- 3) Existing and emerging regulation on media ownership and concentration and its effectiveness;
- 4) A study of signal integrity regulations as well as the issue of overlays or other interruptions of broadcast signals, including also relevant cases beyond the European Union.

1.3 Methodology and scope

This project started in January 2019, and it was only in its inception phase when global circumstances (read: Covid-19) required us all to change the way we live and work. In collaboration with the European Commission, the project team responded by adopting an agile approach allowing us to implement new and innovative approaches to data collection and project management.

In order to obtain complete and elaborate data on the implementation of the new provisions in the revised AVMSD, the study team had to turn to **virtual solutions**. Our analysis is based on information collected throughout the project via virtual consultations with a network of national experts across the EU Member States, virtual interviews and focus groups with key industry stakeholders, as well as market and legal scans, mapping of recent and constantly evolving developments in the field, and in-depth case studies drawing on desk research, and expert and stakeholder input.

This assignment was carried out following a **funnel-based approach**: the study team started with a scan or mapping exercise, after which relevant cases (whether companies or countries) were investigated in more detail. This enables the reader to obtain a sound overview of what is happening in all Member States in the areas of the study and to have at their disposal an elaborate description of regulatory and commercial/contractual practices in countries where relevant regulation has been implemented.

The scope of the study is EU Member States, with additional mapping of the United Kingdom, the United States and Canada due to the global importance of the English-speaking media industry.

For Task A on video-sharing platforms, the scope covered a wide selection of VSPs in order to reflect as much diversity as possible. In brief terms, the methodology employed was based on a scan of market practices, stakeholder consultations, national expert consultations, mapping and document analysis.

For Task B on media ownership and transparency rules, the study team covered all EU Member States, the UK, Canada and the US, and conducted case studies on countries of varied sizes, economies, media industries and geographic location. The methodology for this task was mainly mapping, desk research, stakeholder consultation, national expert consultations and focus groups. Exploratory analyses establishing a correlation between concentration and ownership regulation were added to this.

Task C on signal integrity covered the EU-27, along with the UK, Canada and the US. The main methodological tools employed for this task were stylised models, desk research and analysis, stakeholder consultations, national expert consultations and focus groups.

1.4 Project team

This study was been carried out by Deloitte and SMIT (part of Vrije Universiteit Brussel and imec), with the invaluable support of our network of national experts. A complete list of the national experts and their affiliations is below.

The consortium:

Deloitte is the leading consulting firm which has been delivering services to the EU institutions for more than 20 years and has extensive experience in managing EU-wide data collection efforts for DG CNECT, as well as technical competences in data management and visualisation.

SMIT, which stands for Studies in Media, Innovation and Technology, is a research group part of the Vrije Universiteit Brussel and imec. It has more than years' research expertise in the area of European media policy and strengthened the project with its extensive expertise in media policy, media economics and industry transformations.

The authors of this report are:

Subject-matter experts:

- Prof. Dr Karen Donders – Quality assurance and overall project supervisor

- Dr Sally Broughton-Micova – Task A lead
- Ivana Kostovska – Contributor to Task A
- Olivier Braet – Contributor to Task B
- Dr Heritiana Ranaivoson – Task B lead
- Prof. Dr Tim Raats – Contributor to Task B
- Adelaida Afilipoaie – Contributor to task B
- Monika Magyar – Contributor to task B
- Steven Dewaele – Task C lead

Overall coordination of the study:

- Sebastiaan van der Peijl (Deloitte) – Project Director
- Lydia da Silva Gaspar (Deloitte) – Project Manager
- Lea Ytrehus (Deloitte) – Team member & Contributor

Network of experts:

Table 1 - Network of experts

Country	National Expert - designation
Austria	Prof. Dr Josef Trappel and Dr Corinna Gerard-Wenzel, Paris Lodron Universität Salzburg
Belgium	Stephanie Tintel, PhD researcher and Teaching Assistant, IMEC-SMIT, VUB
Bulgaria	Dr Sally Broughton Micova, University of East Anglia
Croatia	Prof. Dr Zrinjka Peruško, Head of the Centre for Media and Communication Research, University of Zagreb
Cyprus	Dr Antigoni Themistokleous, Officer, Cyprus Radio Television Authority
Czechia	Filip Rozanek, Journalist and Analyst focused on Media
Denmark	Em. Prof. Dr Frands Mortensen, University of Aarhus, Institute for Communication and Culture
Estonia	Prof. Dr Indrek Ibrus, Head at MEDIT, Tallinn University
Finland	Dr Riku Neuvonen, University of Helsinki and Tampere University
France	Dr Heritiana Ranaivoson, Senior Researcher and Project Leader at IMEC-SMIT, VUB
Germany	Dr Stephan Dreyer, Senior Researcher Media Law & Media Governance, Leibniz Institute for Media Research Hans-Bredow-Institut
Greece	Dr Evangelia Psychogiopoulou, Senior Research Fellow, Hellenic Foundation for European and Foreign Policy (ELIAMEP)
Hungary	Dr Krisztina Rozgonyi, University of Vienna

Ireland	Marie McGonagle, National University of Ireland Galway
Italy	Prof. Dr Francesco Marrazzo, Adjunct Professor, University of Naples "Federico II"
Latvia	Prof. Dr. Anda Rožukalne, Head of the Department, Faculty of Communication, Rīga Stradiņš University
Lithuania	Dr Deimantas Jastramskis, Associate professor, Vilnius University
Luxembourg	Prof. Dr Tim Raats, Head of Media Economics and Policy Unit, IMEC-SMIT, VUB
Malta	Dr Karsten Xuereb, L-Università ta' Malta
The Netherlands	Dr Ben Van Rompuy, Assistant Professor (Task B), Leiden University Prof. Dr Tim Raats, Head of Media Economics and Policy Unit, IMEC-SMIT, VUB (Tasks A & C)
Poland	Prof. Dr Alicja Jaskiernia, University of Warsaw
Portugal	Elsa Costa e Silva, Universidade do Minho
Romania	Catalina Iordache, PhD researcher and Teaching Assistant, IMEC-SMIT, VUB
Spain	Dr Carles Llorens, Associate Professor, Universitat Autònoma de Barcelona
Slovakia	Juraj Polák, Senior lawyer ve společnosti Markiza - Slovakia (CME)
Slovenia	Dr Marko Milosavljevic, Associate Professor, Chair of Journalism, University of Ljubljana
Sweden	-
United Kingdom	Dr Sally Broughton Micova, University of East Anglia
Canada	Prof. Dr Dwayne Winseck and Benjamin Klass, Carleton University
USA	Prof. Dr Hilde Van den Bulck, Head of Department of Communication, Drexel University, Philadelphia, Pennsylvania

1.5 Structure of the document

The report contains the full analysis of (self) regulatory practices related to video-sharing-platforms and their responsibilities post implementation of the new AVMSD, the effectiveness of regulation on media ownership and concentration, and signal integrity regulations as well as the issue of overlays or other interruptions of broadcast signals.

The structure is as follows:

- Chapter 1 provides an introduction, the approach and scope of the document;
- Chapter 2 provides the full analysis of regulatory practices related to video-sharing platforms, in relation to the new AVMSD provisions (Task A);
- Chapter 3 provides the full analysis of the media ownership and transparency rules and their effectiveness (Task B);
- Chapter 4 provides the full analysis of signal integrity regulations and the issue of breaches (Task C).

Chapter 2

Video-sharing platforms

Study on the implementation of the new provisions in the revised audiovisual media services directive (AVMSD)



Authors:

Sally Broughton Micova
Ivana Kostovska

With contributions from Karen Donders, Lea Ytrehus, Pinar Dünder, Yuwen Gu and Olivier Braet.

2 Video-sharing platforms

2.1 Snapshot of the market situation in the EU

The section in brief

There was great variation among the potential VSPs we identified in the format options offered for uploaders and the amount of control uploaders had over the dissemination of their videos, as well as in the amount of control users had in how they consumed content.

While guidelines aimed at protecting minors in some way seemed to be common practice, only a handful of the VSPs had functionalities for uploaders and viewers that could provide additional protection and could be considered in line with the requirements of the AVMSD.

We found four main ways that uploaders can monetise their content on VSPs: a share of advertising revenues, a share of direct revenues, receiving donations, or by getting payment directly from advertisers as sponsorship for promoting a product or service.

We identified three main pathways for commercial communications:

Influencer pathway – the trade relationship is between user and advertiser, but influencer behavior is governed by the VSP's terms.

Open web pathway – the relationship between advertiser and VSP is indirect as trade goes through intermediaries in a programmatic system.

Proprietary pathway – the trade relationship between advertiser and VSP is direct and governed by the VSP's terms, possibly within a larger platform ecosystem.

Our mapping of users and advertisers revealed two distinct groups of VSPs, that are nevertheless fluid due to the constant evolution of their services. In the **high functionality group**, users are offered controls both as creators and as consumers of content that either already constitute measures suggested by the Directive for implementing Article 28b or would facilitate the enacting of such measures, and VSPs set the terms for commercial communications. In the **low functionality group**, VSPs offer users few functionalities that could be relied upon for the implementation of Article 28b and do not set the terms governing commercial communications.

Differences in functionality will have implications for the ability of the platforms in question to comply with the expectations of Article 28b of the AVMSD.

2.1.1 Overview/intro

When the AVMSD was first adopted in 2007 as a revision to the Television without Frontiers Directive (TWFD),⁵ attempts were made to make it technologically neutral and to account for the fact that the spread

⁵ Directive 2007/65/EC (AVMSD) of the European Parliament and the Council amended the Council Directive 89/552/EEC (TWFD).

of cable and satellite services and the increase in internet capacity were enabling significant growth in video on demand (VoD). By the time the directive was being revised in 2018, it was clear that the definitions and scope no longer covered a large and growing portion of the services through which European consumers were receiving audiovisual content. Online platforms for sharing user-generated content (UGC), such as YouTube, Facebook and Vimeo, were capturing ever-greater viewing shares and, unlike most of the VoD services, drawing revenues from advertising budgets similarly to television broadcasters. Not all advertising-supported platforms deal in audiovisual content. Not all platforms through which audiovisual content is shared are public. The challenge in revising the Directive was to define exactly what type of online platforms through which audiences encounter audiovisual content would be in the scope of the Directive.

Online platforms fall within the scope of the e-commerce Directive (ECD).⁶ As *information society services*, they are considered hosts exempt from liability for the content they carry as long as they have no knowledge of it (e-commerce Directive, 2000 Art. 12 & 14). What constitutes knowledge of content is not defined in the ECD, but it has been associated with creation, procurement, and essentially editorial control, over content (Polański, 2018). The drafters of the revision to the AVMSD determined that, even if video-sharing platforms (VSPs) do not have the editorial responsibility that is a key element in the definition of audiovisual media services, **they should take measures to protect consumers by virtue of their organisation of the content, even if this is done automatically via algorithms** (EU 2018/1808, 2018 recital 47). The revised AVMSD therefore establishes a definition for video-sharing platforms (VSPs) that acknowledges that they do not have editorial responsibility and reaffirms the role of the ECD, while still bringing them into the scope of the Directive with some level of responsibility.

The AVMSD aims both to protect consumers and to encourage a healthy audiovisual media market. Since it was the TWFD, one of the core intentions of the Directive has been to ensure a level playing field and fair competition among services within its scope. In addition to recognising that VSPs had some responsibility for protecting consumers from potential harm stemming from the content they carry, with the 2018 revision of the AVMSD, European policy makers acknowledged that advertising-supported VSPs compete with audiovisual media services for audiences and advertising revenues (EU 2018/1808, 2018 recital 4). By bringing VSPs into the scope of the AVMSD, they also aimed to level the playing field between them and audiovisual media services. A VSP service is now defined in the AVMSD as one:

*“where the **principal purpose** of the service or of a **dissociable section thereof** or an **essential functionality** of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing” (AVMSD Article 1(1)(aa))* [emphasis/bold added by authors].

The definition includes three categories into which VSPs can fall and introduces the concept of “functionality”, which can be deemed to be essential to a service. The most difficult category to define is the one determined by whether or not functionality that involves the dissemination of audiovisual content is essential. Recital 5 of the Directive revising the AVMSD (EU 2018/1808, 2018, Recital 5) calls upon the European Commission to issue guidelines for this category so as to ensure clarity and consistency of implementation. The European Commission in consultation with the Contact Committee⁷ developed criteria for making this determination

⁶ Directive 2000/31/EC of the European Parliament and of the Council

⁷ See: <https://ec.europa.eu/digital-single-market/en/avmsd-contact-committee>

which were put out for targeted stakeholder consultation in early 2020 and adopted in July 2020.⁸ These criteria can be seen to break down the dissemination of content into a number of functionalities, some or all of which may or may not be essential to the provision of the service.

In this section, we present findings from the mapping of 15 potential VSPs in Europe, looking at their functionalities and researching their business models and the markets in which they operate.

2.1.2 Identification of platforms and functionalities

The mapping process began by identifying potential VSPs. Although we will refer to these as VSPs throughout this report, this designation is solely for the purposes of this study. It is up to regulatory authorities to determine whether or not any of these services fit the criteria for the purposes of regulation. Our identification of VSPs was made before the finalisation of the Guidelines setting out the criteria for regulators. We began with the list of those known already to the research team. We consulted national experts as to whether there were services in their country that might be considered. Subscription to industry publications and intelligence services also allowed us to track whether any new services were being talked about in the industry. MyVideo was excluded as it had been acquired by an audiovisual media service and converted to a VOD service before the start of the study. Trilulilu was identified and included in the first mapping of functionalities but went into hiatus in late spring 2020 and had not yet resumed service by the time of the completion of this report.

Our identification of functionalities for the mapping relied on multiple sources. Some were drawn from existing literature about online platforms; others were extrapolated from the criteria for determining whether video-sharing is an essential functionality that were proposed by the Commission in December 2019 during the preparation of its Guidelines.⁹ Our purpose was not to determine the essence of video-sharing but to map an exhaustive list of user-facing and business-facing functionalities against the VSPs identified to understand better how they function and to develop categories. Therefore, we also took an inductive approach, identifying additional functionalities during the investigation. If a significant functionality was identified on one platform and then found in at least one more, it was applied to all 15 in the sample. The result was a list of 41 functionalities mapped against the 15 VSPs.

Two different coders carried out the mapping independently. Their work was then checked and reconciled by a third investigator. **The business models of all of the platforms studied rely on attracting users to both consume and create content on their platform**, with the exception of Archive.org, which is the only platform in the sample run as a non-profit by a collection of public institutions. The first part of this section discusses the functionalities for users and the revenue sources. The second part examines the commercial communication offerings of 12 platforms, their role in the wider advertising ecosystem or value chain, and the functionalities they provide to advertisers. Finally, we reflect on the three categories of VSPs established by the definition in the Directive and the characteristics of the platforms in these categories. As opposed to being homogenous groups, a division between higher and lower functionality cut across the categories.

2.1.3 The basic revenue models

VSPs operate within a wider industry characterised by a variety of revenue models. Since the 1980s Europe has been known for its dual system in which public service media organisations, funded through license fees

⁸ See: <https://ec.europa.eu/digital-single-market/en/news/consultation-new-guidelines-under-revised-audiovisual-media-services-directive>

⁹ Note that the proposed criteria used for the purposes described here were only draft form and differ from the final Guidelines on Video Sharing Platforms adopted in July 2020, which can be found here: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0707\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0707(02)&from=EN)

or direct government grants (public subsidies), exist alongside privately-owned commercial media that rely on advertising revenues or retail in the form of subscription or pay-per-content (such as publication sales or pay-per-view broadcasts). There are no hard-and-fast dividing lines between these types of revenue models. Many public service media organisations have mixed funding sources in that they also carry advertising and rely partially on revenue from commercial activities. There are also media that are non-profit and not funded through advertising, but are private entities supported by private donations rather than statutorily mandated public service media. Print publishers have historically relied on a mix of advertising, subscription and individual sale revenues, while commercial video-on-demand services may be subscription, pay-per-view, or a combination of both.

There are no public service video-sharing platforms in Europe. Our study uncovered one private non-profit platform that allows for the sharing of user-generated video content that is accessible and used within Europe. Archive.org is funded by private foundations and exists as a user-driven internet archive. Another outlier was D.tube, which is a decentralised platform based on blockchain that is governed by its members and relies on the internal trade of a cryptocurrency. The majority of VSPs in Europe (12 of those studied) obtain their main revenues from advertising. Reliance on direct revenues is limited, with only Vimeo relying almost exclusively on subscription and pay-per-view revenues and using those to subsidise a free offer that only allows viewing. YouTube, Twitch and Flickr offer premium options that allow users to receive ad-free content and obtain additional functionalities in exchange for a monthly fee. Only Vimeo, Twitch and Snap give users the option of paying for particular content in a pay-per-view arrangement.¹⁰ Because of the predominance of the advertising-based revenue models and the diversity within that, we elaborate on this model in depth in the section below in relation to the functionalities provided for advertisers and the purchasing pathway for advertising. As users are critical to all revenue models, we first present the findings on user functionality.

2.1.4 Mapping video-sharing platforms by user functionality

The VSPs' business models are dependent on building as large a user base as possible, making the functionalities they offer users crucial. The attractiveness of platforms, including of subscription-based ones, depends on a wealth of data from users to strengthen their recommending systems (Doyle, 2018; Turow & Couldry, 2018). If disseminating UGC, they depend on user participation for the diversity and quality of their content. Advertising-supported media have always operated in two-sided markets. So, for advertising-supported platforms, indirect network effects also apply because the appeal to advertisers on one side is shaped by the extent of the audience on the other side (Anderson & Jullien, 2015). User engagement can be purely consumption without response, participation – such as through liking, sharing or commenting, and production, which involves creating content (Shao, 2009). Research into user engagement with platforms has identified a variety of factors that motivate user interaction and activity (Törhönen et al., 2019; Zhao et al., 2019; Chiang and Hsiao, 2015; Haridakis and Hanson, 2009; Bründl and Hess, T., 2016; Sjöblom and Hamari, 2017). Many of these factors are directly linked to the functionalities the platforms offer users.

Törhönen et al. (2019) found that extrinsic motivations (e.g. income, career development, prestige) can be less important drivers for video content creation on platforms such as YouTube and Twitch than intrinsic motivations (e.g. enjoyment, social interaction). The importance of the social interaction functionalities has been corroborated by others, who have argued that the participatory nature of the online community of a platform (Hamilton, Garretson and Kerne, 2014) or other ways in which they foster interaction (Ferchaud et al. 2018; Khan, 2017) are key motivating factors in user engagement. Particular features, such as live video streaming, where Facebook's influence is particularly evident (Rein and Venturini, 2018; Guarriello, 2019), can enable real time interaction with other users. This has also proven to be crucial for the kind of gaming

¹⁰ Snap's premium function relates to uploader monetisation; it allows uploaders to create exclusive content for which their followers have to pay.

content typical of Twitch that essentially recreates the live sport and fan experience in a more participatory fashion (Deng et al. 2017) that is associated with specific types of personal gratification (Sjöblom et. al., 2017). All three types of user engagement can be encouraged through functionalities aimed at enabling interaction with content and other users. For engagement in production, income is still a significant motivating factor. Woodcock and Johnson (2019) found that the types of monetisation channels that platforms adopt can foster a variety of interactions (see also Bishop, 2020).

To map the VSPs in our sample in relation to the user experience, we organised the user-facing functionalities into three categories. The three categories are content delivery, participatory interaction, and monetisation. The functionalities associated with each category are listed below. (Some functionalities fall in more than one category.)¹¹

Content delivery options

- Users can upload pre-recorded video to share
- Users can livestream
- Users can record videos within the platform to share
- Searches can be video-specific*
- A significant amount of audiovisual content is available*
- Users make substantial use of videos*
- The character is geared towards sharing content*
- Videos are stand-alone, aimed at attracting viewers*
- Personalisation of audiovisual content is possible*
- Users can schedule and promote their content in advance of release
- Users can purchase single content items in a pay-per-item model
- Users can purchase content in a subscription model (premium)
- Users can set parental controls to block certain content or ads
- Content guidance for users exists and is easily accessible including notice on minor protection
- Users can maintain an accessible archive of the content they share
- Videos are by default public
- Users can control dissemination of content they share - make it public or limit it to a specific group
- Users can set age restrictions or age ratings on the content they share

Participatory interaction

- The character of how users are expected to use the platform is geared towards sharing content*
- Tools foster engagement or interaction with audiovisual content*
- Uploaders can track or manage performance of their content*
- Users can engage in chat connected to a video
- Users can comment on videos
- Users can maintain an accessible archive of the content they share
- Videos are by default public
- Users can control dissemination of content their share - make it public or limit it to specific group
- Users can livestream

Monetisation options

- There is advertising around audiovisual content*

¹¹ Those derived from the proposed essential functionality criteria are marked with an asterisk. Not all the essential functionality criteria are included in these categories as some are not related to the user experience as such and will be discussed in other sections below.

- Users' attention to audiovisual content is tracked*
- Users are enabled to make paid promotion or sponsored content *
- Uploaders can track or manage performance of their content*
- Platform allows some uploaders to enjoy revenue-sharing programmes
- Share of indirect revenues (advertising revenue share) is offered to (some) uploaders
- Share of direct revenues (sales revenue share) is offered to (some) uploaders
- Platform can demonetise some uploaders at its discretion
- Multi-channel Networks (MCNs) are enabled or even encouraged
- Features aim to capture audience

2.1.4.1 Content Delivery Options

Our mapping of functionalities related to content delivery options found that on all 15 platforms users could upload pre-recorded videos that were presented as stand-alone content and save them in an accessible archive. The character of each of the 15 platforms was designed for the sharing of content and they all contained what we determined was a significant amount of video content, but in contrast to the others neither Instagram nor Snap had video-specific search or enabled personalisation within the feeds.¹² Through use and observation of the platforms, we also determined that users of Flickr and Snap did not make significant use of video *vis-a-vis* the overall use of the platforms. However, this impression was not based on any kind of quantitative assessment of content or other systematic measurement as might be used by regulators to determine if video sharing is essential for the purposes of determining whether a service is in scope.

We found great variation in the format options offered for uploaders and the amount of control uploaders had over the dissemination of their videos, as well as in the amount of control users had in how they consumed content. Of the 15, nine enabled users to live stream and four of those allowed users to record within the platform for later dissemination, with only Twitch providing tools for editing a recorded live stream.

Table 2 - Pre-record functionality by VSP

Only pre-recorded	Pre-record + Livestream	Pre-record + Livestream + Recording in platform
Archive.org, Veoh, Flickr, D.tube, IGTV, Trilulilu	YouTube, Facebook, Instagram, Liveleak, Snap	Vimeo, TikTok, DailyMotion, Twitch,

Only on Facebook, Vimeo and Snap were videos not public by default, and all of these allowed uploaders to choose to make their videos public. On seven of those with a public default, users were able to change this in order to limit dissemination to a specific group. On four platforms users only had the option of uploading public videos and on one, Trilulilu we were not able to establish if this functionality existed or not. Six of the platforms allowed users to control the timing by scheduling the release of uploaded content or a livestream, giving them the opportunity to promote it in advance.

¹² On both Instagram and Snap, users choose to follow particular accounts so that in itself can be considered a form of personalisation. There is not however additional personalisation within the feed made up of those followed.

Table 3 - Public/non-public videos by default by VSP

Not public by default	Public default can be changed	Public default cannot be changed
Facebook, Vimeo, Snap	YouTube, DailyMotion, Flickr, TikTok, Instagram, IGTV, Twitch*	Archive.org, D.tube, Liveleak, Veoh

Three functionalities related to the protection of minors, two aimed at uploaders and one at consumers of content. Only four of the platforms did not have easily accessible guidance to uploaders that dealt with protection of minors beyond bans on child pornography. On YouTube, Vimeo, DailyMotion and Veoh uploaders could set age ratings or restrictions for each upload and Facebook allowed page owners to set age restrictions for their pages. Flickr had three levels of “safety” ratings for users to choose from when uploading that related to nudity and sexual explicitly. Its “safe” level was intended to be acceptable to a global audience and “moderate” level could contain partial nudity, while the “restricted” level could be more explicit, but the platform did not allow video at this level. Liveleak also had a ratings system which is used to designate content for its “safe mode”. This is not a parent control mechanism as the service was intended to be used only by those over 18, but users could use it to avoid exposure to R-rated content that might be graphic in some way (pornography or gratuitous violence are banned). On YouTube, Facebook, and DailyMotion users could also set filters or parental controls to affect the content to which they were exposed. TikTok introduced a “family pairing” functionality, which allows a parent or responsible adult to pair their device with a minor’s and through that limit their time on the platform, disable search or direct messages, and otherwise monitor use. Therefore, **while guidelines aimed at protecting minors in some way seemed to be common practice, only a handful of the platforms in our sample had functionalities for uploaders and viewers that could provide additional protection and could be considered in line with the requirements of the relevant Article in the Directive (28b)**. (Protection of minors will be covered in more detail under task A2). Nearly all are only for users over age 13 and some require users to be over 18.

Table 4 - Functionalities related to protection of minors

Guidance for users	User-set age ratings or restrictions	Filters or parental controls
Facebook, Vimeo, Snap, YouTube, DailyMotion, Flickr, TikTok, Instagram, IGTV, Twitch, Veoh	YouTube, Vimeo, DailyMotion, Veoh, Flickr, Liveleak, Facebook (pages)	YouTube, Facebook, Daily Motion, Liveleak (safe mode), TikTok (Family pairing)

On the majority of the platforms that depend on advertising revenues, users were not able to choose an option that was free of advertising. Only YouTube, Twitch and Flickr offered “premium” options that were free of advertising. Twitch and Snap also offered the ability to purchase premium content on a pay-per-view basis, something that YouTube had also experimented with but then discontinued.

2.1.4.2 Participatory interaction

The act of sharing can be considered as participation, so since each of the platforms we studied was of a character designed to encourage sharing, there was an inherently participatory aspect to all of them. The presence of functionalities that enable user interaction with content, and often with other users, is generally something that distinguishes VSPs from audiovisual media services, and among those we studied all but

DailyMotion provided distinct tools to foster user engagement with content. On all but DailyMotion and Snap, users could comment on videos, and on Snap users can engage in chat with the uploader of posted content as long as they are connected as 'friends'. Twelve of the platforms provided a chat functionality including all those that offer live streaming functionality. This combination of functionalities has been shown to be particularly important to the nurturing of certain user communities, in particular around competitive e-sports (Hamari & Sjöblom, 2017; Weiss & Schiele, 2013) and amateur players of video games (Hamilton, Garretson and Kerne, 2014).

Table 5 - Interaction functionalities VSP

No interaction functionalities	Only chat function	Only comment function	Both chat and commenting
DailyMotion	Snap	Archive.org	YouTube, Facebook, Vimeo, Twitch, Veoh, Flickr, D.tube, Instagram, IGTV, Trilulilu, TikTok, Liveleak

Much of the user interaction with the platforms studied was only consumption, perhaps akin to watching television. For this kind of passive user, the tendency that we identified for content to be public by default would not be a deterrent. However, public fora are not always best for encouraging participation and interaction. By allowing uploaders to limit their content to within a certain group, the seven platforms that did so can be seen as providing an important community-building functionality. Providing a more private and possibly 'safe space' may foster more user interaction with content than would public ones (Gandolfi, 2016). Uploaders would be able to see whether this made a difference to the level of interaction with their content because we found that all but Snap also had a functionality that allowed uploaders to track the performance of their content.

2.1.4.3 Monetisation

For users who engage in production and upload content onto VSPs, the potential to receive income from the monetisation of their content can be an important incentive. **There are four main ways that uploaders can earn money from their content on VSPs: a share of advertising revenues, a share of direct revenues, receiving donations, or by getting payment directly from advertisers as sponsorship for promoting a product or service.** We will take each of these in turn to present how the monetisation functionalities of the potential VSPs in Europe map into these three main ways for uploaders to earn money. D.tube is an outlier and will be discussed separately at the end.

Share of advertising: Of the 12 platforms on which advertising appears around content, only YouTube, Facebook, Dailymotion and Twitch have revenue-sharing programmes through which some content creators receive a percentage of the revenue generated by the sale of ads around their content. Each has a partner programme that requires content creators or uploaders to fulfil certain criteria before they can benefit from a share of the revenues derived from the advertising surrounding their content. The share that uploaders receive varies across platforms. Those VSPs with ad revenue-sharing programmes provide tools through which those users of the programmes can access analytics related to their content, the advertising around it, and revenue earned. Uniquely, in August 2020 TikTok launched a "Creator Fund" which distributes revenues to participating creators based on a number of factors such as the number and types of views, engagement, the total participants in the programme, and adherence to the Community Guidelines and

Terms of Service, rather than a direct share of advertising associated with their videos. It was launched in the US initially and made available to creators in larger European countries in September 2020.¹³

Share of direct revenues: YouTube, Vimeo and Twitch all offer uploaders a share in the revenues from the subscriptions paid by subscribers that watch their content and other direct income. For both YouTube and Twitch this is again a feature of being accepted into their partner programmes. Vimeo, Twitch and Snap, which have a pay-per-view functionality of some sort, also offer shares of those revenues. Vimeo uploaders to its on-demand section receive 90% of the revenues from those direct sales. On Twitch, the pay-per-view option is channelled through its subscription service as uploaders can make some content exclusive to subscribers. On Snap, uploaders with premium accounts can choose to require payment for users to view certain content of which they retain a percentage. Twitch's monetisation functionalities also allow users to sell merchandise such as branded clothing or other items within a revenue share model. This is open to any user, not just those in its partner programmes.

Receiving donations: Four of the platforms studied have donation functionalities. Both Twitch and Liveleak have tools that allow uploaders to receive donations directly from other users in connection with individual pieces of content. On Twitch, this is available only to those in its partner programmes. On Liveleak it is an option open to all uploaders. Facebook has extensive functionalities for setting up charitable giving or donations for individual users or for organisations. Vimeo allows users of its Live Stream to set up a donations option through a third-party provider, but this is not a Vimeo tool and Vimeo does not have a payment API to allow users to send funds to each other. Instagram has added a function that essentially allows users to fundraise for charities during their livestreams. The funds go 100% to the charities (Hutchinson, 2020) and therefore we do not count this as a user monetisation functionality.

Direct from sponsors or for promotions: We found user-generated promotional content and sponsored content on all but three of the platforms studied. Archive.org, Flickr and Liveleak did not carry such content. Even though they draw none of the direct income, platforms generally encourage it as a way of incentivising uploaders. Several offer inbuilt tools that either help users connect with potential sponsors or brands looking for promoters; others facilitate the connection in other ways. Twitch, for example, allows users that have affiliated themselves with a product to include a customised link to where it can be purchased.¹⁴ Eight of the platforms encouraged the use of multi-channel networks (MCNs),¹⁵ either through their terms and conditions or specific guidance to help users engage with them. MCNs are third-party service providers that originated with YouTube as networks of content creators, but now many operate across multiple platforms. They give content creators access to better production resources and provide assistance with audience development, digital rights management, and contacts with brands and celebrities. Uploaders sign with MCNs to split their ad revenue with the MCNs (Lobato, 2016), and MCNs take a percentage of any promotion, affiliate or sponsorship deal they have facilitated. Many of the largest are owned by multinational media companies. Bertelsmann, Viacom, Discovery and Sky all own MCNs. A few independent European companies have been successful, such as MediaKraft (Germany) and Yogscast (UK).

D.tube: Monetisation on D.tube is based on the way viewers react to an uploader's content. On this decentralised platform, users can "upvote" and "downvote" content they view. Upvotes can earn anyone revenues for their content. Revenues are calculated and distributed in the platform's cryptocurrency, Steem. Once the content gets enough upvotes to equal 0.02 Steem, then funds will be distributed. The income then

¹³ The programme was launched first in France, Germany, Spain and the UK on 1 September with funds set aside for the inclusion of other European markets according to TikTok. See: <https://newsroom.TikTokTikTok.com/en-us/creator-fund-update>

¹⁴ As Twitch is owned by Amazon, it is the most common affiliate and users often link to items for sale through Amazon.

¹⁵ Multi-channel networks represent individual users that upload content and can help with partner relations, audience development, monetization strategies and digital rights management. They often serve to connect brands with multiple influencers, but represent the user/influencers in those relationships.

has to be converted into a solid currency through specialised cryptocurrency exchange services. Users can give upvotes to others without any expense to themselves, so there is nothing to disincentivise users distributing upvotes.

Table 6 - Monetisation options afforded by platform functionalities

	Share of ad revenues	Share of direct revenues	Donations	Direct from brands for promotion or sponsorship
YouTube	✓	✓	✓**	✓
Facebook	✓		✓	✓
Vimeo		✓	✓**	✓
Daily Motion	✓			✓
Twitch	✓	✓	✓	✓
TikTok	✓*			✓
Instagram				✓
IGTV	✓			✓
Liveleak			✓	
Veoh				✓
Flickr				
Snap		✓		✓
Trilulilu				✓
Archive.org				
D.tube				✓

* In the form of the Creators Fund not directly tied to advertising around each creator's videos.

** Allows third party provision of this functionality but does not offer it directly.

Some of the platforms, namely YouTube and Twitch, appear to position themselves as ones that offer uploaders the potential to earn money, not only in the number of monetization options they offer but also in how those options are presented. Vimeo specifically markets itself as a platform though which professional creators can distribute their content and generate revenues. Nevertheless the proportion of the users on these platforms that are making use of the monetization options is still likely to be small relative to those who simply consumer or perhaps comment on content.¹⁶ Those offering fewer options for monetization also generally position themselves differently in their presentation and promotion of themselves and their functionalities. For example, Snap and Flickr emphasize photography, while Daily Motion and Liveleak distribution of content.

2.1.4.4 Mapping user functionalities

Since all but three of the platforms studied had largely the same basic participation-related functionalities, we have focused our categorisation in relation to user functionalities on those that give users options to choose and control the content they upload and receive, and the variety of monetisation options offered the users. These can be seen as measures of user autonomy.

Figure 1 - Mapping of platforms by user content options and monetisation options as of October 2020

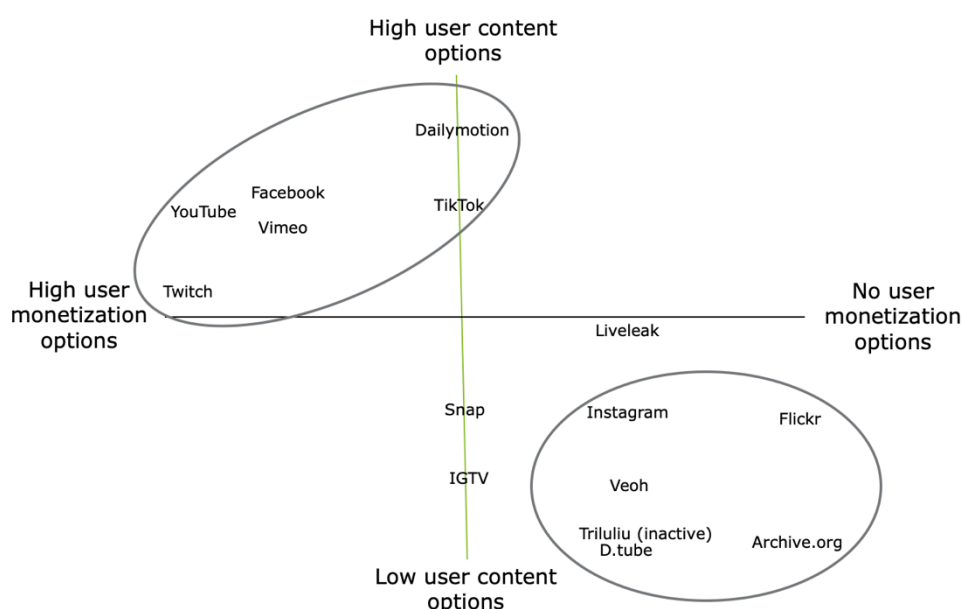


Figure 1 above illustrates our mapping of the VSPs in our sample according to user monetisation options and user content options. The monetisation dimension in the mapping is illustrated in Figure 1 and represents the number of different monetisation options that the platform's functionalities afford users. The user content options dimension was constructed from multiple indicators. The highest level of user content options equates to the greatest variety of formats for sharing content, control over whether posts were public or only for limited audiences, and age-related controls on both upload and exposure.

¹⁶ For example, according to Tubics, a search optimisation tool developed with YouTube, by 2019 YouTube had over 2 billion users, but only 6 million channels that were over the threshold of 1000 subscribers to participate in its Partner Programme for monetization and those would also have to reach other viewing criteria in order to join. See <https://www.tubics.com/blog/number-of-youtube-channels/>

Box 1 - User experience high functionality

User experience high functionality (upper left quadrant):

Jane uploads a video to platform 1 showing how to acquire extra ammunition in a popular video game. When uploading, she sets the age rating as 18+ because of the violent content and tags it both as violent and as game-related. She was the first to uncover this trick in the new edition of the game, so it attracts a lot of attention. She received a good amount from her share of the ad income generated around her video as well as a few donations from thankful players. It also lands her a new sponsor for her live streams.

One donation came from Jens, a fellow player and fan. Jens liked it, shared it, and commented his thanks. His 13-year old son has not seen the video, however, because Jens always remembers to switch back on the filters before the boy uses platform 1 on the smart TV, and filters are active on all his devices.

Dailymotion was at the highest level of user content options. Both Facebook and YouTube had extensive functionalities in terms of age-related ratings and controls on upload and content filters that allowed users to control their exposure to content but did not have the most options in terms of content-sharing formats. Vimeo had a high variety of formats and offered users the option to filter out mature content rated at 18+. Twitch and TikTok both had the highest variety of sharing formats and appeared to lack any age ratings or content exposure controls, but they also are restricted to users over 13 years old and their guidance suggests that those under 18 should be supervised.

Those at the bottom of the user content options dimension were those on which users could not control whether what they shared was public or had no qualitative controls over the content they uploaded or were exposed to as users. **Despite the diversity reflected in this mapping, a group of higher functionality services can be seen in the upper left and a lower functionality group in the bottom right.** Those in the top left draw distinctly on the network effects and interactivity characteristics of online platforms (European Commission, *Online Platforms and the Digital Single Market Opportunities and Challenges for Europe*, 2016), and at the same time offer a greater level of user autonomy. Those in the bottom right mainly provide a self-publishing service to users creating content with some limited opportunity for audience feedback and limited control for uploaders and other users.

Box 2 - User experience low functionality

User experience low functionality (lower right quadrant):

Jane uploads her gaming video to platform 2. She can tag it with some key words for search purposes, but those do not relate to any filtering options and there is no option to give it an age rating. She receives no income from the video as there are no revenue-sharing or other monetisation options. She still thought having a presence on platform 2 might boost her appeal to sponsors. She checks the terms and conditions for any prohibitions on violence. They are pretty vague, so she decides her video should be fine. A few people rate it poorly or comment on the violence, but it still proves quite popular.

Jens's son has heard his dad talking to a friend about this trick from Jane's video. While at a friend's house playing the game, he searches for it on platform 2. He finds it quickly as its popularity places it pretty high in search results. He watches it without difficulty as there are no filters on platform 2. He could comment or rate it if he was registered, but he doesn't want to register as he'd have to lie about his age.

2.1.5 Analysis of audiovisual commercial communications on video-sharing platforms (12 case studies)

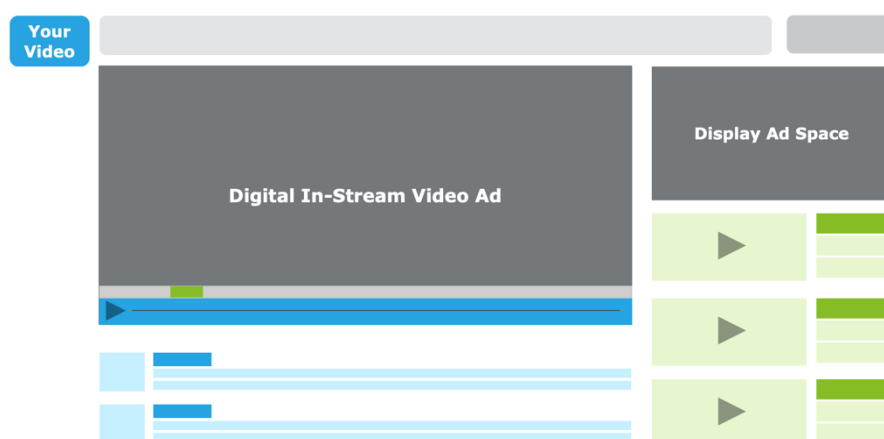
Twelve of the platforms we studied were advertising-supported, while on two that did not carry ads, there was sponsorship and promotion. In this section we introduce basic forms of commercial communication present on VSPs. We then address those VSPs that are supported by advertising and the different purchasing pathway. As part of this, we discuss the extent and nature of the data extraction and control over the purchasing process. We then map the ad-supported platforms according to their purchasing pathway and the two aspects of control in order to provide context for those cases that are ad-supported. We describe in more depth 12 of the VSPs studied which represent various categories.

2.1.5.1 Forms of commercial communication on VSPs

Online advertising can be roughly divided between search advertising, which is specific to search engines and their results, and display advertising, which is the type that appears on VSPs. Display advertising includes a variety of formats from simple banners and sidebar images to video with interactive elements. Adshead et al. (2019) distinguish between *social display* and *other display* within the display category. Platforms with extensive and sophisticated participation functionalities, such as live chat, user groups, channel subscription etc. can offer advertisers a greater range of options. For example, advertisers who sponsor games tournaments on Twitch may have bespoke emojis for use during the live chat and clickable coupons available for subscribers following the tournament, as well as video ads during breaks and other typical display formats. Advertisers on Snap and Instagram can make use of branded overlays that users can choose or shareable story ads.

Given the centrality of video to the content experience on VSPs, many of the display ads are themselves videos. A distinction within video ads can be made based on the placement of an ad, which can have implications for the technology of delivery as well the intrusiveness for the user. The Interactive Advertising Bureau (IAB), the umbrella organisation for the national trade associations of firms involved in digital advertising, defines *in-display video ads* as those that are “served outside of video or in-app streaming content”, whereas digital *video in-stream ads* are those that are served and executed within a video player, which can be standalone, in a feed or in an app (IAB, 2016, pp. 6–7). In-display advertising does not have to be video as well, so still images or gifs can easily be served in that space, whereas in-stream ads should be video, which must be served with specific technology and may be limited by the size and capacity of the player. The figure below from the IAB illustrates what these different forms look like.

Figure 2 - Placement of in-stream and in-display ads on VSPs (IAB, 2016, p. 7)



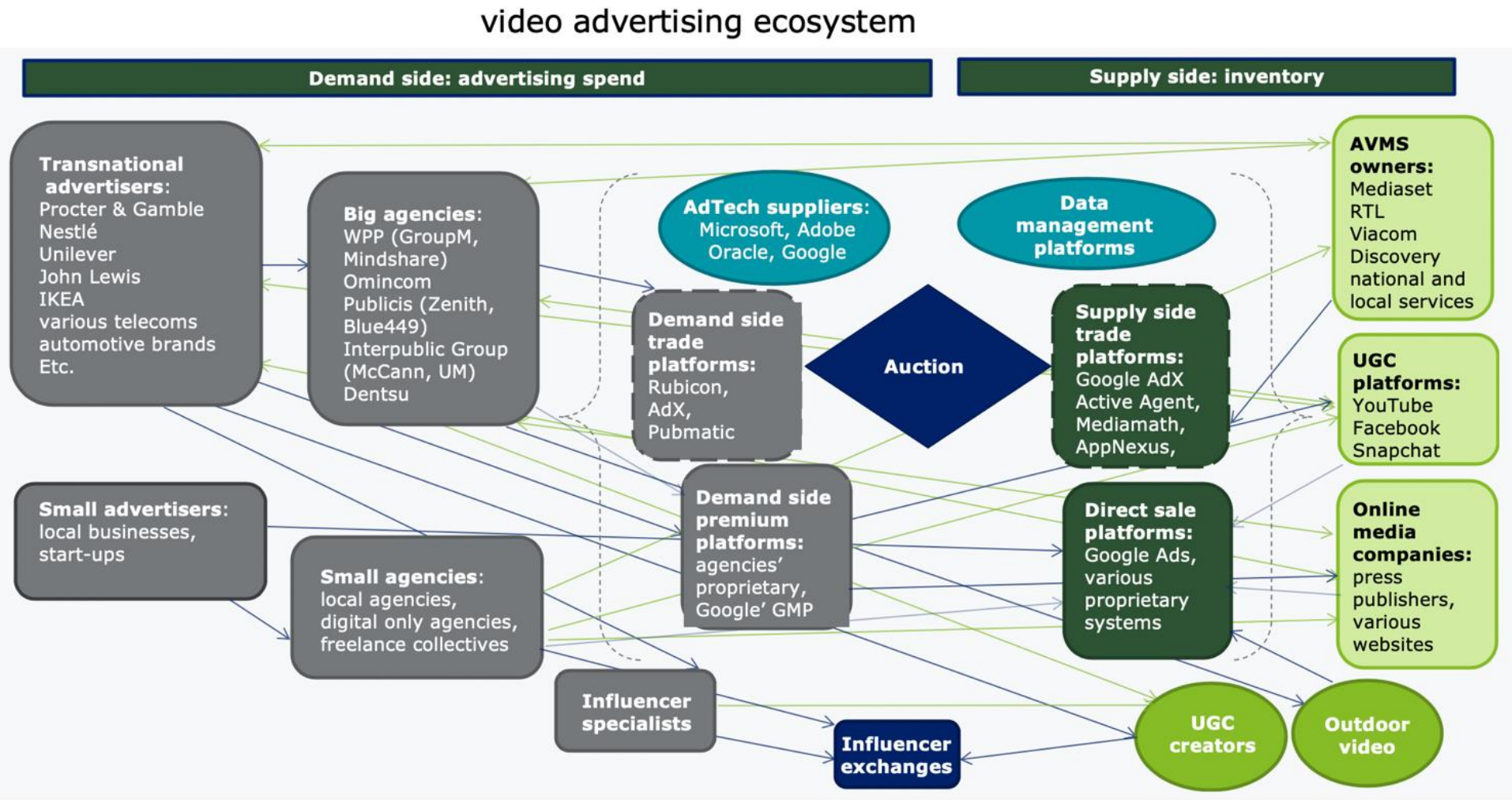
Source: Adapted from Interactive Advertising Bureau, 2016 p. 7

Another form of commercial communication on VSPs, and for which many are well-known, is influencer marketing. This is essentially a modern, internet-enabled form of word-of-mouth or celebrity endorsement that differs from the interruptive ads that appear in-stream or in-display (Backaler, 2018). These endorsements can take a form recognisable as sponsorship or be more akin to product placement and are ways for a brand to engage directly with users that create and upload content to promote their brand (Broughton Micova & Jacques, 2019). This kind of commercial communication falls outside the purchasing pathways through which display advertising is traded. Though sponsorship or influencer agreements are generally between the user and the brand, thus circumventing the platform (Fontaine et al., 2018), a number of the platforms we studied have introduced tools to match users with potential sponsors either as standalone tools or as part of an in-platform MCN through which they may take a percentage. The TikTok Creator Marketplace, for example, helps advertisers find appropriate influencers based on their criteria. The Twitch Bounty Board allows brands to post descriptions of their intended campaigns and a “bounty”, and the platform’s creators can then browse campaigns and choose to accept the bounty and partner with campaigns they think are a good fit. Promotion of brands by users posting on VSPs does not have to come through compensation arrangements. Platforms such as Instagram, TikTok, Facebook and Snap encourage the use of filters, badges and augmented reality. Akin to the forms of native advertising on brands’ own accounts on these platforms, brands can create them in-app or can make use of a number of agencies that specialise in the creation of these. These are then shared naturally by users among each other if they prove popular or are promoted by well-known influencers.

2.1.5.2 Purchasing or trading pathways

The system behind the trading of online advertising is well recognized for its opacity and complexity (Adshead et al., 2019; Australian Competition and Consumer Commission, 2019; Competition & Markets Authority (CMA), 2019). The display advertising on video-sharing platforms falls within a wider ecosystem that includes multiple actors on the demand and supply sides, including agencies, intermediaries, other ad-funded media and a variety of third-party actors. The figure below illustrates the complexity of the wider ecosystem as well as the fact that the parent companies of several VSPs have holdings in multiple places and on both the supply and demand sides.

Figure 3 - The wider video advertising ecosystem (Broughton Micova S. and Jacques, S., 2020)



Source: Broughton Micova & Jacques, Internet Policy Review 9(4), 2020.

In grey on the left-hand side of Figure 3 are the demand-side actors: advertisers, media agencies, and demand-side platforms. Large advertisers go mainly through major media agencies that buy advertising inventory on their behalf. As illustrated by the green lines, they also have direct relationships with major inventory holders, and they also may have contracts with demand-side trading platforms, as this allows them to access campaign data that would otherwise belong to the media agencies. On the right-hand side are the supply-side actors including audiovisual media services, UGC platforms (including those that would qualify as VSPs), and online media companies engaged in publishing, as well as the supply-side trading platforms. On the supply side are also outdoor video suppliers and UGC content creators, such as celebrities or social media influencers. Within the brackets in the middle are the purchasing pathways for all the forms of display advertising on VSPs. Outside the brackets are the pathways for the engagement of influencers in brand or product promotion, as this happens either directly with individual creators, sometimes through specialist agencies and multi-channel networks, or through exchanges or marketplaces.

Box 3 - Influences advertising pathway

Influencer advertising pathway: The in-house marketing team for a company that is launching a men's aftershave handles the influencer strategy, while the company's contracted media agency handles the rest of the campaign. The team works with two specialist agencies. One designs a collection of branded image filters and augmented reality items for use across Facebook, Snapchat, Twitch, TikTok and Instagram. The other is a specialist influencer agency that helps them identify and negotiate sponsorship deals with four YouTube stars who will promote the product in a number of YouTube videos and use their filters and AR on their other social media content. This agency also produces their call for partners for Twitch's bounty board so as to engage some popular gamers, and it arranges agreements with a variety of non-celebrity influencers on TikTok, Snapchat and Instagram to popularise their branded filters and augmented reality tools. The team also works with the company's PR teams to ensure the company's social media communications are engaging with the influencers and using the branded content.

As can be seen in Figure 3, UGC platforms such as VSPs sell advertising directly through what would be considered premium or reserved sales and trade programmatically through auctions, otherwise known as real time bidding (RTB). They do so in the context of non-transactional relationships with agencies and brands (represented in Figure 3 by green lines) and larger players invest a significant amount of resources into nurturing such relationships (Broughton Micova & Jacques, 2019, 2020). Inside the brackets lies the system of programmatic buying, which operates in essentially two different ways: on the open web or through supply and demand platforms owned by the platform (Competition & Markets Authority (CMA), 2019), or in other words within their proprietary platform ecosystems.

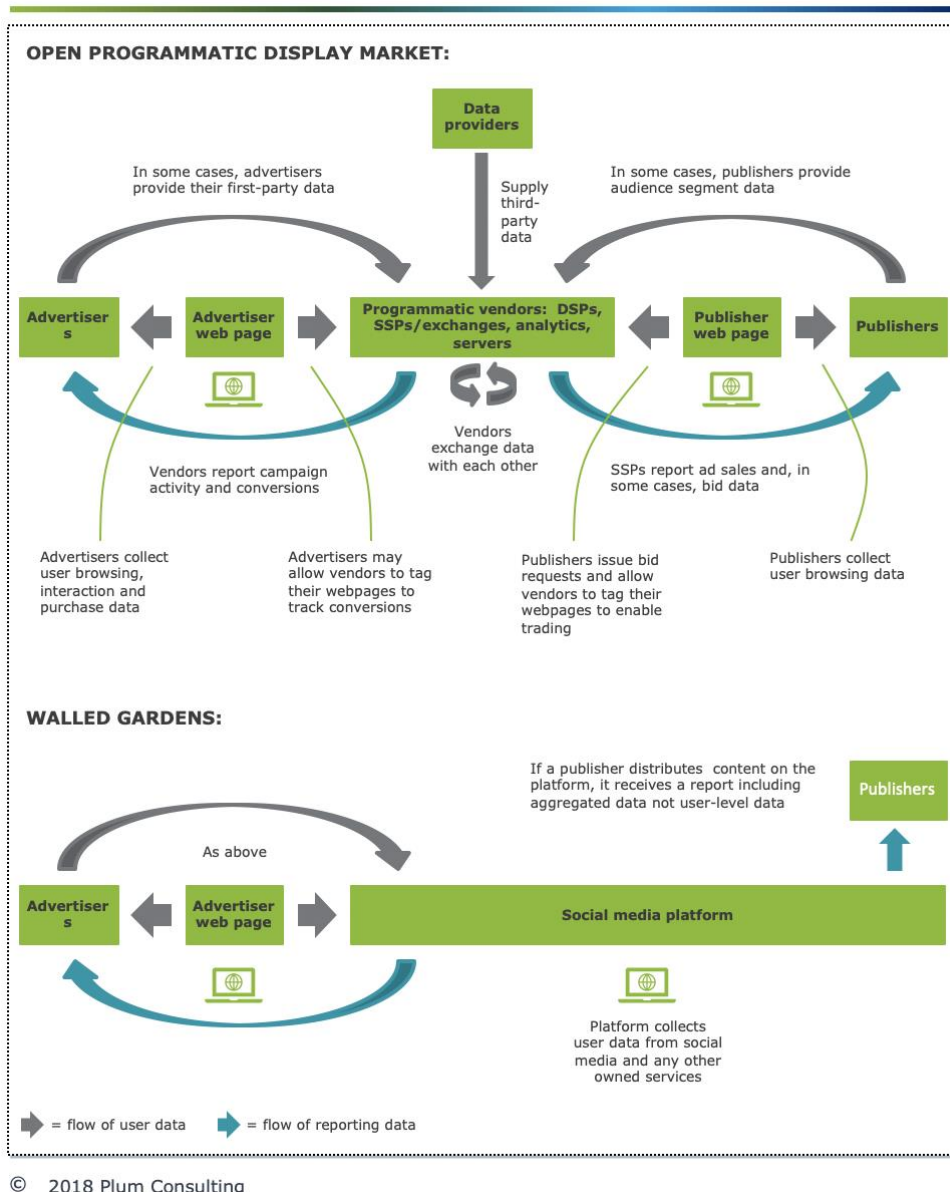
The differences between these two options are significant. The commissions taken by the intermediaries between an advertiser and the inventory supplier can amount to a large portion of the revenues derived from the ad (Adshead et al., 2019). For platforms selling via the open web, those commissions go to other companies, ad servers, ad exchanges, other supply-side platforms, demand-side platforms, trading desks and others. For platforms with their own proprietary systems, more of that revenue stays with the company. Perhaps more important, though, is the difference in terms of control over the transaction and the data extracted from users and generated by the ad campaigns. Proprietary systems, such as those of Facebook or Snap, can be seen as giving advertisers more control over the tools they provide for advertisers to plan and serve ads directly. Advertisers can be surer of where their ads are going and what the terms are that govern that space. They also have to abide by the terms and conditions set by the platforms, many of which have specific guidelines and rules for advertising that they enforce. Facebook, for example, passes all paid content through machine or human moderation.

Using programmatic trading, especially RTB, on the open web an advertiser is buying audience in the form of groups of individual impressions that might be spread across a host of publishers and platforms who sell through any given ad exchange. In such cases, advertisers are contractually bound to the intermediaries rather than the platforms. Platforms selling through their own systems arguably also have more control over the transactions and who their advertisers are, whereas those trading openly through other intermediaries will have little or no control over whose ads appear on their services. The advertisers, however, may have some control. As will be discussed further in section 2.3.4.1 the onus of ensuring that advertising complies with qualitative standards primarily falls on the advertisers, who are governed by self or co-regulatory systems. Many rely on media agencies that use brand safety tools to exercise some control over where their advertising appears and under what conditions. Small advertisers are making use of intermediary or platforms' proprietary tools to place online advertising without the engagement of media agencies.

The other aspect of control is over the data that is used to create user profiles and generate audience segments for profiling, to track user behaviour following ad exposure in order to assess effectiveness, and more. The whole system relies on a wealth of data generated by the behaviour of users and their characteristics, and first party data gained directly from consenting users is most valuable. All forms of advertising on media platforms, even those that do not enable highly targeted or behavioural advertising rely on at least some amount of data from each individual user that tracks their exposure and possibly response to an ad (Kraemer, Schnurr and Broughton Micova, 2020). User attention and behaviour was tracked on all 12 of the advertising supported platforms, but in some cases the platforms essentially have exclusive control over that data, though shared in aggregate with advertisers, and for others most data is gathered and used by third parties. Figure 4 below shows the great difference in the data flows of the open web and of platform-owned purchase pathways.

Figure 4 - Data flows by scenario (open web versus proprietary) - highly simplified (Adshead et al., 2019, p. 15)

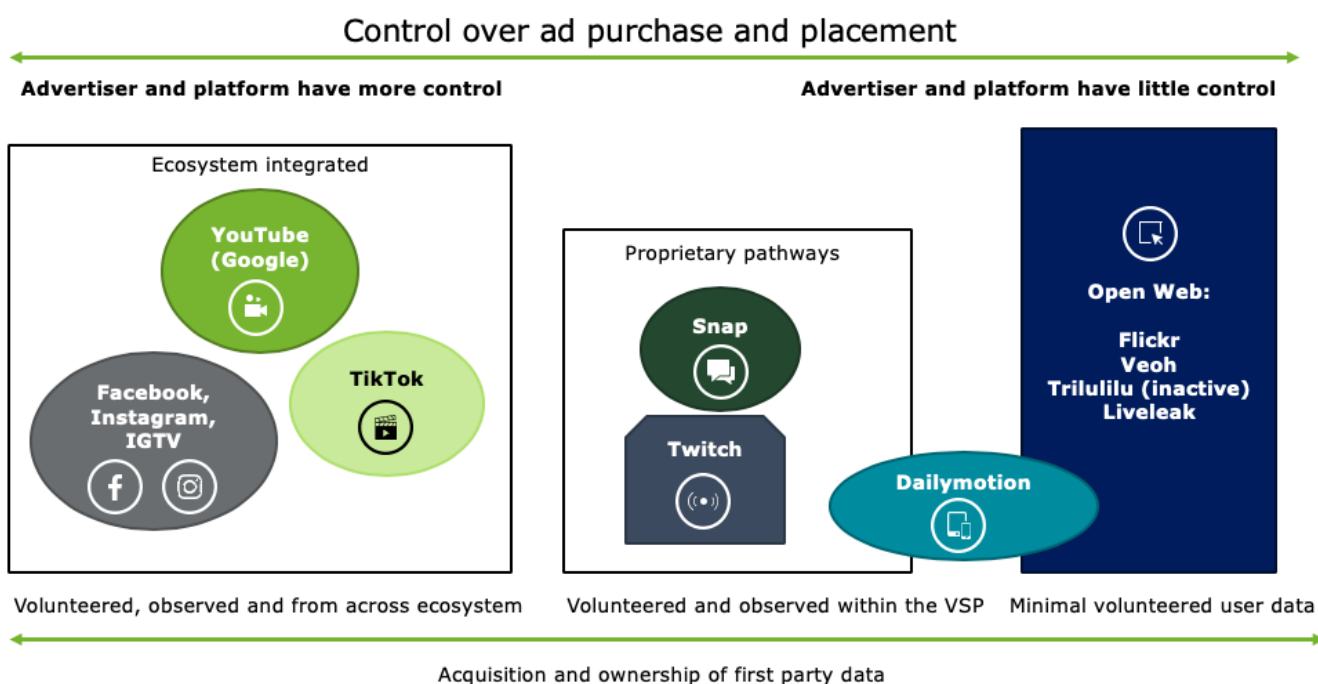
Data flows – executive summary



Source: Adshead et al., 2019 p. 15

Some VSPs that trade through proprietary pathways are part of companies with multiple services and sources of first party data, while for others, their own users have volunteered information and their behaviour on the VSP itself are the sources of first party data. Platforms trading on the open web may be using third parties to provide them insight on their users but will mostly be reliant on volunteered data, while observed data will be gathered and used by third parties. In Figure 5 below, we have mapped the 12 advertising-dependent platforms based on these aspects of control, assessed through our analysis of advertiser-facing functionalities, and the purchase or trading pathway.

Figure 5 - Mapping of VSPs by purchase pathway, transaction and data control



Source: Broughton Micova, author

In the **first group** are those that belong to wider proprietary ecosystems within a single company. **Within their ecosystems are the intermediary platforms that conduct the trade in their inventory.** While they offer sophisticated tools for advertisers to use, to plan, target and optimise campaigns, they are mainly closed systems or what have been called “walled gardens”. They are referred to in this way because the personal, albeit mostly pseudonymised and aggregated data, used to target advertising and evidence the effectiveness of campaigns remains contained within the proprietary ecosystem of the platform. Bolstered by data protection rules limiting the circulation of personal data, these “walls” can limit demand-side actors from using buying tools and intermediary or third-party platforms within that same ecosystem (owned by the same company). There is a vast amount of user data that can be drawn upon, and at least for YouTube and the Facebook properties, we were able to confirm that advertisers’ first-party data could be imported in their systems. On all of these, advertisers were able to export certain categories of anonymised data associated with their individual campaigns.

Box 4 - Proprietary ecosystem purchasing pathway

Proprietary ecosystem purchasing pathway: Automotive advertiser Aria is represented by media agency Mediasa. Planning the campaign for Aria's autumn release of next year's models, Mediasa combines data from Aria on their past customers and people who have done a test drive with third party data on driving licence holders and data they have from previous automotive campaigns to create audience segments, digital twins, and re-targeting lists (advertising to previous customers). Mediasa imports targeting data into tools provided by the VSP and uses a mixture of premium buy and the VSP's own RTB to place Aria's pre-roll and pop up ads on the VSP. Mediasa ensures that the creative used complies with the VSP's community guidelines and the advertising codes of the countries in which the ads are being served.

In the second group are VSPs that offer similar tools for planning and targeting through their own proprietary trading systems, but they are operating on a much smaller scale in terms of the data they are drawing upon to serve advertiser functionality. They also have direct options through which they engage with advertisers on branded content or reserve buying. Twitch, for example, relies mainly on direct buy relationships with media agencies, meaning that both it and advertisers have a great deal of control over the transactions and placement. However, it gathers little first party data on its users and allows very little third-party tracking (e.g. for verification). **The third group includes those VSPs that are trading on the open web. Their advertising is placed through intermediaries such as Criteo, Mediamath and Verizon,¹⁷ which then control the transaction,** and the VSPs themselves gather little first party data on users. Dailymotion was a unique case in that it engages directly with agencies and advertisers for some forms of commercial communication but trades its display inventory on the open web. In the case study profiles below we elaborate a bit more on each VSP, including providing more detail on their commercial communication, position in the marketplace, and other revenue streams where applicable.

Box 5 - Open web purchasing pathway

Open web purchasing pathway: Babaya, an online only retailer specialising in organic, fair trade baby and toddler clothes engages Webda, a small agency that specialises in online advertising. With some help from professional friends the owners have already shot a 5 second video ad and created some still image display ads. Webda relies on a variety of third-party data sources to create a plan for targeting certain audience segments in the countries Babaya services. It goes through a demand-side platform and an RTB intermediary to bid on impressions from individuals matching those segments across a number of ad networks representing a number of different inventory suppliers. Webda engages a third party verifying service to confirm the placements of the ads and receives some campaign data from the ad exchanges used to serve the ad. Babaya's ad appears to individuals who fit the intended audience segments on the Dailymotion main page, on Flickr, and on the websites of a number of different media.

2.1.5.3 YouTube

Profile: YouTube is the second most visited website in the world behind Google (Alexa, 2020) and the second most popular social network behind Facebook. As of 2020, YouTube had 2 billion active users per month (Clement, 2020b). YouTube's total global revenues for 2018 were estimated at between USD 9.5 billion and USD 14 billion with approximately a third of that coming from the US (Iqbal, 2020b). The majority of its revenues come from advertising, though it also generates income from its subscription programme. Separate revenue or use figures for the EU were not available, and only estimates can be presented, as YouTube is in the Alphabet family with Google and reported revenues are not disaggregated. Alphabet also owns Google Marketing Platform, Google Ads, AdSense, Google Analytics and other services involved in the trade of advertising and gathering of the necessary user data and can draw from the use of Alphabet's

¹⁷ These we found evidence of by following the AdSense link in the corner of individual ads to see where we were directed for managing the preferences.

Android operating system. It is therefore part of an extensive platform ecosystem (Jacobides et al., 2018) that is able to leverage data across services and plays a significant, if not dominant role, at nearly every part of the wider advertising ecosystem.

Commercial communication: The type of commercial communication that YouTube offers is varied, though generally comprises standard forms. YouTube carries in-display ads around the video viewer and on the homepage, including on the masthead and closable overlays on up to 20% of a video. In-stream options consist of pre-roll, mid-roll and post-roll video, and those can also be played “out-stream” when videos hosted on YouTube are viewed on mobile devices through Google video partners. YouTube also carries sponsored or promotional content uploaded by users. It was the birthplace of the multi-channel network (MCN) through which users get support as creators and can be represented to brands as promoters. Advertising on YouTube can be reserved or bought programmatically through its intermediaries and the platform is able to draw on the data from the whole Google ecosystem to enhance the targeting capabilities it offers advertisers. Google’s supply-side and ad-serving platforms are also used by the vast majority of other online publishers (Geradin & Katsifis, 2019), giving its properties access to insight from those trades as well. Advertisers can place ads directly using tools provided by Google for planning and targeting, including re-targeting, and can import their own first-party data in order to enhance targeting. However, they must comply with Google’s terms and conditions. Advertisers can export aggregate campaign data related to their own campaigns.

2.1.5.4 Facebook

Profile: Facebook reported 2.6 billion active monthly users in the start of 2020. It reported revenues of over USD 70 billion for 2019, nearly all of which were from advertising (Facebook, 2020), and 23% of which were estimated to have been generated in Europe (Iqbal, 2020a). Facebook is also at the centre of an extensive platform ecosystem that includes other consumer-facing platforms, WhatsApp and Instagram/IGTV, and intermediaries for the trade of advertising. It provides the full buying and serving of advertising on its properties. It also gathers first-party data through the widespread use of the Facebook log in to access other sites and the use of its “share to” function on other websites, as well as other tracking functions specific to mobile devices to which users have consented by using its app.

Commercial communication: Whereas Google has made a business of acting as the intermediary for advertising-supported publishers, Facebook’s Audience Network is focused on app developers and in-app advertising. Therefore, in addition to providing access to ad inventory on the Facebook platform, it offers inventory across a host of other apps. On Facebook itself, advertisers can choose from a variety of in-display and in-stream options, some of which involve sophisticated levels of interaction. The in-display ads can include pop up and redirection, and the in-stream options include video polling, and even game testing and augmented reality. The level of targeting Facebook can offer is enabled by the fact that it draws on data from across the whole ecosystem. Advertisers can place ads directly using tools provided by Facebook for planning and targeting, including re-targeting, and can import their own first-party data in order to enhance targeting. However, they must comply with Facebook’s advertising policies. Advertisers can export aggregate campaign data related to their own campaigns.

2.1.5.5 IGTV

Profile: IGTV is essentially still a function of Instagram and in its corporate presentation is not dissociable from Instagram. Instagram was bought by Facebook in 2012 and is fully integrated into its ecosystem for the trade of advertising and extraction of user data. Instagram had approximately 1 billion users as of April 2020 (Clement, 2020b) and is reported to be responsible for an ever-increasing portion of the ad revenues in the Facebook ecosystem, which was estimated to be at least 15% already in 2018 (Wagner & Molla, 2018).

Commercial communication: Instagram is still developing advertising options for IGTV, so commercial communication on IGTV at the time of writing was limited to the sponsored and promotional content generated by the platforms influencers and native advertising through content from brands' own accounts. Advertisers can place ads directly using the Instagram's tools which are integrated with those of Facebook, and therefore under Facebook's advertising policies. There are resources for planning and targeting, including re-targeting, and advertisers can import their own first-party data in order to enhance targeting. Advertisers can export aggregate campaign data related to their own campaigns.

2.1.5.6 TikTok

Profile: TikTok is a relative newcomer to Europe, but worldwide had over 800 million registered active users by the first quarter of 2020 (Clement, 2020b). It is estimated that TikTok grossed almost USD 177 million globally in 2019. Its owner ByteDance is not stock market listed, so no quarterly reporting is available, but it is rumoured to have earned USD 7.2-7.9 billion in 2018 according to Bloomberg (Yilun Chen & Wang, 2019). ByteDance is another extensive platform ecosystem that includes not only TikTok but a number of other user-facing online content and social network platforms, mainly in Asia. It therefore also has proprietary platforms for the trade in advertising and great data extraction capacity, though does not reach outside its own properties in the same way that Google and Facebook do by serving third party publishers and app developers and others with trading tools and analytics.

Commercial communication: TikTok's ad inventory can be characterised by heavy integration with its user content and influencers. TikTok has no evident in-display ads, though brands can make use of brand takeover that involves the entire screen being taken over with their content leading to their video upon opening before a user gets to his or her feed. Other ads appear as native in the feeds of users or take the form of lenses, stickers and elements of augmented reality that can be incorporated by users into their content. Branded content and sponsorship arrangements with influencers are encouraged and facilitated. Advertisers can place ads directly using tools provided by TikTok though we found no evidence they can import their own first party data in order to enhance targeting or export aggregate campaign data related to their own campaigns. Much of TikTok's commercial communication is influencer related rather than inventory traded by the platform.

2.1.5.7 Dailymotion

Profile: Dailymotion claims 300 million regular users (Dailymotion, 2020), and tracking indicates that its user base is drawn heavily from France and the UK (SimilarWeb, 2020a). Dailymotion's annual revenue is estimated at USD 27.2 million (Owler, 2020a), but as it is part of the larger Vivendi consortium, no further separate revenue details are publicly available. Although Vivendi owns a number of other media properties, including Canal+ and numerous print publications, its proprietary supply-side platform does not seem to represent inventory across its holdings. Instead advertisers can choose to place advertising including native content with those channels on Dailymotion. Unlike those VSPs that are part of larger platform ecosystems, Dailymotion's involvement seems to be supply side only and its promotional materials advertise that it connects with all major demand-side platforms, which would include those of major media agencies as well as those of the larger platform ecosystems.

Commercial communication: The advertising inventory available on Dailymotion included in-stream pre-roll, mid-roll and post-roll and in-display video, which was served by third parties. Dailymotion not only enables branded content, but also offers advertisers in-house production of branded content through its production arm NRoll. Therefore, it combines direct proprietary pathways for branded content and native advertising with display inventory traded on the open web.

2.1.5.8 Snap

Profile: Snapchat had nearly 400 million registered active users as of April 2020 (Clement, 2020b). It was primarily a photo messaging service for use among closed groups of connected users, but then developed public followable “stories” and discoverable content. It reported over USD 1.7 billion in revenues globally for 2019. Users from the UK and France make a significant contribution to its userbase.

Commercial communication: Snap is not part of a larger platform ecosystem, but it does have its own trading platforms that offer real-time bidding for its inventory along with direct buy. Advertisers can make use of story ads, which are essentially native ads or branded content that appear in the discoverable section, as well as non-skippable ads from 3 seconds to 3 minutes, and a variety of integrated branding for users to apply such as lenses and augmented reality elements. Snap allows advertisers to place directly through reserve relationships and using its proprietary RTB auction service. It has some tools that help advertisers plan and target, but we did not find evidence that they can import their own first-party data to help with this. They can, however, export aggregate campaign related data.

2.1.5.9 Twitch

Profile: Twitch is primarily a live streaming service, though users can also upload recorded video. It is known for popularity among gamers who stream or watch live play, and it is owned by Amazon. The latter owns a number of multi-channel networks including ones specialising in representing gamers. Twitch reports viewers in real time with a 7-day average of nearly 2.4 million concurrent viewers as of 16 May 2020¹⁸ contributing to an estimated 15 million active daily users. It collects revenues from both advertising and subscriptions and Nielsen SuperData estimated these for 2019 at USD 1.54 billion. Twitch generated USD 230 million in advertising revenue alone in 2018, and was on course to deliver \$300 million over the course of 2019 (Anand, 2020). The service’s users come in large part from France and Germany, so its presence in Europe is notable (SimilarWeb, 2020c).

Commercial communication: Twitch engages directly with media agencies and their buying platforms and invests in facilitating relationships directly between its content generating users and advertisers. A unique feature of Twitch is its “bounty board” in which advertisers looking for promoters make offers that then can be accepted by users who feel their stream is well suited in a kind of semi-automated influencer exchange. Twitch also offers a variety of in-display options and pre-roll, mid-roll and post-roll ad spots in-stream, as well as branded emojis and overlays that also appear in-stream (including chat). Twitch’s relationships are primarily direct and through its proprietary systems. We found no evidence that advertiser first-party data could be imported though the platform allows third party tracking of minimal campaign data, such as impressions, clicks and completion for tracking campaign performance.

2.1.5.10 Flickr

Profile: Flickr is primarily a service for sharing photography but also contains video. It is owned by Smugmug, another image hosting service that bought the company from Oath (now Verizon) in 2018. Smugmug does not separate Flickr revenues in its reporting, but there are claims that the service enjoys USD 80 million gross revenues per year (Owler, 2020b).

Commercial communication: Flickr offers only in-display advertising that is traded through the open web. It has no control therefore over the ads that are served on the platform, except perhaps by setting some exclusion instructions for the intermediary platforms. Advertisers cannot place their own ads directly and there are no direct relationships with advertisers.

¹⁸ This refers to the number of viewers watching simultaneously at any given moment. Updated figures can be found at <https://twitchtracker.com/statistics/viewers>

2.1.5.11 Liveleak

Profile: Liveleak is a UK-based company that was launched in 2006 to enable citizen journalism with users sharing videos of events they witnessed. As of May 2020, Liveleak was receiving 12.09 million visitors per day, with over 20% of those coming from the Germany, Poland and the UK combined (SimilarWeb, 2020b). Aggregate unique user information was not available. It was estimated that the company earned USD 10 million in 2019 (Owler, 2020c), which would have come primarily from its advertising, with a small part from its commission on donations facilitated to users.

Commercial communication: Liveleak offers only in-display advertising that is traded through the open web. Therefore, it has no control over the ads that are served on the platform, except the possibility of setting some exclusion instructions for the intermediary platforms. Advertisers cannot place their own ads and there are no direct relationships with advertisers.

2.1.5.12 Veoh

Profile: Veoh describes itself as a video and internet television service and its users post and consume a combination of short and long form videos made by users or from television programmes. As of May 2020, Veoh was receiving approximately 1.29 million visits per day with significant numbers of those users coming from Germany and Italy (SimilarWeb, 2020d). Aggregate unique user information was not available.

Commercial communication: Veoh offers only in-display advertising that is traded through the open web. Therefore, it has no control over the ads that are served on the platform, except the possibility of setting some exclusion instructions for the intermediary platforms. Advertisers cannot place their own ads and there are no direct relationships with advertisers.

2.1.5.13 Vimeo

Profile: Vimeo is perhaps the oldest online video-sharing platform. It had just under 1.24 million paid subscribers as of end-2019 (Clement, 2020a), but its content is also available for viewing only to non-subscribers. It is owned by InterActiveCorp, an American holding company. In 2019, IAC reported that Vimeo's gross revenues grew from USD 103.3 million in 2017 to USD 160 million in 2018 (Panchadar & Aripaka, 2019).

Commercial communication: Although Vimeo does not sell advertising inventory, it actively encourages brands to use the platform to promote their businesses, allowing advertisers to share branded content as professional users. It also provides a vehicle for finding and engaging freelance creators through its searchable creator marketplace Vimeo for Hire. For example, its promotional materials cite the case of an outdoor wear company finding adventure sport filmmakers through the platform.

2.1.5.14 D.tube

Profile: D.tube is a decentralised video service that exists on a blockchain rather than a central server, and rewards contributors with cryptocurrency. As of April 2020, it was averaging 576,540 views per day, with just over 20% of those coming from Germany, Italy and Poland combined. It is built on top of Steemit, a privately held blockchain-based blogging and social media company. D.tube is self-governed by a group of people elected as leaders by the community and reports no revenues.

Commercial communication: D.tube does not have advertising, though users are free to promote brands and brands can share content.

Table 7 - Summary of information on the case study platforms

Service	Year of launch	Ownership	HQ	Visits per day	Alexa ranking	Revenues
YouTube	2005	Acquired by Google (Alphabet) in 2006	Main: Mountain View, California, US. EU HQ: Dublin, Ireland	33.39 billion	2	Estimated between USD 9.5 and 14 billion (2018) for YouTube alone
Facebook	2003	Facebook	Main: Menlo Park, California, US. EU: Dublin, Ireland	26.37 billion	4	Global USD 70.69 billion in 2019 and USD 55.83 billion in 2018
Instagram/IGTV	2010	Acquired by Facebook in 2012	Main: Menlo Park, California, US. EU: Dublin, Ireland	4.43 billion	30	Estimated at USD 14 billion in 2019 and USD 22 billion in 2020
TikTok	2016	Owned by Bytedance.	Main: Beijing, China. EU: Paris, France; Berlin, Germany	366 million	309	Estimated at USD 177 million in 2019
Dailymotion	2005	Acquired by Orange in 2013. Acquired by Vivendi in 2015.	Main: Paris, France	260 million	206	Estimated at USD 27.2 million in 2019
Snap	2011	Snapchat.	Main: Santa Monica, California, U.S. EU: Paris, France; Hamburg & Berlin, Germany	33 million	3196	USD 1.71 billion in 2018 and USD 1.18 billion in 2018
Twitch	2007 as part of Justin.tv Spun off in 2011	Acquired by Amazon in 2014	Main: Seattle, Washington, US. EU: Luxembourg, Luxembourg	897 million	32	Estimated at USD 230 million in 2018, and USD 300 million in 2019
Flickr	2004	Acquired by Smugmug 2018	Main: Sunnyvale, California, U.S. EU: Dublin, Ireland	68 million.	663	Estimated at USD 80 million per year

Service	Year of launch	Ownership	HQ	Visits per day	Alexa ranking	Revenues
Liveleak	2006	Liveleak	Main: London, UK	12 million	3822	Estimates vary between USD 10 and USD 44 million
Veoh	2005	Acquired by Qlipso Media Networks in 2014	Main: Los Angeles, California, U.S. Original HQ: Jerusalem, Israel	1.29 million	2271	Estimated at USD 8 million
Vimeo*	2004	Acquired by IAC in 2006	Main: New York City, New York, U.S.	133 million	173	Reported by IAC to be USD 160 million in 2018
D.tube*	2016	Unclear	Unclear	576,000	46,737	Not available

*indicates a platform that is not engaged in the selling of advertising through proprietary platforms or the open web.

2.1.6 Categorisation of VSPs

The VSPs we studied came from all categories. However, within those there were great variations in terms of the extent of user and advertising functionalities and business models. Here we break down the platforms studied according to the categories listed in the AVMSD. This is an analytical exercise only, as the determination of what qualifies as a VSP and by which criteria will be done by national regulators. Among those whose principle purpose was video-sharing were some with sophisticated options for both users and advertisers that were part of large platform ecosystems. Also in this category, however, were some that perhaps could even be thought of as simply video publishers, with few options for user autonomy and little control over the advertising served. **These differences may have implications for the implementation of Article 28b of the AVMSD, particularly for the ability of the platforms in question to act on the responsibilities those articles established.** Article 28b requires Member States to ensure that VSPs protect minors from harmful content, including commercial communication, and the general public from content that incites violence or hatred or constitutes illegal activity, such as terrorism or child sexual exploitation (further elaborated on in section 2.2.1 below).

Article 28b also requires Member States to ensure VSPs comply with the requirements of Article 9(1), which outlines the minimum qualitative standards for commercial communication, and they are supposed to encourage the use of co-regulation or self-regulation aimed *"at effectively reducing the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended."*

In ensuring compliance with the rules for commercial communication in Article 9(1), Member States should be "taking into account the limited control" that VSPs have over commercial communication. Here, based on the findings presented above, we look at the three categories of VSPs established in the Directive in relation to the extent of user options and control and of the VSPs' responsibility for commercial communications. Our placement of platforms within these categories is based on our assessment for this

study; it is not an indication of how they will be classified by regulatory authorities for the purposes of regulation.

2.1.6.1 Principal Purpose

The majority of those VSPs studied appear to fall into the category of platforms for which the principal purpose is the sharing of video content. YouTube was at one end of the spectrum within this group. It offered a high level of both monetization options and user control over the content they uploaded and/or consumed. At the same time, positioned as it is within the Alphabet/Google platform ecosystem, it has highly developed rules for advertising, evident oversight and a rich offering of options for advertisers. Albeit on a smaller scale, Twitch and TikTok are also principal purpose platforms that offer relative autonomy for users producing content, though TikTok has fewer options for monetising content. Both Twitch and TikTok seem to be in good positions to take responsibility for advertising standards as they deal directly with advertisers or their agencies or deal through their own intermediary tools. Vimeo's principal purpose was video-sharing and it had very good options for users to control content on upload and as they consume it. Since its commercial communication is branded or sponsored content, it has as much control over this as any other video shared on the platform.

At the other end of the spectrum are Liveleak, Veoh, and D.tube, which also seemed to have video-sharing as their principal purpose, but offered users little beyond the ability to post videos, and had very little control over the ads served on their properties. In functionality, they were little more than the video equivalent of multi-author blogs. In the middle is Dailymotion, which offered users a high degree of control over the content they share and consume, but which also had limited monetisation options. Dailymotion worked with advertisers directly on some forms of commercial communication but would have had little control over the in-display ads in its inventory that was being traded on the open web.

2.1.6.2 Dissociable section

The only dissociable section of a platform that we found was IGTV, which is a dissociable section of Instagram for sharing only videos. Instagram's main service would arguably fall into the category of VSP by essential functionality. IGTV was fairly limited in terms of user options to control and monetise content. Users uploading could not set tags or limit distribution of their content. Users consuming content could manage their exposure by whom they chose to follow but could not otherwise filter or control content appearing to them from those they followed or in the discovery section. There were no revenue-sharing schemes, but creators using IGTV could land lucrative arrangements with brands as influencers. As a part of the Facebook platform ecosystem, it had sophisticated tools and standards for advertising and could reasonably be expected to bear some responsibility for it.

2.1.6.3 Essential functionality

In this category there was again diversity. The standout in this category is Facebook, with high levels of user control and monetisation options and a large platform ecosystem, within which it governs the trade in advertising on its platform (and others'). With its proprietary auction system and direct reserve trading, Snap also has some control over the advertising on its platform. Much of the commercial communication is sponsored or branded content to which its content guidelines apply. Both Archive.org and Flickr also may be considered in this category. If they do, some provisions of the AMVSD would not apply to Archive.org as it carried no commercial communication. Flickr offered few options for users to control content and had little to no control over the advertising placed in its in-display inventory.

2.1.6.4 Distinction in levels of control

Across these three categories another distinction emerges between platforms that have user-related and business-related functionalities, with accompanying tools that might enable the implementation of the requirements of the AVMSD and those that do not. Those in the high user functionality group illustrated in

Figure 1 and relying on the ecosystem and proprietary pathways for advertising illustrated in Figure 5 would be qualified as the former, while those in the low user functionality group that trade advertising on the open web would be the latter. As functionalities and business strategies change and additional players may also be considered VSPs or enter the market these only provide a snapshot of the position of certain VSPs at the time of this report. Membership in these two groups is likely to be fluid.

In the first group, users are offered controls both as creators and as consumers of content that either already constitute measures suggested by the Directive for implementing Article 28b or would facilitate the enacting of such measures. In this first group, we also find the VSPs that are trading advertising only within proprietary ecosystems or using proprietary tools over which they control the terms and conditions. **Though the VSPs for the most part have no role in the creation of commercial communication, or the content of any advertising, those that do create the advertising content are obliged to abide by the terms of the VSP and/or its parent company.** This applies whether it is an advertiser using the tools to place a targeting campaign of pre-roll spots, or an influencer promoting a product in their content.

In the second group are VSPs that offer users few functionalities that could be relied upon for the implementation of Article 28b, such as content rating and tagging or filtering. This group is also characterised by open web trading of display advertising, meaning that they do not set the terms governing the serving of the ads. They may be able to instruct the intermediaries to block certain categories of products or services but **have no relationship with those creating the content of the ads.** Commercial communications produced and shared by users, such as with influencer promotions, would be subject to the terms of the VSPs. This division is further developed in the next section that examines the existing measures taken by VSPs related to the areas covered by Article 28b.

2.2 Mapping of relevant measures adopted by VSPs

The section in brief

There was consistency in VSP policies in the banning of child sexual exploitation and abuse (CSEA) and terrorism, but great variation in the extent and nature of relevant definitions and guidance given.

CSEA and terrorist content is overwhelmingly dealt with through automated means and before it is observed by any user.

Only four VSPs provided detailed definitions of what constitutes hate speech as prohibited content in their policies, and these varied. Nine of them listed attributes defining protected categories with many going beyond those listed in the 2008 Framework Decision.

Hate speech was being largely identified and removed automatically on the larger platforms with evident efficiency on those providing public reports, but smaller platforms relied more on human content moderation.

We found great differences in approaches to the protection of minors, with variations in design features and the level of detail and thoroughness of guidance given to users in relation to content on each platform.

Very little data is available that evidences what users experience in term of exposure to harmful content or behaviour, much less over time in a manner that would indicate whether or not the introduction of certain measures taken by platforms has had specific outcomes.

Publicly available sources of information available for assessing outcomes and impact of measures taken by VSPs in line with the AVMSD are constrained by the reporting practices of the platforms and the limited existence of external monitoring efforts.

2.2.1 Overview/introduction

As an instrument of minimum harmonisation, the AVMSD contains a minimum standard for the services within its scope aimed at providing basic protections for consumers from harm. Video-sharing platforms are also governed by the EU's complementary regulatory and policy instruments that address a broader range of digital platforms covering a wide-ranging set of activities. Online platforms are subject to existing EU rules in areas such as competition, consumer protection, protection of personal data and single market freedoms. In 2016, the European Commission set out to create a balanced regulatory framework for online platforms in the digital single market based on the following policy principles (European Commission, 2016)¹⁹:

- A level playing field for comparable digital services;
- Responsible behaviour of online platforms to protect core values;
- Transparency and fairness for maintaining user trust and safeguarding innovation;
- Open and non-discriminatory markets in a data-driven economy

¹⁹The European Commission identified the guiding policy principles on online platforms in its May 2016 Communication on Online Platforms.

There are plans to upgrade the European Union's liability and safety rules for digital platforms, services and products with a new Digital Services Act²⁰. However, in the meantime, the 2018 revision of the AVMSD sought to address the first three principles within the existing framework. By bringing VSPs into its ambit, the AVMSD assigned them with responsibility in a way that would not undermine the limited liability for content that they enjoy under the e-commerce Directive (ECD). The two purposes of this were to ensure responsible behaviour in relation to potential consumer harm in a transparent manner that would instil trust, and to level the playing field among services delivering content to consumers that could be considered comparable. Through Article 28b, Member States are obliged to ensure that VSPs offer similar, though not equivalent, protection from harm to that which audiovisual media services provide, including those that may stem from advertising.

Under Article 28b (1) Member States should ensure that "video-sharing platform providers" under their jurisdiction put in place appropriate measures to protect:

- minors from harmful content (which may impair their physical, mental or moral development), access to which shall be restricted;
- the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union;
- the general public from programmes, user-generated videos and audiovisual commercial communications containing content which is a criminal offence under European Union law (for example provocation to commit a terrorist offence or offences concerning child pornography).

Under Article 28b (2), video-sharing platform providers are also subject to certain obligations regarding audiovisual commercial communications. The AVMSD stipulates that any measures taken to comply will need to remain compatible with the e-commerce Directive's liability exemption in Article 14 for information society services that provide hosting of content. For the purpose of the implementation of the abovementioned requirements, in accordance with Article 28b(3), Member States shall ensure that:

- measures shall be practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided;
- those measures shall not lead to ex-ante control measures or upload-filtering of content which do not comply with Article 15 of Directive 2000/31/EC, the e-commerce Directive;
- for the purposes of the protection of minors, the most harmful content shall be subject to the strictest access control measures.

With specific regard to commercial communications, Article 28b (2) requires Member States to ensure that video-sharing platforms comply with additional content requirements set out in Article 9 (1) for advertising directly under their control, and take appropriate measures to comply with these requirements for advertising not directly under their control.²¹ Measures must also be taken to ensure that commercial communications on VSPs are clearly identified.

²⁰According to the political guidelines by the President of the European Commission, Ursula von der Leyen. See: https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf

²¹ Article 9(1) requires audiovisual commercial communication to be recognisable and prohibits surreptitious or subliminal techniques. It states that audiovisual communication shall not "(i) prejudice respect for human dignity; (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation; (iii) encourage behaviour prejudicial to health or safety; (iv) encourage behaviour grossly prejudicial to the protection of the environment... [or] not cause physical, mental or moral detriment to minors" It further prohibits commercial communication for tobacco products and prescription medicinal products or services, and sets limits on commercial communication for alcoholic beverages.

For achieving the dual aims protecting users from harm related to content and from protecting them and levelling the playing field for advertising, the Directive foresees VSPs engaging combinations of the following measures:

"(a) including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1;

(b) including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 9(1) for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers;

(c) having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know;

(d) establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 provided on its platform;

(e) establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d);

(f) establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;

(g) establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;

(h) providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors;

(i) establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h);

(j) providing for effective media literacy measures and tools and raising users' awareness of those measures and tools." (Article 28a (3))

The exercise of responsibility by VSPs will necessarily be very different from the editorial responsibility of an audiovisual media service. Aside from the sheer volume of content and user interactions, there is the different relationship with users, who rather than being audience members, are also participants in the ways described above. According to Helberger, Pierson and Poell (2018), online platforms are characterised by the problem of many hands because multiple actors share responsibility: (i) the platform owners who develop the technological infrastructures; (ii) the users who decide to share content; and (iii) the state institutions that must create the legal and policy framework in which these parties operate. Online platforms have been under fire for some time now from their users, advertisers and policy makers and many have been taking action to deal with many of the potential harms covered in the AVMSD (Brown, 2020).

The measures taken reflect the shared responsibility. Member State and European institutions have been updating legal and policy frameworks, with the German NetzDG law and the AVMSD as prime examples.²² There have also been public institution-led processes leading to commitments by VSP operators, such as the Code of Conduct on Countering Illegal Hate Speech Online. Illegal and harmful content can be detected either by the VSPs themselves with proactive monitoring measures or by users of the platforms notifying the platform or flagging when they find potentially harmful content. The platforms themselves have been investing in technical solutions in the form of human and automated systems to moderate content. Even though the AVMSD specifically does not call for ex-ante control measures, VSPs are increasingly relying on AI-driven filters to detect and filter the most problematic content. VSPs use a number of different policies to outline their expectations in terms of public responsibility and relationships to users, such as terms of services or community guidelines. In recent years many VSPs have frequently updated their terms and conditions and community guidelines and have also enhanced flagging systems, with some involving networks of “trusted flaggers”.²³ In the next section we map the existing measures we were able to identify that address the provisions in Article 28b of the AVMSD. Then the subsequent section presents some evidence of the effects of the existing measures with the aim of helping to identify where gaps need to be filled in the implementation of the AVMSD.

2.2.2 Video-sharing platforms’ existing measures

There are differences in the kinds of harm the provisions of the AVMSD are intended to prevent. There is relative consensus on the severity and nature of harm from the sharing of child sexual exploitation and terrorist content. There is usually physical harm involved in the creation of the content and there is additional harm from the distribution of that content, both additional harm to the victims and harm stemming from the exposure of others to the content. These are clearly illegal, and law enforcement or other security services are often involved in the measures taken against this kind of content dissemination. What constitutes hate speech or what kind of content is considered to harm the physical, mental or moral development of a minor can vary across jurisdictions. Advertising standards, particularly those related to alcohol, high fat, sugar and salt (HFSS) food and drink, or medical services also vary, and arguably address the content’s contribution to wider harms rather than harm directly related to the consumption of the content.

The measures documented here are not what would normally be considered self-regulatory in the way this is generally conceptualised in models of governance. Self-regulation is done collectively within an industry with companies working together to develop and enforce rules (Latzer et al., 2013). As there is no collective enforcement and instead platforms police their own services in relation to potential harms based on their own terms and community guidelines, this has been referred to as solo-regulation (Milosavljević & Broughton Micova, 2016). Even the Code of Conduct on Countering Illegal Hate Speech Online, which was facilitated by the European Commission in 2016 and has been signed by several tech companies, is a kind of a hybrid that will be discussed further in section 2.3.4.3 and sets standards only in terms of response times in the enforcement of their own rules. However, with legal frameworks progressing and law enforcement or security services involved in dealing with the most egregious harms, there is more involvement of regulation in the work of platforms.

According to Brown (2020), there are multiple levels in the governance of illegal and harmful content and behaviour on platforms. Though his model was developed for the governance of hate speech, the levels can apply to actions taken in relation to all the harms dealt with by the AVMSD. Hate speech is illegal, but what

²² The French Parliament also passed the “Avia Law” that would have introduced strict time frames for the takedown of harmful content and given the audiovisual media regulator significant monitoring authority. However, this was struck down by the French Constitutional Court in June 2020.

²³ For example, YouTube’s trusted flagger programme includes individual users, NGOs and government agencies (see: <https://support.google.com/youtube/answer/7554338?hl=en-GB>). These have been particularly prominent in the implementation of the Code of Conduct on Hate Speech, where NGOs are also engaged in monitoring adherence to the Code.

constitutes hate speech can differ across jurisdictions and cultural context. It is therefore, arguably, more challenging to identify than other forms of illegal content. What might be considered harmful content or behaviour can be highly contextual, depending on the age of the user and situation. For example, certain violent content might be suitable for adults but not for children, requiring identification therefore for younger users, or some fictitious content might be harmful only in a political context or during an election period. The application of measures to deal with illegal and harmful content entails making moderating content in a way that makes such distinctions. According to Brown, the moderation level:

"... means assessing bits of content against Internet platforms' "community standards" or "content policies" and deciding whether to leave up, remove, add warning labels or take some other action or non-action in relation to the content. Bits of content come through to moderation by Internet platforms or subcontractors in a variety of different ways, including via user reports, flags from trusted flagger organisations, and by Internet platforms proactively identifying content using their own text extraction and machine learning tools or algorithms. Moderation decisions themselves can also be done by humans, machine learning tools or algorithms, or a combination of both."(Brown, 2020, p. 30)

Most of what we document below falls into this category and amounts to content moderation. The measures taken, such as the removal of flagged content based on community rules or guidelines, the categorisation or rating of content, the provision of parental controls, and operation of complaints mechanisms are all internal to the companies operating the VSPs. In themselves, they are not collective industry self-regulation. The monitoring of the use and implementation of such measures, including standards or codes of practice on their use, could be self or co-regulation. At the moment there are no examples, as the closest would be the Code of Conduct on Countering Illegal Hate Speech, which is limited as mentioned above.

For specific illegal content issues, we did find measures that operate at the "regulatory level," which is when national governments or governmental agencies are involved (Brown, 2020, p. 31). This can mean the imposition of legal obligations accompanied by fines and sanctions. The NetzDG law in Germany is an example of this, as VSPs can face fines for non-compliance. The AVMSD does not prescribe such direct regulation, but instead encourages co-regulation and self-regulation through codes of conduct, the minimum standards for which are outlined in Article 4a. Co-regulatory models usually involve industry-wide codes and collective enforcement with a regulatory back-stop or some government facilitation of or participation in the mechanisms. The measures being taken in relation to child sexual exploitation and terrorism are characterised by cooperation among platforms and civil society initiatives, as well as with the law enforcement bodies or security services that operate at a regulatory level. As we find in section 2.3.4.2 below, though institutions operating at the regulatory or state level are involved, this cooperation amount to co-enforcement rather than co-regulation.

2.2.2.1 Child sexual exploitation and abuse (CSEA) [AVMSD Art. 28b(1)(b)]

The sharing of content containing sexual exploitation of minors was strictly banned on every platform we investigated, as indicated in Table 8 below. The table also shows that **some platforms have elaborated detailed definitions of what might be considered CSEA content or behaviour, whereas others have none**. Those that do have detailed definitions seem to have aimed to cover exactly what kind of content would be considered sexual as well as behaviours such as coercing or exposing minors to explicit content. For example, YouTube and TikTok explicitly mention behaviour associated with grooming and coercion. These definitions also serve as instructions to users who may be minors so they can moderate their own behaviour in order to avoid being victims as well as to potential perpetrators. For example, Twitch, which has a large number of teenage users provides instructions related to dress and exposure of the body and to the creation of avatars.

Table 8 - VSP policies and definitions on child sexual exploitation and abuse (CSEA) as of September 2020

Name of VSP	Excerpt from VSP Policy on CSEA (direct quotation unless otherwise indicated)	Excerpt from VSP guidelines providing further definitions (direct quotation unless otherwise indicated)
YouTube	Sexually explicit content featuring minors and content that sexually exploits minors is not allowed on YouTube. We report content containing child sexual abuse imagery to the National Center for Missing and Exploited Children , who work with global law enforcement agencies.	• Sexualization of minors: Sexually explicit content featuring minors and content that sexually exploits minors; • Harmful or dangerous acts involving minors: Content showing a minor participating in dangerous activities or encouraging minors to do dangerous activities; • Content that could cause minor participants or viewers emotional distress, including: - Exposing minors to mature themes; - Simulating parental abuse; - Coercing minors; - Violence. • Misleading family content: Content that targets young minors and families, but contains sexual themes
TikTok	We do not allow content that depicts or disseminates child abuse, child nudity, or sexual exploitation of children in both digital and real world format, and we report such content to relevant legal authorities. We also do not allow content depicting minors engaged in delinquent behavior.	Nudity includes content that shows visible private parts. Sexual exploitation is any actual or attempted abuse of a position of vulnerability, power, or trust for sexual purposes, including but not limited to profiting monetarily, socially, or politically from the sexual exploitation of another. Do not post: • Content that shows the private parts of minors • Content that depicts sexual exploitation of minors • Content that depicts sexual activities such as penetration, non-penetrative sex, or oral sex involving minors • Content that depicts sexual arousal involving minors • Content that depicts a sexual fetish involving minors • Content that encourages, instructs, or justifies grooming behavior • Content that engages a minor in a sexually explicit conversation

		Content that incentivizes or blackmails a child to transmit sexually explicit material
Twitch	Nudity and sexually explicit content or activities, such as pornography, sexual acts or intercourse, and sexual services, are prohibited. Content or activities that threaten or promote sexual violence or exploitation are strictly prohibited and may be reported to law enforcement. Child exploitation will be reported to authorities via the National Center for Missing & Exploited Children. Sexually suggestive content or activities are also prohibited, although they may be allowed in educational contexts or for pre-approved licensed content, in each case subject to additional restrictions.	Sexual violence and exploitation are strictly prohibited and may be reported to law enforcement. Examples include, but are not limited to: ... - Any nudity, sexual content, sexual violence, or sexual exploitation that involves minors, appears to involve minors, or depictions of minors, or content that encourages or promotes paedophilia. - We don't permit streamers to be fully or partially nude, including exposing genitals or buttocks. We do not permit the visible outline of genitals, even when covered. Broadcasting nude or partially nude minors is always prohibited, regardless of context. - For those who present as women, we ask that you cover your nipples. We do not permit exposed underbust. Cleavage is unrestricted as long as these coverage requirements are met. - For all streamers, you must cover the area extending from your hips to the bottom of your pelvis and buttocks. - For those areas of the body where coverage is required, the coverage must be fully opaque; sheer or partially see-through clothing does not constitute coverage Augmented reality avatars that translate real-life movement into digital characters are subject to this standard, as is cosplay and other costumes.
Facebook	We do not allow content that sexually exploits or endangers children. When we become aware of apparent child exploitation, we report it to the National Center for Missing and Exploited Children (NCMEC), in compliance with applicable law. We also work with external experts, including the Facebook Safety Advisory Board. We also collaborate with other safety experts, NGOs and companies to disrupt and prevent the sexual exploitation of children across online technologies. For example, we work with the Tech Coalition to eradicate online child exploitation, the Internet Watch Foundation, and the multi-stakeholder WePROTECT Global Alliance to End Child Exploitation Online. And next month, Facebook will join Microsoft and other industry partners	Content that depicts participation in or advocates for the sexual exploitation of children, including (but not limited to): - Engaging in any sexual activity involving minors - Adults soliciting minors - Minors soliciting minors - Minors soliciting adults - Using our products and site functionality with the intention of sexualising minors Content that constitutes or facilitates inappropriate interactions with children, such as:

	to begin building tools for smaller companies to prevent the grooming of children online.	Initiating unsolicited contact with minors (for example, private messages between stranger adults and minors); Soliciting, displaying, sharing or viewing imagery of nude, sexualised or sexual activity with minors; Arranging real-world sexual encounters or obtaining sexual material from a minor directly; Displaying nudity to minors; Content (including photos, videos, real-world art, digital content and text) that depicts; Any sexual activity involving minors; Minors in a sexual fetish context; Minors with sexual elements, including (but not limited to); Restraints; Focus on genitals; Presence of aroused adult; Presence of sex toys; Sexualised costume; Stripping; Staged environment (for example, on a bed) or professionally shot (quality/focus/angles); Open-mouth kissing with minor or adult; Content (including photos, videos, real-world art, digital content and verbal depictions) that shows minors in a sexualised context; Content that depicts child nudity where nudity is defined as: Visible genitalia (even when covered or obscured by transparent clothing); Visible anus and/or fully nude close-up of buttocks; Uncovered female nipples for children older than toddler age; No clothes present from neck to knee for children older than toddler age; Digitally created depictions of nude minors, unless the image is for health or educational purposes; Imagery that depicts non-sexual child abuse regardless of sharing intent; Content that praises, supports, promotes, advocates for, provides instructions for or encourages participation in non-sexual child abuse
Vimeo	5.2 Content Restrictions You may not submit any content that: • (...) Is sexually explicit (e.g., pornography) or proposes a transaction of a sexual nature; (...) • Exploits minors; (...) 5.3 Code of Conduct In using our Services, you may not: • (...)Harm or exploit minors;	
Snap	By using the Services, you state that: ... You are not a convicted sex offender...	

	We report child sexual exploitation to authorities. Never post, save, or send nude or sexually explicit content involving anyone under the age of 18 — even of yourself. Never ask a minor to send explicit imagery or chats.	
Dailymotion	Sexually explicit content, such as content which contains nudity or sexual activities, is prohibited on Dailymotion. Sexually explicit content depicting and/or exploiting minors is strictly prohibited on Dailymotion. If Dailymotion becomes aware of the availability of such content, it will be immediately removed, the account will be promptly terminated, and Dailymotion will report the content to the proper authorities. If you are sharing content on Dailymotion, note that Dailymotion strictly prohibits any upload of content involving minors which fits any of the descriptions below: • Sexualization of minors: Sexually explicit content featuring minors and content that sexually exploits minors. We report content containing child sexual abuse imagery to the local authorities. • Dangerous acts involving minors: Content showing a minor participating in dangerous activity or encouraging minors to engage in dangerous activities that may lead to injury, including dangerous stunts, dares, or pranks. • Infliction of emotional distress on minors: Content that could cause minor participants or viewers emotional distress, such as simulating parental abuse, coercing minors, exposing minors to mature subjects, or threatening violence. • Cyberbullying and harassment of minors: Content that targets individuals for abuse or humiliation; reveals personal information, such as email addresses or bank account numbers; records someone without their consent; sexually harass; or encourages others to bullying or harassment. • Intentionally misleading family content: Content that intentionally misleads viewers by appearing to be family content,	Sexually explicit content includes, but is not limited to, content that would be considered or that includes the following: • Any sexual content involving minors; • Promotion of bestiality, incest, or paedophilia; (...) These restrictions also apply to animated or digitally created content unless it is posted for educational, humorous, or satirical purposes.

	but contains sexual themes, violence, obscene, or other mature themes not suitable for young audiences.	
Veoh	[Terms require users to agree not to take action or post content that is unlawful] You agree not to (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any User and Video Content, using any communications service or other service available on or through the Veoh Service, that: • infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity; or • is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, offensive, profane, pornographic or obscene...	/
Flickr	You are solely responsible for the User Content that you post or transmit using the Services and you agree not to post, transmit or otherwise publish through the Services any of the following: User Content that is obscene, pornographic, indecent, lewd, sexually suggestive, including without limitation photos, videos or other User Content containing nudity, unless you have restricted access to such User Content with an appropriate content filter setting that will restrict viewing by minors... Flickr has a zero-tolerance policy towards harmful content involving minors would be an understatement. In protecting children from criminal predators, particularly in crimes involving child sexual abuse, we will aggressively report and cooperate with law enforcement with the goal of prosecuting to the full extent of the law. This includes, but is not limited to, images, video, comments, faves, and other communications.	
Instagram/IGTV	We have eams and systems that work to combat abuse and violations of our Terms and policies, as well as harmful and deceptive behavior. People like to share photos or videos of their children. For safety reasons, there are times when we may remove images that show nude or partially-nude children.	[Refers to Facebook's elaboration of what constitutes CSEA as quoted above.]

	We have zero tolerance when it comes to sharing sexual content involving minors or threatening to post intimate images of others.	
Liveleak	We at Liveleak take the online safety of children very seriously. Liveleak's websites and services are directed to adults. We do not allow children under the age of 13 to obtain User Names, and we do not intentionally collect any personal information from children under 13. ... If the material is extreme in nature (such as child pornography) we will actively endeavour to inform your local authorities where possible.	.
Archive.org	The Collections may contain information that might be deemed offensive, disturbing, pornographic, racist, sexist, bizarre, misleading, fraudulent, or otherwise objectionable. The Archive does not endorse or sponsor any content in the Collections, nor does it guarantee or warrant that the content available in the Collections is accurate, complete, non-infringing, or legally accessible in your jurisdiction, and you agree that you are solely responsible for abiding by all laws and regulations that may be applicable to the viewing of the content. In using the Archive's site, Collections, and/or services, you further agree... (h) not to act in any way that might be harmful to minors, including, without limitation, transmitting or facilitating the transmission of child pornography, which is prohibited by federal law and may be reported to the authorities should it be discovered by the Archive.	/

Source: Authors

Common across all VSPs studied is the identification and removal of CSEA content, overwhelmingly before it is observed by any user. As described by multiple VSP stakeholders, this is done by hash recognition of content²⁴, by using PhotoDNA technology²⁵, and other tools developed by Google and Facebook. The sharing of this technology was facilitated by the Tech Coalition against Child Sexual Exploitation. Multiple platforms and tech companies contribute to hash databases as do civil society organisations and law enforcement bodies. Platform representatives mentioned the National Centre for Missing and Exploited Children (NCMEC), the Internet Watch Foundation (IWF) and the EC funded INHOPE network of hotlines as civil society organisations that facilitate reporting content to law enforcement across the globe. One stakeholder mentioned a third party, Thorn, which develops technology and hash libraries that are used by platforms for the ex-ante detection and blocking of such content. Thorn claims partnerships with several of those we examined: Google, Facebook, Flickr and Snap. Others may not be listed as partners but still use their services. This area is characterised by deep transnational collaboration among platforms and with law enforcement. Hash databases are shared extensively. Stakeholders that responded on this issue reported working with national and international organisations that specialise in trying to combat child sexual exploitation. Most of the policies we examined explicitly state that incidents will be reported to law enforcement, and, as stakeholders explained this reporting is largely coordinated by the National Center for Missing and Exploited Children (NCMEC) in the US, which then communicates with law enforcement worldwide. Except for D.tube,²⁶ each platform also reserved the right to remove any content that is not caught by ex-ante mechanisms and deactivate users who share such content.

2.2.2.2 Terrorism [AVMSD Art. 28b(1)(c)]

Of those that we examined only Twitch, Veoh and Archive.org did not specifically ban terrorist organisations or terrorist content. These three did, however, each forbid illegal activity and/or incitement to violence. As Table 9 below indicates, even those that were relatively open to content related to terrorism for journalistic or critical purposes, i.e. platforms such as Facebook and Vimeo, **explicitly forbade content that aimed to glorify or recruit for terrorist organisations. There was less consistency in the definition of what should be considered terrorism or terrorist groups.** Definitions exist in international law for terrorist acts²⁷ but whether or not a group is considered terrorist can differ. The EU maintains a regularly updated list of terrorist organisations,²⁸ which differs somewhat from that of the US and other countries. As Table 9 shows, among those VSPs we examined, only You Tube and Facebook (including Instagram/IGTV) provided extensive definitions to help users understand how terrorism might be identified in content or use of their platforms. None of the VSPs referred to specific lists of terrorist groups. Vimeo's terms refer to US Government defined "Specifically Designated Nationals", which are individuals identified by the US Treasury as associated with terrorism or organised crime.²⁹

²⁴ Hashes are algorithmically produced signatures of content that indicate whether two files are alike, so when a piece of content is identified as evidence of CSEA its hash can be used to identify other instances of this content that may be circulating. Advanced systems now can also identify variations of similar content.

²⁵ developed by Microsoft

²⁶ D.tube's materials explain that its decentralised blockchain design means that it has no community guidelines as they could not be enforced. The platform relies on members tagging their content and on "downvoting" content or users that they deem unacceptable but has no form of centralised content moderation or consumer protection measures. D.tube is therefore left out of the rest of the discussion in this section as it has none of the measures in place. It should be noted that clear pornography was encountered by a member of the research team on the main page upon her second visit to the platform during the conduct of the research.

²⁷ See the Council of Europe Convention for the Prevention of Terrorism for a list of relevant treaties:

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016808c3f55>

²⁸ See: <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/terrorist-list/>

²⁹ See: <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>

Table 9 - VSP policies and definitions for terrorism and/or terrorist content as of September 2020

Name of VSP	Excerpt from VSP Policy on Terrorism (direct quotation unless otherwise indicated)	Excerpt from VSP guidelines providing further definitions (direct quotation unless otherwise indicated)
YouTube*	Content intended to praise, promote, or aid violent criminal organizations is not allowed on YouTube. These organizations are not allowed to use YouTube for any purpose, including recruitment.	• Raw and unmodified reuploads of content created by terrorist or criminal organizations • Celebrating terrorist leaders or their crimes in songs or memorials • Celebrating terrorist or criminal organizations in songs or memorials • Content directing users to sites that espouse terrorist ideology, are used to disseminate prohibited content, or are used for recruitment • Video game content which has been developed or modified ("modded") to glorify a violent event, its perpetrators, or support violent criminal or terrorist organizations
TikTok	We do not allow dangerous individuals or organizations to use our platform to promote terrorism, crime, or other types of behavior that could cause harm. When there is a credible threat to public safety, we handle the issue by banning the account and cooperating with relevant legal authorities.	Terrorists and terrorist organizations are any non-state actors that use premeditated violence or threats of violence to cause harm to non-combatant individuals, in order to intimidate or threaten a population, government, or international organization in the pursuit of political, religious, ethnic, or ideological objectives.
Twitch*	[The platform does not specifically ban terrorist organisations or terrorist content] Any content or activity featuring, encouraging, offering, or soliciting illegal activity Acts and threats of violence will be taken seriously and are considered zero-tolerance violations and all accounts associated with such activities will be indefinitely suspended. This includes, but is not limited to: • Attempts or threats to physically harm or kill others • Attempts or threats to hack, DDOS, or SWAT others	

	• Use of weapons to physically threaten, intimidate, harm, or kill others	
Facebook*	In an effort to prevent and disrupt real-world harm, we do not allow any organisations or individuals that proclaim a violent mission or are engaged in violence to have a presence on Facebook. This includes organizations or individuals involved in the following: Terrorist activity Organized hate Mass murder (including attempts) or multiple murder Human trafficking Organized violence or criminal activity.	Any non-state actor that: • Engages in, advocates or lends substantial support to purposive and planned acts of violence, • Which causes or attempts to cause death, injury or serious harm to civilians, or any other person not taking direct part in the hostilities in a situation of armed conflict, and/or significant damage to property linked to death, serious injury or serious harm to civilians • With the intent to coerce, intimidate and/or influence a civilian population, government or international organisation in order to achieve a political, religious or ideological aim.
Vimeo	No videos that depict or promote violent activity, extreme or real-life violence, self-harm, or cruelty toward animals. Videos that recruit for or propagandize terrorist organizations, regardless of whether they show actual violence, are never allowed. 5.2 Content Restrictions You may not submit any content that: (...) Promotes or supports terror or hate groups; 5.5 Restricted Users You may not create an account if you are a member of a terror or hate group. You may not purchase any goods or services from us if you reside in a country subject to a comprehensive U.S. sanctions program or are a Specifically Designated National (SDN) as designated by the U.S. Department of the Treasury.	.

Snap	Terrorist organizations are prohibited from using our platform and we have no tolerance for content that advocates or advances violent extremism or terrorism.	
Dailymotion*	Content that aims to encourage dangerous or illegal activities, including activities that risk serious physical harm or death, is not allowed on Dailymotion. Dangerous, harmful, or illegal content includes, but is not limited to, content that includes or would be considered to be the following: (...) Terrorist content (or content that promotes terrorist activities) (...) any content meant to incite the audience to terrorist acts, will be immediately removed.	
Veoh	[The platform doesn't specifically ban terrorist organisations or terrorist content, though the terms forbid action or content that promotes hate or incites violence]	
Flickr	Don't upload content that is illegal or prohibited. This includes but is not limited to drug use, bestiality, and terrorism. If we find you doing it, your account will be deleted and we'll take appropriate action, which may include reporting you to law enforcement.	
Instagram/ IGTV*	Instagram is not a place to support or praise terrorism, organized crime, or hate groups.	[Refers to Facebook Community Standards on "Dangerous Individuals and Organizations," which define terrorism as quoted above]
Liveleak	Terrorist or banned organizations are forbidden to use Liveleak for any purpose.	
Archive.org	In using the Archive's site, Collections, and/or services, you further agree (a) not to violate anyone's rights of privacy, (b) not to act in any way that might give rise to civil or criminal liability,..... , which is prohibited by federal law and may be	

	reported to the authorities should it be discovered by the Archive.	

Source: Authors

* Indicates VSPs that are members of the Global Internet Forum to Counter Terrorism (GIFCT) and/or supporters of the Christchurch Call to eliminate terrorist or violent extremist content online. Note: Twitch is not identified directly, but its parent company Amazon participates in both

Terrorist content is dealt with mainly automatically. This is done in a similar way to child sexual exploitation content through automated detection based on databases of sophisticated hashes. Facebook, Instagram/IGTV and YouTube are members of the Global Internet Forum to Counter Terrorism (GIFCT), which was established in 2017 to combat the dissemination of terrorist content online and the use of platforms by terrorists, as is Twitch's parent company Amazon. These, along with Dailymotion, also are supporters of the Christchurch call to eliminate terrorist or violent extremist content online, which was established following a live-streamed terrorist attack in New Zealand and will be discussed further in Section 2.3.4.2. Another stakeholder who responded to the consultation on this topic mentioned that their platform uses Active Fence, a third-party service that specialises in AI systems for detecting and removing terrorist and other harmful content. Automated detection appears to be the first line of defence followed by ex-post removal. All platforms reserved the right to remove content or block users.

2.2.2.3 Incitement to hatred or violence including offences concerning racism or xenophobia [AVMSD Art. 28b(1)(b)]

Across the VSPs we examined whether behaviour or content that contains or exhibits racism or xenophobia was dealt with in the same policy as incitement to hatred or violence. Hate speech is illegal, but what can be considered hate speech can vary. It is challenging to specify what constitutes hate speech conceptually and to determine what differentiates it from offensive language (Davidson et al. 2017, p. 1). Illegal hate speech, as defined by Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law and national laws transposing it, means all conduct publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin. Exactly what crosses the line is arguably open to interpretation, and for offline media, courts are usually where these distinctions are made. Due to the specific nature of VSPs the platforms themselves are making such decisions continually and often on large volumes of content.

Four VSPs included detailed definitions of what constitutes hate speech as prohibited content in their policies and nine of them listed attributes defining protected categories. During the period in which this study was conducted four of the VSPs expanded their hate speech policies and/or lists of protected categories. Table 10 shows the great diversity in the extent to which the VSPs studied elaborate definitions of hate speech content. As indicated in the table, Vimeo, Facebook, TikTok and YouTube policies go into details as to what will be considered hate speech content on their platforms. Vimeo's rules demonstrate an understanding that some content that may not be directly hate speech can be homophobic or misogynist and includes it in its policy. Facebook and Tiktok both deal with slurs and also make a distinction between when such are used as hate speech and when they are used in humour and self-referentially. However, five of the VSPs offered little expansion on their policy against hate speech beyond listing the attributes that define protected categories, while Veoh and Liveleak did not even list attributes. Archive.org had no evident policy.

As can be seen in Table 10, Several VSPs went beyond the definition in the Framework Decision in terms of protected categories. All of the VSPs that provided definitions forbid hate speech based on race, ethnicity, religion/religious affiliation, national origin, sex/gender, sexual orientation, disabilities or disease, but many include additional characteristics. As of October 2020, YouTube, Twitch and Snap included among attributes of protected categories "veteran status" and "immigration status". Those three along with both TikTok and Facebook included "caste". Other attributes listed included "age", "victims of a major violent event and their kin", "socio-economic status", "weight" and "pregnancy". (see: Table 10 - VSP policies and definitions on hate speech). **Overall, while there was near consensus in the banning of hate speech, there was very little consistency in how it was defined across the VSPs studied.**

Table 10 - VSP policies and definitions on hate speech as of October 2020

Name of VSP	Excerpt from VSP policy on hate speech (direct quotation unless otherwise indicated)	Protected attributes mentioned in VSP terms or guidelines
YouTube*	Hate speech is not allowed on YouTube. We remove content promoting violence or hatred against individuals or groups based on any of the following attributes [...]. Don't post content on YouTube if the purpose of that content is to do one or more of the following. • Encourage violence against individuals or groups based on any of the attributes noted above. We don't allow threats on YouTube, and we treat implied calls for violence as real threats. You can learn more about our policies on threats and harassment. • Incite hatred against individuals or groups based on any of the attributes noted above. Other types of content that violate this policy: • Dehumanizing individuals or groups by calling them subhuman, comparing them to animals, insects, pests, disease, or any other non-human entity. • Praise or glorify violence against individuals or groups based on the attributes noted above. • Use of racial, religious or other slurs and stereotypes that incite or promote hatred based on any of the attributes noted above. This can take the form of speech, text, or imagery promoting these stereotypes or treating them as factual. • Claim that individuals or groups are physically or mentally inferior, deficient, or diseased based on any of the attributes noted above. This includes statements that one group is less than another, calling them less intelligent, less capable, or damaged. • Allege the superiority of a group over those with any of the attributes noted above to justify violence, discrimination, segregation, or exclusion. • Conspiracy theories saying individuals or groups are evil, corrupt, or malicious based on any of the attributes noted above. • Call for the subjugation or domination over individuals or groups based on any of the attributes noted above.	Age, caste, disability, ethnicity, gender identity and expression, nationality, race, immigration status, religion, sex/gender, sexual orientation, victims of a major violent event and their kin, veteran status.

	• Deny that a well-documented, violent event took place. • Attacks on a person's emotional, romantic and/or sexual attraction to another person. • Content containing hateful supremacist propaganda including the recruitment of new members or requests for financial support for their ideology. • Music videos promoting hateful supremacism in the lyrics, metadata, or imagery.	
TikTok	We do not tolerate content that attacks or incites violence against an individual or a group of individuals on the basis of protected attributes. We do not allow content that includes hate speech, and we remove it from our platform. We also suspend or ban accounts that have multiple hate speech violations. Attacks on protected groups We define hate speech as content that does or intends to attack, threaten, incite violence against, or dehumanize an individual or a group of individuals on the basis of protected attributes. We also do not allow content that verbally or physically threatens violence or depicts harm to an individual or a group based on any of the following protected attributes: [...] Do not post: • Content that dehumanizes or incites violence or hatred against individuals or groups, based on the attributes listed above, including but not limited to: ○ claiming that they are physically or morally inferior ○ calling for or justifying violence against them ○ claiming that they are criminals ○ referring negatively to them as animals, inanimate objects, or other non-human entities ○ promoting or justifying exclusion, segregation, or discrimination against them Slurs Slurs are defined as derogatory terms that are intended to disparage an ethnicity, race, or any other protected attributes listed above. They are not tolerated on our platform because we do not want to contribute to the spread of egregiously offensive terms. However, we are aware of the fact that slurs can be used self-referentially or have been reappropriated, and we may give exceptions when slurs are used in a song or in other instances of a self-referential satirical context and/or reappropriation. Do not post: Content that invokes non-consensual slurs	Race, ethnicity, national origin, religion, caste, sexual orientation, sex, gender, gender identity, serious disease or disability, immigration status.

	Hateful ideology Hateful ideologies are incompatible with the inclusive and supportive community that our platform provides. We remove content that promotes hateful ideologies. Do not post: • Content that promotes any hateful ideologies by talking positively about or displaying logos, symbols, flags, slogans, uniforms, salutes, gestures, portraits, illustrations, or names of individuals related to these ideologies • Content that denies well-documented and violent events have taken place • Music or lyrics that promote hateful ideologies	
Twitch	Hateful conduct is any content or activity that promotes, encourages, or facilitates discrimination, denigration, objectification, harassment, or violence based on the following characteristics, and is strictly prohibited [...] Twitch will consider a number of factors to determine the intent and context of any reported hateful conduct. Hateful conduct is a zero-tolerance violation. We will take action on all accounts associated with such conduct with a range of enforcement actions, including and up to indefinite suspension.	Race, ethnicity, national origin, religion, sex, gender, gender identity, sexual orientation, age, disability or serious medical condition or veteran status.
Facebook*	We do not allow hate speech on Facebook because it creates an environment of intimidation and exclusion, and in some cases, may promote real-world violence. We define hate speech as a direct attack on people based on what we call protected characteristics [...] We define attack as violent or dehumanising speech, harmful stereotypes, statements of inferiority or calls for exclusion or segregation. We separate attacks into three tiers of severity, as described below. Sometimes people share content containing someone else's hate speech for the purpose of raising awareness or educating others. In some cases, words or terms that might otherwise violate our standards are used self-referentially or in an empowering way. People sometimes express contempt in the context of a romantic break-up. Other times, they use gender-exclusive language to control membership in a health or positive support group, such as a breastfeeding group for women only. In all of these cases, we allow the content but expect people to clearly indicate their intent, which helps us better understand why they shared it. Where the intention is unclear, we may remove the content. In addition, we believe that people are more responsible when they share this kind of commentary using their authentic identity.	Race, ethnicity, national origin, religious affiliation, sexual orientation, caste, sex, gender, gender identity and serious disease or disability. "We protect against attacks on the basis of age when age is paired with another protected characteristic, and also provide certain protections for immigration status."

Vimeo	We do not allow hateful and discriminatory speech. We define this as any expression that (1) is directed to an individual or group of individuals based upon personal characteristics of that individual or group; (2) conveys a message of inferiority or contempt; and (3) would be considered extremely offensive to a reasonable person. Content will generally be considered categorical hate speech if it: • Advocates for or celebrates violence against an individual or group based upon personal characteristics • Advocates or celebrates genocide • Calls for segregation or exclusion • Denies that certain historical events occurred (e.g., Holocaust denial) • Insults a minority group using a slur or “dog-whistle” code • Equates people to animals, filth, vermin, sexual predators, or criminals based upon personal characteristics • Spreads racial superiority theories or views • Spreads conspiracy theories about specific groups who share personal characteristics • Portrays a symbol of hate for no valid purpose In addition, we do not allow: Content promoting Sexual Orientation Change Efforts (SOCE): This is content that markets, sells, or constitutes counseling, therapy, or treatments intended to change a person’s sexual orientation from same-sex attraction to opposite-sex attraction. We do not allow content that markets, sells, or constitutes classes or tutorials that seek to teach seduction techniques, commonly referred to as Pick-up Artist (PUA) content.	Race, color, national origin, and ethnicity, gender identity, sexual orientation, religion, disability, age
Snap*	Hate speech or content that demeans, defames or promotes discrimination or violence on the basis of [...] is prohibited.	race, colour, caste, ethnicity, national origin, religion, sexual orientation, gender identity, disability, or veteran status, immigration status, socio-economic status, age, weight or pregnancy status
Dailymotion*	Any content that promotes violence or incites hatred against individuals or groups based on discriminating attributes ... will be immediately removed.	including but not limited to ethnicity, gender identity, nationality, race, immigration status, religion, sexual orientation, age, social class, disability, or veteran status,

Veoh	[Terms require users to agree not to take action or post content that among other things] promotes hate or incites violence	
Flickr	Don't use hate speech. Flickr has a zero-tolerance policy towards attacking a person or group based on, but is not limited to (...)	Race, ethnicity, national origin, religion, disability, disease, age, sexual orientation, gender, or gender identity.
Instagram/ IGTV	We want to foster a positive, diverse community. We remove content that contains credible threats or hate speech, content that targets private individuals to degrade or shame them, personal information meant to blackmail or harass someone, and repeated unwanted messages. We do generally allow stronger conversation around people who are featured in the news or have a large public audience due to their profession or chosen activities. It's never OK to encourage violence or attack anyone based on (...). When hate speech is being shared to challenge it or to raise awareness, we may allow it. In those instances, we ask that you express your intent clearly.	Race, ethnicity, national origin, sex, gender, gender identity, sexual orientation, religious affiliation, disabilities, or diseases.
Liveleak	We do not allow hate speech and bigotry and will remove content promoting violence or hatred against individuals or groups.	
Archive.org		

* indicates a signatory to the Code of Conduct on Countering Illegal Hate Speech Online

Source: Authors

Ten of the 13 platforms covered in this section reserve the right to remove suspected hate speech content unilaterally and the larger ones mostly deal with hate speech through their flagging systems. Those that have signed up to the Code of Conduct on Countering Illegal Hate Speech Online (marked with an asterisk in Table 10), make use of 'trusted reporters', which are non-governmental organisations and public institutions that are tasked with monitoring and notifying particular forms of hate speech as well as with checking the compliance of the signatories in terms of response to notification. Nevertheless, automatic detection mechanisms are common. One stakeholder said, for example: "We use stop-words filters to proactively block problematic words or phrases and review them to determine whether they can stay, or they need to be removed". Facebook uses AI to detect hate speech for removal and recently reported that of the content that was removed, its algorithms had detected nearly 90% before it was flagged by users (Simonite, 2020). This did not note how much might have not been detected and therefore was not removed but is an indication that such automated means are increasing in sensitivity.

2.2.2.4 Protection of minors from harmful content [AVMSD Art. 28b(1)(a)]

With the exception of YouTube's dedicated YouTube Kids service, none of the platforms we examined were intended for minors under the age of 13. Those platforms for which the age requirement was 13 also stated in their terms or guidelines that users under 18 should be supervised by parents or guardians. The terms of both Vimeo and Flickr stated that users must be at least 16 and those of Liveleak and Veoh required users to be at least 18. However, on none of those with higher age limits was login required in order to view content. Testing the registration on all platforms, we did not find age verification more sophisticated than requiring the user to input their birth date. This means that there were few barriers to prevent minors from accessing content. On 22 September 2020, YouTube announced that it would be launching new technology that would identify users that appear to be minors and ask them to submit a form of ID to confirm their age before viewing age-rated content. Due to the timing of the launch, we were not able to test this functionality.

YouTube, Dailymotion, Vimeo and Liveleak all offered filters that are designed to block mature content. Facebook automatically filters content including advertising for users under the age of 18. On Liveleak, the default is "safe mode" for non-registered users, which can be changed to allow adult content once registered. On YouTube, logged-in users can set their preference to "restricted mode", but the default setting is not restricted and non-logged-in viewers access the unrestricted mode. On Vimeo, it is necessary to register and log in in order to view content and then users can change the preferences to block "mature" content. All these rely on the uploaders appropriately labelling or tagging their content and the users choosing the filter. Dailymotion's system was different in that uploaders could choose to "age gate" their content, which meant it automatically was not shown to users whose declared age was under 18 or had the "family filter" setting on, and the guidelines indicated that moderators could also classify content in that way as well. The "family filter" setting was on by default on Dailymotion. In spring 2020, TikTok launched "family pairing" which allows an under 18 user's device to be paired with another, allowing the adult to control time spend, switch off direct messaging (which is only allowed for 16+), and block the search function.

Considering the potential for minors to circumvent filters and minimum age requirements, the general content guidelines for each platform were important in determining the nature of risk to minors from harmful content. The moderation of content according to the community guidelines or terms of user for each platform was a shared responsibility between users who flag problematic content and the platforms that should then review and remove it if necessary. As we detail below, **we found great differences in the level of detail and thoroughness of guidance given to users in relation to content on each platform, and also differences stemming from the nature, and arguably the culture, of each.**

Vimeo and Dailymotion are characterised by more professionally produced content. Both provided very detailed descriptions of prohibited content and behaviour that made clear distinctions that might define

artistic or journalistic purposes. Facebook, which has large amounts of content from non-professionals and is a social network with many participation-enhancing tools, has extensive community standards that address not only content, but also participatory behaviour that might be harmful to minors, such as using the interactive elements of the platform for bullying or grooming. Snap and Instagram/IGTV whose services are highly popular with teenagers have clear and simple guidelines that still give specific guidance on nudity and ban content displaying self-harm such as cutting or eating disorders. YouTube has fewer social functionalities and a mix of professional and amateur content. It also had the most extensive and detailed content policies, which covered a host of things that might be harmful to a minor including content glorifying self-harm or eating disorders, hard drug use, or minors doing dangerous activities. TikTok's community guidelines were similarly thorough and also appeared to be aimed at creating a safe environment for users (and brands). According to TikTok, their guidelines are designed to allow only content that would be suitable for age 13+ users. Twitch's were slightly less detailed but covered the same issues as those dealt with by YouTube and TikTok. Twitch makes it clear that its service is not intended for children and that there is a large amount of content that involves video game players and live streaming, which can be unpredictable and often includes certain levels of violence and bad language. Nevertheless, the guidelines give clear instructions to the user as to how to define objectionable and prohibited content. Flickr had a similar set of guidelines to Twitch, and also included a ban on self-harm and certain kinds of behaviour that can be most damaging to minors. At the bottom end of the spectrum were platforms such as Veoh and Liveleak that had quite brief instructions for users as to what might be acceptable or not.

The moderation of content for the purpose of protecting minors, aside from in relation to child sexual exploitation, falls squarely in the moderation level of platform governance, and it is characterised by the shared responsibility between the platforms and the users. On the larger platforms, such as YouTube and those in the Facebook family, a great deal of the work is done by their automated flagging systems that identify content that may violate community guidelines before users even encounter the content, as is discussed further below. For the smaller platforms, the flagging of potentially problematic content is the main source of notification for the platform, which can then take action to evaluate and remove it. This means that on such platforms the content will be first observed at least by someone, who may be a minor.

Media literacy tools or initiatives were evident on YouTube, Facebook, Instagram/IGTV, TikTok, Snap and Dailymotion. However, on Instagram/IGTV, Snap and Dailymotion, these were limited to information and tools for parents and educators on how to protect minors and help them become more literate. There was very limited use of this measure in relation to adult users or other potential harm.

2.2.2.5 Advertising standards [AVMSD Art.9(1)]

Article 28b of the AVMSD makes the qualitative advertising standards set out in Article 9(1) applicable to VSPs. They are responsible for the advertising they carry even if it is sold by someone else, such as the user or channel owner. However, as described in section 2.1.5 above, **a VSP's ability to ensure compliance with advertising standards depends significantly on the purchasing pathway, on whether or not the VSP sets the terms and conditions for the advertising or not.** Those platforms that carried only in-display advertising that was traded programmatically through third parties on the open web, Veoh, Flickr and Liveleak, did not have any rules related to advertising. Dailymotion trades its in-display inventory in this manner and did not have distinct rules for advertising but also has its own SSP and exchange for programmatically trading its in-stream inventory. The terms for those with whom it trades through its proprietary system require them to comply with its relatively detailed and stringent general content policies. Although this would mean the advertising must comply with rules aimed to protect minors and others from harmful content, there were no rules on advertising alcohol, tobacco, prescription, medicines or HFSS food and drink. We found no evidence of advertising-specific rules on Twitch, though as described in the section above it has a relatively high degree of control over its advertising and may apply community guidelines or other rules, though this could not be confirmed. How the advertising is traded is significant in terms of being

able to impose or enforce any standards on advertising. As was explained by one stakeholder in response to our consultation, in direct trade they can refuse any campaign that does not fit legal requirements or their internal policies, whereas for programmatically traded inventory they have no control over what is served and in real-time bidding through intermediaries where they are only allowed to block certain categories of advertisers.

Another group of platforms could be considered to already to have rules that mimic those on audiovisual media services and are generally in line with the requirements of the AVMSD.

YouTube, Snap, TikTok and those owned by Facebook all have advertising-specific guidelines for advertisers that cover nearly all the provisions of Article 9(1). None mentioned subliminal or surreptitious advertising. Only YouTube had policy related to HFSS food and relevant to Article 9(4) in that no food or beverage advertising was allowed on its YouTube Kids platform. In August 2020, YouTube announced that within the EU and the UK, advertisers would have to tag any ads for HFSS products as these would not be shown to users under 18 beginning in October 2020. This announcement was soon followed by the one launching the platform's algorithmic age verification mentioned above. Those platforms that have their own proprietary systems for trading advertising and are more invested in the advertising system, have already established rules that appear intended to provide a safe experience for their users and a safe service to their advertisers.

2.2.3 Assessment of the outcome and impact of the self-regulatory measures (five case studies)

In order to assess the outcome and impact of the content moderation and consumer protection measures taken by individual platforms, we take a deep dive into case studies of those with the most extensive measures. The hope was that by examining these cases we would find enough material, including through stakeholder consultations and strategic interviews, to conduct a viable assessment. The assessments presented below are based on two dimensions. The first dimension represents the outcomes in relation to the protection of consumers from harm. As flagging and removal are the primary ways these VSPs deal with the protection requirements in Article 28b(1)(a) (b) and (c), we use as a proxy for assessing effectiveness data available on the removal of content that has been identified to be illegal or harmful in line with the guidelines of each platform. We also looked at any monitoring that may have been done by outside institutions such as civil society organisations. The second dimension represents the outcomes for freedom of expression, which can be seen to be the other side of the trade-off when decisions are being made about what content can be shared or not. Over-removal of content can have a chilling effect on freedom of expression, which is why Article 28b(3)(i) includes provision for instituting transparent user complaints mechanisms for those affected by measures and Articles 28b(7) and 28b(8) call for effective out-of-court redress and access to judiciary process respectively. For this we examine, where possible, the appeals made and how they were handled on removal or banning decisions and reports from watchdog organisations.

Publicly available sources of information available for assessing outcomes and impact in this area are limited by the reporting practices of the platforms and the existence of external monitoring efforts. At the time of writing, efforts to get additional information directly from the platforms had not yet been met with much success. The findings presented here are based on the transparency reports published by the platforms, including those specific to the German NetzDG law³⁰, as well as the monitoring of the implementation of the Code of Conduct for Countering Illegal Hate Speech Online, and the reports of the Electronic Frontiers Foundation, and other reports from national level studies. **Very little data is available that evidences what users experience in term of exposure to harmful content or behaviour, much less over time in a manner that would indicate whether or not the introduction of certain**

³⁰ The German NetzDG itself is a regulatory instrument beyond what is called for in the AVMSD. Here we simply use the reports generated by the platforms as part of their compliance with the German Law as sources of information about the implementation of their measures that also address harms covered in Article 28b.

measures taken by platforms has had specific outcomes. A recent review of the evidence by researchers at the Alan Turing Institute found the evidence contradictory since the scholarly evidence indicates that 0.001% to 1% of content on mainstream platforms contains abuse (mainly hate speech) but their study with the Oxford Internet Institute found that 30-40% of citizens in the UK alone had encountered abusive content (Vidgen, Margetts and Harris, 2019). This study did not address other types of problematic content or areas of concern that are covered in the AVMSD.

2.2.3.1 YouTube

YouTube has published transparency reports every quarter since December 2017. These document the numbers of reports of content that contravenes their community guidelines, the actions taken in response and any appeal. It also publishes a separate report every six months for the German authorities on the reports and action taken stemming from the NetzDG law. Only a tiny fraction of the content removed has been specific to the German law and jurisdiction, however, and the rest has been content that was removed globally. These removals are included in the overall figures reported in its transparency reports, so only those will be discussed here. What YouTube's data shows is:

- Excluding the last quarter of 2019, during which only 5,887,021 videos were removed, YouTube has removed something over eight million individual videos per quarter since 2017 when reporting began. Since reporting on channel removals began in 2018, on average just over two million whole channels are removed each quarter, which included between 48 million and 77 million videos.
- Only a fraction of the videos removed are appealed. In the last quarter of 2019, only just over 100,000 appeals were made; fewer than a quarter were upheld.
- Since reporting began on comments in third quarter of 2018, there has been a drastic increase in the numbers of comments removed from only 166 million in mid-2018 to over 500 million in the last three quarters of 2019.
- Removed content is overwhelmingly detected first by automatic means. For example, of the nearly nine million videos removed in the last quarter of 2019 only just over 500,000 were from human flaggers. The removal of comments is over 99% done automatically.
- The majority of content across all types is removed for being spam, with child safety, nudity and violence being the next most common reasons for removing videos; the next most common reasons for removal of comments are hatefulness and harassment.
- YouTube's flaggers are very active, making on average over 10 million reports per quarter, though these include multiple reports of the same content.

One outcome of YouTube's content moderation and consumer protection mechanisms that can be seen is the increased engagement of users and institutions in the moderation of content. According to the most recent progress report on the Code of Conduct for Countering Illegal Hate Speech Online, YouTube's network of trusted flaggers specialising in hate speech was four times larger in 2019 compared to 2016, moving from 10 to 46 non-governmental organisations (NGOs). YouTube also incorporated a NetzDG reporting tool into its standard one and through that has received between eighty and ninety thousand reports per quarter from German agencies, which can include NGOs and public institutions covering a variety of potential areas of harm. YouTube's reporting on NetzDG shows that 21-27% of the items reported by individual users and agencies were removed, indicating that flagging makes a significant contribution, but that YouTube's internal content moderation teams or algorithms do not necessarily take flagging as pressure to remove particular items of content.

It is not possible to assess how much content might not have been caught by either automatic or human flaggers or how much exactly was wrongly removed. YouTube reports that the rate of removal of content flagged by trusted flaggers is higher than that for content flagged by ordinary users. YouTube considers automated removal successful if content is removed before it has reached five views, which is their target for CSEA or Terrorist content. The available data on appeals above indicates that very few users feel their content was wrongly removed. Appeals can be made straight from a user's dashboard upon receiving

notification, which includes the policy violated. The Electronic Frontiers Foundation, which monitors online platforms for compliance with the Santa Clara Principles on Content Moderation, also finds that the appeals mechanism is generally transparent, though less so for those whose content was removed for legal reasons than those whose content was removed for a community guidelines breach (Gebhart, 2019).

2.2.3.2 Facebook

In May 2020, Facebook published a Community Standards Enforcement Report covering the period from October 2019 through March 2020 for both the Facebook and Instagram platforms. However, some additional older data for removals was also included and appeals data was only available for all categories for the first quarter of 2020. The report breaks down the removals data into a number of categories. For the purposes of this report, we only analysed the data related to the categories covered by the AVMSD to get a picture of the outcomes of existing measures to deal with issues covered in Article 28b, leaving out those dealing with spam, fake accounts and behaviour not covered by the AVMSD. The following were included: adult nudity and sexual activity, child nudity and sexual activity, terrorism, organised hate groups, hate speech, suicide or self-injury, violence or graphic content. We have aggregated the data from those categories and find the following for Facebook:

- In the first quarter of 2020 Facebook removed 959.9 million pieces of content from the relevant categories. Fewer than 0.05% were appealed and only just over 19% of those appeals were upheld.
- The vast majority of content removals were done by algorithms before the content was flagged by users. For the most part, only a small percentage, in some categories very small, would ever have been seen by potential flaggers.
- Algorithms seem to be getting better at detecting as the overall rates of appeals in the categories for which there was historical data seem to be declining and the trend is towards more content being removed before being observed.

Though Facebook does not report on its flaggers in its enforcement report, the most recent Progress Report on the Code of Conduct for Countering Illegal Hate Speech Online reports that Facebook has increased its network of those trusted for flagging hate speech-related content from nine partners in 2016 to 51 in 2019. The platform's own reporting for the German NetzDG law shows that in the second half of 2019 it received 3,087 reports from users and agencies on content that fell under the scope of that law, of which 562 reports were confirmed, resulting in the removal of 1,047 items. This was a marked increase from previous reporting periods in which the numbers of overall reports from users and agencies were under 1000. These numbers are all but insignificant in relation to the amount of content that is regularly removed by the platform's automated systems. Nevertheless, the data made available in response to the NetzDG law shows that there is an evident trend for increased engagement from users, civil society and public institutions.

The very low numbers of appeals to Facebook removals would seem to indicate that there are few who feel the removal of their content was unjustified. As with YouTube, some appeals can be made with just a click and users receive adequate notification as to why their page was blocked or content removed. However again with "legal removals" and those where there are "extreme safety concerns", this was not the case as only "eligible" removals can be appealed. This has been pointed to as problematic on freedom of expression grounds by EFF (Gebhart, 2019).

2.2.3.3 Instagram/IGTV

Instagram shares its content moderation systems with Facebook as part of the same parent company. IGTV is a dissociable section of Instagram but is fully integrated in that it is accessed through the app and via the same login. Nevertheless, its removals are reported separately in the company's transparency reports. It also submits a separate report on the implementation of the NetzDG law. The platform was not initially an independent signatory to the Code of Conduct and therefore not reported on in the earlier monitoring reports. The monitoring round conducted in December 2019 and reported on in June 2020 showed that Instagram

removed 91.8% of the content notified by the monitors within 24 hours. As described for Facebook above, we aggregated the removals and appeals data in the Community Standards Enforcement Report across the relevant categories. For Instagram we found the following:

- Instagram removed nearly 141 million items of content in the first quarter of 2020 for violations in the categories relevant to the AVMSD. Only 0.05% of those decisions were appealed and 18% of those appeals were upheld.
- Most of the content removed was detected by automated systems before it was observed by users, but this ratio was lower than on Facebook. In the adult and child nudity and sexual activity categories over 90% was caught by automatic systems in the first quarter of 2020. However, in arguably less clear-cut categories this was much lower. Automated systems were responsible for less than 50% of the hate speech-related removals in the last quarter of 2019 and the first quarter of 2020, for example.
- There is a clear increase in the volume of content being removed on Instagram in the relevant areas, which may be due to an increase in volume of violating content or be a result of more rigorous detection and reporting.

Instagram does not report on its trusted flaggers, though clearly user flagging still plays a very important role in its detection and content moderation systems. The platform only started reporting in relation to the NetzDG law in 2019 and it received only a total of 511 reports that year, with the vast majority coming from users rather than from agencies. It may be that the civil society and institutional engagement with this platform is not yet as well developed as it is with Facebook and YouTube.

In terms of balancing the kind of protection sought by the AVMSD and freedom of expression, the evidence on Instagram's mere 0.05% appeals would suggest that there are few users who feel their content was removed unfairly. However, the EFF has also noted that the platform has not committed to providing users with information on the reason their content was removed (Gebhart, 2019) and we could not find evidence that such information was provided. This might inhibit users from appealing decisions to remove their content.

2.2.3.4 TikTok

TikTok's first transparency report from 2019 covers only takedowns stemming from government requests and not removals based on the community guidelines. However, in 2020 it appears to have invested in increasing its reporting and engagement on content moderation and user protection. TikTok published a second, more detailed transparency report in July 2020, which referred to a new content moderation system that was rolled out at the end of 2019. It reported removing 1% of its content in the second half of 2019. Of these, 98.2% were removed proactively before users reported that content, and 89.4% before the content was viewed. Like others, TikTok uses a combination of flagging systems, including automated detection. As of September 2020 the company also had human monitors in Singapore, Dublin and San Francisco who review content flagged by users or identified by the automated systems as needing human assessment. These human moderators also review appeals and base decisions on detailed guidance created by topic experts within the company. The company has a US Content Advisory Council but has not yet instituted others in other regions.

TikTok became a signatory to the Code of Conduct on Hate Speech on 22 June 2020 and has yet to be included in a monitoring round. According to its July 2020 transparency report, however, only 1% of the content it removed was hate speech content. Approximately a quarter was for adult nudity and another quarter on the grounds of child safety, such as content depicting engaging in dangerous behaviour. TikTok does not seem to have reached the required threshold for application of the German NetzDG law and has not been monitored by the EFF.

2.2.3.5 Vimeo

Vimeo differs from the other cases in this section in that its service is aimed more at sharing content produced by professionals and it is not supported by advertising. Its community of users contains many who pay for a subscription or pay-per-view content and it requires registration and login in order to view content on the platform (though uploaders can use Vimeo to embed their own content in other places). It is a smaller company and has a smaller user base. Nevertheless, Vimeo does engage in both proactive and reactive content moderation with a mix of automated and human reviewing.

Vimeo uses third-party services for automatic detection and removal of CSEA and terrorist content, using Thorn and ActiveFence respectively. The company assesses the effectiveness of these by monitoring the number of incidents of such content being flagged by their users. They also report using automated systems for 'simpler' content issues such as spam and copyright but relies primarily on human reviewers for other areas, such as hate speech. Though they maintain information on both automated and human flagging and takedown, as well as appeals against those decisions, at the time of writing they were not producing transparency reports. Their internal monitoring of the outcomes of their measures is used to further refine the detailed guidance that is used by their human reviewers and develop new policies in response to current developments, such as on Covid-related disinformation.

2.2.3.6 Automatic AVMSD implementation

The most notable finding from the five case studies examined so far is the extensive reliance on automated means for detecting and removing violations relevant to the provisions of the AVMSD.

All of these platforms were identified in the previous section as having extensive and detailed community guidelines that largely complied already with the provisions of the AVMSD. Having clear and thorough terms and guidelines for both user-generated content and advertising can be seen as the first step in adherence to the provisions of Article 28b. They form the grounds upon which many of the other measures foreseen in the AVMSD are based, especially the flagging and removal of content. However, the use of automated means to detect and remove content does not amount to the kind of co-regulation through codes of conduct called for in Article 4a of the Directive. They are not based on codes that have been "broadly accepted by the main stakeholders" at national levels. They are instead internal content moderation practices based on guidance unique to the individual companies, except in relation to child sexual exploitation and terrorist content where there is cooperation among companies and with law enforcement.

Efforts to combat CSEA and terrorist content are global. In the context of national and international law, the WePROTECT Global Alliance and the Internet Watch Foundation each bring together industry, civil society and public institutions and work with law enforcement and governments. All five companies covered in the case studies above are members of the WePROTECT Global Alliance, which sets standards for intervention and governance. All but Vimeo are also members of the Internet Watch Foundation, which facilitates detection and actively monitors content and activity online for CSEA. The Foundation reported in its 2019 Annual Report that "video hosting channels" and "social network sites" each only amounted to less than 1% of the abuse they identified (IWF, 2019). This would seem to indicate that the measures being taken by VSPs to rapidly identify, remove and report CSEA content and to prevent behaviour that could lead to CSEA have some effect in that **they are not being used as main vehicles for this criminal activity.** Nevertheless, the volume of content being reported as removed by the larger platforms remains a cause for concern.

YouTube, Facebook and Instagram are all members of the Global Internet Forum to Counter Terrorism (GIFCT) and Vimeo had applied to join right before the Covid-19 crisis. As of 2020, the GIFCT reported having a database of over 300,000 unique hashes, 50,000 of which were video hashes. According to GIFCT's transparency report published in July 2020, only 0.1% of the terrorist content it had in its database was an imminent threat, while 72% was the glorification of terrorist acts (GIFCT, 2020). The data covered above

from **the larger VSPs shows effectiveness at identifying and removing such glorification and other content, however there is not data to show whether there has been an overall decline of use of these platforms by terrorists or reduction in terrorist activities.** Many smaller VSPs do not provide data even on removals.

The transparency reports and other reports we drew upon in the cases above provide a useful insight into the use of the flagging and complaints measures foreseen in Article 28b(3), and provide some indicators of effectiveness to draw upon in relation to the flagging and takedown of content. For those that track appeals and their outcomes, these reports also give an indication of the effectiveness of their measures for handling user complaints about their moderation of content. **However, the speed and volume at which content is removed or the numbers of appeals upheld only tell part of the story.** The extensive use of automated measures presents a challenge for the national regulators charged with assessing the measures taken by the VSPs because of the sophistication and continual evolution of such systems. **Currently only the largest VSPs are reporting regularly on content moderation, leaving a large gap in terms of assessing the effectiveness of many smaller VSPs** in the kinds of protection that rely on content identification and removal. There is even less evidence on the effectiveness of design features aimed at protecting minors such as age verification, ratings or parental controls. Only a handful of tests of such systems on individual platforms have been conducted by civil society or academic groups (see for example in Wilson, 2020). Overall, there remains a deficit in the information available for assessing the effectiveness of measures taken by VSPs.

2.3 Mapping of existing and planned legislative and co-regulatory systems

The section in brief

In all the Member States that we were able to examine and in the UK, the systems adopted or planned for the regulation of VSPs as called for in the AVMSD are a form of co-regulation.

We identified two categories of co-regulation in the approaches of Member States:

- **NRA-dependent** – where the responsibility and ability to implement the AVMSD is transferred from the government to the national regulatory authority (NRA) and the role of industry-led self-regulation is minimal.
- **Industry-led** – those systems in which an SRO or some kind of industry initiative was required

Among those approaches in which the NRAs are set to bear most of the responsibility for enforcing the provisions of the AVMSD, some are granted extensive monitoring and sanctioning powers, while in other cases, the NRAs are much more limited in terms of what they will be able to draw upon in order to investigate, assess and sanction.

Member States with long histories of co-regulation and well-resourced and experienced NRAs might be better placed for effective enforcement as their monitoring and sanctioning powers are already comprehensive and clear. In other cases, there appear to be gaps, such as limited information-gathering powers, or imprecise allocation of responsibility for generating codes of conduct.

Investigating the outcomes of existing mechanisms, we found:

- Transnationally co-ordinated self-regulation on commercial communications is well established based on mutual recognition and centralised cross-border cooperation on complaints.
- Transnational co-enforcement of clear laws against child sexual exploitation and abuse (CSEA) and terrorism involving cooperation among VSP providers, civil society groups, law enforcement and other state bodies is showing some evidence of effectiveness.
- Transnational co-regulation, albeit a hybrid, on hate speech can be seen in the combination of the EU level Code of Conduct and national level regulations granting sanctioning powers to Member State institutions over platforms originating within and outside the state.

Transnational and multi-stakeholder cooperation seems crucial to dealing with illegal content and behaviour, while the protection of minors appears to be more specific to individual platforms, though multiple forums for sharing best practices and establishing principles exist.

Smaller VSPs are not participating transnationally to the same or even to a comparable extent as the larger ones that are setting the standards and investing in technological solutions. Other players are also missing, such as intermediaries placing ads on the open web from cooperation on commercial communications or freedom of expression advocacy groups from cooperative efforts to monitor VSP handling of hate speech.

2.3.1 Overview/intro

The use of self- and co-regulation has long been encouraged by the AVMSD, but one of the novelties in the 2018 revision was the inclusion of Article 4a, which sets out criteria for how Member States should design and use codes of conduct. The article states:

“Those codes shall:

(a) be such that they are broadly accepted by the main stakeholders in the Member States concerned;

(b) clearly and unambiguously set out their objectives;

(c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and

(d) provide for effective enforcement including effective and proportionate sanctions.”

The fostering of codes is not solely the purview of Member States, however. The Directive also foresees a role for the European Commission. It *“may foster self-regulation through Union codes of conduct drawn up by media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations,”* though without prejudice to national level codes.

The provisions on VSPs in Article 28b call for co-regulation to be used as the means through which Member States ensure that VSPs protect users (Art. 28b(1)) through a variety of measures (Art 28b(3)). The fostering of self-regulation through codes of conduct is called for along with the use of co-regulation specifically for reducing the exposure of children to commercial communication promoting HFSS food and beverage. The Directive gives some indication as to the role of national regulatory authorities in co-regulation by stating in Art 28b(5) that *“Member States shall establish the necessary mechanisms to assess the appropriateness of the measures referred to in paragraph 3 taken by video-sharing platform providers. Member States shall entrust the assessment of those measures to the national regulatory authorities or bodies.”* It also requires Member States to ensure that there are mechanisms for out-of-court redress and the settling of disputes between users and VSPs (Art. 28b(7)) as well as judicial process (Art. 28b(8)).

Through the European Regulators Group (ERGA), the Member States’ national regulatory authorities have set out the role they expect to play in implementing this part of the Directive in the ‘Framework for Effective Co-regulation of Video Sharing Platforms’ (ERGA, 2018). They put forward a set of principles and elaborated on how they applied to VSPs, including what questions regulators might need to seek to answer. In their vision, VSPs should be transparent about their policies and create accessible and effective mechanisms for handling complaints from users. They also state that the “NRA should routinely have visibility of the VSPs’ measures taken, and the outcomes of those measures,” and “may ultimately need to “step in”, if the measures taken by VSPs themselves are found to be inappropriate or inadequate.” Though ERGA’s Framework was not meant to be prescriptive, it gives an indication of the level of involvement the regulators would like to have in the co-regulatory systems set up by the Member States.

Some of the provisions in Article 28b relate to advertising standards and require Member States to ensure that VSPs comply with the advertising standards in Article 9(1) of the Directive and foster their engagement with self-regulatory codes on alcohol advertising and advertising to children. Advertising self-regulatory organisations exist in the vast majority of Member States. During the drafting of the revisions to the AVMSD, the position of the European Advertising Standards Alliance, which represents these organisations, was that their members already ensured a level playing field in the enforcement of advertising standards and that

the Directive should rely on existing systems while allowing them to grow and develop as needed (EASA, 2015). There are already codes of conduct on advertising standards at the Member State, the European and the global level.

Member State governments, national regulatory authorities, existing self-regulatory bodies, new self-regulatory bodies, and the European Commission all have potential roles to play in the implementation of the provisions of the AVMSD related to VSPs. Many are already involved in the governance of VSPs in areas that are covered by the Directive and, as described in the previous section, there are already a number of collaborative initiatives addressing the types of harm the Directive aims to prevent.

In this chapter, we first map the existing and planned mechanisms for governing VSPs in the areas covered by the AVMSD within Member States. We examine them in relation to models of regulation, co-regulation and self-regulation, which are elaborated on in the following section. We categorise and analyse these approaches, providing more detail through a series of 10 case studies. We then look more closely at the outcomes and impact of existing approaches that deal with the types of harm covered by the AVMSD.

2.3.2 Models of regulation and governance

In recent years there has been extensive scholarly work on platform governance, and this body of work rests on a long tradition of work on media regulation and governance. From these, often overlapping bodies of literature, we identify the characteristics of different models. Based on the key features, we developed the guiding framework used to map the existing and planned approaches in the Member States.

Scholars generally define models based on the intensity of state intervention. Some describe three distinct categories. Gorwa (2019) draws distinctions among self-governance, external governance and co-governance models. Rochefort (2020), similarly, distinguishes among three policy alternatives labelled as industry self-regulation, limited government regulation and comprehensive government regulation. Others trace a spectrum or continuum of multiple models with less clear divisions. Latzer, Saurwein and Just (2019) argue that between the market mechanisms at one end of the continuum and command-and-control regulation at the other, there are several alternative modes of governance: self-regulation by individual companies; collective self-regulation by industry branches, and co-regulation. Marsden (2011) proposes twelve ideal types of self- and co-regulation. The regulatory schemes range from 'soft' unenforced self-organisation with just an informal exchange of government involvement to a form close to regulation.

The Directive refers to self-regulation and co-regulation specifically and associates the development and application of codes with each of these. Though there may be other variations along a wider continuum, the Directive seems to understand self-regulation as a collective or industry form of governance. It does not prescribe the extent of state involvement in a co-regulatory system but does set out a role for national regulatory authorities and affirms their independence, indicating an expectation of limited government involvement. We therefore elaborate further definitions of self- and co-regulation as we have understood them in this study in relation to VSPs.

2.3.2.1 Self-regulation

Platforms can be understood as self-regulating systems that act independently but also in collaboration with other platforms to establish industry standards (Finck, 2018). Approaches solely internal to the platforms raise concerns about platform power (Cammaerts and Mansell, 2020) and it has been argued that such "solo-regulation" is particularly inappropriate for platforms where it is necessary to achieve a balance between rights of expression rights and other rights and interests (Milosavljević and Broughton Micova, 2018). We therefore make a distinction between **measures that are internal to the platforms**, such as enforcement of community guidelines, and **self-regulation, which involves collaboration with other platforms and actors external to the platforms**. We adopt the definition set out in the 2016

Interinstitutional Agreement on Better Law-Making.³¹ The Agreement states, “self-regulation means the possibility for economic operators, the two sides of industry, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines...” Two characteristics are critical in assessing self-regulatory systems: the incentives for businesses to participate and the extent to which there can be involvement of other stakeholders.

Self-regulation that revolves around a ‘code of conduct’, as is foreseen in the AVMSD, can be developed and adopted voluntarily or the creation of a code can be mandated by public authorities. A credible threat of statutory intervention by public authorities can also provide an incentive for businesses to collaborate in self-regulatory codes and enforcement bodies. In the Interinstitutional Agreement, for example, the EU institutions “reserve the right to adopt a legislative act when it concerns an area for which the EU has competence”. In relation to some online harm it has been shown that public involvement in self-regulatory systems is limited and participating firms are not accountable directly to public authorities (Rubinstein, 2018). The extreme asymmetry of information between platform owners, on the one hand, and public authorities and other stakeholders can be a significant barrier to their involvement in self-regulatory systems. We therefore see the level of transparency as a key indicator of the potential for wider participation in self-regulation.

2.3.2.2 Co-regulation

In co-regulation, the regulatory role is shared between stakeholders and the government or the national regulatory authorities or bodies. According to the Interinstitutional Agreement on Better Law-making, “co-regulation is a mechanism whereby attaining the objectives laid down in a legislative act is entrusted to parties which are recognised in the field (economic operators, social partners, non-governmental organisations, etc.) The basic legislative act therefore defines the framework and extent of the co-regulation. The parties concerned are then able to conclude voluntary agreements between themselves in order to achieve the objectives of the legislative act.” In order for co-regulation to work, command-and-control regulation must exist as a possibility in the background providing those to be regulated with a motivation to cooperate (Schulz and Held, 2004).

The role of the relevant public authorities can include formal approval, direct control and accreditation of organisations/norms (Cannon and Chung, 2014). Public authorities can take part in all stages: from the definition of the regulatory framework to the review mechanisms. A government agency or public body such as a national regulatory authority may devise goals and desired outcomes but leave the industry with the task of implementing particular solutions to achieve those outcomes and industry standards. The solution devised may be only recognised by the government or public body or be given a legal mandate. Alternatively, government and industry could collaborate throughout each step of governance and perform every task with the other’s input. For example, a government entity and an industry trade association might negotiate the proper regulatory goals, collaborate on the drafting of standards, and work cooperatively to enforce the standards against specific firms that violate them. In co-regulation, government or public bodies often serve as backstops in the enforcement of industry-agreed standards or codes, providing additional enforcement capacity as needed or second instance adjudication.

Key defining features of the variations of co-regulation are, therefore, the nature and extent of state involvement and the allocation of responsibilities for standard setting and enforcement between the industry self-regulatory body and the state or public authority. A state or public body may also be involved in monitoring or funding a self-regulatory body. The level of transparency is also an important characteristic in

³¹ The full title is the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, but we use the short form here for the sake of readability. It can be found at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512%2801%29>

co-regulation, particularly in relation to online platforms. A co-regulatory system for platforms should involve data sharing to allow regulators to acquire the necessary information and understand whether platforms enforce the determined standards (Finck, 2018), but the exact nature of the transparency will likely vary.

2.3.2.3 Framework for mapping self- and co-regulation

Based on the above understanding of self- and co-regulation, we devised a framework for mapping the existing and, where possible, the planned approaches to implementing the provisions related to VSPs in the AVMSD, specifically Article 28b, in Member States. Through a number of more detailed indicators, the mapping covered the following:

- allocation of responsibilities for sanctioning and monitoring among a national regulatory, a self-regulatory body, and any other institution;
- the capacity of and key powers of any self-regulatory body involved and of any other body charged with monitoring;
- any state involvement in financing of self-regulatory institutions;
- the genesis of Codes of conduct - whether stipulated in law, or solely industry-led;
- the handling of complaints about measures taken by platforms;
- overall transparency and the extent to which bodies in the system can access information held by the platform.

We aimed to map all Member States and the UK, which is implementing the AVMSD in line with its Withdrawal Agreement. National experts contributed information for this purpose through questionnaires and we supplemented this through additional desk research on each Member State. However, in several Member States existing regulatory frameworks did not cover VSPs and/or transposition of the AVMSD was not advanced enough to have produced a plan for its implementation that we could examine. The results in the following section do not present a complete picture of how VSPs will be dealt with by each Member State. Our intention was not to chart transposition or depict the full regulatory landscape in the Member States, but to understand the commonalities and differences between regulatory approaches and come up with underlying characteristics. Our findings do identify two categories of approach distinguished by the role that NRAs are expected to play. The 10 country case studies attempt to describe the framework in each and show the diversity that exists within the same broad category of co-regulation in this area.

2.3.3 Mapping of existing and planned co-regulatory and self-regulatory systems

Here we present findings on key characteristics of the systems in place or in an advanced stage of legislative drafting. In all the Member States that we were able to include here and in the UK³², the systems adopted or planned for the regulation of VSPs as called for in the AVMSD are a form of co-regulation. We elaborate on two categories that we identified through the mapping that differentiate these forms of co-regulation based on the relative roles of national regulatory authorities (NRAs) and industry-led bodies or processes. In most of the countries presented here, there are well established self-regulatory organisations (SROs) for upholding advertising standards run by the advertising industries. In some countries these are part of co-regulatory systems that include a statutory backstop and in others not. These do have a role to play in the enforcement of the qualitative standards for advertising set out in the Directive across all kinds of services. These are discussed in section 2.3.4 on the outcomes and lessons from established mechanisms. The findings presented here are drawn from our mapping of the systems in place or planned through which Member States will ensure that VSPs are complying with the provisions of Article 28b.

³² We attempted to gain information for all Member States and the UK, however many Member States did not have existing frameworks for regulating VSPs and due to the COVID-19 crisis and other factors not all countries were far enough along in their transposition of the Directive for us to see what was planned. Those for which there was not enough verifiable information on an existing or planned system were therefore left out of the mapping.

2.3.3.1 NRA-Dependent and Industry-Intensive Co-Regulation.

As we discussed above, there can be numerous variations of co-regulation. Some involve a significant role for the state, others an independent national regulatory authority (NRA) or a self-regulatory organisation (SRO) with an extensive mandate. By mapping the systems in place or planned across Europe against the indicators listed above, we were able to establish two archetypes of the co-regulatory models being deployed for the implementation of the AVMSD.

NRA-dependent co-regulation

The first category we identified were those systems that are heavily dependent on an NRA, usually the media regulator or a converged communications regulator, but always the one also responsible for audiovisual media services. We found two exceptions. In Finland, the plan for implementing the AVMSD placed responsibility with an administrative body within a ministry, the National Audiovisual Institute. Under the German NetzDG law a State administrative body, the Federal Office of Justice, is responsible for sanctioning online services, including VSPs for failing to take measures to protect users from illegal content. In most countries, for example Croatia, Hungary and Italy, establishing the supervisory powers called for in the AVMSD is being achieved through the expansion of the powers of the existing NRA. In Ireland and France, the plans include creating a new NRA from the convergence of two existing ones. The defining characteristic of this category is that the responsibility and ability to implement the AVMSD is transferred from the government to the NRA and the role of industry-led self-regulation is minimal. These systems may involve SROs, but these have direct relationships with the NRAs (as opposed to governments or other state authorities) and in these relationships the NRAs have more dominant roles.

In this category, NRAs are the drafters of codes of conduct or must approve or recognise them in some way in order for them to be valid. In Croatia, Finland and the Netherlands, for example, codes of conduct must be approved by the respective regulator. In Estonia, the law allows for the Minister to come up with a code should the industry fail to do so. SROs may be allowed but not be required, and NRAs may have to recognise or designate any SRO that is established, such as is the case in Hungary and Czechia, where they must be approved. SROs may have only a consultative role in developing codes and advising the NRA.

The systems in this category allocate monitoring power and sanctioning power to NRAs, including the power to require information from VSP providers. Sanctions can range from the compliance notices and warnings planned in the Irish system to the significant financial penalties planned in Austria or in place in Germany and Hungary.

The regulatory framework may foresee regular reporting obligations, transparency rules, or ad hoc access to information. In some cases, legislators have already put in place strict reporting obligations, such as in Germany under the NetzDG, and in Italy under its regulator's Hate Speech Regulation. In addition to reporting on notice and takedowns, and any appeals, these reports must describe the organisation of internal systems, technical equipment and capacity, and the training and competence level of content moderation staff. In Lithuania, the NRA will be able to review user complaints, while in Slovenia, it will be able to settle disputes between VSP services and users.

Table 11 - Key differentiating features of NRA-dependent and industry-intensive co-regulation

NRA-dependent co-regulation	Industry-intensive co-regulation
NRA drafts or approves codes	Existence of an SRO is foreseen in law

- NRA can recognise an SRO, but this is not required for the system to function
- NRA has monitoring power
- NRA has sanctioning power
- Transparency and/or reporting to the NRA is required
- SRO has mainly a consultative function
- Drafting of codes is an industry initiative and responsibility
- An SRO has some monitoring power
- SRO may have some sanctioning power
- Access to information from industry is not ensured

Source: Authors

Industry-intensive co-regulation

The second category of co-regulation we identified includes those systems in which an SRO or some kind of industry initiative was required. In these systems the creation of an SRO is mandated, such as in Bulgaria for the implementation of advertising rules. In this category, industry is expected to develop its own codes of conduct, possible through an SRO. In the Netherlands, for example, the NRA is to be charged with supervision, but VSPs are required to develop their own codes with buy-in from other stakeholders. In Lithuania, VSP providers can choose whether to develop their own national codes or to apply for themselves an EU level code. Though SROs being granted sanctioning power was very rare in the countries we studied, the UK plan allows for Ofcom to recognise an SRO and delegate monitoring and sanctioning power (though retaining the option to work in parallel). Another feature of this category was the lack of rules that ensured access to information held by VSPs. These systems appeared to rely on voluntary cooperation with requests for information or reports and gave little detail on what kinds of reports would be expected. The Bulgarian proposal, for example, contained no transparency or reporting requirements. Table 12 shows which country's systems we determined fell into each of the two categories.

Table 12 - NRA-dependent and industry-intensive co-regulation, EU-27 + UK

Country	NRA-dependent co-regulation	Industry-intensive co-regulation
Austria	✓	
Belgium (Flanders)	✓	
Bulgaria		✓
Croatia	✓	
Cyprus	✓	
Czechia	✓	
Denmark	✓	
Estonia	✓	

Finland	✓	
France	✓	
Germany	✓	
Hungary	✓	
Ireland	✓	
Italy	✓	
Lithuania		✓
Netherlands		✓
Romania	✓	
Slovenia	✓	
UK		✓

Source: Authors

While these categories are based on the mapping of the actual existing and planned systems, they are “ideal types”, so some systems will appear to sit between them or not have all the characteristics we have attributed to the category. **Though most of the systems can be classified as NRA-dependent, this does not imply that they are more stringent or likely to lead to stronger monitoring and enforcement.** It is not a reflection of “hard” or “soft” governance (Marsden, 2012). It is simply an indication of where the responsibilities and powers lie. Among those in each of these categories, the exact role of the NRAs varies as do the character and extent of their powers. In Table 13 below, we indicate the kinds of powers and responsibilities granted to the NRAs in each country.

Table 13 - Responsibilities and powers of NRAs, EU-27 + UK

Country	NRA	Monitoring responsibilities	Sanctioning power	Mixed power with SRO	Drafts codes
Austria	KommAustria	✓	✓	X	X
Bulgaria	Council for Electronic Media	✓	✓	X	X
Croatia	Electronic Media Council	✓	✓	X	X
Cyprus	Radio Television Authority	✓	✓	X	X

Czechia	Council for Radio and Television Broadcasting	✓	✓	✓	X
Denmark	Danish Radio and Television Board	✓	✓	X	X
Estonia	Estonian Consumer Protection and Technical Regulatory Authority	✓	X	X	X
Finland*	National Audiovisual Institute	✓	✓	X	X
France	Regulatory Authority for Audiovisual and Digital Communication	✓	✓	X	X
Germany*	State Media Authorities (under the Interstate Media Treaty); KMJ (under the Interstate Treaty on the Protection of Minors in Media); Federal Office of Justice or designated agency (under the NetzDG)	✓	✓	✓	X
Hungary	National Media and Infocommunications Authority	✓	✓	✓	X
Ireland	Media Commission	✓	✓	X	✓
Italy	AGCOM	✓	✓	X	X
Lithuania	Radio and Television Commission of Lithuania	✓	✓	X	X
Netherlands	Dutch Media Authority	✓	✓	✓	X

Romania	National Audiovisual Council	✓	✓	X	X
Slovenia	AKOS	✓	✓	X	X
UK	Ofcom	✓	✓	✓	X

Source: Authors

*Denotes state agency involvement. In the current German framework centred around NetzDG, a state administrative body, rather than national regulator is playing a supervisory role, whereas for the implementation of the Directive the state media authorities are expected to play a role. The Finnish National Audiovisual Institute appears largely responsible so is listed here but is an administrative body under the Ministry of Education.

Table 13 above shows that **all NRAs will be granted some monitoring power, and most will be responsible for sanctioning VSPs**. However, there remain differences. In the UK, this power can be delegated to an SRO if industry forms one and it is recognised by the NRA. The Lithuanian NRA's sanctioning powers are dependent on the involvement of a Journalistic Ethics Inspector within the Ministry of Interior. In the Estonian case, the proposed law does not appear to add any additional sanction options to those held by the NRA, which are minimal. The responsibility for drafting codes of conduct primarily lies with industry, as only in Ireland's plans did we find the NRA given this responsibility. Nevertheless, as described above, in some cases the NRAs must approve codes developed by industry. They are tasked in many countries, such as in Croatia, France and Romania with "encouraging" the development of codes, particularly in relation to advertising and children's programming.

2.3.3.2 Case studies of existing and planned systems addressing VSPs

This section presents more detailed accounts of the systems for addressing VSPs that were in place or in sufficiently advanced stages of planning at the time of this study in 10 Member States. The cases were chosen to provide a geographic mix and based on the extent of available information in the Member States, while also including those that are expected to have jurisdiction over major VSPs. The accounts here take into consideration existing legislation as well as advanced drafts of legislation or officially adopted and publicised strategies for implementing the AVMSD. These case studies are not intended to assess transposition and at this stage of implementation detailed practices cannot yet be examined. Instead, they present the approaches being taken to co-regulation and the systems being designed. Each one first gives an overview of the regulatory framework in place or planned for VSPs and then specifies the level of state involvement through Government bodies in that framework and the co-regulatory system. In each study we then describe as much as possible the way responsibilities and powers have been allocated within their system, mainly between NRAs and self-regulatory or other institutions. Because access to information from VSPs is likely to be crucial for effective monitoring, we also identify what statutory obligations or other mechanism, if any, the Member State appears to have in place or plans in order ensure that access.

Bulgaria

A general overview of the regulatory framework

Bulgaria has started the process of transposing the AVMSD through amendments to the Law on Radio and Television.³³ The draft amending law includes the definition of the VSP from the Directive, as well as Articles 28 (1)(a) and 28 (1)(b) and stipulates industry-intensive co-regulation. VSP providers are encouraged to share best practices on co-regulation and relevant codes of conduct. The self-regulatory organisation is mandated in the draft law only in the area of advertising. VSP providers are obliged to comply with national

³³ See: <http://mc.government.bg/page.php?p=141&s=737&sp=0&t=0&z=0>

ethical rules for advertising and commercial communication developed by the National Council for Self-regulation and its Code of Conduct. A VSP provider that does not comply with a decision of the Ethics Commission of the National Council for Self-regulation can be sanctioned.

A characteristic of the Bulgarian draft law is that it stipulates a media literacy policy containing measures for the development of skills and knowledge that should enable citizens to make informed decisions, use media services and content in a safe way, and participate ethically and effectively in various forms of communication. The Minister of Culture, according to the draft law, must initiate and manage the activity for preparation of a national policy for media literacy and report to the European Commission on the implementation of media literacy measures. The Council for Electronic Media, the media regulator, must contribute to the development of media literacy in cooperation with a wide range of stakeholders, and collect information on the participation of the media service providers and VSPs in the implementation of the policy, using it to update the policy every three years.

Another peculiarity in the Bulgarian draft law is the procedure for penalising VSP providers by post or email if no legal representative or authorised person is present. VSP providers face sanctions of BGN 2 000-5 000 for violation of the provisions of the law. In the case of repeated violations, the sanctions can be doubled.

Level of state involvement

The draft law stipulates that the Council for Electronic Media shall be functionally independent of the Council of Ministers, as well as from any other public authority body, public or private organisation. Under the draft law, there is a low level of direct state involvement in the implementation of the legal provisions.

Allocation of responsibilities, including enforcement powers

The Council for Electronic Media³⁴ will have monitoring responsibilities to check whether VSP providers under Bulgarian jurisdiction are fully complying with the new legislative requirements. It will be obliged to keep a list of VSP providers established in Bulgaria. The Council also gives deadlines to VSPs for removing harmful content. VSP providers will have to publish general terms that include information of the name, registered office and address, conditions for using the service, basic rights and obligations for use, description of protective measures, as well as conditions and procedure for restricting the access to content in the case of violations by users.

The general terms must be drawn up in coordination with the Council. Should the general terms not meet the legislative requirements, the Council must ask the VSP provider to rectify the shortcomings.

Self-regulatory organisations will not have to be recognised by the Council for Electronic Media in order to operate. The National Council for Self-regulation (NCSR)³⁵, which according to the draft law will have new responsibilities in the co-regulatory process, is a non-profit organisation founded by the Bulgarian Association of Advertisers, the Association of the Advertising Agencies - Bulgaria and the Association of the Bulgarian Radio- and TV operators. Membership of the NCSR is voluntary.

The National Ethical Standards of the NCSR are already used as a basis for self-regulation in advertising and commercial communications. The NCSR handles complaints related to content that is misleading, offensive or inappropriate for children or an advertisement and any other form of commercial communication. It also reviews complaints for any breach of the rules for online behavioural advertising. These are designed to ensure transparency and user control on the way third parties collect and use information online with the

³⁴ See: <https://www.cem.bg/>

³⁵ See: <https://www.nss-bg.org/en>

objective of delivering advertisements based on the behaviours and the interests of the internet users.³⁶ The NCSR has reviewed complaints from users about advertisements on Facebook. However, as with advertising on other media, during the complaint resolution procedure, it is the advertiser who is subject to the procedure.³⁷

Transparency/information access (for regulators and/or other stakeholders)

The draft law does not contain any particular transparency requirements for VSP providers or for regulators. This means that no access to information from VSPs is ensured.

Czechia

A general overview of the regulatory framework

Czechia will transpose the AVMSD provisions with the draft Act on the Services of Video-Sharing Platforms.³⁸ The purpose of the legislation is to introduce rules that will protect users from hate speech and incitement to violence or terrorism, and prevent children from content that could disrupt their development. The Act also aims to strengthen existing consumer protection against the inadmissible content of commercial communications. The law will prohibit teleshopping and product placement in children's programmes. Protection of personal data of minors will also be guaranteed. The Czech legislators have taken over the most important definitions, including that of a VSP, from the Directive. The law will transpose the text of Article 28b(1) and 28b(2) of the AVMSD.³⁹ The draft regulatory framework sets out in detail the process of co-regulation, and the powers and responsibilities of self-regulatory bodies.

Level of state involvement

According to the criteria for self- and co-regulation in the draft law, the level of state involvement is comparatively low. The body responsible for facilitating the development of self-regulation and for collaborating with self-regulatory bodies is the audiovisual regulator, the Council for Radio and Television Broadcasting.⁴⁰

Allocation of responsibilities including enforcement powers

The existing responsibilities of the Council for Radio and Television Broadcasting to monitor compliance with legal regulations in the field of radio and television broadcasting, keep registers of broadcasters, impose penalties, and monitor operations will be extended to VSPs. The Council will be obliged to maintain and update a list of VSP providers established in Czechia, to monitor the fulfilment of the legal obligations and to impose remedial measures. In particular, the Council will be asked to monitor whether providers have put in place functional measures to protect against violence and hate speech, to protect against incitement to terrorism and to protect minors from harmful content. The Council will have to check the appropriateness of protection measures in line with 28b(5) of the AVMSD and, if necessary, communicate its recommendations to the VSP service provider. The Council will also have sanctioning power and impose fines in the range of CZK 100 000 to CZK 500 000.

According to the draft law, the Council will be required to cooperate with self-regulatory bodies provided that a self-regulatory body requests such cooperation in writing, and to publish a list of the cooperating self-

³⁶ See: <https://www.nss-bq.org/en/on-kodeks>

³⁷ See: Complaint regarding Facebook communication of the Mintis brand available at: <https://www.nss-bq.org/verdict>

³⁸ See: <https://apps.odok.cz/veklep-detail?pid=ALBSBK2HKTVZ>

³⁹ See: <https://apps.odok.cz/veklep-detail?pid=ALBSBK2HKTVZ>

⁴⁰ See: <https://www.rtv.cz/en/>

regulatory bodies. At the request of self-regulatory bodies, the Council will also make recommendations on their internal rules, in particular on the protection of minors, through a code of ethics.

In doing so, the Council could draw on its own experience in facilitating the development of self-regulation in the areas of broadcasting and advertising. There are two organisation on the Council's list of self-regulatory bodies:⁴¹ the Association of Television Organisations (ATO) and SPIR, a professional association active in the field of internet advertising. Self-regulation in advertising is more developed, with an established code of ethics in the area of commercial communication.⁴²

The draft law states that any existing audiovisual industry alliance, organisation or institution may ask the Council to be included in co-regulatory mechanisms. However, in order to qualify to be included in co-regulation, industry alliances must have been in existence for at least two years, have a code of ethics and prove a history of self-regulation decisions.

The Council will take into account the opinion of a relevant self-regulatory body held on the list of self-regulatory bodies when it determines the amount of the fines. It approves self-regulatory bodies and their codes of ethics and grants, and can revoke the authorisation to carry out co-regulation.

If the Council agrees that the applicant could carry out co-regulation, it will invite the applicant to offer all major providers of the same service⁴³ the possibility of complying with its code of ethics and co-regulation rules. This means that non-members will be able to accept co-regulation rules and pay a fee to the self-regulatory body. Authorisation to carry out co-regulation will be granted for a maximum period of 10 years. The delegated self-regulatory body will have responsibilities for monitoring the service providers represented and for providing a legal opinion. It will handle complaints made against service providers, and prepare and submit to the Council for approval, proposals for changes to the code of ethics or other co-regulation rules. An authorised self-regulatory body also has sanctioning power.

Transparency/information access (for regulators and/or other stakeholders)

The Czech legislators are not going beyond the scope of AVMSD to ask for more strict transparency measures on the part of VSPs. The VSP providers are obliged to report on remedial measures within a specified timeframe.

Denmark

A general overview of the legislation

Denmark transposed the AVMSD provisions on VSPs with the Act amending the Radio and Television Act and the Film Act⁴⁴ and has drafted an Order on Video-Sharing Platform Services⁴⁵ that further integrates the directive in domestic regulation. With this legislation, Denmark has introduced rules for VSPs that mirror those in Article 28b of the Directive. Protection of personal data of minors is also guaranteed. Danish legislators have adopted the same terminology employed in the AVMSD for the most important definitions, including that on VSP.

⁴¹ See: <https://www.rtv.cz/en/static/broadcasters/list-of-service-providers.htm>

⁴² See: <https://aka.cz/pro-cleny/eticke-kodexy/>

⁴³ The main provider of the same service is considered to be the provider whose services are received by a significant part of the population of the territory; the condition of a significant part of the population receiving a service by is considered to be fulfilled if the service in the territory where it is available is used by at least 20% of those inhabitants for whom the service is intended according to its programme composition or offer.

⁴⁴ See: https://www.ft.dk/ripdf/samling/20191/lovforslag/l108/20191_l108_som_vedtaget.pdf

⁴⁵ See: <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2020&num=198>

One of the features of the Danish legislative framework is that the Act and the Order do not provide provisions on co-regulation.

Level of state involvement

The Act amending the Radio and Television Act and the Film Act set out a broad legal framework for regulating VSPs. Within the meaning of the Act, further legislative power is given to the Ministry of Culture. The Minister of Culture has the authority to additionally formulate and enact bylaws that will further specify the responsibilities of VSPs in terms of protection of minors and the general public from harmful and illegal content.

Specifically, the law mandates the Minister of Culture to enact bylaws that regulate qualifying criteria for registering VSPs in the National Register of VSPs and criteria that determine whether a VSP falls within Danish jurisdiction. Furthermore, the Ministry must enact rules that will determine the application of the essential functionality criterion to a VSP. Most importantly, regarding the protection of minors and the general public from illegal and harmful content, the Minister of Culture is required to specify further measures (in addition to the general provisions laid down in the law) and corresponding procedures that VSPs must implement to protect the public from content that encourages violence or hatred, or content whose dissemination constitutes a criminal act in connection with public calls to commit terrorist acts, or in connection with child pornography, and offences in connection with racism and xenophobia.

Allocation of responsibilities, including enforcement powers

The main regulatory power lies with the Radio and Television Board, which has monitoring responsibilities. The Board also has the power to sanction a VSP service with temporary or permanent termination for grossly or repeatedly infringement of the rules. VSPs can appeal against the decision in the relevant court.

The Board establishes and maintains an up-to-date list of VSP providers under the purview of Danish authorities under the rules of the Act. It also examines appeals in the event of disagreement between VSP providers and users about the appropriate measures that providers are obliged to take.

The Danish legislation sets out what type of illegal content is considered to be harmful to the general public and/or minors and requires VSPs to introduce measures that will enable users to report and flag such content, in accordance with Article 28b of the AVMSD. In particular, any discrimination under Article 21 of the EU Charter of Fundamental Rights is prohibited. VSP providers also have to protect the general public from programmes, user-generated videos, advertising, sponsorship and product placement the dissemination of which constitutes a criminal offence as public provocation to commit acts of terrorism, child pornography and offences related to racism and xenophobia as laid down in the Penal Code.

Transparency/information access (for regulators and/or other stakeholders)

The Radio and Television Board may request information, documents and written opinions from the VSP providers on the operation of the business. This procedure is a way for the Board to verify if a VSP complies with the rules of the Act. The Board may set a deadline for submission of such information.

France

A general overview of the regulatory framework

France intends to complete the transposition of the AVMSD by adopting a Law on Audiovisual Communication and Cultural Sovereignty.⁴⁶ The transposition has been delayed because of Covid-19 crisis until 1 January 2021, a date confirmed by the French President.⁴⁷ The most urgent measures can be passed by ordinance⁴⁸. In October 2020, the French Parliament adopted two articles that empower the Government to transpose by ordinance the AVMSD provisions that do not pertain to VSPs.⁴⁹

The CSA (High Council for Audiovisual), which is the national audiovisual regulatory authority, and the Hadopi (High Authority for the Dissemination of Works and the Protection of Rights on the Internet) are planned to be merged to become the Autorité de régulation de la communication audiovisuelle et numérique (Regulatory Authority for Audiovisual and Digital Communication, i.e. ARCOM).⁵⁰

The draft law will transpose Article 28b(1) and Article 28b(2) from the AVMSD. It also states that personal data of minors should not be processed for commercial purposes, which is in line with Article 6a(2) of the AVMSD. According to the draft law, VSPs will be encouraged to adopt codes of good conduct aimed at effectively reducing children's exposure to audiovisual commercial communications relating to food or drink containing nutrients or substances with a negative nutritional or physiological effect, in particular fats, trans fatty acids, salt or sodium and sugars.

VSPs were also supposed to be captured by Law n. 2020-766 of June 24, 2020, also known as the Avia law. However, the French Constitutional Court struck down most of the provisions of this controversial law. The Avia law was aimed at combating hate speech online and it was designed to oblige platforms to remove flagged "obviously unlawful" hate speech content within 24 hours, flagged terrorist propaganda and child sexual abuse within one hour. The Constitutional Court argued the legislation "undermines freedom of expression and communication in a way that is not appropriate, necessary and proportionate to the aim pursued" making the text incompatible with the French constitution.⁵¹

France had previously adopted some rules on the takedown of illegal content in Law No. 2004-575 for Trust in the Digital Economy.⁵² The law obliges "persons whose activity is to offer access to communication services to the public online" to inform their users of the existence of technical means making it possible to restrict access to certain services. According to the law, any such natural or legal persons are obliged to put in place an easily accessible and visible system enabling anyone to bring illegal content to their attention, as well as to promptly inform competent public authorities promptly. The liability is guaranteed, as persons can be considered responsible for the information held only when they are made aware of the illegal content.

⁴⁶ See http://www.assemblee-nationale.fr/dyn/15/dossiers/communication_audiovisuel_et_souverainete_culturelle?etape=15-AN1

⁴⁷ See: <https://www.fr24news.com/fr/a/2020/05/la-france-promulgue-la-directive-avmsd-avant-la-fin-de-lannee.html>

⁴⁸ By giving additional competences to the Conseil Supérieur de l'Audiovisuel (CSA), the currently discussed project foresees the transposition of the following provisions of the AVMSD: Articles 3,4 and 22 (the protection of minors' data, from commercial communication and product placement); Article 4 (the conditions to regulate product placement); Article 9 (the exemptions for low turnover and low audience); Articles 10, 13, 16 and 21 (Provisions to make content more available for people with disabilities); Articles 13 and 14 (on the promotion of European and French expression audiovisual work), Article 19 (rules concerning measures for VSPs to tackle disinformation and obligations of AVMS from other Member States regarding the Country of Origin principle) and Articles 28 and 29 (concerning an agreement for new media chronology which will modify the contribution to cinematographic production regarding the operating times).

⁴⁹ See: <http://www.assemblee-nationale.fr/15/cr/2020-2021/20210010.asp> and http://www.assemblee-nationale.fr/dyn/15/textes/l15b3196_projet-loi

⁵⁰ See: <https://www.gouvernement.fr/en/france-medias-a-powerful-and-agile-public-audiovisual-service-in-the-face-of-digital-evolution>

⁵¹ See: https://www.epra.org/news_items/online-hate-in-france-the-law-avia-an-intensive-legislative-saga-for-a-heavily-censored-law

⁵² See: https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000002457442

Level of state involvement

The authorities are primarily involved in imposing sanctions in cases of non-compliance with the laws.

Allocation of responsibilities, including enforcement powers

According to the draft Law on Audiovisual Communication and Cultural Sovereignty, ARCOM will have to encourage VSP providers to adopt codes of good conduct. It will also publish annual reports on the implementation of the VSP services' obligation to ensure transparency to viewers in relation to content uploaded on to their platforms which contains commercial communications that they declare its nature so that it is transparent to viewers when audiovisual material contains commercial communications. ARCOM is also expected to report on the codes of good conduct adopted by VSP providers as well as on the appropriate measures put in place to protect users, including minors, from illegal and harmful content.

As part of its responsibilities, ARCOM will have to ensure that VSP providers respect the requirements provided for by decree of the Council of State about audiovisual commercial communications that they market, sell or organise themselves and take the appropriate measures to ensure that these rules are also respected for commercial audiovisual communications marketed, sold or organised by third parties.

The CSA already has monitoring responsibilities in relation to VSPs under Law No. 2018-1202 of 22 December 2018 on Combating the Manipulation of Information and encourages VSP providers to adopt codes of conduct.

Transparency/information access (for regulators and/or other stakeholders)

Under Law No. 2004-575 for Trust in the Digital Economy, the judicial authority may request information and data from service providers. Noncompliance with the legal obligations can be sanctioned by one-year imprisonment and a fine of EUR 75 000. Platforms are obliged to send the CSA an annual declaration on how they have met the legal obligations, specifying how they have implemented measures under Law No. 2018-1202 on the fight against the manipulation of information.

Germany

General overview of the regulatory framework

Germany is at the forefront of regulating social networks. The legislative framework on VSPs builds on a long-standing tradition of self- and co-regulation in advertising and media⁵³. Online content has traditionally been regulated by so-called 'regulated self-regulation', such as has been the case in relation to the protection of minors for the last two decades. The transposition of the AVMSD provisions for VSPs in Germany is being done under a legislative umbrella of several laws: the Network Enforcement Act (NetzDG), the Telemedia Act (TMG), the Interstate Treaty on the Protection of Minors in Media and the new Interstate Media Treaty⁵⁴, which is in the process of being formally adopted. A Law against Right-wing Extremism has also been proposed as a response to the right-wing terrorist attack on the Jewish community in 2019⁵⁵ and overlaps

⁵³ The German Press Council, as the oldest German instrument of media self-regulation was founded in 1956.

⁵⁴ See: <https://ec.europa.eu/growth/tools-databases/tris/de/search/?trisaction=search.detail&year=2020&num=26>

⁵⁵ See: https://www.bmjbv.de/SharedDocs/Artikel/DE/2020/021920_Kabinett_Bekaempfung_Rechtsextremismus_Hasskriminalitaet.html

is some ways with the aims of AMVSD, but it is not directly associated with the implementation of the directive.

Level of state involvement

The Network Enforcement Act (NetzDG) is so far the most ambitious attempt to regulate social networks, Germany has made it mandatory for the large social networks to remove obviously unlawful content within 24 hours after receiving a complaint. Under the law, which came into effect on January 1, 2018, social networks face fines of up to EUR 50 million for systemic failure to delete illegal content. NetzDG applies to large social networks⁵⁶ with at least 2 million registered users in Germany. Hence, NetzDG is not only applicable to VSPs, but also to other platforms. The law holds social networks accountable for enforcement of 22 statutes in the online space specified in the German criminal code. In addition, with the introduction of the law against right-wing extremism, the catalogue of criminal offences in the Criminal Code has been expanded to include criminal offences such as the threat of dangerous bodily harm.⁵⁷

Under the NetzDG, the state is directly regulating the implementation of legal provisions. Both the sanctioning and the supervisory power are delegated to a state administrative authority – the Federal Office of Justice.⁵⁸ Some social networks, among them Google, have questioned the independence of the Federal Office of Justice.⁵⁹ In July 2017, the Federal Office of Justice fined Facebook EUR 2 million for underreporting the number of complaints it had received about illegal content on its platform.⁶⁰

Allocation of responsibilities, including enforcement powers

Through the German compound legislation that implements the AVMSD for VSPs, monitoring responsibilities and sanctioning powers are allocated to different institutions, but the State Media Authorities, which is an umbrella of the 14 media authorities in Germany, has key role to ensure that VSP comply with the legal requirements.

In accordance with NetzDG, the monitoring of how complaints are handled is the responsibility of the senior management of social network providers. Compliance can be supervised by an agency tasked to do so by the Federal Office of Justice. Social networks can decide to pass on cases that are difficult to handle to a self-regulatory authority. If social networks rely on this option, they must agree to accept the decision of that institution as final. The first self-regulatory body licensed under this regime was the Association for Voluntary Self-Regulation of Digital Media Service Providers (FSM)⁶¹, which supports companies in complying with legal requirements for protection of minors.

Under the Interstate Treaty on the Protection of Minors in Media, monitoring responsibilities mainly lie with the Commission for the Protection of Minors in the Media (KJM)⁶², one of the four central commissions of the State media authorities, the national regulator. Under this law, the allocation of responsibilities to an institution of regulated self-regulation is also possible.

The State Media Authorities have oversight and sanctioning power under the State Media Treaty. The Interstate Media Treaty stipulates that VSPs must adhere to the rules on advertising and the rules on the

⁵⁶ Social networks are defined as "telemedia service providers which, for profit-making purposes, operate internet platforms which are designed to enable users to share any content with other users or to make such content available to the public."

⁵⁷ See: <https://www.bundestag.de/dokumente/textarchiv/2020/kw25-de-rechtsextremismus-701104>

⁵⁸ See: The Federal Office of Justice is the central service authority of the federal German judiciary.

⁵⁹ See: <https://www.bundestag.de/dokumente/textarchiv/2020/kw25-pa-recht-netzwerkdurchsetzung-699188>

⁶⁰ See: <https://www.dw.com/en/germany-fines-facebook-for-underreporting-hate-speech-complaints/a-49447820>

⁶¹ See: <https://www.fsm.de/en/netzdg>

⁶² See: <https://www.kjm-online.de/en/about-us>

protection of minors. Under this law, sanctioning power lies with the State Media Authorities. Under the same law, the arbitration of disputes between the complaints of users and VSP providers is to be handled by a consultation body set up by State Media Authorities. The German regulator regulates the details on the organisation the arbitration procedure and the costs in a joint statute. The Interstate Media Treaty stipulates that the Commission for Approval and Supervision (ZAK)⁶³, which is a central organ of the State Media Authorities and is responsible for oversight of VSP services in terms of the provisions that apply to advertising. VSP providers have to authorise person to receive service in Germany and inform ZAK.

The Telemedia Act stipulates a procedure for establishing and maintaining a procedure for reporting user complaints due to illegal content, as well as a procedure for reviewing and remedying such user complaints.

Transparency/information access (for regulators and/or other stakeholders)

NetzDG imposes stricter transparency requirements compared to legislation in other countries. Social networks are obliged to set up an effective complaint mechanism and have reporting obligations. They have to produce a German-language report every six months on how they have handled complaints. Yet, social networks such as Facebook and YouTube have different reporting formula under NetzDG, which has led to criticism on the lack of standardised reporting formats (Tworek & Leerssen, 2019). The reports must contain, among others, information on the volume of complaints and the decision-making practices. A fine can be imposed if the social network does not comply with its reporting duties. With the latest amendments to the NetzDG⁶⁴ adopted by the German government, there will be new information requirements for the transparency reports, such as reporting on automated procedures for finding and deleting illegal content. Social networks must establish an official domestic point of contact with the capacity to receive information requests from law enforcement authorities, to which it must respond within 48 hours of receipt. The point of contact must be able to process regulatory fines and take part in civil proceedings. Social networks must publish details of this person on their website.

According to the provisions in the Telemedia Act, in individual cases of violation of protected rights, the VSPs may be required by a court to disclose information about subscriber data they possess. The procedure for obtaining information from social networks, for example, about the identity of an offender will be simplified with the latest amendments to the Telemedia Act. Namely, the court dealing with the admissibility of data disclosure will be able to order social networks to disclose data⁶⁵.

Hungary

A general overview of the regulatory framework

Hungary transposed the AVMSD's provisions related to VSPs into national law by means of Act XXIV of 2020 on the Amendment of the E-Commerce Act CVIII 2001.⁶⁶ The Hungarian legislation encourages co-regulation with significant power for the NRA. A distinctive characteristic of the Hungarian regulatory framework is that it allows a professional self-regulatory body to receive financial support for tasks related to VSPs from the National Media and Infocommunications Authority (NMHH), the national regulator.⁶⁷ The law clearly makes a difference between "official powers" by the NMHH and "non-official tasks" performed by the self-regulatory

⁶³ See: <https://www.die-medienanstalten.de/en/about-the-media-authorities/organisation/commission-on-licensing-and-supervision-zak>

⁶⁴ See: https://www.bmiv.de/SharedDocs/Artikel/DE/2020/040120_NetzDG.html

⁶⁵ See: https://www.bmiv.de/SharedDocs/Artikel/DE/2020/040120_NetzDG.html

⁶⁶ The new rules entered into force on 12 June 2020.

⁶⁷ See: <http://nmhh.hu/rolunk>

body. Another feature is that the Hungarian law describes the content of the code of conduct and to a large extent details the self-regulatory procedure, including how long it is allowed to last.

Overall, the Hungarian legislation directly transposes the AVMSD provisions that refer to CSEA, hate speech, terrorism and commercial communications rules.⁶⁸ VSP providers must also comply with the regulation on advertisements set out in the Hungarian Media Act in regard to commercial communication. They are obliged to apply measures and tools to increase media awareness and to inform the users about this.

Level of state involvement

The regulatory authority, the NMHH, has a wide set of responsibilities for co-regulation. Established in 2010 amidst severe national and international criticism, the NMHH has an exceedingly broad range of regulatory competences and enforcement powers. The NMHH is formally an independent regulatory body, with an annual reporting obligation to the Parliament.⁶⁹ The head of the NMHH is appointed by the President, based on the recommendation of the Prime Minister. Concerns have been raised about the NMHH being formally in line with European requirements but in practice lacking in accountability (Polyak & Rozgonyi 2015). The Council is a 91% self-funded body, while 9% of its budget stems from the state budget funds. Its budget must be approved by the Parliament.

Allocation of responsibilities, including enforcement powers

Monitoring responsibilities and sanctioning powers lie with the NMHH. The Hungarian regulator is required to analyse, assess and evaluate VSPs at regular intervals, and for this purpose, it may request data from providers. In the event of an infringement, the NMHH has the option of applying several measures. It can oblige the VSP provider to terminate the infringement and establish an obligation within the framework of the enforcement of the legal provisions. The law sets out that NMHH may also ask the VSP provider to publish the notice of the decision on the home page of its website or to suspend its service for a period from 15 minutes to one week. The strictest sanctions include fines of up to one hundred million forints or suspension of the VSP.

The Hungarian regulator is required to be strongly involved in design and implementation of co-regulatory initiatives. The law instructs the NMHH to cooperate with self-regulatory organisations to promote voluntary compliance. Within the framework of cooperation, the NMHH may enter into an administrative contract with a self-regulatory organisation established under the law. In the administrative contract, the NMHH may authorise the self-regulatory organisation to register its membership. The law specifies that self-regulatory organisations may not have official public authority or competence and do not qualify as an administrative authority.

Under this legislation, the self-regulatory organisations can also have monitoring roles as they may supervise and control the companies covered by a code of conduct. They can be directly involved in handling individual cases covered by its code, settle disputes on the subject matter of authorisation and control of the activities and conduct of VSPs.

Within the framework of the administrative contract, the NMHH and the self-regulatory organisation may agree on the implementation of tasks, principles of activity and service development, and public interest programmes closely related to VSPs. The NMHH may provide financial support for the performance of the

⁶⁸ See:

http://nmhh.hu/cikk/212898/Tajekoztato_a_videomegosztoplatformszolgaltatokra_vonatkozó_2020_június_12_napiatol_hatályos_törvényi_rendelkezesekről

⁶⁹ See <http://rm.coe.int/the-independence-of-media-regulatory-authorities-in-europe/168097e504>

tasks of the professional self-regulatory organisation. The self-regulatory organisation is obliged to report annually to the NMHH.

Any code of conduct⁷⁰ has to be included as part of the administrative contract between the self-regulatory body and the NMHH. The NMHH is allowed to review the code of conduct, but only to check its compliance with the legal requirements. Self-regulatory organisations are obliged, through their codes of conduct, to encourage their members to take appropriate measures in accordance with the requirements in Article 28b(1) of the AMVSD. The Office is allowed to terminate the administrative contract. It also may act against a member of a self-regulatory organisation if it considers that the self-regulatory procedure does not comply with the law or the provisions of the administrative contract. The Office is allowed to review decisions by self-regulatory organisations and it may initiate official proceedings. This is possible in cases where there is a complaint that the decision made by the self-regulatory body is contrary to law or a self-regulatory body is unable to enforce it.

Transparency/information access (for regulators and/or other stakeholders)

After concluding the administrative contract, the NMHH may inspect the registers of any self-regulatory organisation and may request information or any data needed in order for it to fulfil its supervisory role over the self-regulatory organisation.

Italy

General overview of the regulatory framework

In January 2020, the Council of Ministers approved the final reading of a law delegating to the Government the power to implement specified European directives and other EU acts (European Delegation Law). This also includes a roadmap for transposition of the AVMSD. Article 3 sets out the specific delegation principles and criteria for the implementation of Directive (EU) 2018/1808 on audiovisual media services through amendments to the existing single text on audiovisual and radio media services (Legislative Decree No 177 of 2005).⁷¹

Although no VSP provider has been identified as being under Italian jurisdiction, VSPs are still within the scope of its hate speech regulation (Deliberation no. 157/19/CONS of 15 May 2019).⁷² In the regulatory framework relevant to hate speech, the definition of VSPs is directly transposed from the AVMSD. A video sharing platform provider is “the natural person or legal entity that provides a video sharing platform service. The Deliberation no. 157/19/CONS of 15 May 2019 (Article 1g) also provides the definition of a video sharing platform service.

AGCOM, the communications regulator, has a Permanent Observatory of Guarantees and Protection of Minors and the Fundamental Rights of the Person on the Internet, which monitors cases of incitement to hatred, threats, harassment, and cyberbullying on the Internet and drafts co-regulatory codes of conduct in cooperation with Internet companies and social media platforms.⁷³

⁷⁰ The Code of Conduct should contain provisions related to the self-regulatory organisation's self-administrative tasks, the relevant rights and obligations of the members, the relationship between the members and the self-regulatory organisation, and their legal effect.

⁷¹ See: <http://www.senato.it/service/PDF/PDFServer/BGT/01145553.pdf>

⁷² See: <https://www.agcom.it/documents/10179/13511391/Delibera+157-19-CONS/568d8b16-6cb6-4ea1-b58c-c171c2e24367?version=1.0>

⁷³ See: <https://www.agcom.it/osservatorio-delle-garanzie-per-i-minori-e-dei-diritti-fondamentali-della-persona-su-internet>

Level of state involvement

In Italy, there is a low level of state involvement in the implementation of existing legal provisions as responsibility has been delegated to the independent communications regulator. AGCOM is accountable to Parliament, which established its powers, defined its statutes and elects its members.

Allocation of responsibilities, including enforcement powers

The proposed legislation for transposition of AVMSD entrusts AGCOM with new regulatory powers, but without providing a clear perimeter. In the position paper published on 5 May 2020, AGCOM stated that, in certain cases, the legislation should better specify which powers are granted to AGCOM pursuant to the balance of tasks and prerogatives among different regulatory authorities. Under the Italian hate speech regulation (Deliberation no. 157/19/CONS of 15 May 2019), AGCOM is required to promote, coordinate and direct the processing of codes of conduct and co-regulation for VSPs.

So far, AGCOM has tried to design and promote co-regulatory initiatives with VSPs outside of the scope of AVMSD. In particular, AGCOM tried to “institutionalize” the cooperation with online platforms through the Technical Roundtable on Pluralism and Online platforms⁷⁴, which aims to promote self-regulation of platforms and exchange of good practices⁷⁵. Through the Table, AGCOM intended to encourage creation of a structure of working groups for monitoring, studying and sharing possible solutions to online disinformation, open to participation to different stakeholders, including platforms.

The Italian regulator promoted two self-regulatory interventions for election campaigns as part of the Roundtable. AGCOM aims to implement at national level the measures undertaken by online platforms by adhering to the Code of Practice on Disinformation⁷⁶ and the activates carried out by ERGA. Through the initiatives, AGCOM intended to identify new procedures and new tools that could be adopted both nationally and at an EU level⁷⁷. The platforms committed to providing tools for reporting content that infringes the equal treatment during the electoral period, to develop fact-checking tools and to tackle fake accounts and to issue reports to AGCOM on such activities.

AGCOM is involved in the implementation of such co-regulatory initiatives and **has monitoring responsibilities and sanctioning power over VSPs** under the Italian hate speech regulation (Deliberation no. 157/19/CONS of 15 May 2019). The legislation requires VSPs to (i) provide effective systems for detecting and reporting offences and their perpetrators, and (ii) send the Authority a quarterly report on the monitoring carried out in order to identify online hate content. The hate speech regulation stipulates co-regulatory procedures to encourage the adoption of measures aimed at countering the online distribution of infringing content, and AGCOM has an obligation to promote these.

The regulation also promotes adoption of awareness campaigns and development of codes of conduct. In particular, VSPs are advised to provide awareness campaigns or other initiatives concerning inclusion and social cohesion, the promotion of diversity and the fundamental rights of the person in order to prevent and

<https://www.agcom.it/tavolo-pluralismo-e-piattaforme-online>

⁷⁵ See:

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5IVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5IVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5IVOIXoE_assetEntryId=8971693&_101_INSTANCE_FnOw5IVOIXoE_type=document

⁷⁶ See: <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>

⁷⁷ See:

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5IVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5IVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5IVOIXoE_assetEntryId=14966360&_101_INSTANCE_FnOw5IVOIXoE_type=document

combat online discrimination⁷⁸. As explained by AGCOM, although traditional players during the consultation phase reacted that there is no level playing field in terms of regulation between them and VSP providers, the primary rules that delimit the area of competence of the regulator do not allow regulatory interventions concerning the content disseminated on VSPs⁷⁹. Therefore, the Deliberation no. 157/19/CONS encourages VSP providers to tackle hate speech through codes of conduct.

The Permanent Observatory of Guarantees and Protection of Minors and the Fundamental Rights of the Person on the Internet established by AGCOM with 481/14/CONS of 23 September 2014, also has certain monitoring responsibilities. The Observatory collects, processes and publishes data relating to user behavior with respect to the internet and social networks and analyses the policies adopted by the operators to protect minors and assesses their effectiveness. The Observatory is also encouraged to prepare guidelines for adoption of self- and co-regulatory codes of conduct⁸⁰.

Transparency/information access (for regulators and/or other stakeholders)

The Permanent Observatory of Guarantees and Protection of Minors and the Fundamental Rights of the Person on the Internet is monitoring data relating to habits and preferences of social media users and use of effective and available tools. VSP providers have certain transparency requirements under the hate speech regulation. The quarterly reports that VSPs have to provide to AGCOM under the hate speech regulation should include information on the operating methods and verification systems, and their enforcement measures.

Ireland

General overview of the regulatory framework

Ireland is set to play a central role in regulating the measures to be taken by YouTube and Facebook, among other platforms, to ensure they comply with the revised AVMSD. The draft Online Safety & Media Regulation Act 2019 is expected to undergo a pre-legislative scrutiny as part of the Autumn legislative programme⁸¹. The draft will be debated in both Houses of the Oireachtas (Parliament) and may be amended there before being enacted.

The draft Act provides for the appointment of an Online Safety Commissioner as part of a wider Media Commission to oversee the new regulatory framework for online safety. The Commissioner will govern this new framework through binding online safety codes and robust compliance, enforcement and sanction powers. Online safety codes will deal with a wide range of issues, including measures to be taken by online services to tackle the dissemination of harmful online content on their services.

The Media Commission will replace the Broadcasting Authority of Ireland (BAI) and will also take on all BAI's present functions and role in regulating the audiovisual sector. The staff currently working in the BAI will transfer to the new Commission. According to the scheme, VSP services are to be a category of designated online service.

⁷⁸ See: <https://www.agcom.it/documents/10179/13511391/Allegato+23-5-2019+1558628852738/5908b34f-8c29-463c-a7b5-7912869ab367?version=1.0>

⁷⁹ See: <https://www.agcom.it/documents/10179/13511391/Delibera+157-19-CONS/568d8b16-6cb6-4ea1-b58c-c171c2e24367?version=1.0>

⁸⁰ See: <https://www.agcom.it/documents/10179/1519664/Allegato+5-11-2014/dcbd4e27-98ee-46b7-befc-cf8fa4b86f0f?version=1.0>

⁸¹ See: https://merriestreet.ie/en/News-Room/News/Autumn_legislative_programme_published.html

Level of state involvement

The Commission will comprise an Executive Chairperson and between 3 and 6 additional members, that will be appointed by the Government following a competition by the Public Appointments Service. The Online Safety Commissioner will be appointed by the Minister on the recommendation of the Public Appointments Service. The Minister may also receive notifications in cases of non-compliance by VSP providers. If, following an appropriate period to be determined by the Media Commission, a designated online service does not provide a satisfactory justification for alleged non-compliance or an outline of its actions to bring itself into compliance, the Commission may issue a warning notice to the designated online service. The Minister will also receive any warning notice issued by the Commission to VSPs.

Allocation of responsibilities, including enforcement powers

The Media Commission will be expected to prepare, and from time to time revise, online safety codes.

These codes would develop, in the first instance, high level principles-based codes governing standards and practices. Designated online services would be asked to develop measures in order to meet the principles from the online safety codes. Next, the Online Safety Commissioner could assess whether the measures are working in practice.

The focus of the online safety codes would be on reducing the spread and amplification of harmful online content. The harmful content expected to be covered by these codes is divided into four categories: material the dissemination of which is illegal (e.g. CSEA material, terrorism); material that is intimidating or threatening (e.g. bullying); material that promotes eating disorders; material that promotes self-harm.⁸²

The codes for content in these categories will cover content delivery and content moderation, including:

- How designated online services handle complaints from users of their services and members of the public;
- What designated online services can do to minimize the availability of harmful online content;
- Measures that [may] be taken by designated online services or categories thereof in relation to [commercial communications] available on their services;
- How designated online services can assess the risk profile of their services;
- What kind of reports do designated online services have to make to the Online Safety Commissioner.

The codes are expected to be constantly improved through ongoing assessment by the Online Safety Commissioner⁸³.

The Commissioner will be able to propose new categories of harmful online content to inform the making of online safety codes. According to the procedure for adding new categories, they have to be approved by the Government and Oireachtas⁸⁴. In proposing new categories for harmful online content, the Commissioner could be also informed through collaboration with other regulatory bodies, especially within the EU and consultation with stakeholders.

The Commissioner will have to examine the compliance of designated online services with online safety codes and it may appoint authorised compliance officers. In doing so, it may collect information from

⁸² See the General Scheme for the Online Safety Bill <https://www.gov.ie/en/publication/d8e4c-online-safety-and-media-regulation-bill/>

⁸³ See: <https://assets.gov.ie/89802/d34f3695-94a0-4cd3-9c7b-31b77f07ed98.pdf>

⁸⁴ See: <https://assets.gov.ie/76725/61834cef-c977-4a66-9b97-95cf03216c2c.pdf>

regulators from other EU Member States, analyse concerns raised by nominated bodies under the Systemic complaints scheme, information from the public, investigations, including by authorised officers, etc.

The Commission may issue guidance materials in matters relevant to harmful online content and inappropriate online content and relevant online services and designated online services shall have regard to these guidance materials in their operations as appropriate.

The Commission also will have a specific monitoring power to audit user complaints periodically or on an ad hoc basis. It will have the enforcement power to direct services through compliance notices to take specific actions, including to remove or restore individual pieces of content and to make changes to the operation of their systems.

The Media Commission will establish a scheme wherein it can receive notice of systemic issues with relevant and designated online services from nominated bodies. The draft law provides the Commission with the power to devise and operate a so-called 'super complaints' system. The nominated bodies such as expert NGOs or other members of the European Regulator Group for Audiovisual Media Services (ERGA) will be able to send notices on systemic issues with specific online services to the Commission. The Media Commission will be tasked with setting up a scheme for operating these so-called "super-complaints", including the process for nominating and removing the participating organisations, and the procedures and timeframes through which they can notify the Commission.

The Commission will also have the authority to enter into voluntary arrangements with any relevant online service not established in Ireland. In such cases, it must specify the extent to which a relevant online service agrees to comply with any online safety code and/or online safety guidance materials, and then will be able to request information and may require such services to report to them regarding their compliance on a periodic basis. The Commission will be required to publish the details of any relevant online service that enters into a voluntary arrangement.

If the steps to be specified in a compliance notice concern the removal or restoration of material the Commission may, in advance of issuing a compliance notice, may engage with the designated online service in question with a view to inviting submissions from the uploader of said material or from a person who made a complaint to the designated online service about the material. If the designated online service does not provide a satisfactory justification for not adhering to the compliance notice, the Commission will issue a warning notice. A designated online service that doesn't comply with the steps outlined in a warning notice issued to it by the Commission will be guilty of an offence. In such case, the Commission will be able to pursue a sanction against the designated online service. The application of sanctions will have to be approved by court whereupon the designated online service will have the opportunity to dispute its application.

The sanctions might include:

- An administrative financial sanction;
- Compelling compliance, or
- The blocking of access to the designated online service in Ireland.

Transparency/information access (for regulators and/or other stakeholders)

The draft Online Safety & Media Regulation Act 2019 provides that the Media Commission may request information from any designated online service regarding their compliance with any online safety code. The necessity for transparency of decision making in respect to content delivery and content moderation by relevant online services is one of the criteria for which the Media Commission must have regard in preparing guidance materials.

Lithuania

General overview of the regulatory framework

Lithuania will implement the AVMSD provisions on VSPs through amendments to the Law on Provision of Information to the Public and to the Law on the Protection of Minors Against the Detrimental Effect of Public Information⁸⁵. The sanctions will be included in an amendment to the Law on the Code of Administrative Offenses⁸⁶. The Lithuanian draft legislation adopts the Directive's definition of a VSP, as well as provisions of Article 28 (1)(a) and Article 28 (1)(b). The drafting of the codes, according to the Law on Provision of Information to the Public, is left to the VSP providers.

A distinctive feature of the proposed legislation is that it gives VSP providers an option to voluntarily choose codes of conduct at the national level or at the EU level, where appropriate in cooperation with professional associations. The codes of conduct must be widely recognised by the main stakeholders either at national or at EU level. According to the draft Law on Provision of Information to the Public, the codes must also state their goals clearly and unambiguously, provide regular, transparent independent monitoring and evaluation of the achievements of their objectives and provide effective enforcement of the provisions of the codes, including effective and proportionate sanctions. Once VSPs voluntarily choose a code, they will have to inform the public that they comply with it.

Level of state involvement

Under the draft Law on the Protection of Minors Against the Detrimental Effect of Public Information, several administrative bodies have monitoring responsibilities, as explained in the next subsection on the allocation of responsibilities. The high reliance on voluntary participation in self-regulatory codes shows an intention for low levels of state involvement.

Allocation of responsibilities, including enforcement powers

According to the draft legislative framework, the monitoring responsibilities mainly will lie with the Radio and Television Commission of Lithuania, the national regulatory agency accountable to the Seimas. The Law on Provision of Information to the Public stipulates that the Commission shall be independent in the performance of its duties and in taking decisions in matters falling within its competence. Once the law is amended, VSPs will have to pay a fee to finance the activities of the Commission. The Commission will have the power to impose mandatory requirements on VSP providers should it find that a code of conduct or part of it is not sufficiently effective. The Commission has to immediately notify the European Commission of such requirements.

Another defining element of the Commission, according to the draft amendments to the Law on the Provision of Information to the Public, is that it has the responsibility for investigating user complaints. In the case of a dispute between a user and a VSP provider, the Commission can appeal to a court. The Commission also supervises the implementation of the provisions of the Law on Protection of Minors. The Commission will also have sanctioning power. Failure to comply with the Commission's decisions may result in a fine of up to 3% of the gross annual revenue of the VSP provider, and in cases where it is difficult or impossible to calculate the gross annual income, up to EUR 100 000. Decisions of the Commission regarding the imposition of a fine may be appealed to the Vilnius Regional Administrative Court.

⁸⁵ See: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/c7b33e907f2211eaa38ed97835ec4df6?positionInSearchResults=0&searchModelUUID=29bd90b1-1397-489c-b78e-b803181a7fdd>

⁸⁶ See: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/651d9fb17f2111eaa38ed97835ec4df6?jfwid=-bkq43eks4>

Under the revised Law on the Protection of Minors against the Detrimental Effect of Public Information, the main supervisory body is the Inspector of Journalistic Ethics.⁸⁷ Similarly to the Commission, the Inspector could complaints regarding violations of the provisions of the Law. In accordance with their competence, the supervision of the provisions implementing the AVMSD may be carried out by the Radio and Television Commission of Lithuania, the Lithuanian National Radio and Television Council, the Ministry of Culture, the Public Information Ethics Association, the Ombudsperson for Children's Rights, municipalities, the police department or the Communications Regulatory Authority of the Republic of Lithuania. These institutions may require of the Inspector that they classify information that has a negative impact on the development of minors, co-operate, exchange information and, within their competence, impose liability on persons who do not comply with the provisions.

Transparency/information access (for regulators and/or other stakeholders)

The Commission may ask VSP providers to provide information that is necessary for the performance of its duties. According to the draft-law, the Commission collects information from VSPs, analyses their activities and prepares reports, but there are no details or specific powers.

United Kingdom

General overview of the regulatory framework

The Audiovisual Media Services Regulations 2020⁸⁸ that came into force on 1 November 2020 transposes the AVMSD in the UK. Under the terms of the Withdrawal Agreement, the UK is required to implement the revised AVMSD, as its implementation date falls before the end of the transition period.⁸⁹ Ofcom will serve as the regulatory authority and its powers are expanded to include VSPs. Ofcom is given the authority to recognise a self-regulatory authority should one be established by the industry. The law requires persons intending to provide VSP services to notify Ofcom in advance.⁹⁰

The intention is that the government has set the direction of the policy but gives Ofcom the freedom to draw up and adapt the details. Ofcom is charged with setting out guidance on the application of measures. Over the summer of 2020, a Call for Evidence was issued, primarily seeking information on these measures, and the practical and proportionate application of them to inform the development of that industry guidance⁹¹.

The Law only includes the basic definitions set out in the AVMSD. Further delineation of what services are in scope is expected to come through guidance issued by Ofcom based on consultation with stakeholders and the European Commission's guidance on essential functionality. The legislative changes to implement the AVMSD are expected to be superseded by the Online Harms White Paper⁹², which sets out the government's plans for a package of measures to keep UK users safe online.

⁸⁷ See: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/dac95f607f2111eaa38ed97835ec4df6?ifwid=-bkq43eks4>

⁸⁸ See: <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2020&num=352>

⁸⁹ This means that the VSP regulatory framework will continue to apply from January 2021, however the Government has also stated its intention for VSP regulation in the UK to be superseded by the Online Harms Bill, when that comes into force. See <https://www.ofcom.org.uk/consultations-and-statements/category-1/video-sharing-platform-regulation>

⁹⁰ The Regulations insert a new Part 4B into the Communications Act 2003 (see Part 4 of the Regulations). Section 368V contains the obligation to provide advance notification, and sections 368W, 368Z4 and 368Z5 set out how the obligation will be enforced. The Regulations include transitional provision (see Part 6 of the Regulations), specifying the requirements for video-sharing platform services already operating when the advance notification requirement comes into force on 6th April 2021. Providers of such services in this case will be required to notify that they are already providing the service (rather intending to do so) by the 6th of May 2021.

⁹¹ See: https://www.ofcom.org.uk/data/assets/pdf_file/0030/198327/call-for-evidence-vsp-regulation.pdf

⁹² See: <https://www.gov.uk/government/consultations/online-harms-white-paper>

Level of state involvement

Government involvement in the regulation of VSPs is low, as this responsibility will be assigned to Ofcom. The Government appoints the Chair of the Ofcom board. According to the 2003 Communications Act, which established Ofcom by merging previous regulators, it has statutory duties to provide information and advice to the Secretary of State as well as other obligations in that relationship.

Allocation of responsibilities, including enforcement powers

According to the Audiovisual Media Services Regulation, the regulatory authority has a duty to take steps to ensure VSPs comply with their notification obligations and use measures to ensure content creators and advertisers comply as well. The regulator has the power to issue an enforcement notification and/or to impose a financial penalty for contraventions and has a significant role in design and implementation of self-regulatory initiative.

The requirements specified in an enforcement notification may in particular include requirements to cease providing or to restrict access to video, audiovisual commercial communication or to provide additional information to users of the service about the content of a specified video or videos of a specified description prior to the selection of that video or a video of that description by an individual for viewing. Also, the requirements could include asking the VSP provider to show an audiovisual commercial communication marketed, sold or arranged by the provider on the service only with specified modifications or publish a statement of the findings of the appropriate regulatory authority in the form and place and for the time period specified.

An enforcement notification has to include the reasons for notification and fix a reasonable period for taking the steps required to comply. Ofcom has been granted the following additional powers:

- To designate a regulatory authority for VSPs;
- To serve as the regulatory authority if none is formed;
- To require notification by VSPs and charge them a fee;
- To monitor and require information from VSPs;
- To facilitate the development of VSP codes of conduct on HFSS foods and children's programming;
- To enforce the notification requirement for VSPs and their duties to implement measures to protect consumers from harmful content, including advertising, through enforcement notifications and financial penalties.

According to the consultation outcome published by Ofcom⁹³, there were concerns as to whether the regulators, in particular the Advertising Standards Authority (ASA), would be given sufficient legal and financial means to regulate the sector effectively, and the need for regulators to take into account the specific characteristics of VSPs effectively.

The Audiovisual Media Services Regulations state that Ofcom could designate a self-regulatory body and sets out criteria for such a body, in which case Ofcom can act as the appropriate regulatory authority for that purpose concurrently with or in place of that body.

Being designated by Ofcom will:

⁹³See: <https://www.gov.uk/government/consultations/audiovisual-media-services/outcome/audiovisual-media-services-government-response-to-public-consultations-on-the-governments-implementation-proposals>

- (i) provide for a body to be the appropriate regulatory authority in relation to VSPs of a specified description;
- (ii) provide that a function of the appropriate regulatory authority is exercisable by the designated body—

- to such extent as may be specified;
- either generally or in such circumstances as may be specified; and
- either unconditionally or subject to such conditions as may be specified.

Where the appropriate regulatory authority, Ofcom or a designated self-regulatory body, determines that a provider of VSP service is contravening, they will be able to do one or both of the following:

- give the provider an enforcement notification;
- impose a financial penalty.

The amount of a penalty imposed on VSP provider cannot exceed 5% of the provider's applicable qualifying revenue or £250,000, whichever is the greater amount, and should be proportionate to the contravention or failure identified.

The notification system for VSPs set out in the proposed Audiovisual Media Services Regulation is similar to that in existence for on-demand programme services. Ofcom will maintain a database of VSPs, charge them fees to cover the costs of this, and it will be able to penalise them through notices or fines.

The draft regulation foresees that Ofcom must encourage VSP services to develop codes of conduct regarding standards concerning the appropriate promotion of food or beverages in audiovisual commercial communications which are included in, or accompany, videos containing content which is likely to appeal to children.

Transparency/information access

The regulator will be able to require information for several purposes as long as the demands are proportionate. Ofcom can require information to determine whether a person falls under the jurisdiction of the UK for the purposes of the AVMSD. It can also require information that would help fulfil its monitoring responsibilities and sanctioning power.

2.3.3.3 Array of models

We arrived at two archetypes or categories of approaches based on our mapping of the key indicators derived from the conceptualisations of self- and co-regulation across the existing or planned approaches of Member States to the regulation of VSPs as called for in the Directive. We loosely classified their approaches as either **NRA-dependent co-regulation or industry-intensive co-regulation** based on the relative expected roles for NRAs and industry-led initiatives. As is evident in the case studies that followed, **there will still be great variety within these categories**. Among those approaches in which the NRAs are set to bear most of the responsibility for enforcing the provisions of the AVMSD, some are granted extensive monitoring powers, such as the ability to investigate individual user complaints, to obtain operational or user data from the VSPs, and to demand regular reporting. In other cases, the NRAs are much more limited in terms of what they will be able to draw upon in their monitoring. Similar variation can be seen in the allocation of sanctioning powers.

The case studies additionally show that countries with long histories of co-regulation and well-resourced and experienced NRAs might be better placed for effective enforcement as their monitoring and sanctioning powers are comprehensive and clear. **In other cases, there appear to be gaps, such as limited information-gathering powers, or imprecise allocation of responsibility for generating codes of**

conduct. It also seemed that such gaps were more often seen in countries where it is not likely that they would expect to have VSPs in their jurisdiction.

The differences in the supervisory powers foreseen for NRAs and varying relationships with industry may create challenges for cooperation among NRAs but at the same time, arguably, make such coordination essential. There has been little discussion of “forum shopping” by VSPs due to the country of origin principle, which was a concern in earlier iterations of the AVMSD in relation to other services. Although it may still be a concern, the case studies also show that some countries, namely France, Germany and Italy are already in some way regulating to combat certain kinds of harmful content on VSPs. Austria and the UK have already indicated their intention to do so. **This might lead to duplication of effort if not well coordinated.**

There is also potential for overlap with existing, transnational industry-led efforts already in place. In many of the countries examined above, the laws or draft laws call for encouragement to set up self- and co-regulatory mechanisms and draft codes of conduct. For many of the potential types of harm the AVMSD aims to address through the provisions of Article 28b, there are already industry-led or multi-stakeholder initiatives in place, including some codes of conduct. In the next section we analyse some of these and draw out possible lessons.

2.3.4 Outcomes and impact of existing self- and co-regulatory mechanisms

Given that the deadline for transposing the AVMSD was 19 September 2020, it was outside the scope of this report to examine the outcome and impact of mechanisms set up to implement the Directive. Nevertheless, there are a number of self- and co-regulatory mechanisms already in existence and in which VSPs participate that address the harms covered by the Directive. Some of these will necessarily be involved in mechanisms designed to implement the Directive, and important lessons can be learned from the outcomes of their work. We elaborate on these here drawing on case studies from Member States and the UK that illustrate their function and impact.

2.3.4.1 Transnationally coordinated self-regulation of commercial communication

There is a long history of self-regulation in advertising and of transnational cooperation. The first international Code of Advertising Practice was adopted by the International Chamber of Commerce in 1937.

Box 6 – Case study: Lithuania

Case study: Lithuania

Lithuania is one of the few outliers in that it does not have an advertising SRO. The *Asociacija Lietuvos reklamos biuras*, the Lithuanian Advertising Bureau, was established as an industry initiative in 2005 and was charged with administering the national advertising activity code, which was based on the ICC Code. The Bureau was funded entirely by industry. As a small country, Lithuania has a limited domestic advertising market. Moreover, a 2018 ban on all alcohol advertising drastically reduced the number of national advertisers with both the capacity and interest in funding the mechanism. Advertising is governed by the Law on Advertising from 2000 as amended in 2015 (Law VIII-1871 amended by XII-1885), which contains provisions that mirror the requirements in Article 9 of the AVMSD and many of the provisions in the ICC Code. The law allows for the creation of a self-regulator but does not mandate it. Enforcement is entrusted to the State Consumer Rights Protection Authority and the Competition Authority. The Competition Authority made several decisions and issued some fines for misleading advertising before the supervision of misleading and comparative advertising was transferred to the State Consumer Protection Authority (Competition Council, 2019). There is still a gap in the monitoring and enforcement of advertising in relation to many of the other qualitative standards that is only partially filled by the Radio and Television Commission.

The current version of the ICC Code contains provisions covering nearly all those contained in Article 9 of the AVMSD, excluding only those related to the advertising of tobacco, alcohol and medicinal products. There are advertising self-regulatory organisations (SROs) in 22 Member States and the UK. These enforce national level codes of conduct. These are the results of national level processes and are attuned to national sensitivities, but they are based on the ICC Code and its guidance on various specific advertising issues, and are in line with the requirements of the AVMSD and other European level recommendations.

These **advertising SROs are the main mechanism through which Member States “ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply” with the provisions of Article 9 of the AVMSD.** In some Member States, the SROs have a backstop in that they can refer a case to a media or competition and consumer regulator if they need additional enforcement. However, for the most part the onus is on the advertisers to comply with the advertising codes, which is ensured through third-party monitoring, pre-clearance for certain categories and types of media, as well as independent complaints’ handling, rather than by the media on which the commercial communications appear or the media regulator. Their codes apply to all advertising, including online commercial communication and many of the SROs have developed specific codes or guidance in relation to online advertising. The Spanish AUTOCONTROL, for example, has a detailed “Online Trust” code of ethics that covers e-commerce and advertising issues, and the UK’s Advertising Standards Authority and the Belgian Advertising Council are among many SROs that issue extensive guidance for influencers.⁹⁴ European advertising SROs cooperate and share good practice through the European Advertising Standards Alliance (EASA), which is also responsible for coordinating the European cross-border complaints (CBC) system.

Box 7 - Case study: Cyprus

Case study: Cyprus

Cyprus is a small country that shares a language with a larger neighbour. Consumption of cross-border media services is common as is the advertising of many imported foreign brands. The Cypriot advertising SRO, the Advertising Control Agency FED, was established by the advertisers’ association and mass media quite recently. The FED developed a Code of Conduct with its industry founders that is based on the ICC Code and its commitments as a member of EASA. In early 2020, the FED ruled on a case brought to it through EASA’s cross-border complaints system that was referred to it by the UK’s ASA. The complaint had come to the ASA from a UK resident and related to an ad on Facebook for a role play video game owned by a global app developer registered in Cyprus (Case: CBC 4578, 4597). The FED ruled that the advertisement had indeed violated the Cypriot Code of Conduct and ordered the company to withdraw the ads within five working days. In another case, the FED received complaints about advertising appearing on Facebook and was not successful in getting the advertiser to withdraw the advertising. The FED made contact with Facebook with assistance from EASA and the offending advertisements were removed.

Several lessons can be learned from the experience of the self-regulation of advertising. First, a transnational agreement on a code of conduct can provide a useful basis for national level codes and facilitate mutual recognition and cross-border cooperation. Second, **having a centralised system for cross-border cooperation can be an effective way of dealing with complaints.** Third, while SROs’ first point of call

⁹⁴ For a full list of countries with such guidance and the transnational guidance upon which they are based see: https://www.easa-alliance.org/sites/default/files/EASA%20BEST%20PRACTICE%20RECOMMENDATION%20ON%20INFLUENCER%20MARKETING%202020_0.pdf .

for dealing with problematic advertising is the advertiser or agency representing the advertiser, they will sometimes need to rely on VSPs or any media where the advertisement is placed to assist with enforcement.

Outcomes

- Globally accepted standards enshrined in codes of conduct, enabling significant harmonisation across jurisdictions with slight differences based on national conditions and sensitivities.
- Equal treatment of online and offline advertising in relation to basic standards.
- Effective cross-border complaints handling systems facilitating cooperation among SROs.
- According to EASA, 65 000 complaints were handled by SROs in 2019, of which 200 were cross-border.
- Initial cooperation with some major VSPs.

2.3.4.2 Transnational co-enforcement on illegal content – CSEA and Terrorism

Perhaps the two most egregious harms that the AVMSD attempts to prevent are the production and dissemination of CSEA and terrorist content. This includes thwarting the recruitment for or glorification of either. For both types of offence there are existing transnational collaborative schemes aimed at detection and prevention in which the major VSPs and some of the smaller ones participate. These are not co-regulatory systems because **there is no mechanism for oversight or supervision of the schemes by governments or public bodies or a statutory back stop**. Instead, these are dealt with through what we are calling transnational co-enforcement. For each type of offence, **the law is clear and there is collaboration among VSPs, civil society groups, law enforcement and other state bodies on its direct enforcement**.

VSPs can be not only the means for the distribution of CSEA content, but also sites where children are groomed and where acts of abuse can take place through live streaming. As evidenced in section 2.2, VSPs categorically prohibit such content and behaviour. Speaking to representatives of VSPs, we found **consistency in the approaches to CSEA content and commitment to working with each other, with civil society organisations, and law enforcement. The cooperation among these three is not unidirectional**. The system relies on all of them contributing to hash databases for the identification of content and on mutual notification and provision of information on cases and perpetrators. The Tech Coalition against Child Sexual Abuse facilitates collaboration in innovation and the sharing of tools such as the PhotoDNA used to identify images and APIs that allow civil society and law enforcement to monitor and gather evidence. The Internet Watch Foundation (IWF), based in the UK, and the National Coalition for Missing and Exploited Children (NCMEC), based in the US, maintain global hash databases and play coordinating roles channelling information from VSPs and others to law enforcement in jurisdictions worldwide, as do the national InHope hotlines in each country. The WePROTECT Global Alliance and the International Centre for Missing and Exploited Children work on policy and technological solutions, and provide advice and support to national governments, public bodies and industry.

Box 8 - Case study: United Kingdom

Case study: United Kingdom

The UK has been a leader in efforts to combat online CSEA. The Internet Watch Foundation came out of collaboration between the Metropolitan Police and the Internet Service Providers Association. It was intended to engage ISPs in detecting, investigating and removing CSEA materials without holding them criminally liable for the dissemination of the content. Though it predates the e-commerce Directive, it was fully in line with the liability exemptions later contained in the Directive. It is funded by its members, which now include most major platform-owning companies, and donations. It provides a hash database, alerts, and an international reporting tool. The hash database was developed using Microsoft's PhotoID technology and initially in 2015 the UK Home Office's Child Abuse Image Database (CAID) and is made available to IWF members. The UK is now home to only about 0.1% of the URLs identified as hosts, so much of its work is international. The WePROTECT Global Alliance was established in 2016 when the UK government's WePROTECT Children Online initiative merged with the joint US and EC initiative, the Global Alliance Against Child Sexual Abuse Online. In March 2020, the UK, along with the governments of Australia, Canada, New Zealand and the USA adopted the Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse. These were officially endorsed by Facebook, Google, Microsoft, Roblox, Snap, Twitter and TikTok at their launch. Following the publication of the Principles, WePROTECT transitioned out of the UK Government to become an independent organisation responsible for promoting the Principles globally and driving collective industry action. It now has 97 national government, numerous tech company and civil society groups as members. It has developed a model national response and supports governments to engage with industry and civil society in efforts to combat CSEA.

International efforts to combat terrorist content and the use of online platforms by terrorists for the recruitment and glorification of terrorist acts have recently been expanding and becoming formalised. In 2016, several major platform owning companies formed the Global Internet Forum for Counter Terrorism (GIFCT). The purpose of the GIFCT was to collaborate on the creation of a hash database for identifying terrorist content that could be used by all of them to enforce prohibitions on terrorist content and stop its spread. This is similar to the resource managed by the IWF, NCMEC and other organisations for CSEA content. It is not a self-regulatory initiative but a collective tool for enforcement. In 2019 the Christchurch Call, initiated by New Zealand's Prime Minister Jacinda Ardern and French President Emmanuel Macron, brought national governments and platform-owning companies together to commit to a number of measures aimed at combating the use of online media by terrorists.⁹⁵ Fifty governments, the European Commission, UNESCO and the Council of Europe have joined the Call. Participating states commit to strengthening inclusiveness, enforcing the law and supporting voluntary frameworks and industry standards. The commitments made by "online service providers" pertain to the quality and enforcement of community standards and immediate action upon detection, as well as regular reporting and design of algorithms so as not to amplify terrorist and violent extremist content. The commitments therefore cover both prevention of the conditions that lead to terrorist incidents and enforcement action when terrorist incidents and content occur.

A number of Member States and the UK have dedicated law enforcement or other authorities that also work on detecting terrorist or violent extremist content and informing online services. These mostly deal with

⁹⁵ The full list of commitments can be found here <https://www.christchurchcall.com/call.html>. Several of the commitments refer to measures also noted in Article 28b of the AVMSD.

content aimed at recruiting or glorifying rather than the publicising in-progress terrorist attacks. In some jurisdictions, removal orders must come from judges or a court order. It has been argued that efforts to prevent violent extremism and terrorism by controlling content dissemination are plagued with vague definitions of incitement, glorification or even hate speech resulting in a failure to limit the discretion of authorities and potential over-blocking (Belavusau et al., 2019).

Following the commitments made in the Christchurch Call, the role of the GIFCT changed to involve more collaboration with state authorities and law enforcement. In 2019 it instituted a Content Incident Protocol, which was launched and tested at Europol's headquarters in concert with the EU Crisis Response Protocol. It enables the rapid sharing of information among GIFCT member companies and law enforcement to prevent or limit the spread of any content online and provide information to an affected country's authorities. The GIFCT reports that by March 2020 the protocol had been activated 70 times. Since June 2020, the GIFCT has been an independent charitable organisation with an independent advisory board.

Box 9 - Case study: Germany

Case study: Germany

On 9 October 2019 in Halle (Germany), an armed man attempted to enter a synagogue and after failing to do so killed a passer-by and then attacked customers in a kebab shop. Online platforms played two roles in this incident. Firstly, there is evidence that his engagement with online platforms contributed to his motivations for the attack, which appeared to have been a copycat of previous attacks in Christchurch, New Zealand, and Poway and El Paso in the US (Koehler, 2019). In particular, he used a now closed platform called Meguca, the forum of which was known to be an online hiding place for white supremacists (Crawford, 2019). Secondly, his manifesto containing anti-Semitic and Holocaust-denying material was posted on Meguca, and he used a livestream on Twitch on the day of the event, which was also posted to Meguca. Germany's NetzDG law that aims to prevent extremist and illegal hate speech had been in place for almost two years, but neither of the platforms he used are within the scope of this law. Twitch reported that the live stream was only seen by 5 users and that its moderators had found and removed the content within 30 minutes after 2,200 views. The day of the attack was the first time the GIFCT Content Incident Protocol was activated and GIFCT reports that the reaction of its members was rapid and coordinated with law enforcement. It notes that only 36 unique video versions were hashed from the incident in its database, far fewer than were created following the Christchurch incident. Several GIFCT members were criticised however for not releasing data on the numbers of views and takedowns on their platforms (Reuters, 2019).

The lessons that can be learned from the efforts of platform-owning companies, national governments and civil society organisations are many. Firstly, **international collaboration seems crucial on both CSEA and terrorism** because the crimes often cross borders and can involve perpetrators or crimes in multiple jurisdictions. Secondly, the experience in these areas demonstrates **the benefits of pooling and exchanging information among a variety of stakeholders and establishing well defined systems of notification and communication**. Thirdly, **technological solutions such as PhotoDNA or others used in content hashes or tools for recognising grooming, will likely be developed by the big tech companies themselves**. Making them available more widely, including to smaller rivals is an important step. There was some evidence in our interviews with VSP representatives that there is a commitment from some of the larger ones with the capacity to invest in detection technology to make it available. Finally, smaller and emerging platforms can remain under the radar of these transnational collaborative enforcement mechanisms. While some may have mechanisms in place and unilaterally be able to take responsible action and engage with law enforcement (such as Twitch on the Halle incident), others may not.

Outcomes

- Widespread transnational multi-stakeholder commitment to combating both CSEA and terrorism.
- Vast databases of hashes to enable the rapid detection and removal of material.
- Established systems for collaboration between major online platforms, including VSPs, and law enforcement both for long-term prevention and removal as well as for immediate intervention to stop ongoing crime as it takes place.
- Consistent high-level dialogue among major platform-owning companies, civil society, governments and law enforcement.
- Collaborative investment in technology that can be made widely available.

2.3.4.3 Transnational co-regulation of hate speech

We use the term transnational co-regulation in relation to hate speech even though what exists in Europe does not strictly fit the model of co-regulation described in section 2.3.2.2 above. There is a Code that was not the result of an industry-led process and compliance with the code is monitored by institutions outside of industry. There is no direct sanctioning power directly connected to the Code or held by those doing the monitoring, but some Member States have regulations in place that can be seen as national-level backstops to the transnational application of the Code. Instead of a national government agency or regulator, it was the European Commission that instigated the drafting of the Code of Conduct for Countering Illegal Hate Speech Online. It was signed in May 2016 initially by Facebook, Microsoft, Twitter and YouTube and has since been joined by Dailymotion, Google+, Instagram, Jeuxvideo.com, Snapchat and TikTok. The Code places time limits on the implementation of notice and takedown measures, as are called for in Article 28b of the AVMSD in order to protect users from content that incites hatred. Compliance with the code is systematically monitored by a host of civil society organisations across the Union that report to the Commission.

Box 10 - Case study: Spain

Case Study: Spain

Spain is a country which has been cited as an example of draconian application of its hate speech and incitement laws against individual speakers for content disseminated through online platforms (Article 19, 2020), yet does not have a law that holds the platforms or platform-owning companies responsible. However, Spanish civil society groups and government have thoroughly engaged in the implementation of the Code of Conduct for Countering Illegal Hate Speech Online. A Spanish civil society group Movimiento contra la intolerancia was among the first “trusted flaggers” that conducted the initial round of monitoring following the adoption of the Code in 2016. By the fifth round of monitoring completed in June 2020, Spain was represented by civil society groups representing Roma (Gitanos) and the LGBT+ community, the Spanish Observatory on Racism and Xenophobia (OBERAXE), and the Ministry of Interior. Together they flagged 344 cases of which 47% resulted in removal (Reynders, 2020). Though their removal rate was well below the 71% average, their work helped to show that 90% of cases were considered within 24 hours. That the wide-ranging participation from a country in which the understanding of incitement to hatred has been criticised for being overly broad resulted in a lower than average removal rate (and has consistently done so thus far) can be seen as a positive indication from a freedom expression point of view. Though VSPs and other participating platforms may be reaching their targets for the speed at which they consider flagged cases, there does not seem to be an incentive structure that leads to excessive caution or removal of content.

In **Germany, Italy and France**, policy makers have adopted regulations to penalise companies for failures to address illegal hate speech⁹⁶. In Germany, the NetzDG law described in the sections above obliges platforms to take down infringing content within specific time frames and report regularly on their implementation of these measures. In **Italy**, the communications regulator AGCOM issued a regulation through its Resolution 157/19/CONS citing failures in the self-regulation of hate speech by audiovisual media services and VSPs. The regulation requires VSPs to submit quarterly reports on the measures taken to identify and remove hate speech and sets out administrative sanctions in the form of financial penalties if VSPs fail to respond when notified by AGCOM of incidents of hate speech. The regulation has yet to be used to penalise a VSP, though it was applied to one audiovisual media service. These laws apply to VSPs regardless of their country of origin, so **a VSP based in any other Member State must still comply with the German and Italian rules as long as they meet their criteria**. Therefore, it is plausible that a VSP that is not a signatory to the Code of Conduct on Hate Speech might still be meeting notice and takedown and reporting standards in order to comply with rules in Germany or Italy, and if not might be sanctioned by one of their designated regulators. There is not exact equivalence, and there is some tension between the expectations of the Code of Conduct and those of the national level rules, however there is overlap in the commitments required of platforms and aims of protecting the public from illegal content. The national rules in Germany and Italy at the time of writing also cover those platforms that do not yet participate in the Code. They can be seen as a kind of back stop the EU level self-regulatory mechanism, which itself is close to co-regulation given the level of external monitoring. These national laws were not intended as means for implementing the AVMSD and neither was the Code of Conduct, which pre-dates the most recent revision. **Combined, however they amount to a system that already essentially implements Art. 28b(1)(b), albeit one that goes farther than the minimum standards for protecting users in the Directive.** This system is a hybrid and also likely to be a temporary situation as EU lawmakers are preparing a Digital Services Act that is expected to introduce a stronger regulatory framework at the EU level.

⁹⁶ In France the Avia law was adopted by Parliament, but much of it was struck down by the country's supreme court soon after (see box 11). In Italy the rules are contained in a regulation adopted by AGCOM, the country's national regulator rather than in legislation.

Box 11 - Case study: France

Case study: France

In June 2019, lawmakers in France, led by Laetitia Avia, determined that the outcome of the Code of Conduct for Countering Illegal Hate Speech Online and the measures taken by online platforms to combat “hateful content online” were inadequate (Avia, 2019). What became known as the Avia law that was adopted by the French parliament required online platforms to remove hateful content within 24 hours and the more highly offensive CSEA and terrorism content within one hour of being notified. The law also contained sanctions, including high financial penalties and jail terms for non-compliance. By June 2020, these provisions had been struck down by the Constitutional Court in Decision number 2020-801 as disproportionate and placing excessive constraints on freedom of expression. The experience of the Avia law was notably different from the case of Law 2018-1202 adopted in December 2018 to fight the dissemination of misinformation during elections. This law provides an expedited procedure in the three months prior to an election for the removal of “false information.” A judge’s decision is required for the removal of content and regular reporting is also foreseen in the law. Failure to comply can result in a EUR 75 000 fine. The law also imposes strict transparency requirements on platforms. Despite a lack of precision in the definitions, the law was accepted by the Constitutional Court and has been seen as a good example of a proportionate restriction on freedom of expression (Crauford-Smith, 2019). Platforms are required to send the CSA an annual declaration indicating how they have met the obligations of Law 2018-1202 and the CSA has produced its first assessment report based on the questionnaires filled in by 11 platforms, including some VSPs. The assessment report (CSA, 2020) pointed out some of the difficulties that platforms face in identifying accounts that are disseminating false information on a massive scale. It contained a critical evaluation of the measures taken by platforms such as the quality of flagging tools and identification of political advertising, but the CSA claimed it was constrained in its ability to determine effectiveness by a lack of information on the human and financial resources dedicated to content moderation and requested more disclosure in the future.

The way hate speech is currently handled within the EU arguably fulfils the first three criteria for co-regulatory codes set out in the AVMSD’s Article 4a. There is a code that has been accepted by major industry players and a wide range of civil society groups (though not all), as well as by the European Commission. It has “clear and unambiguous” objectives those these are limited to the speed with which flagged content is addressed and reporting requirements. It provides for “regular, transparent and independent” monitoring through the periodic monitoring cycles implemented by the civil society network of trusted flaggers and the Commission. It still situates the responsibility for defining what constitutes hate speech and where the balance is achieved among competing fundamental rights with the platforms and the external monitoring is not paired with the kind of access to information held by the platforms that would be needed to assess how the balance is being achieved. There is no “effective enforcement” with “proportionate sanctions” directly associated with the code, so it does not fulfil the last of the criteria set out in the Directive. We have argued that the Member State regulations, particularly the German NetzDG law, indirectly provide this to some extent, though there is still an active debate as to whether its sanctions are proportionate and enforcement effective.

Co-regulation is ardently encouraged by the AVMSD for implementing its provisions on VSPs, among others. The lessons to be learned from existing national and EU level mechanism for illegal hate speech point **to a need to coordinate this at an EU level and perhaps for guidance on information access and reporting for the purposes of monitoring**. Major VSPs that are signatories to the Code and within the scope of the German and Italian regulations will be both externally monitored and produce reports for the

two national regulators. They will also generate reports on their handling of false information for the French regulator to comply with the Avia law as well as any others that are set by Member States.

Despite the multiple reports being generated, the experience described above and our evidence presented in section 2.2.3 indicates that there are still gaps in the information being made transparent or available to regulators through this reporting. There may also be a lesson to be learned on the application of sanctions, but more data is needed to understand the subtleties of incentives and practices. **The limited evidence from the monitoring reports on the application of the Code of Conduct and reporting from the VSPs suggests that, when not coupled with sanctions, time limits for considering flagged content do not necessarily incentivise over-removal of content.** However, the monitoring of the Code mainly involves groups representing those in protected categories who test the speed of takedown. There is currently no testing of the efficacy and fairness of appeals. **Without pairing the existing monitoring of takedowns with testing of appeals by digital rights or expression groups and insight into the detailed moderation guidance used in the platforms, the extent to which there are incentives or tendencies for over-removal cannot be confirmed.** Representatives from some smaller platforms with which we spoke saw the time limits as admirable targets but indicated that they would have trouble meeting such deadlines with their current capacity for content moderation.

Outcomes

- Recognition of the status of trusted flaggers and enhanced working relationships between civil society groups and VSPs.
- Evidenced increases in the speed with which content flagged as hate speech is considered and dealt with by those platforms that are signatories to the Code of Conduct.
- The production of multiple reports by major platforms on their handling of the moderation of speech where a delicate balance between freedom of expression and other rights or concerns must be achieved.

2.3.4.4 Building on existing mechanisms

Here we have examined the existing mechanisms that address some of the harms the AVMSD aims to prevent with the provisions in Article 28b. Our examination of existing mechanisms highlights the importance of transnational and multi-stakeholder cooperation, particularly in relation to illegal content and behaviour, namely CSEA, terrorism and illegal hate speech, and in relation to advertising. There are numerous forums for sharing best practices and advising on the protection of minors from harmful content both within Member States, such as Germany's FSM, and transnationally, such as within the Internet Governance Forum. These are much more fragmented than the efforts to tackle illegal content and behaviour. The systems for dealing with CSEA and terrorism have been led by industry and civil society in cooperation with law enforcement and national governments. **Investment in technological tools seems to have been crucial, as has the sharing of those already developed.** Member States are required to "assess the appropriateness of the measures" (Art 28b(5)) and instructed to entrust their audiovisual media regulators with doing that. With the multi-stakeholder nature of the current system and its reliance on technical solutions, questions will need to be answered as to what kinds of relationships national regulators will need to have with the various stakeholders and what information they will need to have in order to assess the measures being taken.

What information is needed for adequate monitoring and assessing the measures taken by VSPs is also a question that needs to be answered in relation to the protection of users from illegal hate speech and incitement. The implementation of the Code of Conduct on Countering Illegal Hate Speech Online and the enforcement of national level regulation, namely the German NetzDG law and French disinformation law have led to the production of regular reports on content moderation measures taken by platforms. The evidence indicates that these still fall short of what would be needed for a regulator to assess the appropriateness of the measures. Some VSPs report extensively on their content moderation, but the focus

of reporting has been on removal rates and speed and testing of systems from the perspective of protected groups. **There is a lack of information at all from many VSPs, few regulators seem to be gaining explicit and specific information gathering powers, and the current reporting does not capture the subtleties** required to assess the balancing of expression rights.

The platforms owned by Google and Facebook engage with all of these existing transnational collaboration systems, though are not full participants in advertising self-regulation. Mid-sized platforms, such as TikTok, Snap and DailyMotion, participate in some of them. The gap between higher functionality platforms with a capacity for implementing measures and lower functionality platforms with lower capacity identified in the earlier sections is apparent here as well. This raises the question of how existing systems that seem so important to the effective protection from some of the harms addressed by the Directive, especially those involving illegal behaviour and content, can engage smaller platforms and be accessible to any newcomers.

2.4 Conclusions

We draw two main conclusions from our investigation into VSPs and the governance frameworks within which they are operating:

- There appears to be an implementation gap between high functionality VSPs, provided by well-resourced companies that are highly engaged at an international level and are already implementing many of the protection measures foreseen in the Directive and those VSPs that have fewer functionalities for users and advertisers and are provided by smaller companies.
- International cooperation among VSPs, regulatory bodies, government (including law enforcement), and civil society seems very active in some areas, with evidence of effectiveness which can serve as models for other areas, but there are still gaps in terms of who is involved.

In this conclusions section we explain how each of these stems from our findings presented above and discuss the implications.

2.4.1 Implementation gap

We began this chapter with the results of our mapping of the functionalities of 15 platforms that we identified as possibly fitting the definition of VSP that were available and used within Europe. By examining the public documentation of the platforms and testing them, we mapped content delivery, participation, and monetisation functionalities for users. **This mapping revealed two categories of platforms.** On platforms in the high functionality category, users had greater autonomy in the form of options for controlling the content they uploaded, for example, by tagging or restricting access, and options for controlling the content to which they were exposed, for example, through filters. On platforms in this category, users had more monetisation options. The low functionality category included platforms that offered few options beyond basic uploading of their content and few or no monetisation options.

We also took the perspective of advertisers, looking at the functionalities offered to them by the various platforms. **We identified three purchasing pathways, each characterised by different levels of control by the platforms.** In the influencer pathway, platforms may have little or no involvement in the relationship between the content creator and the advertiser, but the creators will operate under the terms of the platform. In the proprietary purchasing pathway, advertisers use tools provided by the platforms to plan and place their advertising or make direct arrangements with the platforms. In this pathway the platforms have considerable control as their terms and contractual conditions apply. The third purchasing pathway is through the open web, which means that advertisers go through intermediaries that then serve the ads to a specific user on the platform based on the targeting criteria set by the advertisers. Platforms may be able to instruct the intermediaries to avoid certain categories of advertisers, but otherwise have no relationship with advertisers and little control over the ads served on the platform.

These distinctions have implications for the measures that can be taken to protect users as required in the AVMSD. In order for platforms to implement filters to protect minors from certain kinds of content, users should be able to tag and/or age rate the content they upload. In order for platforms to ensure advertisers are complying with the qualitative rules set out in the Directive, they must have some control over the advertisements being served to their users. **Our findings indicate that there are a number of platforms that may qualify as VSPs yet lack the level of functionality needed to implement the range of measures foreseen in the AVMSD.**

This distinction was borne out in our examination of the measures already being taken by VSPs to protect users, especially minors. Our investigation mapped measures taken to address each area of harm noted in the Directive by each of the platforms we had identified. This mapping showed that the larger platforms

already engage in an array of the measures foreseen in the Directive and the pivotal role of automated systems based on artificial intelligence and machine learning. The large global platforms appeared to be making vast investments in developing technology and in resources for implementing measures.

Any engagement with child sexual exploitation and abuse (CSEA) was universally banned by the platforms, and nearly all also specifically banned terrorism. There was, however, significant variation in the way and extent to which these were defined in the terms or guidance for users. Automated detection and removal systems were the main defence against the spread of CSEA materials and terrorist content. These relied on technology developed by the major platform-owning tech companies and shared through transnational cooperation. The pooling of hashes used to identify content by multiple platforms and other institutions was also characteristic.

There was also vast variation in the definitions of hate speech or incitement to hatred and violence deployed by the platforms. Several of them went beyond the protected categories listed in the Framework Decision. The evidence from the platforms' own documentation and interviews with their representatives showed that **massive investments are being made by some platforms in both machine and human content moderation**, especially those that have signed up to the Code of Conduct on Countering Illegal Hate Speech Online. These combine automated detection systems based on machine learning with large numbers of human moderators. These have topic, language and regional specialists who help develop detailed guidance for the human moderators, whose work then is used to teach the automated detection systems. Smaller platforms seem to rely largely on human moderation in this area, and it was reported by some that they would have trouble meeting tight moderation deadlines.

Except for YouTube Kids, none of the platforms we studied were intended for children under the age of 13 and some had age limits of 16 and 18. None at the time had age verification methods beyond requiring users to enter their birth date upon registration, though YouTube announced at the end of September 2020 it would be launching additional verification. **There was great variety in the way the platforms attempted to protect this 13-18-year-old group of users.** The more sophisticated VSPs included automatic filtering of content and advertising, such as on Facebook, options for choosing filters, such as on Vimeo and Dailymotion, and Tiktok's family pairing that gives adults insight and control on a number of functions. As mentioned above, the range of protection measures a platform applied appeared linked to the extent of functionalities it offered users and advertisers. Among the low functionality platforms, age limits were generally higher (D.tube was the exception), but content was available without login on some and only on Liveleak was age-rating available.

In summary, the larger platforms seem to be already implementing most if not all of the measures outlined as a non-exhaustive list in Article 28b of the AVMSD. They set through terms and guidance for both users and advertisers. They enable and encourage uploaders to declare sponsorship and rate or categorise their content. They provide easy systems for flagging content and making complaints. They also provide parental controls and extensive guidance for parents and educators aimed at protecting minors. All of this appears to require very large investments in both human and technological resources. We identified a number of services used in Europe that are not yet implementing such measures and may not have the capacity to do so, which may affect their ability to compete as well as to comply. There will probably be small or emerging ones that we have missed, and as one stakeholder representative pointed out, there are a number of adult content services that could also be considered VSPs. Indeed, in an assessment of the potential VSPs in the UK jurisdiction by Plum Consulting (Adshead et al., 2019), two adult content services were included. **The implication of this gap in implementation capacity is that there will be users who are unprotected from the harms the Directive aims to prevent.**

2.4.2 Cooperation gap

The Cooperation gap we identified takes two forms: participation and information. Firstly, **there is a lack of participation from some players in the existing cooperation that appears crucial to the effectiveness of some of the measures foreseen in the AVSMD**. Smaller VSPs seem to be only on the receiving end of some tech innovations aimed at combatting illegal content, namely CSEA materials or terrorist content, and appear less engaged with the high-level standard-setting cooperation that is occurring at a transnational level. There is an evident imbalance in the range of civil society organisations engaged in current efforts to combat illegal hate speech, and advertising intermediaries, which our study shows need to be involved in the enforcement of advertising rules, are not yet sufficiently engaged. Secondly, our attempts to assess the measures already being taken by VSPs showed **a significant deficit in information of the kind that national regulators will need in order to fulfill the monitoring role expected of them** in the Directive. This gap represents an opportunity for shaping the cooperation between VSP providers and regulators.

The experience with efforts to combat CSEA and terrorism demonstrate that transnational and trans-platform engagement is crucial. It has shown that what we called transnational co-enforcement mechanisms can be effective in achieving specific goals. For battling both, there have been industry led initiatives for sharing technological tools and databases (e.g. The Tech Coalition for Fighting Child Sexual Abuse and the Global Internet Forum for Counter Terrorism). Through multiple global and regional initiatives there is high level collaboration on technological and policy innovation. Larger platforms have made key technological innovations available to other platform providers and stakeholders. Smaller VSPs seemed absent from the major transnational initiatives and on the receiving end of innovation. While the current cooperation shows some evidence of effectiveness, the extent to which smaller and emerging platform providers can be part of the high-level transnational collaboration in addition to being recipients of its fruits remains unclear.

We described the implementation of the Code of Conduct on Countering Hate Speech Online as a form of transnational co-regulation because of its regional nature and the innovative supervision mechanism. It is not directly associated with the AVMSD but aims to tackle one of the areas of protection covered in the Directive and is a key element to the measures taken by some VSPs to protect users from incitement to violence or hatred towards specific groups. The Code is a result of dialogue initiated by the European Commission among platform providers, civil society stakeholders and others. We found the experience with its implementation to highlight two gaps that can be informative for developing mechanisms in other areas as well because it is the inclusiveness of co-regulation that results in greater legitimacy claims (Marsden, 2011). Firstly, smaller platforms are not yet participating, suggesting that perhaps targets set in dialogue with the large high functionality platforms may be out of reach to smaller or emerging ones. Secondly, monitoring by civil society was limited. The testing done in the monitoring rounds was small in relation to the volumes of content moderated by the platforms, and does not provide insight into the functioning of automated detection and removal systems. The civil society organisations participating mostly represented the protected categories of people or other vulnerable groups, and they tested the notice and action mechanism. While this monitoring is extremely valuable, it has not yet been paired with similar monitoring of appeals mechanisms, which could involve freedom of expression organisations.

Advertising self-regulation has a long history. Many self-regulatory organisations in Europe are part of co-regulatory systems that also involve a backstop role for the NRA or a state authority. SROs are broad churches with various kinds of advertisers as well as media companies involved. They are networked at a European level through the European Advertising Standards Alliance (EASA) through which they make use of a cross-border complaints mechanism and the ability the Alliance has as a regional institution to engage directly with the large global platforms. Its coordination and collective action are a model that could be useful for other areas covered by the Directive. In case of a suspected violation of any national advertising

code, the first point of intervention for advertising SROs is the advertiser in its country of origin. However, if the advertiser does not react, they also need the cooperation of the medium through which the advertisement is being disseminated. The EASA reports some success in reaching out to major VSP providers for assistance in such instances, but our identification of the different advertising pathways indicates VSPs trading on the open web would not be able to help. As these VSPs have little to no control over the ads being served and no direct contractual relationships with the advertisers, **enforcing the advertising standards outlined in the AVMSD may need to involve those intermediaries serving ads on VSPs through the open web as well as those VSPs that are in control of their relationships with advertisers** through their proprietary systems. Our mapping of the existing or planned regulatory systems in Member States revealed two types of co-regulatory systems emerging. The first and most prevalent we called NRA-dependent because of the crucial role that the national regulatory authorities were expected to play. In these systems, NRAs were responsible for more aspects of the supervision and either the existence of a self-regulatory organisation (SRO) was not necessary or the NRA had to approve or recognise any codes of conduct or SRO. The second category of system we labelled industry-intensive because of the apparent expectation on industry to take the initiative. These systems relied on industry devising or choosing a code of conduct and required SROs to be set up by industry.

Neither of these can be directly linked to “harder” or “softer” regulation. For example, NRA-dependent systems did not necessarily grant strong enforcement powers, simply the main or only enforcement powers. As Rubinestein (2018) argues, the advantages of co-regulation are that it draws on industry knowledge and expertise, yields rules that are more cost-effective, workable and innovative, creates a stronger sense of industry ownership over rules and thus better compliance, and results in rules that are more politically practicable and efficient. Where the role for industry and other stakeholders is less prescribed by law, it may fall on the NRAs to shape and encourage industry involvement and define the nature of that relationship. The Directive contributes to this in that it establishes basic criteria for the independence of NRAs and makes Member States’ NRAs responsible for monitoring the use of measures by VSPs. **There is great potential here for effective cooperation and compliance**, but our study found an information gap that will likely need to be overcome in order for this to be achieved.

Our attempt to assess the existing measures being taken by VSPs highlighted the significant lack of information available with which to make such assessments. The efficiency with which the largest VSPs are able to identify and remove illegal content could be seen. Some data was available with which to track the extent to which these and other removals were appealed. For many smaller platforms there was no data available. Even for the larger ones, there was not sufficient data to determine how exactly they balanced expression rights with other concerns, for example how they drew the line between illegal hate speech and just offensive. There was **not sufficient information available with which to determine the effectiveness of the myriad design features and measures aimed at protecting minors**. Nearly all the data we found was self-reported. Of the VSPs we studied, only Facebook (Including Instagram), TikTok and YouTube regularly publish information on their content moderation. In summer 2020, Facebook issued a tender for an external auditor for its Community Standards Enforcement Reports. This could provide the kind of independent verification that arguably should be common practice but it was not yet operational at the time of writing.

Some Member State frameworks that were in place or planned set out reporting requirements and/or granted the NRA the power to require information from the platforms, but many did not. The **variation among Member States’ approaches and the transnational nature of the VSPs will necessitate close coordination and collaboration among NRAs** for which there is already an existing mechanism that has been reinforced by the Directive. There appears to be an opportunity for cooperation within the European Regulators Group for Audiovisual Media Services (ERGA) to work with industry to establish the type of information, the means of acquiring it, and any auditing or validation of the kind of information they will

need in order to monitor. Several VSP representatives with whom we spoke expressed a willingness for dialogue as to what information they should provide and how. This is an opportunity to maximise the benefits of co-regulation, as this is an area where industry knowledge will need to come together with the principles and needs of the NRAs.

Chapter 3

Media ownership and transparency in the EU

Study on the implementation of the new provisions in the revised audiovisual media services directive (AVMSD)



Authors:

Dr Heritiana Ranaivoson
Adelaida Afilipoaie
Monika Magyar
Prof. Dr Tim Raats
Prof. Dr Karen Donders

With the collaboration of Lea Ytrehus, Prof. Dr Ben Van Rompuy and Jonathan Hendrickx

3 Media ownership and transparency in the EU

3.1 How the revised AVMS Directive deals with media ownership rules and transparency

Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU added a new provision in Article 5 to ensure media ownership transparency, allowing Member States to adopt provisions on media ownership transparency:

Article 5

1. *Each Member State shall ensure that a media service provider under its jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information:*

(a) its name;

(b) the geographical address at which it is established;

(c) the details, including its email address or website, which allow it to be contacted rapidly in a direct and effective manner;

(d) the Member State having jurisdiction over it and the competent regulatory authorities or bodies or supervisory bodies.

2. *Member States may adopt legislative measures providing that, in addition to the information listed in paragraph 1, media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners. Such measures shall respect the fundamental rights concerned, such as the private and family life of beneficial owners. Such measures shall be necessary and proportionate and shall aim to pursue an objective of general interest.*

In addition, the preamble of the revised AVMSD says:

(15) Transparency of media ownership is directly linked to the freedom of expression, a cornerstone of democratic systems. Information concerning the ownership structure of media service providers, where such ownership results in the control of, or the exercise of a significant influence over, the content of the services provided, allows users to make an informed judgement about such content. Member States should be able to determine whether and to what extent information about the ownership structure of a media service provider should be accessible to users, provided that the essence of the fundamental rights and freedoms concerned is respected and that such measures are necessary and proportionate.

(16) Because of the specific nature of audiovisual media services, especially the impact of those services on the way people form opinions, users have a legitimate interest in knowing who is responsible for the content of those services. In order to strengthen freedom of expression, and, by extension, to promote media pluralism and avoid

conflicts of interest, it is important for Member States to ensure that users have easy and direct access at any time to information about media service providers. It is for each Member State to decide, in particular with respect to the information which may be provided on ownership structure and beneficial owners.

In line with the objectives of the assignment this Chapter provides for:

- an analysis of national and regional legislation governing and limiting media ownership in the European Union;
- an overview of the rules governing media ownership transparency;
- an analysis of the implementation of the legislative framework in the recent past via case studies – 10 (for media ownership) and 6 (for transparency);
- a reflection on the effectiveness of the legislation restricting media ownership, on the one hand, and governing media ownership transparency, on the other.

Some of the descriptions provided throughout the different sections might overlap. The authors decided to provide all relevant information per section to allow the reader to select specific parts of the report without lacking specific contextual descriptions.

3.2 Media ownership rules: mapping, implementation and effectiveness

The section in brief

This section first analyses how current trends of globalisation and digitization are leading to further media concentration, and the role of media ownership regulations in limiting this concentration trend and its potentially negative impact on competition and media pluralism.

The section provides a framework for mapping media ownership rules and their implementation in the EU.

- Ownership rules linked to the allocation of broadcasting licences and newspapers;
- Ownership rules based on quantitative thresholds but not per se linked to the allocation of licences;
- Ownership rules depending on specific categories of actor; and
- Special rules and procedures of media mergers.

It gives an overview of Member States' legislation governing and limiting media ownership in the European Union and analyses the implementation of the legislative framework on media ownership in the recent past via 10 case studies.

- Audiovisual markets remain very different (rules, implementation, concentration, context).
- There are very large differences in national media-specific ownership legislation across Member States.
- There is a common trend towards deregulation of media ownership rules.

It reflects on the effectiveness of the legislation restricting media ownership.

- Media ownership rules are necessary but insufficient.
- More media ownership rules correspond to lower market concentration.
- Media concentration and pluralism are not necessarily mutually exclusive.
- Moreover, the context is important, as several factors can influence media markets, from the Member State's socio-demographic profile to its history to how the rules are enforced.
- Aiming for a uniform media ownership regulatory framework across the EU is not preferable.

3.2.1 Context

Media industries are impacted by a series of important external shaping factors: globalisation, regulation, economics, technology and social aspects (Iosifidis, 2014). Globalisation allows companies to expand beyond their national borders, establish new headquarters and acquire new firms. Regulation keeps in check businesses and industries by creating a healthy competitive environment, protecting consumers and businesses at the same time, but also generating revenues through taxation. The government's strategy, the macroeconomic context and microeconomic behaviours are the forces influencing a country's economics. Technological advances have obliged media companies to compete to stay relevant, especially as the digital world has challenged companies to augment their business models and revenue streams. Finally, social aspects have led to a fragmented audience with different needs and interests, which have to be met by

media companies. These factors have accelerated the transformation of media industries and have created **an environment suitable for Mergers & Acquisitions (M&A) activities.**

As defined in Article 3 of the EU Merger Regulation 139/2004/EC (2004), M&A are concentrations that arise when there is a change in control between “two or more previously independent undertakings or parts of undertakings”, or in the case of an “acquisition by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.” Additionally, the creation of an “autonomous economic entity” through the establishment of a joint venture also constitutes a concentration.

As generally defined, M&A is a consolidation of companies or assets through various types of financial transaction, including mergers, acquisitions, consolidations, tender offers, purchase of assets and management acquisitions. Although the terms are used interchangeably, they have slightly different meanings. Yet, according to the well-established practice in competition law literature, the term merger control captures both terminologies (Bradford, Jackson & Zytnick, 2018). The tendency for media markets to be oligopolistic or even near monopolistic is a result of the structure of the media industries, which are characterised by economies of scale, product differentiation, public goods, advertising-content interdependence and network effects. Both growth and survival are the ultimate goals of any organisation (Gupta, 2012). Thus, like in any other industry, M&A transactions in the media sector are also a form of survival strategy, needed especially in today’s globalised and competitive media industries where a handful of media giants put pressure on smaller media companies, whose only feasible option of survival relies on consolidation (Evens & Donders, 2018).

Media companies, which used to have clearly differentiated activities, have begun to consolidate both horizontally and vertically in the search for scale, making the identification of the market-operating boundaries more difficult. An outcome of this consolidation is that **media companies have become large conglomerates** and have converged activities with telecommunications companies as well. Content-related companies work closely with telecommunications companies to distribute their content to the end-consumer. Recent megadeals such as the 2013 Comcast and NBC Universal acquisition, alongside the 2016 AT&T acquisition of Time Warner, the 2019 Disney acquisition of 21st Century Fox and the CBS and Viacom merger in the same year, stand proof that media and telecommunications groups are consolidating and converging their offerings to reach greater scale and efficiencies that come with size.

Current consolidations within traditional media conglomerates are furthermore pushed by the rise of global platforms, which have all started competing in production and distribution of content, and whose business models allow them to build scale at a rapid pace (Google, Amazon, Facebook, Netflix, Apple) (Evens & Donders, 2018). European media and telecommunications companies are generally smaller than those of the US and usually operate nationally. There are a few exceptions, with conglomerates such as the German Bertelsmann, the French Vivendi, the British Sky and Vodafone, whose operations cover multiple European markets. Furthermore, Europe is no stranger to M&A activities, examples being the Swedish telecom operator Telia’s acquisition of Bonnier Broadcasting in 2018, the 2019 takeover of the Luxembourg-based satellite pay TV service M7 by the French Canal+ (owned by Vivendi), the Vodafone acquisition of Liberty Global’s cable assets in selected territories in the same year, and the merger of the Scandinavian pay TV operations of Viasat and Canal Digital.

Given the external factors and the structure of the media industries, concentration is inevitable as companies seek to become bigger, more competitive and to increase their market power. Although economies of scale and scope allow companies to be more efficient through lower production costs, increased market share and increased profits, M&A and the concentration activities may translate into reduced competition and higher

prices for consumers – at least in the shorter run (Ashebfelter & Hosken, 2010; Leigh & Triggs, 2016; Genakos, Valletti & Verboven, 2017); not to mention the non-economic threats to media pluralism and diversity as a result of excessive media concentration (Iosifidis, 2014; Hendrickx and Ranaivoson, 2019). As explained by Picard and Zotto (2015), having a high number of media content suppliers does not necessarily mean that representation of diverse viewpoints is ensured, and concentrated ownership could in fact lead to an increased degree of pluralism provided that the merged organisation can improve the range of output offered. Because media ownership does matter and does impact media pluralism, among others, **EU competition policy** (antitrust and merger control rules) **and national media-specific legislation** address the abovementioned concerns.

There are two ways in which competition law can ensure that the market is contestable and open to competing operators: ex ante control of envisaged concentration and ex post enforcement of the antitrust rules. Complementary to competition law, sector-specific media regulation adds a further level of regulation and aids in continuously monitoring the market and steering it away from a monopoly to a competitive market. Some Member States have decided against the implementation of national media-specific legislation and rely solely on competition law, whereas others have adopted their own media ownership rules, with some opting for more relaxed rules than others in order to ensure a pluralistic and diverse competitive media system.

Repeals of regulatory constraints and changes in regulatory practices with respect to the consolidation of media ownership have been on the rise in Europe, corresponding to the needs of a new, digital media environment (Gálik, 2010). Recently, in a manifesto, certain Member States have called for policy modernisation in order to have a globally integrated, sustainable and competitive industrial base (German Federal Ministry of Economics and Technology, 2019). At the same time, European Commission Executive Vice-President for a Europe fit for the Digital Age, Margrethe Vestager, has stated that favouring horizontal mergers in large European industries, at the expense of smaller European competitors and consumers, is not the way to strengthen the EU's global competitiveness and that becoming competitive globally is not done by reducing competition locally (Vestager, 2020). Likewise, opinions are split between the need for more regulation or deregulation of the sector, with the latter position mostly voiced by large markets, such as France, Germany, Italy and Poland.

From an analytical point of view, three main questions are addressed in this subchapter: to what extent Member States have imposed specific rules for media services in their respective markets? What are the most common similarities or differences between Member States? In what ways does media ownership regulation impact levels of media ownership concentration?

3.2.2 Framework for the analysis of media ownership rules

It is essential to point out first that there are no specific EU rules on media ownership and cross-ownership regulation. Thus, it is within the competence of every Member State to set its own regulation consistent with EU law. Those rules are strongly linked to the historic and cultural background of each Member State. Therefore, the information on media ownership rules for the EU-27 plus UK has been aggregated into a table and divided into four main sections according to a pre-defined typology identified in the literature scan. The four sections are:

1. Ownership rules linked to the allocation of broadcasting licences and newspapers (3.2.2.1);
2. Ownership rules based on quantitative thresholds but not per se linked to the allocation of licences (3.2.2.2);
3. Ownership rules depending on specific categories of actor (3.2.2.3); and
4. Special rules and procedures of media mergers (3.2.2.4).

The main types of media included in this analysis are traditional TV, radio and press, and their online counterparts. Additionally, the existence of cross-media ownership rules is another category mapped.

The sections below explain each of the sections and provide a few examples that help to better understand the framework. Insights are based on a document analysis performed by the research team and cross-checked with the mapping carried out by the national experts.

3.2.2.1 Ownership rules linked to the allocation of broadcasting licences and newspapers

It is worth looking at the distinctions in ownership rules per media type. Historically, the written press has been much less regulated so as not to hamper press freedom. Radio, and later television, broadcasts in Europe were initiated through public service broadcasters run by governments, and as such they have always been under more scrutiny and hence subject to more legislation. From the literature, we were able to see that many of the media ownership rules were linked to the allocation of broadcasting licences and limitations for newspaper operations. This section is divided into three main categories, which correspond to limitations on:

1. the number of broadcasting licences and of newspapers;
2. geographical coverage area; and
3. country population or inhabitants in a specific area.

Limitations on the number of broadcasting licences and newspapers

In order to maintain the plurality of markets and representation of a diversity of voices, and to reduce market concentration, certain Member States have opted for implementing thresholds on the allocation of licences for broadcasters or the number of newspapers owned by one person. In many cases, the allocation of licences is linked to the geographical coverage area and/or number of inhabitants in the area covered by the spectrum.

In **Spain**, for example, with a view to protecting market pluralism and prevention of horizontal concentration, players are allowed to own 50% of the total number of radio licences available in a certain area providing that the total number of overlapping radio broadcasting licences⁹⁷ controlled in that area is no greater than five. Moreover, there have to be at least three national broadcasting licence holders and the number of Digital Terrestrial Television (DTT) multiplexes is restricted to a minimum of three. In **France** the number of licences allocated is clearer, with fixed numbers of licences allowed to be in the possession of an owner; one licence for national analogue TV, seven licences for national digital TV and two licences for local TV in the same area. In the **Flemish Region of Belgium**, an association can only provide one regional broadcasting programme and it is thus forbidden to operate two regional TV stations. The **Greek** print media has some unique rules established to prevent excessive horizontal concentration of ownership. These rules deal with the categories of newspaper, location, distribution and the frequency of release; e.g. one can own one daily financial newspaper and one daily sports newspaper published in Athens, Piraeus or Thessaloniki or two daily regional newspapers published in different regions. Greek media ownership regulation also differentiates between pay-TV/radio and free-to-air TV/radio, and between information media and non-information media (see 3.2.4.5).

⁹⁷ In this Spanish legislation, overlapping means reaching the same population. As an example of how the 50% and 5 thresholds combine: if an area is covered by 12 licences, a single broadcaster could own a maximum of 6 licences but out of the 6, the same population cannot be reached by more than 5 licences' signals.

Geographical coverage area

Secondly, there are **limitations to ownership at the level of a whole territory**. Regulators in many countries have imposed rules to ensure that their entire nations are covered by a host of media outlets, with several having specific rules at regional or local level.

France, for example, makes a distinction between companies holding broadcast licences for national and local television services, so that, for instance, no more than two licences for local television services are awarded in the same area for one company. Additionally, when it comes to the press, no one can own, control or publish daily political and general information publications whose total distribution exceeds 30% in the national territory of publications of the same kind. **Italian** law stipulates that no publisher can own more than 50% of copies printed in the same year in the newspapers in four inter-regional market areas: North-Western Italy, North-Eastern Italy, Central Italy and South of Italy. The extent of the geographical coverage area also dictates whether the owner can own other media services. This translates into cross-ownership rules. **Austria** is one of the examples where, if a media owner holds more than 30% of the national coverage area in either radio, press or cable networks, they cannot own TV channels or terrestrial television services. In **Spain**, the area of coverage is related to limitations on capital or voting rights held by an individual or corporate body in a broadcasting licence. If the individual or corporate body holds 5% or more of the share capital or voting rights of a broadcasting licence holder, it cannot have significant holdings in any other company within the same area of coverage. When it comes to the number of radio broadcasting licences an individual or corporate body can control, this is limited to 50% of the total radio broadcasting licences available in a certain area, as long as the total number of overlapping radio broadcasting licences controlled in that area is no higher than five.

Country population or inhabitants in a specific area

This metric looks at the total population coverage that a certain group of stations may control by using census data and signal coverage maps. Although not used in many Member States, some examples included are France, Czechia, Romania and Slovakia. These rules are set up to serve the public interest by encouraging competition, diversity and innovation.

In **Czechia**, for example, in terms of restrictions on the number of licences for local and regional TV and radio broadcasting, an owner who holds more than one local or regional licence may not control national coverage in aggregate of more than 70% of the total population of the country. The same ownership rules apply to radio broadcasting, with a maximum aggregate of 300% of the total population of the country. **France** has a so-called 'two out of four rule' relating to cross-media ownership rules, where the owner can satisfy only two of the four criteria at either the local and/or national level. These criteria are linked to the geographical coverage area, number of inhabitants and a certain percentage of the national circulation of daily newspapers, e.g. when it comes to radio, the cumulative potential public cannot exceed 20% of the cumulative population in areas covered by the same company and may not exceed a cumulative total of all the networks of 150 million listeners. Similarly, in **Romania**, the national audiovisual licence provides the right to broadcast the same programme in a geographical area covering a potential audience of over 60% for radio and 70% for television of the country's population as recorded in the census.

3.2.2.2 Ownership rules based on quantitative thresholds

These rules are not per se directly linked to the allocation of broadcasting licences and are made up of a series of quantitative thresholds.

Audience shares

In the audience shares model, restrictions are used as thresholds to prevent ownership concentration and to increase pluralism. Examples of Member States that have imposed this include Belgium (Fédération

Wallonie-Bruxelles), France, Germany, Hungary, Romania and Spain. Such audience shares thresholds apply only to **TV and radio, with the exception of France** where the press is also covered.

In **Hungary**, for example, with the exception of public service, community and thematic media service providers, a linear audiovisual media service provider (either TV or radio) may not launch new media services and may not acquire shares in business entities providing media services, if the provider has an annual audience share of at least 35% of the average audience share in its specific market or an aggregate average annual audience share of at least 40% in case of a combined market (TV and radio).

In **France**, the thresholds for the audience share are represented by absolute numbers and not necessarily by percentages. When establishing thresholds for cross-media concentration limitations, an owner can be involved in a restricted number of given situations, which include thresholds for audience shares, capital and voting rights shares and market shares at both the regional and national level. The audience shares can go up to a maximum of 4 million viewers for a TV licence and 30 million viewers for a radio licence. Furthermore, there can be exceptions to the limitation of capital and voting rights shares in a media company based on audience share, as the 49% cap on ownership can increase if the audience is below 2.5%.

In **Germany**, audience share is used when establishing the level of a media company's dominant power over opinion and it ranges between 25-30% of all viewers.

Spanish law stipulates that as a result of a merger, national broadcasting licence holders can hold shares in several national TV stations provided that they have no more than 27% of the total audience during the 12 months prior to the acquisition.

Dominant power of opinion

The dominant power of opinion criterion, established to ensure the diversity and pluralism of opinion, is used exclusively in **German, Irish and Romanian** legislation when setting out preventive measures for media concentration. This specific metric can be seen as a sub-category of the audience share. For example, in **Germany**, dominant power of opinion is based on an audience share threshold. This regulation based on audience shares to prevent media concentration in the audiovisual industry serves to maintain the diversity of opinion, with thresholds ranging from 25% to 30% of audience share. The lower threshold applies where the undertaking holds a dominant position in a media-relevant related market (radio); the latter applies in the TV market. The press does not fall under these criteria.

Market shares

Market share is another metric useful for establishing the level of market dominance. As such, it is an element omnipresent in any media undertaking assessment. In our assessment, we consider market share as a metric as long as the legal documents include information on what market share percentage is considered to be dominant and/or if there are exclusive specific market share percentages per media type which set the maximum market share an entity can own before becoming dominant.

For instance, in **Lithuania** and **Poland**, a 'dominant position' is determined to be present if a company owns 40% of the market in a certain relevant market. In addition, in Lithuania, each group of three or a smaller number of economic entities with the largest shares of the relevant market, jointly holding 70% or more of the relevant market, are considered to occupy a dominant position in the market.

In **France**, the national market share is one of the 'two out of four' rule and it applies to the newspaper market as part of a strategy of preventing cross-media concentration. To ensure pluralism in the print press, the owner of a TV or radio channel cannot control a daily newspaper with a national market share of more than 20%.

Another way to look at market share goes **beyond the 'dominant position' percentage**. In **Italy**, for example, there are restrictions applicable exclusively to the press restricting how much one natural or legal person can control based on the daily newspaper's market share at the local and national level, e.g. no daily newspaper can be linked to another daily newspaper publisher if they together release more than 30% of copies printed in the same year in the daily newspaper market. In the **UK**, cross-media regulation prohibits a newspaper operator with 20% or more of the market share for print newspapers from holding a Channel 3 licence or a stake in a Channel 3 licence that is greater than 20% and vice versa.

Capital rights shares and voting rights shares

The quantity, value and rights associated with a shareholder's capital ownership share determine the control and voting power the specific shareholder has in the company. Examples of Member States where this is found include Belgium (Fédération Wallonie-Bruxelles), Croatia, Cyprus, Czechia, France, Greece, Hungary, Ireland, Luxembourg, Poland, Romania, Slovenia and Spain.

In **Ireland**, under the media merger guidelines, merging parties are put under scrutiny if one of the holdings has more than 25% of the capital rights shares or voting rights. This is identified as a 'significant interest'. **Hungarian** media law makes clear that an owner controlling a capital rights share or voting rights share of more than 25%, cannot launch new media services, and may not acquire shares in undertakings providing media services. In **France**, nobody can own more than 49% of any national broadcast licence if their annual audience reach exceeds 2.5%. In **Greece**, under specific conditions, cross-media ownership is allowed as long as the owner is not one of the ten main shareholders of the other media company in terms of shares or voting rights. To tackle horizontal ownership concentration, in **Spain**, an individual or corporate body that owns 5% or more of the share capital or voting rights of a broadcasting licence holder cannot have significant holdings in any other company within the same area of coverage. **Luxembourg** law stipulates that one single shareholder can own a maximum of 25% in one of the commercial radios. In **Slovenia**, cross-media ownership rules prohibit the owner of a radio or a television channel from controlling more than 20% of the shares or voting rights in a daily newspaper and vice versa.

Foreign ownership

Threshold requirements in this category can be found when establishing the maximum level of control a foreign owner is allowed to exert over a local firm, but also when media ownership restrictions are addressed in this way, limiting as such a company's influence on the market. In total, 11 of the EU-27 plus UK have measures in place that limit or even prohibit the ownership of media organisations by natural or legal persons who are not (respectively) EU citizens or not established in the EU. Some countries extend this to the EEA. In the examples below, 'foreign' means non-EU or non-EEA countries.

Spanish regulation stipulates that non-EEA nationals cannot hold more than 25% of the share capital of a licence holder in the radio or television sectors. Moreover, the total shares in a licensee's capital held by non-EEA individuals or corporate bodies must be less than 50%.

In **Germany**, if a non-German investor (this includes both EU and EEA investors) holding a direct or indirect shareholding of 25% or more wants to invest in a German company which is considered part of 'critical infrastructure' and 'software of critical infrastructure' such as energy, IT or telecommunications, a foreign investment filing with the Germany Ministry of Economics and Technology may be required.

In **French** regulation on foreign ownership, a non-EU person cannot be authorised to own a French-language terrestrial radio or television service if they either directly or indirectly hold more than 20% of the share capital or voting rights. Moreover, any investment where a foreign, non-EU company acquires control of a

branch of activity or 33.33% of rights in capital or voting rights of an undertaking established in France is considered 'sensitive' and needs prior authorisation from the Ministry of Economy and Finance.

In **Poland**, to obtain a broadcasting licence non-EEA shareholders' equity stake in the company, or the stake held by non-EEA shareholders in the share capital of the company, cannot exceed 49%. Moreover, Polish residents have to constitute the majority of the members of the Board of Management of the said company. These percentages ensure that the majority owner will never be a non-EU or non-EEA company.

Cross-media ownership restrictions

There are also **cross-media ownership restrictions**. The most common limitation consists of thresholds (of market shares, audience shares, etc.) above which cross-media ownership is not allowed (e.g. Austria, Cyprus, Germany, Hungary). Other aspects considered in cross-media ownership regulation are the number of authorisations. This is the case in **France**. In **Poland**, only monomedia concentration is limited in the audiovisual and broadcasting markets.

3.2.2.3 Restrictions depending on specific categories of actor

Usually the most common categories of actors to whom restrictions on specific categories of actor apply are **advertising agencies** (the actors most often mentioned in, for example, Croatia, Greece, Italy, Slovenia and the UK); **political parties** (in Croatia, Germany, Ireland and the UK) and **state institutions** and agencies who are not allowed to own any media operations or are allowed to own certain types of media but subject to certain market share caps.

In **Croatia**, for example, owners of advertising activities cannot own shares in TV and radio. Moreover, members of political parties cannot be members of the governing bodies of the public service broadcaster, and the Council for Electronic Media and editors-in-chief cannot be persons that have immunity. Additionally, political parties and coalitions cannot be sponsors of audiovisual or radio programmes except during official campaign time. In **Slovenia**, advertising agencies and telecom operators are prevented from owning radio or television stations. **Italian** law stipulates that advertising agencies cannot exercise exclusivity over for a number of daily newspapers, whose copies printed exceed 30% of copies printed at national level. Moreover, if an advertising sales agency is controlled by a publisher, it cannot exercise exclusivity over a number of daily newspapers, whose copies exceed 20% of copies printed at national level.

In the **UK**, advertising agencies and political parties are banned from holding any broadcast licences to avoid any political influence and safeguard the independent nature of media outlets. Moreover, when approving a change of corporate control of a broadcaster or allocating a broadcasting licence, the British regulatory and competition authority for broadcasting, telecommunications and postal industries, Ofcom, applies a 'fit and proper' person criterion, which checks if any director or shareholder has received a criminal conviction or civil penalty. However, it depends on circumstances whether these persons can own licences or be shareholders, as someone with a criminal record 'will not necessarily be prevented from holding a licence'.

In **German** media law, political parties are allowed to offer radio or broadcasting services but are prohibited from having influential stakes in them. In **Ireland**, election candidates and elected representatives are excluded from membership of the boards of public service broadcasters. In **Lithuania**, state institutions and agencies, banks and legal persons established and/or managed by them and political parties cannot be producers of public information and/or their shareholders may not manage them on the basis of a mandate.

Local public authorities in **Romania** can be granted audiovisual licences for local programme services provided that there is no other audiovisual licence for a local programme service and that the service only provides information services regarding the respective community. Moreover, members of the National Audiovisual Council regulatory body cannot own shares in companies with activities in fields where they

would be in conflict of interest with the capacity of a member in the Council. Finally, the members cannot be part of the board of directors of providers and distributors of audiovisual services and cannot hold shares in a company holding an audiovisual licence.

3.2.2.4 Special rules and procedures of media mergers

Media industries are defined by economies of scale, product differentiation and network effects. It is certain that **concentration of media ownership is growing, with media actors seeking to consolidate** (Evens & Donders, 2020). Technological advances enabled by digitisation are seen as the main drivers of the consolidation in the media industry. Some media mergers, as in the press, for example, are carried out to enable survival; in other cases, they are driven by an expansionist mindset, with lower costs and efficiencies in mind. However, due to the impact these mergers can have on the diversity and pluralism of opinions and views, in certain Member States, such mergers are dealt with under special rules and procedures.

Lower thresholds, no thresholds on turnover and the use of multipliers

Under national merger control rules, concentrations come under the scrutiny of a competition authority when turnover-based thresholds are exceeded. In most Member States, relying on merger control and scrutinising media mergers under the same turnover thresholds as in any other industry is believed to be sufficient. Yet, in certain Member States, in order **to make sure that relevant M&A's are scrutinised effectively on competition grounds and do not pass undetected**, such thresholds are lowered for media companies. In some countries, such turnover-based thresholds for media concentrations are inexistent. Therefore, all mergers involving media companies are brought under scrutiny regardless of thresholds. Finally, some countries apply multipliers to the media companies' revenues when assessing whether the merger should be brought under scrutiny to make sure they trigger the investigation. Once more, the objective of such methods is to bring more of these mergers under scrutiny.

In **Austria**, for media mergers, certain multipliers need to be applied to the revenues in order to assess jurisdiction. Additionally, there are different thresholds in place to assess the transaction value, as it is argued that, in the digital arena, the companies very often do not generate sufficient turnover to be assessed under merger control but can still have significant competitive potential. The turnover thresholds for media mergers in **Greece** are three times lower than the thresholds applied to other industries. **Croatia** is the only country in which mergers in the media sector need to be notified irrespective of whether the thresholds are triggered. While these countries apply thresholds to turnover, in **Germany** these are applied based on the companies' revenues.

System of ministerial override or parallel assessment

Whereas in some Member States **there is an independent regulatory body that assesses and decides on solely on media mergers**, there are thirteen Member States where the regulatory body is part of a parallel assessment structure where, under certain circumstances, it either cooperates with the National Competition Authority or cooperates with a ministry/minister, which has the power to override the regulatory body's decision. As an example of the former, the **Austrian** Federal Competition Authority is the regulatory body and the Commission on Competition acts as an advisory body, but ultimately it is the Competition Authority which decides on a merger's outcome. In **Portugal**, when the merged company will have less than 50% of the market, the National Authority for Competition assesses the merger. However, the Media Regulatory Agency must provide a statement/opinion on each operation. This is binding when pluralism or freedom of expression is at risk.

In other Member States, **it is a ministry who assesses the mergers and the regulatory body is simply used as an advisory body**. This is the case in **Ireland** where it is the ministry which assesses the merger

and, if there are concerns, the ministry redirects the merger assessment to the Broadcasting Authority of Ireland. This acts as an advisory body, but the Minister for Communications will make the ultimate decision.

In **Slovenia**, the Slovenian Competition Protection Agency, the merger authority, decides on media mergers. However, the Ministry of Culture has the power to refuse the approval of a merger that would result in a dominant position of the merged entity in the media market or in the advertising market, as such overriding the regulator's decisions.

In the **UK**, the regulator, Ofcom, is the advisor to the Secretary of State who has the power to override any competition advice or decision. The regulatory body's advice is in most cases non-binding and the Ministry has the last word in deciding on the merger.

In **Spain**, if the National Commission of Markets and Competition decides to either prohibit or clear a transaction subject to commitments or conditions, the Ministry of Economic Affairs and Digital Transformation may ask the government to decide whether to confirm or clear the decision subject (or not) to commitments or conditions. In the event of clearance or modification of the commitments, the government's decision must be based on certain specified public interest criteria other than competition.

In the **Netherlands**, the situation is slightly different as the Minister of Economic Affairs may override a merger decision by the Dutch Competition Authority if the authority blocked a decision, but only if the decision was blocked on competition grounds. In this case, the decision is overridden on the basis of public interest and the minister's intervention is subject to the approval by the Council of Ministers.

Hungary represents a unique case, as there is no independent regulator to ensure fair market competition because the government-appointed Media Council can intervene in a merger approval procedure conducted by the independent Hungarian Competition Authority and the authority's decision is subject to approval by the Media Council.

3.2.3 A detailed analysis of current national (or regional) legislation and rules governing media ownership structures in all EU Member States

The following table applies the framework for the analysis of media ownership rules to the EU-27 + UK. This makes it possible to obtain an overview of the existence of **media-specific**⁹⁸ **rules on ownership** in the EU-27 + UK. The table indicates, for each category of restriction,⁹⁹ whether they exist or not and in what form in the given country. For the subcategories in the first two categories,¹⁰⁰ our overview distinguishes between media (TV, radio, press) and cross-media, to allow the reader to see quickly which of these media are concerned. In contrast, for the two last categories,¹⁰¹ we do not make any distinction. All relevant legislation and competent national authorities are listed in Annex B. A distinction has been made within Belgium between the Fédération Wallonie-Bruxelles and Flanders.

This overview confirms the broad diversity in the way media ownership rules are applied in the EU. This will be confirmed more qualitatively in the case studies in the next section. It shows that every Member State is different, with some Member States preferring deregulated competition and ownership regulation for the media sector, such as Denmark, Estonia and Sweden; some opting for light regulation, such as Lithuania, Luxembourg and Poland; some opting for medium regulation such as Austria, Hungary and Italy; and at the

⁹⁸ In Chapter 3, by 'media-specific', we mean that they apply to the media sectors, and not necessarily to other sectors.

⁹⁹ Allocation of broadcasting licences and newspapers, quantitative thresholds, categories of actors, special merger rules/procedure

¹⁰⁰ I.e. Allocation of broadcasting licences and newspapers, quantitative thresholds.

¹⁰¹ I.e. Categories of actors, special merger rules/procedure

other end of the spectrum, Member States which opt for a more complex regulatory system based on multiple values, such as France, Germany and Greece.

Table 14 – Analysis of media ownership rules

Country		AT				BE Flanders				BE Fédération Wallonie-Bruxelles				BG				HR				CY			
Media		TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media
Allocation of broadcasting licences	Limitations on the number/percentage of licences allocated																								
	Geographical coverage area																								
	Country population or inhabitants in a specific area																								
Quantitative thresholds	Audience shares																								
	Market shares																								
	Capital/voting rights shares																								
	Dominant power of opinion																								
	Foreign ownership																								
Categories of actors	Restrictions on actors who can control media companies																								
Special merger rules/procedure	Lower thresholds/ no thresholds/ multipliers	✓																✓							
	System of ministerial override or parallel assessment	✓																✓							

Country		CZ				DK				EE				FI				FR				DE			
Media		TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media
Allocation of broadcasting licences	Limitations on the number/percentage of licences allocated																								
	Geographical coverage area																								
	Country population or inhabitants in a specific area																								
Quantitative thresholds	Audience shares																								
	Market shares																								
	Capital/voting rights shares																								
	Dominant power of opinion																								
	Foreign ownership																								
Categories of actors	Restrictions on actors who can control media companies	✓																				✓			
Special merger rules/procedure	Lower thresholds/no thresholds/multipliers																					✓			
	System of ministerial override or parallel assessment													✓				✓				✓			

Country		EL				HU				IE				IT				LV				LT			
Media		TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media
Allocation of broadcasting licences	Limitations on the number/percentage of licences allocated																								
	Geographical coverage area																								
	Country population or inhabitants in a specific area																								
Quantitative thresholds	Audience shares																								
	Market shares																								
	Capital/voting rights shares																								
	Dominant power of opinion																								
	Foreign ownership																								
Categories of actors	Restrictions on actors who can control media companies	✓				✓				✓				✓								✓			
Special merger rules/procedure	Lower thresholds/no thresholds/multipliers	✓								✓															
	System of ministerial override or parallel assessment					✓				✓				✓								✓			

Country		LU				MT				NL				PL				PT				RO			
Media		TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media
Allocation of broadcasting licences	Limitations on the number/percentage of licences allocated																								
	Geographical coverage area																								
	Country population or inhabitants in a specific area																								
Quantitative thresholds	Audience shares																								
	Market shares																								
	Capital/voting rights shares																								
	Dominant power of opinion																								
	Foreign ownership																								
Categories of actors	Restrictions on actors who can control media companies																								
Special merger rules/procedure	Lower thresholds/no thresholds/multipliers																								
	System of ministerial override or parallel assessment	✓								✓								✓							

Country		SK				SI				ES				SE				UK			
Media		TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media	TV	Radio	Press	Cross-media
Allocation of broadcasting licences	Limitations on the number/percentage of licences allocated																				
	Geographical coverage area																				
	Country population or inhabitants in a specific area																				
Quantitative thresholds	Audience shares																				
	Market shares																				
	Capital/voting rights shares																				
	Dominant power of opinion																				
	Foreign ownership																				
Categories of actors	Restrictions on actors who can control media companies																				
Special merger rules/procedure	Lower thresholds/no thresholds/multipliers																				
	System of ministerial override or parallel assessment																				

3.2.4 Implementation of the media ownership rules in a set of countries

This section presents an in-depth case study of 10 selected EU Member States. The countries are: Austria, Finland, France, Germany, Greece, Hungary, Italy, Netherlands, Poland and Spain. The selection was based on two criteria:

- geographic spread;
- the inclusion of Member States with very developed regulation and Member States with no, or almost no, specific media ownership rules.

The structure follows and develops the framework table (see Table 14 – Analysis of media ownership rules). We added:

- authority, with authorities dealing with media ownership;
- relevant legislation (media-specific and non-specific);
- implementation, with details on implementation of the legislation
- special merger rules and procedures, and how they have been implemented.

3.2.4.1 Austria¹⁰²

Austria	
Authority	The Federal Competition Authority (FCA or Bundeswettbewerbsbehörde, BWB) is an independent authority. It was established under the Federal Competition Act as an independent and autonomous authority at the Austrian Federal Ministry of Science, Research and Economy on July 1, 2002. BWB conducts investigations into the possible violations of antitrust law and European competition law. It is managed by its Director General or his deputy, the Head of Agency. The Competition Commission (WBK) is the advisory body of the FCA. It can give expert opinions on issues of competition policy and recommendations on notified mergers. Its members are appointed for a four-year term by the Federal Minister for Digital and Economic Affairs. In addition, the Federal Economic Chamber, the Federal Chamber of Labour, the Austrian Trade Union Federation and the Presidential Conference of the Austrian Chambers of Agriculture each have the right to nominate one deputy member. In exercising their activity, the (deputy) members are not bound by instructions and are subject to official secrecy.
Relevant Legislation	The most important law is the Cartel Act 2005 ('Kartellgesetz' also known as the Austrian merger control law) (the equivalent of Articles 101/102 TFEU). This was amended in 2017 following a Damages Directive on competition law infringements – the Cartel and Competition Amendment Act 2017. It includes rules on cartels and (other) horizontal restrictions, vertical agreements, abuse of dominance and mergers, enforcement of cartel regulation, and specific provisions on the enforcement of private damages claims. There is no specific law on media concentration in Austria. However, there are two paragraphs in the Cartel Act addressing media mergers (as discussed in more detail subsequently). The Competition Act has provisions relating to the Austrian national competition authority, the Federal Competition Authority (FCA) and its powers, and the Commission on Competition body that advises the FCA. The Neighbourhood Supply Act has rules on competition, such as a non-discrimination obligation; it applies to the relationships between all commercial entities that are not end-customers. The Federal Act on Audiovisual Media Services, also known as the Private Television Act 2001 was last consolidated in 2015. It notably provides regulation on licences, requirements regarding all audiovisual media services and special requirements regarding on-demand audiovisual media services. It includes transparency requirements, in particular related to the licensing process. The Federal Act enacting provisions for private radio broadcasting, also known as the Private Radio Broadcasting Act 2001 was last consolidated in 2015). It notably provides regulation on licences.
Allocation of broadcasting licences and newspapers	According to the Federal Act on Audiovisual Media Services 2015, several Digital Terrestrial Television licences can be held as long as no more than three coverage areas included in the licences overlap. There are levels of coverage restrictions in terrestrial radio programmes, daily press, weekly press and cable networks (more than 30%). If the owner has more than 30% in one of these markets, the media owner will be precluded from providing television channels or terrestrial television services. There is no similar regulation in the radio sector, thus newspaper publishers can acquire radio stations.

¹⁰² Insights are based on the input submitted by Prof. Dr Josef Trappel and Dr Corinna Gerard-Wenzel, Paris Lodron Universität Salzburg

Cross-media ownership restrictions	The Private Radio Law and the Private Television Law 2001 provide for exceptions for media companies which are allowed to own several radio and TV stations if the areas of distribution do not overlap.
	The rules related to the allocation of licences (see above) are also designed to prevent cross-media concentration.
Quantitative thresholds	Within the meaning of Austrian antitrust law, the market is dominant when a company is not exposed to competition or only insignificant competition (e.g. monopoly companies) or has a dominant market position in relation to other competitors. In particular, the financial strength, relationships with other companies, access to the procurement and sales markets, as well as the circumstances that limit market access for other companies must be taken into account. To make it easier to determine a company's market power, given the difficulty of proving the abovementioned qualitative considerations quantitatively, quantitative thresholds are applied: - market share of at least 30%, or - market share of over 5% if two other companies are on the market at most, or - market share of over 5% if the four largest companies on the market have a combined market share of at least 80%. Considering the threshold values shifts the burden of proof to the disadvantage of the potential market-dominant player. This method can lead to the contrary evidence that the company is not dominant. The Cartel Act 2005 prohibits anti-competitive behaviour. However, in terms of vertical agreements, the 2017 Amendment Act allows for the exemption from the cartel prohibition for agreements between publishers and press wholesalers. Foreign ownership is allowed, but investors not from EEA member countries or Switzerland need to obtain approval from the Minister of the Economy in the event of an acquisition which involves a stake of 25% or more or a controlling interest in Austrian companies active in domestic and external security or in Austrian utilities. According to the Federal Act on Audiovisual Media Services 2015, foreign ownership of television and radio service providers is limited to a maximum of 49% of the shares of the company, but individuals and legal entities from the EEA have the same status as Austrians.
Restrictions on actors who can control media companies	No restriction.
Implementation	<i>Who is responsible for ensuring compliance?</i> Violations of antitrust laws are evaluated by the antitrust courts defined in section §58 of the Kartellgesetz. <i>What procedures and benchmarks are applicable?</i> The benchmarks are described above. According to section §38, the Cartel Court and the Cartel High Court rule in as in limited civil proceedings procedure („außer Streitsachen“). <i>What remedies are available in the event of non-compliance?</i> The court is able to prohibit the merger within the first six months of registration. According to §14 (1), the Cartel Court may only prohibit the merger within five months of receipt of the examination request or the first of two examination requests. This period is extended to six months if the applicant requests this of the Cartel Court within the five-month period. After the expiry of these deadlines and after the withdrawal of the examination request (s), the Cartel Court must stop the examination proceedings. According to §29, the Cartel Court can impose fines up to a maximum of 10% of the total turnover generated in the previous financial year by an entrepreneur

Special merger rules & procedures & how they have been implemented	or an association of entrepreneurs who intentionally or negligently contravenes the ban on cartels (Section 1), the ban on abuse (Section 5), the ban on retaliation (Section 6) (para 1 lit a), or up to a maximum of 1% of the total turnover generated in the previous financial year on an entrepreneur or an association of entrepreneurs who intentionally or negligently provides incorrect or misleading information in the registration of a merger according to §9 (para 2 lit b). §8 of the Kartellgesetz sets out a specific regime for media mergers: a merger is a media merger if at least two of the entrepreneurs or companies involved belong to one of the following groups: 1. Media companies or media services (Section 1 Paragraph 1 Numbers 6 and 7 Media Act, Federal Law Gazette No. 314/1981); 2. Media aid companies (para. 2) or 3. Companies that have a direct or indirect stake in a media company, media service or media support company of at least 25%. Media mergers which are also assessed on their impact on media diversity are those considered as "a variety of independent media companies that are not linked and that ensure reporting taking into account different opinions." (§ 13). Therefore, there are no lower thresholds than those detailed above for media mergers in Austria (compared to other sectors), but there is an explicit mandate for the competition authority to take media pluralism considerations into account when assessing media mergers and acquisitions. Finally, certain multipliers need to be applied to assess jurisdiction: revenues need to be multiplied by 200 for media undertakings and media services and by 20 for media support undertakings. These multipliers do not apply to the <i>de minimis</i> threshold. In practice, companies have to register a planned merger with the antitrust court which decides after that if they examine the merger or not. There has not been any significant media merger within the last few years. A list of mergers is available on the website of the antitrust court.¹⁰³

¹⁰³ Available at: <https://www.bwb.gv.at/nc/de/zusammenschluesse/2019/>

3.2.4.2 Finland¹⁰⁴

Finland	
Authority	The Finnish Competition and Consumer Authority (FCCA) is tasked with ensuring good market performance. It is composed of two Divisions: the Competition Division and the Consumer Division. It can intervene in large companies' mergers. Its remit also includes advertising malpractices and monopolistic development. The Finnish Transport and Communications Agency (Traficom) is an authority in permit, licence, registration, approval, safety and security matters. It results of the merger in 2019 of the Finnish Communications Regulatory Authority (FICORA) and the Finnish Traffic Safety Authority. Its tasks, powers and appointment procedures of the head and members of the collegiate body of the authority are ensured by law. It acts as the independent media regulatory body.
Relevant Legislation	The Information Society Code notably specifies that additional duties and responsibilities may be imposed on a (broadcast media or a telecommunications) company that holds significant market weight. The Competition Act. General competition legislation applies to media companies. It is geared towards competition, not plurality. The Broadcasting Act governs all TV and radio broadcasting, and notably the state-owned Finnish Broadcasting Company (YLE).
Allocation of broadcasting licences and newspapers	Broadcasting in Finland requires a licence.
Cross-media ownership restrictions	Finnish law prohibits concentration and cross-media ownership only when effective competition is at risk.
Quantitative thresholds	N/A
Restrictions on actors who can control media companies	N/A
Implementation	The main procedure is standard competition analysis or when there is a change in licence ownership . There is one case of a government override when in 2017 a well-known Russian troll tried to buy a radio station. The Finnish Government then revoked the licence of that radio station.
Special merger rules & procedures & how they have been implemented	N/A

¹⁰⁴ Insights are based on the input submitted by Dr Riku Neuvonen, University of Helsinki and Tampere University

3.2.4.3 France¹⁰⁵

Authority	France The competition regulator is the Autorité de la concurrence. The independent body's Board has 17 members with an irrevocable term of office. It follows the principle of separation of investigation and decision-making. The French Broadcasting Authority (CSA) mainly plays an advisory role, especially in competition matters. It monitors the application of anti-concentration mechanisms for the media and more generally is in charge of sector-specific regulation of broadcasting media. When attributing licences, the CSA aims at guaranteeing pluralism and diversity. Its seven board members are designated by the President of the National Assembly (3), the president of the Senate (3) and the President of the Republic (1 – the president of the Board). The Autorité de Regulation des Communications Electroniques et de Postes (ARCEP) is a specialised administrative authority/advisory body which the Competition Authority (Autorité de la concurrence) can ask for advice in a Phase II investigation in the radio/television sectors. The agency is in charge of sector-specific regulation of electronic communications network operators, electronic communications service providers and providers of online electronic communications services to the public.
Relevant Legislation	Decree no. 2019-339 simplifying merger notifications to the French competition authority. The threshold from which a market is considered to be affected for the analysis of vertical effects was raised from 25% to 30%. The Commercial Code stipulates that the Competition Authority oversees securing transparency in concentration transactions. Law no. 2016-1524 aims at strengthening the freedom, independence, and pluralism of the media. It applies to audiovisual media as well as to press Law no. 86-1067 on the Freedom of Communication. It notably establishes the CSA and provides regulation on audiovisual media services, notably public service broadcasters. Law of 29 July 1881 on the Freedom of the Press defines press and journalists, their rights and duties. The Monetary and Financial Code.
Allocation of broadcasting licences and newspapers	The law currently applies to holders of a DTT authorisation. The current system limits the possibility of traditional audiovisual groups' internal and external growth by means of three series of restrictions: (i) restrictions on the composition of the share capital of television services; (ii) restrictions relating to the cumulative effect of television service authorisations; (iii) restrictions relating to multimedia concentration. Law no. 86-897 prohibits the same person, or group of persons, or entities from owning, controlling or publishing daily publications of political and general information where total distribution exceeds 30% of distribution on the national territory of publications of the same kind.
Cross-media ownership restrictions	According to Law no. 86-1067 on the Freedom of Communication, to prevent cross-media concentration, an owner may not be involved in more than two of the following situations at the national level (an equivalent rule applies at the regional level): - holding a licence for a television service reaching more than 4 million viewers; - holding a licence for radio services reaching more than 30 million listeners; - publishing or controlling daily newspapers with a national market share of 20%; - holding an authorisation to operate a cable network for an area which has more than 6 million inhabitants.

¹⁰⁵ Insights are based on the input submitted by Dr Heritiana Ranaivoson, Senior Researcher and Project Leader at IMEC-SMIT, VUB

Quantitative thresholds	For national television broadcasting, no single capital holding or right to vote of the media company may exceed 49%. This does not apply if the average audience of the channels remains below 2.5%. In radio, the cumulative potential audience may not exceed 20% of the cumulative population areas reached by all the same company's networks (may not exceed 150 million). Under the Monetary and Financial Code, any investment by which a foreign company acquires control of a branch of activity or 33.33% of the rights in the capital or voting rights of an undertaking established in France is considered "sensitive" and needs prior authorisation from the Ministry of Economy and Finance. (This is not media-specific.) Article 7 of Law n° 86-897 states that in general foreigners may not make an acquisition which will have the effect of bringing their share to more than 20% of the share capital or voting rights of a company publishing a French-language publication
Restrictions on actors who can control media companies	No restriction.
Implementation	Article 42-3 of Law no. 86-1067 states that the CSA has the power to withdraw a DTT authorisation, without prior notice, "in the event of substantial modification of the data in view of which the authorisation had been issued, in particular changes which have occurred in the composition of the capital or in the management bodies and in the methods of financing." The anti-concentration mechanism was partially analysed by the Conseil Constitutionnel (Constitutional Council) in 2000. This considered it complies with the Constitution, taking into account the constitutional objective of pluralism (Decision of the Conseil constitutionnel n° 2000-433 DC of 27 July 2000, paragraph 9). It thus considered that this device provided, within the technically restricted framework of hertzian broadcasting, appropriate and justified mechanisms making it possible to limit the size of audiovisual groups (idem, paragraph 43). The provision that no DTT or radio authorisation may be granted to a company in which more than 20% of the capital or voting rights are held by foreign persons has appeared, over time, difficult to implement, given the floating and fragmented nature of the shareholdings, which means that it is sometimes difficult to know nationality. The provisions limiting the capital or voting rights ceiling to 49% certainly, according to some operators interviewed, made it possible to avoid takeover bids qualified as "hostile" on audiovisual groups present in France. They did not, however, completely prevent the creation of groups, involving channels with a significant national audience, from being partially integrated vertically (such as the Bouygues/TF1 group) or from creating conglomerates (such as the Bertelsmann group/M6/RTL).
Special merger rules & procedures & how they have been implemented	Media ownership concentration in audiovisual (and radio) comes under the CSA (Conseil Supérieur de l'Audiovisuel). For press, this is dealt with by the Autorité de la Concurrence. The rules described above are applied. There is some consensus that media-specific anti-concentration regulation is still needed and that the current legislation is no longer suitable because it does not take into account new forms of content distribution which have emerged in recent years. Opinions on the issue diverge between those who think that anti-concentration measures should not prevent the consolidation of traditional players and those who argue that anti-concentration measures should be applied more strictly, in particular to new actors in the media sectors.

3.2.4.4 Germany¹⁰⁶

Germany	
Authority	The Federal Cartel Office (BKartA) is Germany's national competition regulator. As such, it approves or prohibits mergers. The independent higher federal authority is assigned to the Federal Ministry for Economic Affairs and Energy. The Commission on Concentration in the Media (KEK) monitors the influence of companies on the formation of public opinion. To ensure national concentration control, the KEK functions as a decision-making body and mediating authority for all state media authorities. It is involved in procedures for the selection and licencing of broadcasters of transmission time for third parties and windows into the region. It also provides transparency on ownership structures in nationally distributed private television. The State Media Authorities of the Länder have additional rights of inspection
Relevant Legislation	Mergers of media companies are subject to German competition law – The Act against Restraints of Competition (GWB) Interstate Treaty on Broadcasting and Telemedia – A recent complete overhaul of the Interstate Treaty on Broadcasting and Telemedia into an Interstate Treaty on Media did not amend any of the current ownership provisions. State Media Laws of the Länder
Allocation of broadcasting licences and newspapers	See below in relation to the State Media Laws of the Länder.
Cross-media ownership restrictions	There are specific cross-media ownership rules in the Interstate Treaty on Broadcasting and Telemedia (§§26-34). Most Federal State (Länder) media laws address cross-ownership of press and broadcasting companies with regulations to prevent so-called 'double monopolies', i.e. cross-media ownerships of both local or regional press monopolies and local or regional broadcasters. Sometimes companies that have a dominant market position in daily (regional) newspapers are not allowed to licence additional radio or TV programmes in the same Federal State, or only on condition that they implement measures that ensure diverse reporting. Others limit the licencing of regional radio or TV stations where companies already have a nationwide TV licence and reach a certain threshold (e.g. 15% audience share).
Quantitative thresholds	Germany's legal framework for media ownership is twofold: based on audience shares in TV programmes and dominant power of opinion, on the one hand, and specific rules for the nationwide general channels on the other. There are broadcasting-specific as well as cross-media ownership specific rules in the Interstate Treaty on Broadcasting and Telemedia (§§ 26-34 RStV; as of September 2020: §§ 60-68 MStV) based on audience share. These regulations are designed to prevent media concentration and maintain diversity of opinion. An undertaking can own an unlimited number of television services as long as it does not acquire a dominant power of opinion. Dominant power of opinion is assumed to be present where there is "an annual average audience share of 30 % of all viewers", or a 25% audience share if the undertaking holds a dominant position in a media-relevant related market. In addition to these rules (25%/30% threshold), the two nationwide general channels with the largest audience reach are obliged to incorporate independent third-party regional window services. Since a court ruling of the Federal Administrative Court (BVerwG) in 2014, the broadcasting-specific

¹⁰⁶ Insights are based on the input submitted by Dr Stephan Dreyer, Senior Researcher Media Law & Media Governance, Leibniz Institute for Media Research | Hans-Bredow-Institut

	ownership rules are practically meaningless given the current TV audience shares in Germany.¹⁰⁷ No specific thresholds are defined for radio stations. However, under the Interstate Broadcasting Treaty and the Act against Restraints of Competition radio is considered part of the 'other relevant market'. In cases of foreign investment in German media companies, the Federal Ministry for Economic Affairs and Energy can investigate whether the acquisition of the company or of a stake in the company poses a threat to public order or the security of the state. Since December 2018, the Foreign Trade and Payments Ordinance has incorporated media as a relevant sector: according to §55 (1) No 6 AWV (Foreign Trade and Payments Ordinance) such an acquisition may be deemed a threat in cases where this company "is a company of the media industry which contributes to the formation of public opinion via broadcasting, telemedia or printed products and is characterised by particular topicality and breadth of impact". The threshold for acquisition of stakes is 10% of the voting rights (§ 56 (1) No 1 AWV). The Ministry can prohibit the acquisition accordingly. According to 20a (1) RStV, in order to get a national licence (radio or television), the legal person must have its head office in the Federal Republic of Germany, in another EU Member State or in another state of the EEA. There are various specific ownership restrictions in the regional media laws of the Länder, applying to regional radio, regional broadcasters and press companies. These rules sometimes limit the number of radio and broadcasting programmes one company is allowed to air in the respective region.
Restrictions on actors who can control media companies	At both national and Länder level, there are explicit rules that hinder political parties and voter associations from offering radio or broadcasting services. Moreover, there are several provisions in the media laws of the Länder that prohibit political parties from holding stakes which give them an influence over media companies. The Constitutional Court (Bundesverfassungsgericht, BVerfG) deemed such provisions constitutional in 2008.¹⁰⁸
Implementation	<i>Enforcement of ownership rules in broadcasting law</i> Responsibility for assessing the personal capacities of any licensee lies within the competent State Media Authorities. Persons (natural or legal) applying for a radio or TV licence have to submit all relevant information (§ 21 (1) RStV); the State Media Authorities have additional inspection rights (§ 22 RStV). The responsibility for monitoring the influence of companies on the formation of public opinion lies with the KEK (Commission on Concentration in the Media), a joint body of all State Media Authorities. The ZAK (Commission on Licensing and Supervision), together with the KEK, can object to new and amended programme licences if the threshold is reached (see above <i>Quantitative thresholds</i>); TV stations are obliged to give prior notification of any planned changes to their shareholder structure. If the threshold is reached as a result of mergers and acquisitions, the KEK can propose measures to counteract any dominant influence of opinion, including, inter alia, granting broadcasting time to independent third parties (Article 31) or establishing a programme advisory council (Article 32). <i>Enforcement of national merger control rules</i> In the event of media mergers, formal procedures under broadcasting law (based on the influence on public opinion) and under competition law (based on the market power and economic size of the merger, incumbent upon the BKartA) will start separately and in parallel. However, according to §40 (4) GWB the BKartA has to consult with the KEK before any antitrust law proceedings

¹⁰⁷ In a ruling of the Federal Administrative Court (BVerwG) in 2014 regarding the planned merger between Pro7Sat.1 and Axel Springer (<https://www.bverwg.de/290114U6C2.13.0>) the court ascertained that these rules rely on the basic assumption of a dominant broadcasting programme. The lesser the audience market share of a TV programme, the more this restricts the consideration of market shares in other markets. Since no broadcasting group is likely to reach such an audience share in the foreseeable future, the control of media concentration under the RStV is currently void of usefulness

¹⁰⁸ Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2008/03/fs20080312_2bvf000403.html

	relating to the nationwide distribution of television programmes commence; for the procedure for ministerial approval pursuant to §42 GWB, the KEK is also given the opportunity to comment on such cases. If the BKartA does not allow a specific merger or acquisition, the Federal Minister for Economic Affairs and Energy is able to authorise the deal if "the restraint of competition is outweighed by advantages to the economy as a whole resulting from the concentration, or if the concentration is justified by an overriding public interest" (§42 (1) GWB). §50c GWB stipulates further provisions on cooperation between the different relevant authorities (e.g. Data Protection Authorities, Consumer Protection Agencies, Federal Financial Supervisory Authority, Central Bank, State Media Authorities, KEK, etc.). The KEK has decided on over 1 050 procedures since 1997.¹⁰⁹ The KEK has applied the regulations rather restrictively – sometimes too restrictively according to the Federal Administrative Court (BVerwG, see above). In addition, the BKartA has ruled on some 35 media-specific procedures since 1999.¹¹⁰ The yardsticks or competition-based decisions leave less scope for decision-making, so it seems reasonable to say that BKartA has applied the GWB rules. <i>Ownership limitations for foreign investments</i> In cases of foreign investment in media companies, the Federal Ministry for Economic Affairs and Energy can prohibit the deal (see above).
Special merger rules & procedures & how they have been implemented	In addition to the ownership rules in Germany's broadcasting laws, the Federal Act Against Restraints of Competition (GWB) also applies to media mergers. The Federal Cartel Office (BKartA) is entitled to check mergers based on the turnover of the parties concerned. The GWB allows several exemptions from application of the law on press co-operations and mergers. One applies to cooperation between newspaper or magazine publishers where such agreements enable the parties to strengthen their economic base for intermediate competition (§30 (2b) GWB). For specific industries and sectors, the GWB uses fictional factors on turnover to widen its application to smaller mergers as well. For mergers in the area of press products, radio and television programmes as well as TV ad sales, the GWB multiplies the turnover by eight (§ 38 (3) GWB; before 2018: by 20). Since 2018, merger control procedures have also applied to acquisitions where the purchase price is above EU 400 million, regardless of the turnover (§ 35 Abs. 1a GWB).

¹⁰⁹ The respective database can be found at <https://www.kek-online.de/medienkonzentration/verfahren/>

¹¹⁰ Available at: https://www.bundeskartellamt.de/SiteGlobals/Forms/Suche/Entscheidungssuche_Formular.html?%20nn=3589936&cl2Categories_Format=Entscheidungen&cl2Categories_Arbeitsbereich=Missbrauchsaufsicht+Kartellverbot+Fusionskontrolle&resultsPerPage=15&sortOrder=score+desc%2C+dateOfIssue_dt+desc&cl2Categories_Wirtschaftsbereich=Medien

3.2.4.5 Greece¹¹¹

Greece	
Authority	The Greek National Council for Radio and Television (ESR) is an independent supervisory and regulatory administrative authority of the radio and television market. Its seven members are appointed by the Greek Parliament. Its action is only subordinated to the courts. The Hellenic Competition Commission (HCC) is responsible for applying Art. 3 of Law 3592/2007 (relating to concentration of control in the news media market) and general competition rules in the media market.
Relevant Legislation	Media legislation Law 3592/2007 deals inter alia with media ownership, concentration of control and licensing of media undertakings in the analogue era. It was amended by Law 4279/2014. Law 4487/2017 abolished certain of its provisions. Media legislation Law 2328/1995, Law 2644/1998, and finally Law 4339/2015 and Law 4512/2018 on the licensing of digital terrestrial TV and radio respectively. All these laws prevent horizontal concentration and cross-media concentration of ownership in TV, radio and newspapers. Different ownership rules apply to 'information media' and to 'non-information media' (see below).
Allocation of broadcasting licences and newspapers	The Media legislation Law 2328/1995 foresees ownership limitations to prevent excessive horizontal concentration of ownership in the newspaper market. Anyone can own at most: (i) two daily political newspapers published in Athens, Piraeus or Thessaloniki; (ii) one daily financial newspaper and one daily sports newspaper published in Athens, Piraeus or Thessaloniki; (iii) two daily regional newspapers published in different regions; (iv) two non-daily regional newspapers published in different regions; (v) one Sunday publication. The Media legislation Law 3592/2007 limits ownership of television and radio 'information media': ownership is allowed up to 100%, and participation in another electronic media undertaking of the same type is allowed, provided that it does not lead to 'control' – related to influencing, in a substantive manner, the decision-making of the management and general operation. The influence is explained in the law. The same law has different rules for television and radio 'non-information media'. The owner of an information TV outlet can own a maximum of one non-information TV outlet, while others can own up to two non-information TV outlets. Participation in non-information radio outlets is permitted provided that it does not exceed 15% of the licences tendered for the establishment, installation and operation of non-information radio outlets in each region/geographic area, in a maximum of three regions/geographic areas. The Greek regions have different thresholds (mentioned in the law): participation in radio outlets is permitted in up to five non-information radio outlets in the Attiki region, up to three in the Thessaloniki region, and up to one in other regions. In all cases, there is a cap of five on participation in non-information radio outlets nationwide.
Cross-media ownership restrictions	Pursuant to Art. 2(4) of Law 2644/1998, as amended by Law 4506/2017 (FEK A 191/2017), a licensed pay TV/pay-radio provider and its shareholders are allowed to possess a licence to operate only one free-to-air radio and only one free-to-air television station. Participation of a licensed pay-TV/pay-radio provider and its shareholders in another (thus a second) undertaking possessing a licence to operate a free-to-air radio or television station, is allowed, provided that it does not lead to control. The law explains when such "control" exists.
Quantitative thresholds	To prevent a high degree of horizontal concentration of ownership in the audiovisual sector for information content, the law stipulates that concentration is prohibited when a dominant position is held or when a

¹¹¹ Insights are based on the input submitted by Dr Evangelia Psychogiopoulou, Senior Research Fellow, Hellenic Foundation for European and Foreign Policy (ELIAMEP)

	dominant position is the result of concentration itself. The concept of dominant position is intrinsically linked to the concept of concentration of control. When a natural or legal person is engaged in one or more media outlets of the same type, a dominant position exists when the person acquires a market share exceeding 35% in the relevant market (TV, radio or press). In addition, a dominant position exists when a person is engaged in two or more media of a different type (hence it deals with cross-media concentration) and: - acquires a market share of more than 35% of each medium; - acquires a market share of more than 32% in the aggregated market, when active in two different media of the same range; - acquires a market share of more than 28% in the aggregated market, when active in three different media of the same range; - acquires a market share of more than 25% in the aggregated market when active in four different media of the same range. Any transfer of ownership of a licensed TV or radio undertaking in its entirety or of its shares above 1% of its capital has to be notified to the ESR. Companies outside the EU/EEA are not eligible for free-to-air digital terrestrial TV and radio licences. The rules are more restrictive for pay-TV and pay-radio: companies based in the EU need to have one legal representative residing in Greece.
Restrictions on actors who can control media companies	Article 57(1) (c) of the Greek Constitution renders the duties of a member of parliament incompatible with the job or the capacity of owner or partner or shareholder or governor or administrator or member of the board of directors or general manager or a deputy thereof of an enterprise which owns or manages a radio or TV channel or publishes a newspaper with nationwide circulation. According to Art. 6(2) of Law 4339/2015, shareholders who own/hold shares or voting rights that exceed 1% of the total share capital or of the voting rights in the general assembly, the members of the management board and the legal representatives of the undertakings that participate in the procedure for the grant of a free-to-air digital terrestrial TV licence shall not participate in any way in broadcasting market research undertakings, advertising undertakings and teleshopping undertakings. According to Art. 225(2) of Law 4512/2018, the partners or shareholders and the legal representatives of the undertakings that participate in the procedure for the grant of a free-to-air digital terrestrial radio licence, as well as the members of the management board in the case of candidates which are companies limited by shares shall not participate in any way in broadcasting market research undertakings and advertising companies. Art. 6(4) of Law 4339/2015 furthermore stipulates that the capacity of owner, partner, key shareholder, member of a management body, or executive officer of a candidate for the grant of a free-to-air digital terrestrial TV licence is incompatible with respective capacities in an undertaking that enters into public procurement contracts in accordance with Article 3 of Law 3310/2005 (on transparency of the public procurement process, FEK A 30/2005), as amended by Art. 3 of Law 3414/2015 (on public procurement, FEK A 279/2015). There are restrictions on control by, but also, to prevent “undue influence” from the involvement of spouses, direct relatives and collateral relatives up to the fourth degree (Art. 2(10) of Law 2644/1998, Art. 13(11) of Law 2328/1995); see also: Art. 5(3)(b) of Law 3592/2007 and Art. 3(9) of Law 3592/2007 for restrictions concerning spouses, direct relatives and collateral relatives up to the third degree.
Implementation	The ESR is responsible for ensuring compliance with the media ownership restrictions set out in Art. 5 of Law 3592/2007. This includes licences for free-to-air digital terrestrial television or radio. Any transfer of ownership of a licensed TV or radio undertaking in its entirety or of its shares above 1% of its capital (registered or not registered on the stock market) has to be notified to the ESR within 10 days and obtain approval. Notification within 10 days must also be made to the ESR for the establishment of any new undertaking in which a licensed TV (or radio) undertaking participates and for any other changes involving a licensed TV (or

	radio) undertaking (e.g. an increase in its capital). The ESR also investigates the means of financing of the undertaking/shareholders/partners concerned. According to the latest (2017) Annual Activity Report of the ESR, the ESR issued 66 decisions on ownership transfers in 2017 (7 decisions for TV operators and 59 decisions for radio operators).¹¹² The ESR also examines compliance with media ownership rules in the context of licensing procedures for pay TV/pay-radio service providers and actions of licensed pay-TV/radio operators (see Art. 6(2) and Art. 8 of Law 2644/1998). The sanctions that can be imposed are set out in Art. 12 of Law 2644/1998. They range from mild sanctions (i.e. fines) to revoking the licence. The concentration of control in the information media market is handled by the HCC. The HCC is responsible for monitoring compliance with Art. 3 of Law 3592/2007 (see Art. 3(10) of Law 3592/2007) and general competition rules (Law 3959/2011). An example of the assessment practice of the Hellenic Competition Commission, particularly as regards the application of the provisions of Law 3592/2007, is decision 655/2018.¹¹³ Pursuant to Art. 100(1)(c) of the Constitution, the Supreme Special Court is competent to judge cases involving the incompatibility or the forfeiture of office by a Member of Parliament in accordance with Art. 57 of the Constitution.
Special merger rules & procedures & how they have been implemented	See above.

¹¹² Available at: <https://www.esr.gr/wp-content/uploads/EP2017.pdf> p. 29

¹¹³ See https://www.epant.gr/files/2018/apofaseis/655_2018.pdf. See also decisions 652/2017 (https://epant.gr/files/652_2017.pdf) and 697/2019 (https://epant.gr/files/2019/apofaseis/679_2019.pdf).

3.2.4.6 Hungary¹¹⁴

Hungary	
Authority	The Media Authority allocates and manages the radio frequency and broadcasting spectrum. Its president is responsible for tendering for and licensing digital broadcasting. Spectrum allocation criteria are not established in the Media Act but defined in the internal rules created by the Media Authority, thus giving it extensive control over Hungary's media landscape. The Media Council (NMHH) is a body within the Media Authority set up to monitor and enforce the set of new media laws passed by the Parliament in 2010. Its primary function is to ensure the working of democratic publicity in the media, and to create and maintain a healthy balance between the interests of the audience and those of the media, while also partnering with market players and professional organisations. It maintains a watch on the processes in the media market and, where necessary, engages in administrative tasks which would prevent a market concentration that would violate the legislation. Therefore, the Media Council drafts and issues tenders, and renews and awards licences for all analogue linear media service providers. The Media Council intervenes in mergers and acquisitions approval procedure conducted by the Hungarian Competition Authority (GVH) in cases where the provisions of the Media Act related to concentration in the media market apply. As the Media Council's members are appointed by the Parliament, the Council's independence is not assured whenever the ruling parties hold a two thirds majority in the Parliament, as nominations and elections can be completed without any contribution by the political opposition. Former regulations ensured that each parliamentary faction could independently nominate a member, whereas currently the ruling parties are allowed to nominate at least two of the four members. Additionally, as the president of the Media Council is appointed by the Prime Minister, ruling-party delegates are guaranteed a majority. The president of the Media Council holds sway over the entire process of preparing decisions. Moreover, all four state-run media are managed by an organisation called the MTVA (Media Services and Support Trust Fund) headed by the head of the Media Council. The Hungarian Competition Authority (GVH) is in charge of public enforcement of the competition rules established in the Competition Act. It promotes competition in general and, where no competition exists, it creates competition and promotes the putting in place of appropriate state regulation. When assessing mergers, the position statement of the Media Council binds the GVH to consider and apply that position in the approval or rejection of the merger or acquisition. Therefore, the GVH, although an independent authority, cannot legally decide on anything without the consent of the Media Council. The so-called KESMA case is considered illustrative. A few months after the 2018 establishment of The Central European Press and Media Foundation (KESMA), 476 media outlets were placed under its control – i.e. a significant part of the Hungarian pro-government media. Before the GVH could assess the merger, the government intervened and announced that the acquisition of ownership is a matter of national strategic importance and thus exempt from competition review and possible investigation. Citing lack of competence, the GVH closed its review procedure and issued the statutory certificate approving the merger. The GVH can nevertheless disapprove of transactions approved by the Media Council or add more conditions that were not proposed by the Media Council.
Relevant Legislation	The Media Act is the main piece of legislation governing and limiting media and cross-media ownership. According to its Section 4, "The diversity of media services has a particularly important public value. The protection of diversity extends to avoiding the formation of ownership monopolies and any undue restriction of competition on the market. The provisions of this Act shall be interpreted in due consideration of the protection of diversity." The Media Act specifies the independence of the Media Authority and Media Council. However,

¹¹⁴ Insights are based on the input submitted by Dr Krisztina Rozgonyi, University of Vienna

	the board members of both are appointed solely by the parties in Parliament, so that their independence is in question. This contrasts with the situation in other countries where parts of the decision-making bodies are nominated by the presidents, but also by civil society groups and/or professional associations. The president of Hungary needs to approve the prime minister's nomination for the head of the Media Authority and Media Council. The Media Act allows the Media Council to issue licences without a tender, as such, giving it arbitrary control in issuing and revising tenders until finding a suitable applicant to the Media Council. The Administrative Procedure Act prevents concentration and identifies SPI (Significant Power of Influence) media service providers.
Allocation of broadcasting licences and newspapers	A company may operate numerous brands (channels or titles) in the same market sector. There are limitations which apply only to radio providers, where an owner can simultaneously provide no more than one national analogue linear radio media service, or four regional and seven local analogue radio media services or 19 local analogue linear radio media services.
Cross-media ownership restrictions	There are provisions governing providers of analogue linear radio media services acquiring rights to media services based on a public contract or broadcasting agreement. These provisions limit cross-media ownership relating to the number of services provided and depending on whether these are national, regional or local radio, but apply only to radio.
Quantitative thresholds	The Hungarian Media Act states that the market concentration of providers of linear media services may be limited within the framework of the Act in order to maintain the diversity of the media market and to prevent the formation of information monopolies. In order to clarify the facts and circumstances considered relevant for the purposes of the Administrative Procedure Act, the Media Council may order media service providers to disclose data by way of a ruling, in particular on audience shares. The Act states that linear audiovisual media service providers and linear radio media service providers with an average annual audience share of at least 15% shall qualify as media service providers with significant market power. As such, providers of linear audiovisual media services with an average annual audience share of at least 35% and linear audiovisual or radio media service providers with an aggregate average annual audience share of at least 40% may not launch new media services. In addition, they may not acquire shares in business entities providing media services and shall take measures to increase the diversity of the media market by modifying the media service's programme structure. Furthermore, any owners with a controlling share of more than 25% of the undertaking's assets or voting rights, may not launch new media services and may not acquire shares in undertakings providing media services.
Restrictions on actors who can control media companies	Section 43 of the Media Act deals in detail with the conflict of interest rules for linear media service providers. Paragraph (5) states that for the purposes of Paragraph (3) (d), the undertaking, in which the Mayor of Budapest, the Deputy Mayor of Budapest, the Mayor, or Deputy Mayor, the chairperson or deputy chairperson of the county-level general assembly, or any of their close relatives holds a direct or indirect qualifying holding or is entitled to influence the decisions thereof under a separate agreement or otherwise, may not be entitled to provide linear media services if the reception area of the respective media service covers at least twenty percent of the territory of the local government concerned. According to Section 46 (3) of the Media Act, in order to prevent conflicts of interest, the following persons may not be founders or publishers of press products: the National Media and Infocommunications Authority's President, Vice-President, Director General, Deputy Director General, or the Chairperson or member of the Board of Trustees of the Public Service Foundation or the Chairperson or member of the Board of Public Services, the CEO of the Fund, the President, Deputy President or member of the National Council for Communications and Information Technology, members of the Media Council,

	not including the founding or publishing of press products aimed at publishing scientific results or disseminating popular science.
Implementation	<i>Who is responsible for ensuring compliance?</i> The Media Council performs the official tasks related to the control of market concentrations. The Media Council analyses market facts and circumstances relevant for the assessment of the level of concentration and may order media service providers to disclose data. The Council observes and ensures that no forbidden ownership or concentration of ownership emerges from the tender. The decision on the Media Council's tender procedure may be challenged in court. The competence of the Council's authority is to enforce the requirement of diverse information in the market of media services and press products. In certain circumstances the GVH intervenes in merger analysis. <i>What procedures and benchmarks are applicable?</i> The media service providers need to reveal their average annual audience share and disclose any information requested by the Media Council. The benchmarks are presented in the quantitative thresholds section and in the allocation of broadcasting licences section of this case study. If during the proceedings for the prevention of media market concentration and for identification of SPI media service providers, the Media Council identifies that the media service provider is affected by the restriction of media market concentration, or in an official resolution, the Media Council decides on the termination of such status determined in its earlier resolution. <i>What remedies are available in the event of non-compliance?</i> In the event of any failure to comply, or improper compliance with data disclosure requirements, the Media Council may impose an administrative fine. Additionally, in the event of a repeat offence, the Media Council must impose a fine upon the infringer's executive officer or upon his notified representative in an amount between fifty thousand and three million forints.
Special merger rules & procedures & how they have been implemented	The Media Council is required – with a view to identifying and analysing market processes – to open regulatory proceedings, by means of a ruling, to monitor compliance with the provisions of the Media Act and investigate whether the regulatory powers conferred in the Act should be invoked if any price movements or other market conditions suggest that competition on a media services market is being distorted or restricted. This Media Council procedure is without prejudice to the competence of the Hungarian Competition Authority to conduct a sectoral inquiry under the Act on the Prohibition of Unfair and Restrictive Market Practices. If, based on the findings of the regulatory inspection, the Media Council finds that competition may be distorted or restricted in any segment of the media services market stemming from the market processes examined, and considers that this situation cannot be remedied by exercising the powers conferred in the Media Act, the Media Council may move to initiate the supervisory proceedings of the Hungarian Competition Authority. The Hungarian Competition Authority (GVH) is required to obtain the opinion of the Media Council relevant to the notification of concentration of enterprises. Government Degree 229/2018. (XII.5.) provides the government with a legal instrument to exempt the competition authority from scrutinising certain operations and can override any meaningful implementation of the (cross-) ownership restrictions. Before being implemented, the legal instrument was submitted to review by the Constitutional Court in Hungary (which is under the political control of the ruling political party) who did not find any conflict with the Fundamental Law (Constitution). This translates into the Government being able to exempt mergers from antitrust procedures at will (see KESMA case). The implication of these decisions is that the legal instrument undermines the implementation of the AVMSD and restricts its impact relative to its objectives.

3.2.4.7 Italy¹¹⁵

Italy	
Authority	The National Regulatory Authority for audiovisual media services, postal services and electronic communications (Autorità per le Garanzie nelle Comunicazioni or AGCOM), also known as the Authority for Communications, is an independent administrative authority that ensures lawful competition of operators in the market and protects media pluralism and consumers' rights. AGCOM performs regulatory and supervisory functions in the telecommunications, audiovisual, publishing and postal sectors. The Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato or AGCM) is an independent administrative authority which has the power to repress unfair commercial practices, misleading and unlawful practices. It has the status of a public agency whose decisions are taken on the basis of the Italian Competition Law without any Government interference.
Relevant Legislation	The Audiovisual Media Services Consolidated Act includes the general principles that regulate the structure of the national, regional and local radio and television system, and adapts it to the introduction of digital technology and the process of convergence between radio and television and other sectors of the interpersonal and mass communications, such as communications electronics, publishing, also electronics and the Internet in all its applications. It includes provisions relating to the transmission of television programmes, radio programmes and television programme data programmes, as well as with conditional access, and the supply of associated interactive services and conditional access services on terrestrial, cable and satellite frequencies. The Press Law of 1981 amended by Law 1987 introduced Italy's first rules on press ownership. The Italian Competition Law passed in 1990, enforced by the Competition Authority, was the first to provide for concentration control.
Allocation of broadcasting licences and newspapers	According to the Audiovisual Media Services Consolidated Act, no content provider (including through subsidiaries and affiliated companies under considerable influence) may hold licenses to broadcast more than 20% of television programmes nationwide by means of terrestrial technologies (digital terrestrial television). Moreover, the same broadcaster cannot have licenses for national and local broadcasting. At national level, according to the Press Law, no company can release more than 20% of the copies printed in the same year in the daily newspaper market. Furthermore, no daily newspaper publisher can be linked to another daily newspaper publisher, if they release more than 30% of the copies printed in the same year in the daily newspaper market together. At the local level, no company may release more than 50% of the copies printed in the same year in the inter-regional newspaper market. The same Law defines four inter-regional areas: North-Western Italy, North-Eastern Italy, Central Italy, and South of Italy.
Cross-media ownership restrictions	There are a few cross-media ownership restrictions in the Italian market. As stipulated in the Audiovisual Media Services Consolidated Act, electronic communications operators (including through subsidiaries and affiliated companies under 'considerable influence') that hold more than 40% (by revenue) of the electronic communications sector, which is not part of the Integrated Communications System (SIC), cannot have more than 10% (by revenue) of the SIC. The SIC comprises TV, publishing, radio, internet, direct advertising activities, sponsorships, revenues from licence fee, sales of cinema tickets, rented or sold DVDs, and direct State grants to print publishers. Revenues from online advertising include search engines, social networks and mobile. Moreover, nationwide TV broadcasters (including subsidiaries and affiliated companies under 'considerable influence') on any platform holding more than

¹¹⁵ Insights are based on the input submitted by Prof. Dr Francesco Marrazzo, Adjunct Professor, University of Naples "Federico II"

Quantitative thresholds	8% (by revenue) of the SIC cannot acquire stakes in daily newspapers, excluding pure online newspapers. The Audiovisual Media Services Consolidated Act rules on the structural separation of holders of authorisations for the activities of broadcaster (or digital radio station) and network operator nationwide, or provider of interactive associated facilities/conditional access provider. Accounting separation is in place for all other activities. The dominant market as understood by the Italian Competition Authority relates not only to market share, but to other elements such as barriers to entry, the number of competitors in the market and the degree of vertical integration. For this reason, the Authority does not allocate a certain market share to represent what is a dominant position. Although the Authority has held that a 70-80% market share is indicative of a dominant position, this is not in the law. There is an overall prohibition on generating more than 20% of the total revenues of the SIC. This applies to all registered communications operators (including subsidiaries and affiliated companies under considerable influence) and is calculated across the entire media sector. On 3 September 2020, in case C-719/18 on an alleged infringement by Vivendi of Italian law by acquiring 28% of the capital shares in Mediaset, the Court of Justice of the European Union – at the request of the Regional Administrative Court of Lazio, Italy – found that the provisions of this law constitute “a prohibited impediment to the right of establishment (under Article 49 of the TFEU) as it is not appropriate for achieving the objective of protecting pluralism of information.” Furthermore, it concluded that the “thresholds bear no relation to the risk to media pluralism, since those thresholds do not make it possible to determine whether and to what extent an undertaking is actually in a position to influence the content of the media.” Thus, the provisions of the Italian law mentioned above were ruled by the Court of Justice of the European Union to be contrary to EU law (Court of Justice of the European Union, 2020).
Restrictions on actors who can control media companies	The only restriction on controlling media companies applies to advertising sales agencies. According to the Press Law, no advertising sales agency may exercise exclusivity over a number of daily newspapers, whose copies printed exceed 30% of the copies printed at national level. If an advertising sales agency is controlled by a publisher, it cannot exercise exclusivity over a number of daily newspapers, whose copies printed exceed 20% of the copies printed at national level.
Implementation	<i>Who is responsible for ensuring compliance?</i> AGCOM is in charge of ensuring compliance with the restriction on the number of broadcasting licences and restrictions on market share laid down in the Audiovisual Media Services Consolidated Act. AGCOM is also in charge of ensuring compliance with the restrictions on newspaper ownership laid down in the Press Law. AGCOM verifies that there are no dominant positions in the integrated communications system (SIC) and in the markets that make it up and that the limits set out in paragraphs 7, 8, 9, 10, 11 and 12 are respected, taking into account the revenues, the level of competition within the system, the barriers to entry, the size of the company's economic efficiency as well as the audience share of broadcasting of radio and television programmes, editorial products and cinematographic or phonographic works. <i>What procedures and benchmarks are applicable?</i> Following the outcome of the preliminary investigation on media mergers, or on the reporting by any stakeholder, AGCOM will, if it finds reasonable grounds to hypothesise the existence of a prohibited position, recommend that the Board start an investigation aimed at the possible adoption of the measures provided for by article 43 of the Audiovisual Media Services Consolidated Law. This may even consist of measures that affect the structure of the company, including the imposition of divestments of companies or business units. The Board, on the basis of the results of the investigation, can adopt a scheme of provisions containing the measures, with an indication of a time frame within which the companies or entities concerned must comply.

	For mergers and acquisitions not subject to notification, AGCOM can, within sixty days, propose launching a procedure aimed at ascertaining the existence of a position prohibited under the terms of Art. 43, paragraphs 7, 8, 9, 10, 11 and 12 of the Consolidated Law, described in article 16 et seq. of the AGCOM Regulation. The decision not to initiate a procedure is communicated to the companies concerned. Mergers and acquisitions taking place between companies within the same group are not subject to the notification obligation. <i>What remedies are available in the event of non-compliance?</i> In the event of non-compliance with the provisions adopted by AGCOM, AGCOM itself can launch another procedure aimed at sanctioning the non-compliant company. Under article 1, paragraph 31, of AGCOM Institutional Law (n. 249/97 of 31 July 1997), this sanction may be up to 5% of the infringing company's revenue. This procedure must follow the indications included in the AGCOM Sanctioning Procedures Regulation, adopted by Deliberation no. 136/06/CONS, and amended by Deliberation n. 194/12/CONS.
Special merger rules & procedures & how they have been implemented	The Audiovisual Media Services Consolidated Act provides specific rules and procedures for mergers and acquisitions in the audiovisual sector. AGCOM itself authorises transfers of ownership involving radio and TV broadcasting companies. Companies operating in the Integrated Communications System (SIC) are required to notify the AGCOM of the merger and acquisition procedures. These mergers and acquisitions are notified in advance by the parties if the companies' combined total turnover at national level is greater than EUR 495 million and the national turnover of the target company is greater than EUR 50 million. These thresholds may be automatically increased to the extent established by AGCM, by means of its own provisions, pursuant to Art. 16 of the Competition Law. Within the competences exercised by the AGCOM in the field of radio and television frequencies, there are opinions received by the Ministry of Economic Development on the transfer of individual rights of use of radio frequencies, pursuant to Article 14-ter, paragraphs 5 and 6 of the Electronic Communications Code. In particular, in order for the Ministry of Economic Development to grant the authorisation, the AGCOM verifies compliance with the planning and restrictions provided for by the related resolutions and, upon approval by the AGCM, the absence of distortion of competition (AGCOM, 2017). Additionally, when the thresholds set out in the Italian Competition Law exceed the AGCOM's remit, the AGCM and the AGCOM cooperate and coordinate their decisions, although they will both conduct separate investigations (ICLG, 2019).

3.2.4.8 The Netherlands¹¹⁶

Authority	The Netherlands The Dutch Media Authority (Commissariaat voor de Media or CvdM) is the independent authority responsible for granting licences, supervising both public and commercial broadcasters, and monitoring their compliance with the Media Act 2008. The Dutch Authority for Consumers and Markets (Autoriteit Consument & Markt or ACM) ensures fair competition between Dutch companies and supervises concentrations on the basis of the Dutch Competition Act. The Minister of Economic Affairs can invoke public interest in order to authorise a concentration that was blocked on competition grounds by the ACM. The Minister's decision is subject to approval by the Council of Ministers.
Relevant Legislation	The Media Act 2008 (Mediawet 2008) amended in January 2014, is the most important law. It provides a varied range of radio and TV channels and sets requirements for both public and commercial broadcasters. The Dutch Telecommunications Act 1988 (Telecommunicatiewet), amended multiple times since then to keep up with EU Directives, covers the roles and responsibilities of the ACM and the obligations of communication providers operating in the Netherlands. The Dutch Competition Act (Mededingingswet) is applied to the media sector. In 2011, the 2007 Temporary Media Concentrations ACT (Tijdelijke Wet Mediaconcentraties) 'TAMC' was repealed, and with it all media and cross-media ownership restrictions, as the enforcement of the general competition rules was considered sufficient to safeguard media pluralism.
Allocation of broadcasting licences and newspapers	The conditions and procedure for obtaining a broadcasting licence are set out in the Media Act 2008. There are no limitations on the number of broadcasting licences or on the number of newspapers one can hold. Similarly, there are no restrictions on the allocation of licences based on the geographical coverage area or the number of inhabitants. According to the Media Act 2008, commercial broadcasting services are subject to an individual licensing system where a separate licence is required for each programme channel and remains valid for a period of five years. After the broadcasting licence expires, an application for renewal is required. The Dutch Media Authority is responsible for the allocation and withdrawal of licences.
Cross-media ownership restrictions	N/A
Quantitative thresholds	The repealed Temporary Media Concentration Act prohibited concentrations that would lead to a market share greater than 35% on the daily newspaper market and concentrations that would lead to a combined market share greater than 90% in at least two of the following markets: daily newspapers, television and radio. These restrictions did not apply when a media company's market share exceeded the stated thresholds due to autonomous growth. However, as the ACM currently supervises the media sector under the same rules as any other sector, there are no media-specific quantitative thresholds.
Restrictions on actors who can control media companies	There are no restrictions on specific actors controlling media companies, such as advertising agencies, political parties and state institutions, who can control media companies.
Implementation	The Dutch Media Authority may allocate and withdraw any licence if the applicant provides incomplete or inaccurate information about its management and shareholders, which is information required for a licence application and renewal of applications. The ACM examines concentrations and gives its consent (or not). The Dutch Media Authority can express its opinion on possible concentrations and media pluralism concerns.

¹¹⁶ Insights are based on the input submitted by Dr Ben Van Rompuy, Assistant Professor, Leiden University

Special merger rules & procedures & how they have been implemented

There are **no media-specific merger control rules of procedures**. When the Dutch government repealed the Temporary Media Concentration Act, it considered that the regular (non-media specific) supervision of concentrations on the basis of the Dutch Competition Act would still provide an important safeguard of media pluralism. In the Netherlands, the ACM applies the rules found in the Competition Act, but in certain situations its decision can be overridden by the Minister of Economic Affairs (i.e. decide to grant a licence to effectuate the concentration), but only when the ACM has blocked a transaction, and only if it is blocked on competition grounds and “if, in the Minister’s opinion, this is necessary for important reasons in the public interest, which outweigh the expected impediment to competition” (Article 47(1) of the Competition Act). Therefore, in this case, the decision is overridden on the basis of public interest and the Minister’s intervention is subject to the approval by the Council of Ministers. The public interest on which the Minister’s decision must rest is not further specified. In principle, this therefore could include media pluralism grounds, but again, *only* if the ACM blocked the concentration on competition grounds.

3.2.4.9 Poland¹¹⁷

Poland	
Authority	The National Broadcasting Council (KRRiT) is the Polish broadcasting regulator responsible for ensuring the open and pluralistic nature of broadcasting in applicable procedures through various possible dimensions, such as content, genre, ownership and function among others. It is responsible for issuing broadcasting licences, ensuring compliance with the law by public broadcasters and indirectly controlling the state-owned media. The Office of Competition and Consumer Protection (UOKiK) is a central authority of the state administration which shapes antitrust policy and consumer protection policy. The UOKiK is authorised to control mergers in order to prevent situations where a dominant entity is created on the market as a result of a merger. The National Media Council is a government agency that has the power to appoint and dismiss the members of the governing bodies of the public radio and television and the Polish Press Agency.
Relevant Legislation	The Broadcasting Act adopted on 29 December 1992 and consolidated in 2016 limits only monomedia and horizontal concentration. The Act on Competition and Consumer Protection 2007 (Ustawa o Ochronie Konkurencji i Konsumentów), although tackling some forms of horizontal media concentration, does not distinguish the media sector from other sectors. The National Media Council Act 2016 defines the tasks, powers, organisations and procedure for the appointment of the members of the National Media Council.
Allocation of broadcasting licences and newspapers	The KRRiT is responsible for allocating or revoking licences. The Broadcasting Act does not contain any restriction on the number of broadcasting licences or newspapers that one natural or legal person can control. The KRRiT can prevent the awarding of licences to applicants who may achieve a dominant position in the media sector in the given area. Thus, it evaluates whether an applicant can achieve such a dominant position considering all the main goals of the Broadcasting Act relating to ensuring the open and pluralistic nature of radio and television broadcasting.
Cross-media ownership restrictions	No restriction
Quantitative thresholds	The 2007 Act on Competition and Consumer Protection contains a prohibition on abuse of a dominant position, which is reached when an entrepreneur achieves a market share exceeding 40%. In compliance with the Broadcasting Act, the KRRiT evaluates whether the applicant for a licence might achieve such a position, considering the main goals of the Broadcasting Act. In terms of foreign ownership, the Broadcasting Act, which introduces some general rules for radio and television broadcasters, stipulates that the equity stake held by non-EEA shareholders in the company, or the stake held by non-EEA persons in the share capital of the company or the voting rights, may not exceed 49%.
Restrictions on actors who can control media companies	There are no restrictions on actors such as advertising agencies, political parties and state institutions, controlling media companies.
Implementation	<i>Who is responsible for ensuring compliance?</i> The KRRiT is responsible for ensuring the open and pluralistic nature of broadcasting in procedures

¹¹⁷ Insights are based on the input submitted by Prof. Dr Alicja Jaskiernia, University of Warsaw

Special merger rules & procedures & how they have been implemented	applicable through various possible dimensions, such as content, genre, ownership and function among others. The main rules are found in: - Regulation of the National Broadcasting Council of 4 January 2007 concerning the content of an application for awarding a licence and detailed procedures for awarding and revoking licences for transmission and retransmission of radio and television programme services. - Regulation of the National Broadcasting Council of 27 April 2011 concerning the detailed manner of and procedure for keeping a register of television programme services transmitted exclusively in the information and communications technology system and a register of retransmitted programme services; - Regulation of the National Broadcasting Council of 15 November 2012 concerning technical methods for determining the reception of a programme service in the reception area of a programme service transmitted by means of terrestrial broadcasting. <i>What procedures and benchmarks are applicable?</i> The KRRiT needs to take into account the 40% maximum market share on individual ownership and more generally make sure that the nature of broadcasting is open and pluralistic. In certain cases, concentration (based on volume) is reported to the UOKiK. Pursuant to the Act on Competition and Consumer Protection, proceedings in concentration cases are in two stages. The President of the UOKiK may consent to the concentration (unconditionally or conditionally) or prohibit it. <i>What remedies are available in the event of non-compliance?</i> The KRRiT can revoke a licence if a broadcaster achieves a dominant position on the relevant market or if another person takes control of the activity of the broadcaster. Pursuant to antitrust law, if the concentration is prohibited, then the UOKiK will obligatorily discontinue the proceedings. In Poland, there are no specific merger control rules or procedures in the media sector (printed press or radio and television broadcasting). The Act on Competition and Consumer Protection does not deal with media mergers differently.

3.2.4.10 Spain¹¹⁸

Spain	
Authority	The National Commission of Markets and Competition (La Comisión Nacional de los Mercados y la Competencia or CNMC) is an entity that promotes and defends the proper functioning of all markets in the interest of consumers and businesses. It is a public entity with its own autonomous legal status. It is independent of Spain's central government but is subject to parliamentary control. The CNMC also deals with mergers within the telecommunication sector.
Relevant Legislation	The Media Act regulates state audiovisual media coverage and establishes basic rules on audiovisual matters without prejudice to the powers reserved to the Autonomous Communities and local authorities in their respective fields. The Act (Law 7/2010, of March 31) articulates sector reform and gives Spain "audiovisual legislation with the times, consistent, dynamic, liberalising and guarantees of democratic control and respect and strengthening the rights of citizens, providers and the public interest." The National Competition and Market Commission Act, also known as the Competition Act, can be applied in any situation that limits free competition among companies. The General Telecommunications Law regulates telecommunications services of general interest under conditions of free competition regardless of the imposition of certain public service obligations on operators. IP-based services are regulated under this law.
Allocation of broadcasting licences and newspapers	There must be at least three national television broadcasting licence holders. Thus, if an acquisition prevents the existence of at least three different private providers of national television audiovisual communication services so as to ensure pluralism in the media, the concentration is forbidden. The number of DTT multiplex operators in the market is also limited to at least three. Individuals and legal entities are not allowed to acquire a significant stake or voting rights in more than one provider of television audiovisual communication services when national providers, in aggregate, hold rights to use the spectrum exceeding the technical capacity corresponding to two multiplex channels; and regional providers, in aggregate, hold rights to use the spectrum exceeding the technical capacity corresponding to one multiplex channel. With regard to radio licences, no individual or legal entity may control, directly or indirectly, more than 50% of the private licences for the terrestrial radio services within the same coverage area. Furthermore, no individual or legal entity may control, directly or indirectly, more than five of these licences within the same coverage area. In addition, no person is allowed to control more than 40% of the total licences in an Autonomous Community where there is only one licence per licence area. Nor is any person allowed to control more than one third of the licences with total or partial nationwide coverage.
Cross-media ownership restrictions	There are no specific rules on cross-media concentration of ownership . Current media legislation – including competition laws – does not establish a specific threshold or other limitations to prevent a high degree of cross-ownership between the different media.
Quantitative thresholds	Television service providers are forbidden from holding a significant stake in more than one operator providing national television audiovisual communication services if the average number of viewers of the television channels broadcast by the service in question exceeds 27% of the total viewers in the past 12 consecutive months. A significant stake is deemed to be a direct or indirect holding by one owner of 5% of the share capital or 30% of the voting rights.

¹¹⁸ Insights are based on the input submitted by Dr Carles Llorens, Associate Professor, Universitat Autònoma de Barcelona

	Capital and voting rights percentages are taken into consideration when the CNMC is granting a TV or radio licence, and when establishing if there is a significant stake issue. Moreover, individuals or legal entities holding a stake in a national provider of television audiovisual communication services cannot acquire a significant stake or voting rights in another provider of the same service if the acquisition prevents the existence of at least three different private providers of national television audiovisual communication services so as to ensure pluralism in the media. In terms of foreign ownership, according to the Media Act, non-EEA nationals cannot hold more than 25% of the share capital of a licence holder in the radio or television sectors and the total non-EEA stake must be below 50% of the share capital.
Restrictions on actors who can control media companies	There are no restrictions on actors, such as advertising agencies, political parties and state institutions, who can control media companies.
Implementation	<i>Who is responsible for ensuring compliance?</i> The National Commission of Markets and Competition is the entity in charge of ensuring compliance and improve competition. It investigates and sanctions anti-competitive practices, either on its own initiative or after receiving complaints; it produces recommendations to improve the conditions of competition in the various markets, including electronic communications and audiovisual communications; it authorises corporate concentrations or mergers, performs follow-up monitoring of these and supervises the conduct of companies operating in regulated markets, initiating and resolving procedures for sanctioning practices that are contrary to regulation of the specific sector. <i>What procedures and benchmarks are applicable?</i> These are discussed below under the special merger rules and procedures section. The specific benchmarks are described in the previous sections. <i>What remedies are available in the event of non-compliance?</i> Pursuant to CNMC rulings, upheld in accordance with competition law, non-compliance is considered under law as a serious breach that can result in fines being levied of up to 10% on an offending company's turnover; this is calculated on the company's fiscal year prior to the imposition of the fine. There is a Monitoring Division Board that verifies the fulfilment of the remedies and conditions.
Special merger rules & procedures & how they have been implemented	Merger control in Spain employs the test of significant impact on effective competition to assess merger operations for potential approval or rejection. One month after filing, the CNMC must reach a Phase I decision, a period that can be extended by 10 working days if the parties submit commitments. If the transaction could impede effective competition, the CNMC opens a Phase II investigation which can last between 2 and 4 months. In cases where the CNMC decides either to prohibit the transaction or to clear it subject to commitments or conditions, the Ministry of Economy may ask the government to decide whether to confirm the CNMC's decision or clear it, subject (or not) to commitments or conditions. In the case of clearance or modification of the commitments, the government's decision must be based on certain specified public interest criteria other than competition.

3.2.5 A reflection on the effectiveness of media ownership rules in the EU Member States

3.2.5.1 The potential impact of media-specific ownership regulation on media market concentration

In this section, we propose **an exploratory approach to the potential impact of media-specific ownership regulation on media market concentration**. We assess whether there are correlations

between the level of regulation and the level of concentration. In order to assess if this is the case, we categorised the Member States into four groups based on the number of media ownership rules identified in Table 6: 0 rules corresponds to a deregulated market, between 1-3 rules is a light level of regulation, between 4-6 rules is a medium level of regulation and between 7-11 rules is a high level of regulation. After each country had been placed in one of these categories, we looked at the reports on each Member State's audiovisual landscape and indicators on audience market share for the years 2014 and 2018 (2018 audience data being the latest most complete data) used by the European Audiovisual Observatory in compiling the *Yearbook 2019/2020 Key Trends* (2020). We used the reported audience data to calculate the level of concentration in the TV broadcasting market for each Member State based on the concentration ratio for the top four TV groups (CR4). Based on the audience share, we also calculated the Herfindahl-Hirschman (HHI) index for a more complete picture.¹¹⁹ Additionally, the European Audiovisual Observatory's (2019) report on *The internationalisation of TV audience markets in Europe* was consulted in order to provide information on the audiovisual trends in terms of fragmentation and the market power of non-domestic TV groups in national markets.

Concentration indexes are employed to measure the level of competition within an industry. While **CR4 shows the concentration ratio of the top four firms** in the industry, with 0-40% being low concentration, 40-70% medium concentration and anything higher than 70% high concentration, it does not show the differences in the market structure based on the firms' disparate size which affect the level of competition. The **HHI provides a more complete image of concentration** as it considers the whole market by totaling the squares of all the players' market shares (Naldi & Flamini, 2014). The competition level based on the HHI is divided into three types: 0-1500 on the index represents an unconcentrated market, between 1500-2500 a moderately concentrated market and anything higher than 2500 is taken as proof of a highly concentrated market. Thus, the higher the value of the HHI, the higher the concentration is. However, it is important to point out that the exact number of players in any given Member State is unknown and varies between each Member State (represented in the data under 'others' and includes values as low as 0.5% and as high as 45.2%). The higher the known number of players and their market shares, the more precise the HHI value is.

Such an approach leaves aside the qualitative aspects taking into account the context and all factors that could influence market concentration (such as country size, GDP per capita, state aid, political philosophy, media system, level of market liberalisation and number of players). These are considered in the comments and analysis that follow the exploratory assessment.

¹¹⁹ The HHI is often used to assess the level of concentration in a market. Thus both the US Department of Justice and the European Commission use it for a first indication of concentration in any market under scrutiny (McIntosh & Hellmer, 2012). It is defined as the squared market share of each firm summed across all firms.

3.2.5.2 Findings of the exploratory assessment

Table 15 – Level of regulation and market concentration in the EU's TV broadcasting markets

c	Country	Number of media ownership rules	CR4 (2014)	CR4 (2018)	HHI (2014)	HHI (2018)
Deregulation	Denmark	0	89%	94%	2631	3061
	Estonia	0	61%	55%	1560	1616
	Sweden	0	92%	94%	2461	2659
Light regulation	Bulgaria	1	80%	75%	2564	2548
	Finland	1	88%	86%	3066	2904
	Latvia	1	69%	56%	2248	1894
	Malta	1	76%	57%	2226	2913
	Netherlands	1	76%	72%	2163	2004
	Belgium Flanders	2	83%	80%	2776	2581
	Lithuania	2	72%	65%	2105	2272
	Luxembourg	2	52%	52%	1691	1943
	Belgium Fédération Wallonie-Bruxelles	3	78%	79%	1780	1816
	Poland	3	77%	82%	2067	2052
	Slovakia	3	67%	63%	2682	2615

c	Country	Number of media ownership rules	CR4 (2014)	CR4 (2018)	HHI (2014)	HHI (2018)
Medium regulation	Portugal	4	74%	66%	1751	1528
	Slovenia	4	71%	63%	2085	1857
	Austria	5	78%	74%	2183	2009
	Cyprus	5	67%	52%	2129	2720
	Czechia	5	88%	86%	2473	2328
	Italy	5	81%	78%	2717	2375
	UK	5	79%	78%	2226	2104
	Hungary	6	63%	51%	1488	1311
	Spain	6	78%	72%	2126	1843
High regulation	Croatia	7	80%	80%	2302	2451
	Germany	7	87%	86%	2035	1978
	Romania	7	57%	58%	1276	1235
	France	8	79%	83%	2127	2207
	Greece	8	62%	57%	1405	1390
	Ireland	9	51%	54%	2168	2193

Table 16 – Value indexes for the level of regulation and the market concentration

Number of media ownership rules	CR4 value index	HHI value index
0-deregulation	0-40% low concentration	0-1500 low concentration
1-3 light regulation		
4-6 medium regulation	41-70% medium concentration	1501-2500 medium concentration
7-11 high regulation	>70% high concentration	>2500 high concentration

According to our framework, of our 29 markets (EU-27 + the UK, with Belgium separated into two markets: Flanders and Fédération Wallonie-Bruxelles), **three media markets are deregulated with regard to mergers and acquisitions regulation** (Denmark, Estonia and Sweden), **11 are lightly regulated** (Belgium – both Fédération Wallonie-Bruxelles and Flanders, Bulgaria, Finland, Latvia, Lithuania, Luxembourg, Malta, Poland, Slovakia and the Netherlands), **nine are medium-regulated** (Austria, Cyprus, Czechia, Hungary, Italy, Portugal, Slovenia, Spain and the UK) and **six are highly regulated** (Croatia, France, Germany, Greece, Ireland and Romania).

The average CR4 for the TV broadcasting industry in the 29 markets in 2014 was 74% whereas in **2018 the CR4 average had dropped to 71%**, both numbers representing high concentration levels. This decline in concentration is mostly linked to a loss of audience shares by the leading TV groups and the fragmentation tendencies in a multitude of Member States where audiences are changing their content consumption behaviour to non-linear programming (European Audiovisual Observatory, 2019). A more complete picture is painted by the HHI index scores, where the average HHI for 2014 was 2156 whereas in 2018 the average had dropped slightly to 2152, both numbers signifying that on average, the EU's TV broadcasting industry is moderately concentrated.

In terms of audience shares held by the four main TV groups in each country in 2018, of the 29 markets, **16 registered a high level of concentration, with audience shares reaching over 70%** (in ascending order: Spain, Netherlands, Austria, Bulgaria, UK, Italy, Belgium – the Fédération Wallonie-Bruxelles, Belgium – Flanders, Croatia, Belgium – Flanders, Poland, France, Germany, Finland, Czechia, Sweden and Denmark) and **13 a medium level of concentration between 40-70%** (in ascending order: Hungary, Luxembourg, Cyprus, Ireland, Estonia, Latvia, Malta, Greece, Romania, Slovakia, Slovenia, Lithuania and Portugal). **No market is characterised by a low level of concentration.** Whereas the lowest CR4 audience share was in Hungary (51%), the highest was in Denmark (94%). There was less concentration in the European audience market in 2018 when compared to the 2014 CR4, as 20 markets registered on average a 6% decrease in audience shares (the lowest decreases being 1% in the UK and Germany and the highest 19%

in Malta), the latter recording such a high discrepancy due to missing data on the 2018 audience shares of the leading Italian broadcasters RAI and Mediaset). Of the remainder, seven markets registered on average a 3% increase in audience share (the lowest increase being 1% in the Fédération Wallonie-Bruxelles in Belgium and Romania and the highest 5% in Poland and Denmark) and two markets maintained their 2014 shares (Croatia and Luxembourg).

Looking at the markets registering high concentration levels for their four main TV groups, **the Nordic countries (Finland, Sweden and Denmark) were among the most highly concentrated markets**, with audience shares between 86% and 94%. Of the three deregulated markets, two were highly concentrated. Of the 11 lightly regulated countries/regions, six also registered a high level of concentration among the four main TV groups, with audience shares between 72% and 86% (Netherlands, Bulgaria, Belgium – both Fédération Wallonie-Bruxelles and Flanders – Poland and Finland). **High concentration ratios were also recorded in five of the nine medium-regulated markets** (Spain, Austria, the UK, Italy and Czechia), with audience shares between 72% and 86%. **Of the six highly regulated markets, three reached audience shares between 80% and 86% (Croatia, France and Germany).**

Looking at the Member States registering medium concentration levels for their four main TV groups, **Estonia was the only deregulated market which recorded an audience share of 55%.** Of the lightly regulated markets, five had audience shares between 52% and 65% (Luxembourg, Latvia, Malta, Slovakia and Lithuania), whereas four medium-regulated markets (Hungary, Cyprus, Slovenia and Portugal) reached audience shares between 51% and 66%. Ireland, Greece and Romania, three highly regulated markets, recorded audience shares of 54% and 58%.

The findings based on the HHI index scores paint a more complete picture of the concentration levels than the concentration ratio as the HHI gives additional weight to firms with larger size, as the market shares are squared prior to being added together, unlike the case of the CR4 index, which solely provides signs of the oligopolistic or monopolistic nature of the industry and indicates the degree of competition based solely on the top four firms.

In terms of the HHI index scores in 2018, of the 29 markets, eight registered a high level of concentration and 18 had moderately concentrated markets. Unlike the findings based on the CR4 where no market registered low concentration levels, **three markets were deemed to be unconcentrated** based on the HHI index. Whereas the lowest HHI index was registered in Romania (1235), the highest was recorded in Denmark (3061). Eleven markets registered on average an increase in the HHI index by 232 (the lowest increase being 25 in Ireland and the highest 687 in Malta, the latter recording such a high discrepancy due to missing data on the 2018 audience shares of the popular Italian broadcasters RAI and Mediaset), whereas **18 markets registered on average a decrease of 154** (the lowest decrease being 15 in Poland and Greece and the highest 354 in Latvia).

Looking at the markets registering high concentration levels **based on the HHI index, the Nordic countries (Sweden, Finland and Denmark) were among the most highly concentrated markets.** Thus, two of three deregulated markets were highly concentrated; five of the 11 lightly regulated markets (Bulgaria, Belgium – Flanders, Slovakia, Finland and Malta) also registered a high level of concentration. **High concentration levels were also recorded in one of the nine medium-regulated markets** (Cyprus). **None of the six highly regulated markets registered high concentration levels based on the HHI index.**

Looking at the Member States registering medium concentration levels based on the HHI index, Estonia was the only deregulated market in this concentration band. Six lightly regulated countries (Belgium – the Fédération Wallonie-Bruxelles, Latvia, Luxembourg, Netherlands, Poland and Lithuania) were at a medium

concentration level, whereas seven medium-regulated Member States (Portugal, Spain, Slovenia, Austria, UK, Czechia and Italy) reached a medium concentration level. Germany, Ireland, France and Croatia, four highly regulated markets, recorded medium concentration levels.

Looking at the Member States registering low concentration levels based on the HHI index, Hungary was the only medium-regulated country in the category, followed by Romania and Greece, two highly regulated markets.

The difference in concentration levels between the CR4 and the HHI are noticeable. Based on the 2018 CR4 data, of the 29 markets, 16 markets (including UK) registered a high level of concentration, 13 markets registered a medium level of concentration and no market registered a low level of concentration. In comparison, based on the 2018 HHI data, eight markets registered a high level of concentration, 18 (including UK) were moderately concentrated and three were deemed to be unconcentrated. What this difference shows is that relying solely on the **concentration ratios of the top four players in the market is not representative of the whole market** and that the status of the industry is more accurately mirrored by the HHI which takes into consideration the market shares distributed among all competitors. For example, based on the CR4 index, **markets with large audiences**, such as UK, France, Germany, Spain and Italy, **are highly concentrated**, whereas **based on the HHI index they are moderately concentrated**, meaning that other players take market shares as well, balancing the competition.

Based on Pearson's product-moment correlation test (Wang, 2013), there is no significant correlation between the number of media ownership rules and CR4 at a significance level of 0.05 (correlation p-value = 0.41). Contrary to this result, using the same approach, a significant negative correlation was detected between the number of media ownership rules and HHI (correlation coefficient of -0.415) at a significance level of 0.05 (correlation p-value = 0.0248). This means that **the higher the number of media ownership rules, the lower the HHI concentration level is**. It is important to point out that the Pearson's product-moment correlation test does not determine a cause-and-effect relationship and it can only establish the strength of the association between two variables. Additionally, this correlation does not say anything about the markets' output (e.g. Scandinavian markets are clearly highly concentrated, yet they also have good quality output in terms of programmes created and journalistic output). Nevertheless, **the HHI can be considered a more accurate and complete metric than CR4 in reflecting market realities**.

Although media ownership regulation levels differ in each market, **the media ownership rules are not solely responsible for the level of concentration**, as even some markets with both a highly and medium-regulated media sector have registered high levels of concentration alongside deregulated markets, and to some extent the same can be said for deregulated markets like Estonia and some lightly regulated markets which have also registered low levels of concentration. Whereas there was no correlation between the number of media ownership rules and the CR4, the tests run suggest that there is actually a correlation between the number of media ownership rules and the HHI, where the higher the number of rules, the lower the HHI index and thus, concentration level. Nevertheless, these findings do not portray a complete picture. Relying solely on these quantitative findings to explain the level of concentration based solely on the CR4 and HHI indexes and without taking into consideration the nuances and complexities of certain markets and Member States is not reliable. However, as an exploratory exercise, we can confirm that from a quantitative point of view, there is a strong correlation between the two variables, so that **the higher the number of media ownership rules, the lower the market concentration level based on the HHI index score is**.

This result is particularly important in a context where there is a **trend towards deregulation**, notably here **for media ownership rules** (Harcourt, 2007; Galik, 2010; Noam, 2016; Iosifidis &

Papathanassopoulos, 2019 ; Papathanassopoulos, 2020). This is exemplified in case of the Netherlands where in 2011 all media and cross-media ownership restrictions were abolished.

Qualitative interpretation of the findings

The quantitative-based approach does not take into account the qualitative factors and contextual elements that could influence market concentration, such as country size, GDP per capita, state aid, level of subsidisation of the media sector, political philosophy, media system, level of market liberalisation and number of players among others. Moreover, as the focus groups organised for this report highlighted, even if media ownership rules exist, their effectiveness depends on each country and its political will. These aspects are considered in the comments and analysis that follow. The Member States which we included in this brief analysis (with the exception of Estonia) are identical to those included in the case studies.

During our focus groups, discussion on competition and competition law overlapped with ideas on the necessity of media-specific rules that would serve to maintain pluralism. When referring to **pluralism**, interviewees referred to the importance not only of having a multitude of players active in a market but **also to how these players disseminate a plethora of views and opinions**, be that of political coverage (more in the news coverage) or diversity of media content. This is a goal that all Member States should strive for. **There is no one-size-fits-all type of approach** to reach this aim and best practices can be seen in the diversity of ways that countries tackle media regulation and ownership (or not), be that through rules applied to various media, cross-media ownership rules, allocating broadcasting licences to limit market share concentration, audience share thresholds or through special procedures for media mergers.

Yet, due to media sector's critical societal role, it was argued that there is a **need for media-specific rules** and that **competition law is not enough to safeguard the pluralism of society**. Thus, as competition policy largely takes a consumer welfare perspective (Van Rompuy, 2012), media policy ought to be concerned with the interests of 'citizens' as well (Picard, 2020). Although our research in this section is focused more on the traditional media, we should not forget that challenges posed by convergence of such traditional media and online platforms (which are disrupting the business models of traditional players) need to be taken into account, especially in the constantly changing media landscape where regulation will inevitably fall slightly behind the speed of developments.

The audiovisual markets of the Nordic countries are among the most concentrated in Europe as the 2018 audience data using both the HHI index and the CR4 showed. The high level of concentration is not unexpected, firstly because **these Member States rely solely on** general competition law to regulate their media sector (Ohlsson, 2015). Secondly – based on the Paolo Mancini and Daniel Hallin (2004) media system typology – the Nordic countries' **media systems are based on a Democratic Corporatist model** (today with influences from the Liberal model) where there is strong state intervention, but with a more protectionist approach which tries to preserve PSBs and public values by offering robust support subsidies. As a result, **the public broadcasters are the biggest players with the highest audience market shares**; Sweden's public broadcaster SVT has a 35% market share, Finland's Yleisradio Oy has 44%, and Denmark's two public broadcasters TV2 and DR together have 76%. Third, **state aid subsidies are substantial** (Berg & Lund, 2012) and last but not least, **the Nordic countries have always been a stronghold of public service tradition**, learning from and coordinating their regulatory models (Syvertsen, Enli, Mjøs, & Moe, 2014). Among the Nordic countries which fall in the deregulated media markets category, Finland falls in the lightly regulated markets category, but in reality, it is a deregulated market, as the one specific rule only addresses cooperation between different bodies when assessing M&A and thus it is not specifically related to the media sector.

The affinity between **Estonia** and the Nordic countries is grounded in their cultural and historical engagement and their views on open and liberalised markets (Opermann, 2014). This makes Estonia another

deregulated media market with an **oligopolistic character due to its very small size**. This cannot accommodate many owners, thus limiting the number of competitors and inevitably the diversity and pluralism of the market. Moreover, the audience is divided between **Estonian and Russian speakers with different consumption patterns** and only limited players to cater for these language groups' consumption needs (Loit & Siibak, 2013). The fact that the TV players cater to two distinctive language markets balances the share of audiences between the TV groups. In spite of the particularities of this market, both the CR4 and HHI show that the market is moderately concentrated, with the top four players reaching an audience share of 55% with the public broadcaster EER holding a 19% audience share, making it the largest TV operator in Estonia.

The Estonian government abstains from subsidising the media sector so as to not interfere with media performance – other than supporting the public broadcaster through state aid, although the public broadcaster claims to suffer from a constant lack of resources (Media Pluralism Monitor, 2016, 2020). Nevertheless, local and community media, which work with very small audiences, are in need of supportive measures (not exclusively limited to monetary subsidies). As a result, with weak national players and due to a general lack of general support for the media sector, **foreign non-national TV groups have made their presence felt** and take their fair share of audiences. Two of the top four TV groups are owned by a British and a Swedish operator respectively, attaining a 20% share. Russian TV groups have a share of 11%, followed by US groups with a share of 4%. Although a deregulated but moderately concentrated market, due to its very small media market, the lack of regulation and its **susceptibility to concentration**, media ownership concentration needs to be closely monitored. The Competition Authority is the body in charge of overseeing the media market and so far, as the stakeholder consultation reveals, there have been no controversial rulings during any merger evaluation.

Smaller markets, which tend to have fewer small TV channels but with higher audience shares per channel, **are generally less fragmented**, with a higher number of TV channels reaching a two-digit audience share than in larger markets. The presence of bigger players and the lower market fragmentation signify that these small markets **are more predisposed to concentration**. Additionally, as pointed out by the experts during the focus groups, **especially in smaller markets, specific media rules are of utmost importance to maintain pluralism**. There is plenty of evidence that shows that, like in most small markets, in markets with limited linguistic reach, there will be market failure if only market-driven principles are applied, with content that is not commercially viable not being produced (Ohlsson & Sjøvaag, 2018). Countries such as Austria, Ireland, Luxembourg or Malta which share cultural and language proximity with their bigger neighbours whose PSBs undisputedly have a presence in these territories are an exception. Based on the data, **foreign non-domestic groups have more significant shares in smaller audiovisual markets** than in larger markets, as nurturing local and regional operators in the former is a financial challenge highly dependent on public support. Thus, the missing support creates a suitable landscape for non-domestic groups to establish themselves in these markets and invest only in commercially feasible programming, thus neglecting audiences' specific needs. In this context, it is understandable that a lack of media ownership regulation in small markets might harm the sector.

With 17 million residents, the **Netherlands** is considered the 'giant among the small ones' (Puppis, 2009). The Dutch media system fits the Paolo Mancini and Daniel Hallin (2004) typology of a Democratic Corporatist model where public and commercial media coexist and **the state plays an active role in shaping the media system and preserving PSBs and public values by offering robust support**, albeit state-subsidised media producers have been facing budget cuts and layoffs since 2013 (Van Dreunen, 2016). The CR4 is high, with a 72% audience share and a medium HHI of 2004. **The presence of non-domestic TV groups in terms of audience reach is high**. The public broadcaster NPO has the highest national audience share of 32% and is followed by the German TV group Bertelsmann (RTL channels) with 21% and US groups with an audience share of 12%. There is a general lack of media-specific concentration of ownership

legislation. Despite the fact that the competition authority and the media authority work together based on a collaboration protocol and in certain cases the Ministry of Economic Affairs is entitled to intervene, the Netherlands is characterised by having one rule on media ownership, when **in reality, it is a deregulated market**.

The Dutch media industry used to be regulated, but in 2007 the rules were relaxed, and concentration was set at very high shares to tackle media convergence and to allow Dutch media companies to compete in the international landscape. As of 2011 the **legislation was repealed on the grounds that the law restricted publishers' survival strategies through M&A and cross-media development**, and that the Dutch media industry would continue to self-regulate and its development be closely overseen by the media authority through annual concentration surveys (Van Dreunen, 2016). In general, as the media authority reports, **the Dutch media industry has for years leaned greatly towards concentration**.

As the stakeholder consultation revealed, an effect of repealing the limits of media ownership was the concentration of the newspaper market in the hands of two foreign companies which now hold 90% of the market. The radio market suffered a similar fate. Additionally, there has been a rise in takeovers by, and partnerships with, domestic players. In 2017, Dutch media organisation Talpa Media took over three important television stations, is now the owner of four main radio stations and the following year became the owner of the largest Dutch press agency ANP.

Competition with major international corporations has indeed sent national companies on a quest for scale, without which there is a high risk of becoming marginalised (Media Pluralism Monitor, 2020). While scale might have been necessary for the Dutch media companies' survival, the Netherlands is a good example that proves that **limits on media ownership can be effective and liberalising the market can have adverse effects**, leading to high levels of concentration and cross-media ownership. Yet, in the Netherlands it seems that this is only regarded as a problem if pluralism is affected, which it does not consider to be the case at this point.

The medium-regulated market of **Austria** shows a high concentration of 74% in the CR4 and an HHI of 2009 which positions Austria in the moderately concentrated market category. Austria has in place restrictions to prevent horizontal and cross-media concentration, yet these rules are not very tight, as in 2017 the law enabled – albeit after imposing some conditions to prevent the creation of a dominant position and to prevent the restriction of media diversity – the merger between the two biggest private TV stations (ATV and PULS 4) which are now owned by the German ProSiebenSat.1 group. This is second in terms of audience shares after the PSB ORF (Media Pluralism Monitor, 2020).

The Austrian Cartel Act includes certain rules on media diversity and merger prohibitions if media pluralism is affected. Similarly to the Netherlands, the Nordic countries and Germany, the Austrian media system is based on a **Democratic Corporatist** model where PSB's are preserved and backed financially. **The public broadcaster ORF is the dominant player** in the Austrian broadcast media with a market share of 32%. Foreign non-national groups hold significant audience shares in Austria, with the most prominent groups being German-based; in fact, **the top four players in the German market are among the top five players in Austria**, with a 47% audience market share, **reinforcing the cultural and language proximity concept**, especially given that German is the official language in Austria and that Germans are the largest group of foreign nationals in Austria.

The **Hungarian** media market is controlled largely by the **right-wing government, leading to an authoritarian media system** where the conservative government can reshape the media landscape using legal, regulatory and state-backed financial instruments (Bátorfy, 2019; Media Pluralism Monitor, 2020). **Media owners are involved in politics and other businesses**. The status of the media landscape has

been under the EU scrutiny in recent years, especially since the formation of KESMA (a pro-government media giant of approximately 500 merged entities).

According to the Media Pluralism Monitor, although the media industry is moderately regulated, the **laws are poorly implemented**, and the effectiveness is problematic as the **Media Council's decisions are arbitrary and controversial**, and the Media Council is backed by the government, who can overrule any limitation in the Media Act (Media Pluralism Monitor, 2020). Nevertheless, in the TV broadcasting industry, Hungary registered the lowest CR4 of 51% in the EU and an HHI of 1311 which represents a low concentration level. This shows that **keeping concentration low is not enough to ensure media pluralism and freedom of speech**. Two nationally based TV groups, PSB Duna and private TV2 Media, hold a 23% market share. The other two TV groups in the top four players are the foreign German-based Bertelsmann, the market leader with 22%, and the American group AMC Networks, with a market share of 6%. Japan's Sony Corporation had a market share of 4% and other US groups, such as Viacom, Discovery, Walt Disney Company, Comcast and Warner Media (AT&T) have an aggregated market share of 8%. According to Herrero et al. (2017) **the Hungarian PSB receives low investment** and although not the bottom-ranked, **Hungary has one of the lowest audience shares of a PSB** (13%), alongside Lithuania 13%, Greece 9%, Luxembourg 6% (where the public broadcaster is the German ZDF), Bulgaria 7% and Romania 4%.

Greece has one of the most media-regulated markets in the EU (with the same number of media ownership-related rules as France – Ireland ticking the box with 9 of 11 rules, making it the highest regulated media market), with clearly defined thresholds to prevent a high degree of horizontal and cross-media concentration, in addition to relevant provisions that complement general competition rules as they focus on concentration of control, defining the concept of dominant position. An explanation for the high degree of media-specific regulation is that the Greek economy is generally heavily regulated, with its markets being among the most regulated among the OECD countries (Organization for Economic Cooperation and Development with 37 member countries).

Greece fits the **Polarized Pluralist model** of Hallin and Mancini, where media is integrated into party politics and there is strong state intervention with subsidies. **The state is to a large extent the owner and regulator of media**. The stakeholder consultation revealed that **initiatives aiming at the limitation of power of media owners can sometimes mask political reasons**. In an attempt to decrease the power of traditional media owners in control of more than one type of media and using the excuse of it being a matter of urgency, the then newly elected government in 2016 amended the law regulating the licensing of free-to-air DTT providers to bypass the National Council for Radio and Television regulatory authority – which at that time was without a board – and empower the government to take over responsibility for licensing, in addition to providing other amendments. In 2017, the Greek supreme administrative court annulled the government's decision.

Surprisingly, with an audience of just 9%, the **public broadcaster ERT** (perceived by some as a state broadcaster) **is in a weak position**, failing to reach an audience share that would place it in the top four groups. However, the reasons for ERT's low audience share could include the two-year suspension of the ERT from 2013 during the economic crisis in a plan to combat the debt crisis, and the lack of resources which also translates into lower-quality programming (Iosifidis, 2016). The top four groups are national private TV groups holding a 57% audience share which signals a medium concentration level. The HHI of 1390 shows a low concentration. The European Audiovisual Observatory's report on TV audiences (2019) states that **more than one in five of the TV channels in Greece accounted for an audience share above 10%, confirming the lower audience fragmentation in small countries**.

The EU-27 Member States and the UK with **large audiovisual markets**, i.e. France, Germany, Italy, Spain and UK, and Germany – also known as the ‘Big Five’ – tend to have high concentration levels in the top four TV groups, but based on the HHI index they are in the range of moderate concentration, signifying that these markets are still competitive. Whereas Italy, Spain and the UK have a medium level of regulation, France and Germany are the most regulated Member States in the EU, which according to our findings correlates to the level of concentration. However, during the expert consultation, it was pointed out that large markets may need less regulation than small markets and that maintaining competition in the former is easier than in the latter. Certainly, **larger markets can, due to their audience size, host a significant number of players**, who can thus tap into a variety of social groups and cater to their specific needs. Moreover, these markets have a tradition of **encouraging strong local, regional and national players by offering support to their media industry**.

France, alongside Italy, Spain, Greece and Poland, fits in the **Polarized Pluralist model** of Hallin and Mancini, with high state intervention and strong integration of media into party politics. France is **known for its strong history of media regulation and well-developed policy** holding pluralism and diversity in the audiovisual market in high regard. Yet, the CR4 was 83% and the HHI 2207, which places the audiovisual market at the high end of the medium concentration spectrum, **leaning towards a high level of concentration. This shows that even a well-developed policy is not sufficient to avoid strong concentration. The French public broadcaster had the highest audience share** of 29%, followed by the nationally-operated Bouygues, the German Bertelsmann and other nationally-based players such as Altice, Amaury, the Franco-German ARTE, the NRJ Group and Vivendi.

The **UK** fits the **Liberal model** which is characterised by dominance of **widely unregulated commercial media, with the role of the state somewhat limited** in comparison to the role of market and the private sector. The medium-regulated UK market is **dominated by nationally-based operators** with the top three players accounting for 69% of the total audience share, followed by the US-based groups Comcast, Viacom, Discovery, Walt Disney Company and Warner Media (AT&T), which altogether account for 20% of the audience shares.

The strong presence of nationally-based operators does not come as a surprise as **there are a range of PSBs** (with the commercial broadcaster ITV being under a PSB remit), **and funding models**, which operate on a non-for-profit basis under a **regulatory remit focusing on maximising public value, delivering high quality programmes and supporting local independent production companies**, all these being necessary elements to cater to the audiences’ needs (Ernst & Young LLP, 2016). High concentration of ownership can be prevented by merger control rules and the public value test in the case of PSB’s. In spite of the media-specific rules and the bodies that oversee the market, the UK has a concentration of 78% in the top four players and an HHI of 2104. **This high concentration might be linked to a relaxation of media ownership rules over the years** (the Broadcasting Act 1996, the 2003 Communications Act and the 2011 Media Ownership Order).

In **Germany**, there is an audience share of 86% concentrated in the top four players and an HHI of slightly under 2000, signifying medium concentration. Similar to France and the UK, **German public broadcasters achieved the highest audience share** of 48%, making the German public broadcasters the second largest in terms of audience shares held after Denmark. **The share of public funding in Germany (35%) is the highest in Europe** (European Audiovisual Observatory, 2020). Private player, **Bertelsmann**, the group most present across the European market (active in 10 Member States) and the second highest in Germany, based on an audience share of 21% in the domestic market, **was the only European entity that achieved a higher audience share in non-domestic territories than in its national territory**. To prevent the creation of dominant power of opinion there are restrictions mainly based on audience shares. What is distinctive about the German media regulation is that **the legal framework has been upheld by the**

German Constitutional Court. This framework offers protection of fundamental rights from any political influence (Media Pluralism Monitor, 2020).

In **Spain**, similar to the UK, **successive waves of liberalisation have relaxed the rules** through a mixture of royal decrees and amendments and have allowed for greater national concentration since 1988. This has led to the creation of a very solid market, making the **entry of foreign and new players difficult** (Media Reform Coalition, 2013). A royal decree in 2009 legalised mergers between media owners and allowed national broadcast licensees to hold simultaneous shares in multiple national stations as long as the average audience of all the channels of the providers with national coverage considered remains under 27%. This percentage was carefully chosen with the sole purpose of preventing a merger between the two dominant commercial channels in Spain, Telecinco and Antena 3 TV, which are owned by the Mediaset and Atresmedia groups. In 2014, the average audience shares of the two groups was 29%, but with audience shares declining in Spain, in 2018 the average audience share dropped to 27%. The 27% threshold stipulated in the legislation refers to the average audience (that is the number of households watching a specific channel or programme out of the total measured population and not out of the TV audience) and not the average audience share, the former always being lower than the latter. Thus, according to the national expert consultation, some experts have already been warning about **the obsolescence of this percentage as a defence mechanism against media ownership concentration**.

As an extra pluralism safeguard, Spain's 2010 Broadcasting Act stipulates that no mergers are allowed if the transaction limits the presence of at least three independent national licensees. Currently there are four independent national players: Atresmedia, Mediaset, Unidad Editorial and Vocento. Thus, if the average audience drops below 27% (which is already the case), a merger between Mediaset and Atresmedia for which the percentage was specifically chosen, would be allowed. In spite of these rules, Spain still has a high CR4 of 72%, with **three of the four players being nationally-operating groups**, but the market is deemed by the HHI of 1843 to be moderately concentrated.

Italy seems to be **the only Member State whose cross-media ownership covers all media sectors**. Yet, according to the CR4, **the Italian TV broadcasting market is highly concentrated** at 78%, but is still competitive with a relatively high HHI of 2375, leaning towards high concentration, thus **showing some limits and/or flaws in the law's effectiveness** (Media Pluralism Monitor, 2020). The public broadcaster RAI and the Italian Mediaset form **a solid duopoly** with an audience reach of 66%.

The regulatory authority AGCOM is in charge of monitoring the revenues generated by the firms which are part of the SIC, making sure they do not exceed the 20% threshold and checking if any player reaches a dominant position. As reported by the Media Pluralism Monitor (2016b), risks to media pluralism come from **political control over media outlets and a lack of independence in the public broadcaster's governance**, due to the **political parallelism of the Italian media system**. Currently **the Italian landscape is facing some changes** as Mediaset, the second biggest player after the public broadcaster RAI, with an audience share of 29% is looking to merge its Italian and Spanish businesses into a new pan-European media company with a Dutch holding company entitled Media For Europe, a merger contested by the French Vivendi, which owns the second-biggest share in Mediaset, on the grounds that the move by the former Prime Minister Silvio Berlusconi's family (the main shareholders in Mediaset) will reinforce their control over Mediaset and increase the Berlusconi family's stake and voting shares (Dams, 2020).

The fact that in **Poland** the **state plays a significant role as the owner of public audiovisual outlets, which have become instrumentalised** (through the two broadcasting law amendments in 2015 and 2016 which resulted in growing political control), is one of the reasons why Poland fits the **Polarized Pluralist Model**. Nevertheless, for the past two decades, due to the privatisation process and higher competition, the

Polish media system has adopted some elements of the Liberal model which, according to Dobek-Ostrowska (2012), is increasingly mixed with the Polarized Pluralist model in the CEE region.

State support for the private media sector has been minimal although some changes can be seen in the tax reduction policies for the e-press after the 2019 amendment of the 1997 Act on tax (Media Pluralism Monitor, 2020). **There is a lack of media ownership policies that would prevent the concentration of ownership.** Additionally, the Media Pluralism Monitor (2020) places the independence of the media authority at high risk given political interference.

The CR4 index shows that **the Polish TV broadcasting market is highly concentrated**, with the top four holding 82% of the total audience shares, with the public broadcaster (or better said the state-owned broadcaster), TVP, holding the highest share of 28%. 31% of the audience share is split between two nationally based private broadcasters. The US group Discovery Communications is ranked third in terms of audience shares with 22%. Thus, **the presence of strong and concentrated nationally based TV networks is significant.** The HHI score of 2052 shows that the market in Poland is moderately concentrated.

The effectiveness of the rules in Poland is debated. During the stakeholder consultation, a different approach to media regulation was discussed, given today's digital era. This suggestion was **linked to liberalisation and deregulation of the media market by adopting methods appropriate for concentration law** (relevant market, substitutability, supply chain, dominant position, subsidiary) and lowering the threshold for what is considered a dominant position to 30% (currently set at 40%) in any of the markets such as advertising revenue, revenues from Pay-TV, television and radio audience, or users of online audiovisual services, in such a way that it would not interfere with the companies' need for development.

It was suggested that the authority in charge of pluralism protection considers in its assessment factors such as: innovation in new markets, investments, the degree of concentration of a given market and independence in taking economic decisions, customer trends, audiences, user number, coverage, etc. Other aspects pointed out were the current lack of clear criteria and procedures applied to protect pluralism, the necessity of amending the provisions to ensure close collaboration between the different authorities and a body that would be in charge of systematically reviewing the media market and determining the degree of concentration. Another issue identified was the lack of a possibility for investigating the telecommunication players who are at the same time media players. It was highlighted in the stakeholder consultation that the national regulator's recommendation to amend the law was not being implemented.

As seen above, **there is a strong presence of nationally-operating groups in Member States with large markets:** Italy (e.g. Mediaset), Spain (e.g. Atresmedia), France (e.g. Bouygues), the UK (e.g. BBC), Germany (e.g. Bertelsmann) and Poland (e.g. TVP). At the opposite end of the spectrum, **nationally-operating groups in smaller markets are less strong and the presence of foreign non-domestic players is much higher.** The most internationalised European groups are the German Bertelsmann, the Swedish Kinnevik (active in 10 Member States), followed by the UK's BBC (i.e. 8). This is proof that **today there are not just local and national media markets but also global markets**, as was pointed out during our focus groups. **Public service media groups accounted for a considerable market share in most European markets**, but compared to 2014, audience shares have been declining.

3.2.5.3 Concluding remarks

The existence (or lack thereof) of media ownership rules, the enforcement power of the agencies, the level of state intervention, the history of media regulation, the media systems in place, the liberalisation waves, and cultural and language proximity and market size are all aspects that influence the level of concentration in a given market. Some of these aspects were also pointed out during the focus groups, leading to the

conclusion that as no Member State is alike, **aiming for a uniform media ownership regulatory framework across the EU is not preferable.**

From the views shared during the focus groups, the conclusions can be drawn that **media ownership rules alone are not enough to protect diversity and pluralism**, and that **it is in fact possible to have concentrated markets with a few media outlets (external pluralism) and a diversity of voices and opinions (internal pluralism) at the same time.**

As such, **media concentration and pluralism are not mutually exclusive.** Although the measures in place have been effective in contributing to the development of many new services, they have also prevented services from becoming global leaders. In support of this statement, the discussions led to the idea that **horizontal concentration could be the key to creating global European players.** Yet, this will be impossible if the regulatory landscape is rigid. Concentration was deemed to be positive for broadcasters to compete with global platforms, and that is understandable and preferred, but not at the expense of diversity, which needs to be present and protected. Overall, **the question is** not one of regulating more, but rather **who must be regulated to level the playing field.**

3.3 Transparency of media ownership in the EU

The section in brief

This section explains the place of transparency of media ownership in the AVMSD and explains how our analysis goes beyond the scope of AVMSD.

The section provides a framework for mapping media transparency rules and their implementation in the EU.

- Whether there are media-specific transparency rules on ownership;
- Transparency requirements (disclosure obligations in relation to financial information, nature of the owner, ownership structure);
- How information is shared (by communication to the public, through notification to the competition authority, through notification to another regulator, through direct notification to government representatives, other means).

It gives an overview of the rules governing media ownership transparency in the EU and analyses the implementation of the legislative framework on media transparency in the recent past via 6 case studies.

- Audiovisual markets remain very different (rules, implementation, concentration, context).
- EU legislation tends to harmonise general transparency rules.
- Member States differ in the emphasis put by regulatory authorities and governments on transparency.

The section also reflects on the effectiveness of the legislation on media ownership transparency.

- Transparency is commonly perceived as important, notably to limit concentration and ensure media pluralism.
- While regulation is necessary, it may not be enough to ensure efficient implementation of transparency of media ownership.
- The section identifies best practices. Each best practice identified is discussed in terms of its efficiency, as they all come with limitations, such as their complexity or their cost.
 - Constitutional provisions relating to media ownership transparency;
 - General requirements regulating disclosure rules for company ownership;
 - Media-related provisions;
 - Other sources of information.
- Enforcing transparency of media regulation should happen at EU level.
 - Importance of sharing information between regulators.

3.3.1 Context

As Recital 15 of the AVMSD (2018/1808/EU) states, “Transparency of media ownership is directly linked to the freedom of expression, a cornerstone of democratic systems.” It “allows users to make an informed judgement about such content.” Thus, based on the democratic values of the EU, European citizens need to

be able to know who owns the media which they rely on to be able to judge the content of the given medium and most importantly to inform their political choices, be it at the domestic or European level. **The concept of media ownership transparency enables states to take effective action to prevent the concentration of undue power and influence through extensive media ownership.** Transparency of ownership and the availability of sources of media funding also help to expose potential state influence or control over the media as well as media influence on political parties or state bodies (Craufurd-Smith & Stolte, 2014). Moreover, as the Rule of Law Report recalls, transparency of media ownership is an essential precondition for any reliable analysis on the plurality of a given media market; it is necessary not only to conduct informed regulatory, competition and policy processes, but also to enable the public to evaluate the information and opinions that are disseminated by the media.¹²⁰ Previous research has shown that a higher level of transparency of ownership information is favourable for controlling and monitoring media pluralism – and at the same time facilitates the collection of further information to serve as the basis for future ownership regulation (Bárd, Bayer & Carrera, 2016). Ensuring media pluralism through transparency – as also stated in the preamble of the AVMSD – is one of the prerequisites for freedom of expression (*Di Stefano v. Italy*, 2012).¹²¹

A close examination of the roots of European regulation reveals that the issue of media ownership transparency has been addressed in the judicial practice of the European Court of Human Rights and in a number of Recommendations issued by the Committee of Ministers of the Council of Europe, as well as by the EU's AVMS Directive. A common element of these guidelines is that they propose that **national legislators apply effective media ownership rules in order to ensure transparency of media ownership.** Thus, according to Recommendation CM/Rec (2018)1 adopted by the Committee of Ministers of the Council of Europe, the adoption and effective implementation of media ownership regulation can enhance transparency.¹²² Furthermore, this measure could also contribute to the effective separation of political influence from the control of the media. Finally, according to the Recommendation, transparency of media ownership, organisation and financing (thus, not only of media ownership) is also a tool to increase media accountability.

In order to make media ownership rules more transparent, as already mentioned in section 3.1., the EU's AVMS Directive stipulates that **"Member States may adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners."** The second paragraph sets out the boundaries of such legislative measures and states that such measures must respect the fundamental rights concerned, such as the right to private and family life of beneficial owners. Such measures are required to be necessary and proportionate and must aim to pursue an objective of general interest.¹²³ Due to their different national characteristics (such as the size of the country, size of the market or traditions), Member States have chosen different measures to comply with this rule.

The following sections of the study examine transparency measures related to media ownership. Section 3.3.2. presents the framework for transparency requirements, describing on the one hand the different information indicators which, regulation requires be disclosed and on the other hand the ways of making

¹²⁰ European Commission (2020), Communication – 2020 Rule of law report – the rule of law situation in the European Union, Brussels, European Commission, https://ec.europa.eu/info/files/2020-rule-law-report-rule-law-law-situation-european-union_en.

¹²¹ See application no. 38433/09, *Centro Europa 7 S.R.L and Di Stefano v. Italy*, judgment 7 June 2012, at para.133 and discussion of individual rights and media ownership transparency in section 4 below.

¹²² Section 11, Recommendation CM/Rec (2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies).

¹²³ Article 5, 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).

information available for the public. This part of our research is based on mapping key information and consulting external subject-matter experts; section 3.3.3. proceeds with a mapping of all EU Member States' requirements; 3.3.4 then presents an in-depth examination of transparency requirements in a selected number of countries. In section 3.3.5., we examine to what extent the public effectively has access to media ownership information under the different regulatory regimes across Member States. We subsequently look at what information is specifically available on ownership structure and owners, the quality of this information and how easily accessible the information is.

3.3.1.1 The EU Anti-money laundering directive

While focusing on media-specific legislation, this section also considers legislation that not only targets the media sector, but all economic sectors generally, such as competition law. Of particular interest to media transparency, the 5th Anti-money laundering Directive (Directive (EU) 2018/843) notably provides definitions of ultimate beneficial owners and imposes requirements that contribute to the transparency of the media sectors, among others. On 19 June 2018, the **5th anti-money laundering Directive** was published in the Official Journal of the European Union. The Member States had until 10 January 2020 to transpose this Directive. Essentially, the substantial provision introduced by the Directive concerned extended public access to the transparency register as well as the extension of the circle of entities obliged to notify the transparency register. The Directive also introduced new usage obligations for obliged entities and created a more stringent standard of due care for business relationships relating to high-risk third countries and for the use of virtual currencies. In addition, the Directive makes provision for an EU-wide network of the EU Member States' existing national transparency registers by means of an electronic European platform (European Transparency Register).

On May 14, 2020, the European Commission urged eight Member States and the UK to fully transpose the 5th Anti-Money Laundering Directive. The Commission sent a formal notice to Austria, Belgium, Czechia, Estonia, Ireland, Greece, Luxembourg, Poland and the UK for having only partially transposed the Directive.¹²⁴ The Commission had previously sent letters of formal notice to Cyprus, Hungary, Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain for not having communicated any transposition measures.¹²⁵

3.3.1.2 Media transparency: beyond the AVMSD

To conclude this introductory subsection, it is crucial for the reader to understand how Section 3.3, and more generally Chapter 3, take as a starting point the AVMSD as it covers media ownership transparency, but actually goes far beyond the corresponding articles and recitals (see 3.1). First, 3.2 deals with media ownership regulations, which are related to transparency of media ownership, but do not deal with transparency of media ownership as such.

The following table details how this section goes beyond the scope of media transparency as covered by the AVMSD. First, 3.3 not only covers regulation dedicated to the audiovisual sector, as it analyses with the same level of detail **regulation that deals with radio and press**, and in addition all regulations that are **not specific to media**, as far as they also have an impact on media sectors. For example, the EU Anti-money laundering Directive (see 3.3.1.1) concerns all economic sectors, *including the media sectors*.

Second, while Article 5, and Recitals 15 and 16 focus on transparency of media ownership, our analysis covers that transparency **and also transparency obligations related to the nature of the owner and**, most importantly, **to financial information**. Some sections dealing with both types of regulation (within and beyond scope).

¹²⁴ See: https://ec.europa.eu/commission/presscorner/detail/en/inf_20_859.

¹²⁵ See: https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202.

Table 17 - Relationship between section 3.3 and the AVMSD

Section	In scope	Beyond the scope
3.3	Audiovisual/television	Radio, Press, non-media specific
3.3.2.2	Ownership structure	Obligation to disclose financial information The nature of the owner
3.3.3	Ownership structure	Market shares Market reach Turnover/revenue/income Nature of the owner
3.3.4	Ownership structure	Obligation to disclose financial information Nature of the owner

3.3.2 Framework for the analysis of transparency of media ownership

Transparency of media ownership refers to the public availability of accurate, comprehensive and up-to-date information about media ownership structures to enable media authorities and the wider public to ascertain who effectively owns and controls the media. It is an essential component of any democratic media system and it is crucial for media pluralism and democracy in general. Our analysis of transparency regulations identifies the Member States' media-specific regulations regarding transparency, i.e. the information available to some stakeholders (even sometimes the public) of some features of media companies, such as the identity of owners. More specifically, we consider the following points:

- The existence of media-specific transparency rules on ownership (see 3.3.2.1)
- Transparency requirements (see 3.3.2.2) including:
 - Disclosure obligations in relation to financial information (Market shares, Market reach, Turnover/revenue/income);
 - The nature of the owner
 - Ownership structure
- How information is shared (see 3.3.2.3):
 - By communication to the public
 - Through notification to the competition authority
 - Through notification to another regulator
 - Through direct notification to government representatives
 - Other means

3.3.2.1 The existence of media-specific transparency rules

In our framework we seek to clarify whether the Member States have specific transparency obligations (also as part of media ownership rules or media-specific competition rules). In our research we found that

Bulgaria, Portugal and Sweden have introduced specific transparency acts, but transparency requirements are mostly regulated in the Member States' media, company and competition laws. In countries with media transparency regulation it was found that such regulations tend to differ by sub-sectors within media industries. Member States have set **sector-specific rules on newspapers, television and radio** to trace and prevent cross-media ownership, which contributes to the clarity of ownership structures, and therefore to transparency as well. Specific media sectors are subject to different regulations in some countries. The broadcasting sector is subject to specific media ownership transparency regulations in **Malta, Poland, Romania and Sweden**. The audiovisual sector is subject to specific media ownership stipulations in **Belgium, France, Latvia, Romania and Spain**. The transparency of printed media is established in regulation in **Germany, Greece and Luxembourg**. Special laws for online media transparency can also be found, for instance, in **Germany**. Finally, **there are also countries without any media-specific transparency rules**, such as **Denmark or the Netherlands**. Media companies in this case have to follow common company and competition rules.

3.3.2.2 List of transparency requirements

As media transparency is essential for the proper functioning of the media market, and also to the openness and accountability of the media, this section analyses the legislation of the Member States in greater depth by listing all the main pieces of information on which media transparency requirements are laid down. By examining the existence of media transparency rules, we came to the conclusion that Member States follow a similar set of conditions to maintain and to increase media transparency, such as the obligation to notify their authorities or the public about:

- Obligation on disclosure of financial information. This includes the market share, the audience shares, and information on turnover, revenue or income;
- Information on the nature of the owner and the ownership structure.

Obligation to disclose financial information

Market shares

Media entities' market share is, as mentioned in 3.2.2 (Framework for the analysis of media ownership rules), a metric to determine a company's market power. Therefore, providing information on market share to the competent authority is an essential measure of media ownership transparency and of media pluralism as well. For example, in **Italy** the *Autorità per le Garanzie nelle Comunicazioni* (AGCOM), the national regulatory authority, monitors whether a media operator exceeds 20% of the revenues of the *Sistema integrato delle comunicazioni/Integrated System of Communications* (SIC) to check whether an operator is exceeding a dominant position within a given media market. So AGCOM has direct access to the market share and financial information of the media companies in Italy. Besides, the SIC share held by the main actors is publicly disclosed.

The audience share model restrictions are used as thresholds to prevent ownership concentration, and to increase pluralism. **Hungarian** regulation is worth mentioning here again because, in order to clarify the facts and circumstances considered relevant for the purposes of the Administrative Procedure Act (to prevent concentration and identify SPI media service providers), the Media Council (NMHH) may order media service providers to disclose data by way of a ruling, in particular on audience shares.

Market reach

Sales and market reach of a media group's brands cover information on the media groups' average circulation, such as data on income and other financial aspects, as well as ratings and distribution reach. Our research shows that there are transparency requirements on this **only in Croatia and France**. In

Croatia, through the Media Act, publishers need to announce their average circulation, that is, average radio or television ratings, data on total income and average print run sold, that is, average listening/viewing ratings to the Croatian Chamber of Economy. In France, comparable rules can be found in Law no. 86-1067 on the Freedom of Communication as well as in Law no. 86-897 on the Reform of the legal regime of the press, relating to press ownership.

Turnover/revenue/income

Transparency of **media groups' turnover/revenue/income** is **mainly required in relation to mergers**, with the obligation to notify the regulator when a defined revenue threshold is reached (see 3.2.2.2). Merger control is particularly important in order to prevent market concentration and meet competition law requirements. All Member States have notification thresholds for concentrations based on turnover, except **Luxembourg**, which does not have merger control rules. **The UK** has no notification obligation. These notification obligations apply to all sectors. In this case, turnover refers to the net sales revenue earned by the party from media service provision activities during the course of the previous business year.

For example, in **Ireland**, media merger decisions and all other media ownership decisions are reported publicly by the relevant bodies, whether the Department of Communications, the BAI (Broadcast Authority of Ireland) or the Competition Commission, and are reported in the national and regional media. In **Hungary**, during the tendering procedure for analogue linear radio media services, the tender needs to contain a bank certificate to verify that the tenderer has sufficient funds set aside to cover the costs of the proposed media services. (It is relevant to note here that linear radio media services are out of the scope of the Audiovisual Media Services Directive.) **Polish** law's approach to obtaining transparency on the size of media groups is covered by Article 13 of the 2007 Act on Competition and Consumer Protection, which imposes a requirement of notification of the intention of concentration.

There are also rules to ensure transparency on turnover/revenue/income **beyond mergers**. These rules include those that require annual (or half yearly) reporting on financial transactions (**Croatia, France**), or revenue (**Italy**). In **Cyprus**, special rules require the disclosure of any financial or other support received from any source by any of the participants in the concentration (Article 47).

Italian regulation is a perfect example in this area because the regulatory framework calls for the Authority to monitor whether a media operator has exceeded 20% of the revenues of the Integrated Communication System (SIC). If an electronic communications operator holds more than 40% of the overall revenues in the electronic communications sector and is not part of the SIC, it cannot have more than 10% revenue of the SIC. Audiovisual media service providers are obliged to declare their annual revenues, including revenues from advertising, PSB fees, user payments, sales of TV content, public funds, etc. Furthermore, the audiovisual providers are required to provide distinct information on their national and local revenues, and disclose their financial relationships with advertising sales agencies. The providers need to declare total costs of free-to-air and paid TV activities at national and local level, in particular investment costs from broadcasting rights, sports rights and major football league broadcasting rights.

The nature of the owner

This category includes all requirements related to **disclosure of the nature of the actors who control media companies**. This may apply to categories of actor, such as people working in advertising agencies and members of political parties. Thus, in **Hungary**, the media owner must make a statement that there is no conflict of interest under the Media Act and that none would arise in relation to them as a result of the

registration of the owned media. In **Germany**, political parties must disclose their involvement in media entities.

This category includes cases when the owner, or a significant shareholder, needs to **report if they are a foreign national**. This regulation differs by Member State, because it could mean legal and natural persons that are non-EU, non-EEA or simply different (in or out of the EU) from the given Member State. This issue occurs **mainly in the case of acquisitions**, when foreign ownership requires prior official approval. For this permission, media associations need to disclose information to the related authorities accordingly based on the regulation of media ownership.

For example, a foreign investment in Germany requires an application to be filed with the **German** Ministry of Economics and Technology if a foreign investor with a direct or indirect shareholding of 25% or more wants to invest in a German company ('foreign' includes both EU and EEA investors if they are not German). In **Cyprus**, non-EU persons can only acquire (up to 5% of) capital shares with the approval of the Council of Ministers – and their total percentage in a licensed company cannot be more than 25%.

Besides the examples mentioned, the connected transparency requirements in the Member States facilitate the official control of compliance with the relevant media ownership regulations.

Ownership structure

This category includes all cases when **ownership structure** and status, as well as any change in related data, must also be **published** or at least **reported** to a state authority. **This title deals with the AVMSD transparency requirements**. In **Greece**, any transfer of ownership above 1% of the capital has to be reported to the Greek National Council for Radio and Television (ESR). In **Romania**, the ratio is 10% or more of the acquisition of shares or voting rights of the holder of a broadcasting licence. The **Latvian** Company Register must also be informed about owners or beneficiaries who own more than 25% of the shares in any company. The same percentage is required in **Luxembourg**. The ownership and shareholder structure are only important in some countries for obtaining a licence, like Croatia, Czechia or Germany. In Luxembourg it only becomes relevant as media companies concentrate. However, in **Cyprus**, the ownership structure is important in both licence-granting and merging of media companies. **Slovenian** law requires that the Ministry of Culture approve an ownership concentration above 20% for radio, TV and newspapers. Media companies in **Slovakia** must also inform the Ministry of Culture about the ownership structure for every stakeholder who has reached at least a 20% stake in the market. The aim of inquiring whether a company has a dominant position is to trace where such a company has a significant influence over and impact on the media or its specific sectors. Thus this scrutiny is of utmost importance in terms of media ownership transparency.

In **France**, under the Law on Freedom of Communication 1986, Law 86-1067, the so-called Léotard law, service providers must provide the name of the legal representative and the three principal associates. In general, a great deal of information on media ownership is already available online in studies published by the media authority CSA. For the press, it is mandatory to inform readers of the identity of owners of at least 10% of the capital involved, as well as to disclose the name of the director of the publication, and the name of the person responsible for editorial, and a yearly account of ownership transfers leading to the transfer of at least 5% of share capital. In addition, Law no 2016-1524 states that, each year, news media companies must disclose their capital structure and governance to their readers if any legal or natural person holds 5% or more of its ownership. Moreover, the company must also mention the identity and shareholding stake of each of its shareholders.

In **Hungary**, the current regulation on the registration of linear media service providers (Media Act Section 42 Paragraphs e)) and on the tendering of linear radio media services (Media Act Section 56 Paragraphs c))

states that the prospective or tenderer's media service provider is required to disclose the size of the notifier's direct or indirect ownership stake in any business enterprise providing media services, or applying for media service rights, in the territory of Hungary – or that of any other person maintaining a qualifying holding in the notifier's business enterprise. In addition, the market concentration of linear media service providers is regulated by the provisions of the Media Act in order to maintain a pluralist media market and prevent the establishment of an information monopoly. To further prevent an information monopoly, any linear audiovisual media service provider and linear radio media service provider with an audience share of at least 35%, as well as a linear radio media service provider and a linear audiovisual media service provider with a joint average annual audience share of at least 40% is required to adapt their programming to diversify the media market. By determining the audience share, the Media Council examines other media services provided by the owner of media service provider. However, the public service broadcaster is an exception to these rules (Section 5 of the Media Act).

The **Romanian** audiovisual regulatory agency, *Consiliul Național al Audiovizualului* (CNA) has to be informed when individuals or economic actors acquire 10% or more of a company's shares, and/or voting rights in companies which have been granted broadcasting/audiovisual licences. Article 44 of the Audiovisual Law establishes that concentration of media ownership and increases in audience shares must not generate dominant/influential positions in the formation of public opinion. Here too, the public service broadcaster is an exception to these rules. A media company is considered to have a dominant position if its share in the national sector-based market is over 30%.

In **Ireland**, the Broadcasting Authority of Ireland (BAI) states that the licensing process facilitates transparency in respect of media ownership and control in that information on shareholders, directors and membership of broadcast services (in the case of community media services) is publicly available.

In **Austria**, according to Austrian GAAP (generally accepted accounting principles), media companies (and companies in general) are obliged to publish their ownership structures on their websites or in records or documents accessible to the public once per year within the first five months of a financial year. This so-called management report has to include details on corporate governance, the capital structure, and shareholdings in the company which confer at least 10% ownership rights of shareholders. In addition to this Section, 25 § of the Austrian Media Act states that the ownership, shareholding, share and voting right proportions shall be stated with respect to all persons holding a direct or indirect share in the media outlet.

Some countries scrutinise who is **the real owner** (or **UBO, ultimate beneficial owner**) of media companies and thus increase transparency by revealing hidden ownership structures. The real owner is a natural person (or more natural persons) who owns the media company directly or indirectly through other companies or a chain of such companies. According to Article 3 Section (6) of the EU's Anti-Money Laundering Directive, the **UBO is "any natural person who ultimately owns or controls the customer or any natural person on whose behalf a transaction or activity is being conducted"**. Thus, as we have found, most Member States have some form of media ownership transparency regulation that could be further examined on the basis of the criteria set out below.

Bulgaria is one of the few countries that seeks to reveal the true owners. The purpose is to make media ownership transparent by leveraging funding in the media and its "real" owners, but it is criticised, as the law does not oblige media to disclose sources of income such as government funding, bank loans and cash coming from 'normal' market practices. Marius Dragomir and Mariia Altergot, in their analysis edited by CEU Center for Media, Data and Society say that, although the law is formally aimed at increasing transparency of media ownership, the law is an attack on a specific group of media outlets (Dragomir & Altergot 2018).

3.3.2.3 How information is shared

We have further analysed how and with whom the information described in the transparency requirements has to be shared by media companies. We have mapped and identified five main ways of sharing information which are the following:

By communication to the public

This includes all routes for making information available to the general public. The main ways of sharing information are through communication **in annual reports** (e.g. as is usually the case in the financial reports of companies that are listed on the stock exchange), **on corporate websites** and **through registers** managed e.g. by chambers of commerce. In general, this covers all ways in which the public may receive information about media companies directly. Some countries oblige companies to publish information on their websites, while in other Member States it is subject to specific conditions, for example in the case of mergers or concentrations.

In **Bulgaria**, any change in ownership needs to be declared by both the publisher and by the distributor of periodicals. According to the Delyan Peevski media law, some publishers of newspapers are not required to comply with the law on declaring the ultimate owner of the company. In **Austria**, on the other hand, ownership structure must be published on the companies' websites or in accessible records once in a year. This disclosure must be reported within the first five months of a financial year. In **Germany**, online media outlets have to make their ownership information transparent on their websites. **Belgium's** regional laws prescribe that regulatory authorities (VRM - *Vlaamse Regulator voor de Media* for the Dutch-speaking Community and CSA - *Conseil Supérieur de l'Audiovisuel* for the French-speaking Community) need to publish annual reports or online databases on the level of media concentration and media company ownership structures. In **Denmark**, companies need to include ownership shares in their annual accounts, if anyone owns more than 20% of the overall shares.

Some Member States have special rules on periodicals and newspapers. In **Austria**, for example, any change in ownership needs to be declared by both the publisher and the distributor of periodicals. Publishers in **Croatia** also need to inform the public through the media about the ownership structure, business results and average circulation, that is, average radio or television ratings. The publisher is obliged to publish yearly data on total income achieved and average print run sold, i.e. average listening/viewing ratings. Changes in print ownership must be reported once a year to the Chamber of Commerce, which holds a register of print media. In the case of non-compliance, the Chamber will write a letter of warning, and in case of continued non-compliance, a fine of 1 million kuna would be determined at every change in the ownership structure in given electronic media. In the event of a finding that a sale produces improper concentration, the broadcaster will be given a period of grace, during which they are obliged to bring the structure within legal limits. In the event of non-compliance, the Council for Electronic Media can revoke this concession. All shares above 1% must be notified to the proper body.

For broadcasting, the media authority of the **United Kingdom** (Ofcom) requires licensees to provide and update detailed ownership information of their outlets, although they publish limited ownership information on their website. In **Cyprus**, there is a requirement for changes in a television or radio broadcaster's ownership structure to be published in at least two daily newspapers within one month from the occurrence of any such change. The names of the shareholders as well as of any legal beneficiaries of more than 5% of the shares held in a television or radio broadcaster of national or local coverage has to be published in the same manner each year in January.

Relevant information can also be made available to the public via registers, such as commercial registers or registers developed in the context of fighting money laundering. Since companies are enrolled in commercial registers, such registers include data about media companies. According to **Estonian** law, every legal entity

has to submit certain data in the Commercial Register which is accessible to the public (Commercial Code). The Central Register of Securities contains the data about the shares in the undertakings. In **Cyprus**, to acquire a licence, establish, install and operate a television or radio the broadcaster must be registered in the *Registrar of Companies* of the Republic (Art 16.3 of the Radio and Television Broadcasters Law 7(1)/1998). Article 20 of the Law makes it mandatory to publish several times in at least two daily newspapers information on who hold more than 5% of the shares, and on changes in the ownership or shareholding.

In Denmark and Finland, the fight against money laundering is a significant factor. Thus, beneficial owners controlling (usually) 25% or more of the shares or voting rights must be disclosed in a publicly available register in **Denmark** – the Danish CVR registry of the Danish Business Authority. Similarly, in **Finland**, the information filed with the UBO register (the ultimate beneficial owner) is not public, but a special request to receive information on an entity's UBOs can be filed separately with the Trade Register.

Through notification to the competition authority

In this case, the media owner has to inform the competition authority, which may inform the public as well, though with less detail: confidential or commercially sensitive information will always be redacted in the decisions.

The most general case concerns **mergers and acquisitions**, when parties have to notify the competition authority before the merger or acquisition is potentially assessed. The information provided almost systematically includes market shares and turnover (revenue, income).

Some countries publish information **on the website of the local competition supervision authority**. **Austria**, for example, publishes a brief summary of the merger notification transaction which includes information on the parties concerned, type of intended transaction and the relevant business sector. Cyprus and Czechia make transactions and decisions of proceedings available. The **Cypriot** Commission will publish a notice on its website that a transaction has been notified, naming the parties and the type of transaction. Similarly, in **Czechia**, the regulator publishes the announcement of initiation of the proceedings on its website as it does the final decision, minus business secrets and other commercial sensitive data.

We were **not** able to find **any example of transparency requirements on communicating the repercussions of mergers** (for example the actual level of concentration a few months after the merger).

Through notification to another regulator

This is **mainly** in this case a **sector-specific regulator, such as audiovisual or media authorities**. In most countries, there is a requirement to notify the media regulator (Germany, Greece, Ireland, Latvia). The notification may be published on the website of the authority (Greece, Latvia) – thus becoming communicated to the public. This category also includes regulators neither related to media nor competition. In **Croatia**, according to The Prevention and Suppression of Money Laundering and Terrorist Financing Law, all organisations need to submit information on their ultimate beneficial owners in a new Register of Ultimate Beneficial Ownership maintained by the **Croatian financial authority** (FINA). This Register of Ultimate Beneficial Ownership has been publicly available from January 2020 and it is based on the EU's Anti-Money Laundering Directive (see above 3.3.1.1).

In **Czechia**, the Council for Radio and Television Broadcasting must be informed in advance (to be able to give its written consent) of a change in share(holder)s or voting rights / a licence transfer or registration / retransmission of another broadcaster (only for radio). The **Cypriot** Radio Television Authority (CRTA) has the responsibility of drawing up a report every three years on the development of pluralism and the concentration of shares in media service providers, which it is required to submit to the Council of Ministers

and the House of Representatives. A summary must be published in at least two daily newspapers. In **Belgium**, the regional regulators (VRM and CSA) carry out sector and public consultation before taking measures with a potential significant impact on the market.

Through direct notification to government representatives

In a few EU Member States, government representatives have to be notified. This is **often the case for ministries of culture**.

The **Croatian** Chamber of Economy (HGK), upon request, must guarantee public access to the information submitted to it. In **Bulgaria** the Ministry of Culture must publish on its website within 10 days any change in ownership of a publisher after such change is declared (Mandatory Deposition of Press and Other Works Act). In **Slovenia**, the Ministry of Culture is responsible for reviewing mergers & acquisitions cases between large daily newspapers, radio and/or television but there does not seem to be any obligation on them to make the information available to the public.

Other means

These include more particular means, specified by some Member States in legislation such as competition, money laundering regulation or media-related legislation. Some information on transparency requirements could be relevant for (1) competition authorities (but not the competition regulator), or (2) other measurement in relation to advertising, political parties or governments.

(1) For example, the proceedings before the Cartel Court are public in **Austria**. Final decisions need to be published by the Cartel Court. The operative part of the Cartel Court decision needs to be published on the Federal Competition Authority website.

(2) In **Croatia**, members of political parties cannot be members of the governing bodies of the PSB HRT and the Council for Electronic Media, and editors-in-chief cannot be persons with immunity. In **France**, any editor of a broadcasting service or director of a publication must keep certain information permanently available to the public, including information about ownership. Frequencies for audiovisual services are conditional on the information on the owner of the service requesting it. Article 20 of the Spain Law requires any purchase of advertising space to be made within the framework of a contractual written mandate. In **Greece**, undertakings active in more than one medium of the same or other form are required to maintain separate advertising revenue accounts for each medium, in accordance with the range of coverage. Pursuant to Art. 13(12) of Law 2328/1995, persons falling within the ownership restrictions applicable to the press (Arts. 13(10) and (11) of Law 2328/1995) must make a statement explaining how they breach the requirements of the law to the Vice-Prosecutor of the Court of Cassation, the relevant press publishers' union and the competent service of the minister responsible for the media. They must comply with the rules within six months by transferring the relevant undertakings, partner shares or shares. The notarial documents proving such transfers, as well as a statement on the financial means made available by the buyers, are deposited with the Vice-Prosecutor of the Court of Cassation.

3.3.3 An overview of media ownership transparency and disclosure provisions in all EU Member States

The following table applies the framework for the analysis of rules on transparency of media ownership to the EU-27 + UK. This includes media-specific¹²⁶ as well as common rules (that also apply to the media

¹²⁶ In Chapter 3, by 'media-specific', we mean that they apply to the media sectors, and not necessarily to other sectors.

sectors). This provides an overview of the existence of such rules in the EU. All relevant legislation and competent national authorities are listed in Annex.

In addition to illustrating a broad diversity among EU Member States, the overview shows that the majority of EU Member States already have media-specific transparency rules. These apply in particular to the audiovisual and radio sectors (less often to press). A common trend consists in having market shares and the ownership structure communicated to the competition regulator. This happens notably in the case of mergers and acquisitions when parties have to notify this regulator, informing them of their respective market shares and their ownership structure.

More precisely, in the fields covered by the AVMSD, our overview shows that **18 of the 28 countries** we analyse **require media companies to be transparent in one way or another in terms of who their owner is or who manages them**. This may include the obligation of revealing who is the ultimate beneficial owner (UBO) but also includes cases where such information is required because some categories of owner (advertising agencies, political parties, and state institutions and agencies) are not allowed to own any media operations or are allowed to own certain types of media but under certain market share caps. Finally, **all countries except Finland require media companies to provide information about their ownership structure** and status, and/or any changes.

Table 18 – Analysis of rules on transparency of media ownership

Country		AT			BE			BG			HR			CY			CZ			DK			EE			FI		
Media		TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press			
	Media-specific transparency rules																											
Communication																												
Market shares	To the public																											
	To the competition regulator																											
	To another regulator																											
	To government representative																											
	Other																											
Market reach	To the public																											
	To the competition regulator																											
	To another regulator																											
	To government representative																											
	Other																											
Turnover/ revenue/ income	To the public																											
	To the competition regulator																											
	To another regulator																											
	To government representative																											
	Other																											
The nature of the owner	To the public																											
	To the competition regulator																											
	To another regulator																											
	To government representative																											
	Other																											
The ownership structure ¹²⁷	To the public																											
	To the competition regulator																											
	To another regulator																											
	To government representative																											
	Other																											

¹²⁷ This title deals with the AVMSD transparency requirements.

Country		FR	DE	EL	HU	IE	IT	LV	LT	LU
Media		TV Radio Press	TV Radio Press	TV Radio Press	TV Radio Press	TV Radio Press	TV Radio Press	TV Radio Press	TV Radio Press	TV Radio Press
	Media-specific transparency rules									
Communication										
Market shares	To the public									
	To the competition regulator									
	To another regulator									
	To government representative									
	Other									
Market reach	To the public									
	To the competition regulator									
	To another regulator									
	To government representative									
	Other									
Turnover/ revenue/ income	To the public									
	To the competition regulator									
	To another regulator									
	To government representative									
	Other									
The nature of the owner	To the public									
	To the competition regulator									
	To another regulator									
	To government representative									
	Other									
The ownership structure ¹²⁸	To the public									
	To the competition regulator									
	To another regulator									
	To government representative									
	Other									

¹²⁸ This title deals with the AVMSD transparency requirements.

Country		MT			NL			PL			PT			RO			SK			SL			ES			SE			UK		
Media		TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press	TV	Radio	Press
	Media-specific transparency rules																														
Communication																															
Market shares	To the public																														
	To the competition regulator																														
	To another regulator																														
	To government representative																														
	Other																														
Market reach	To the public																														
	To the competition regulator																														
	To another regulator																														
	To government representative																														
	Other																														
Turnover/ revenue/ income	To the public																														
	To the competition regulator																														
	To another regulator																														
	To government representative																														
	Other																														
The nature of the owner	To the public																														
	To the competition regulator																														
	To another regulator																														
	To government representative																														
	Other																														
The ownership structure ¹²⁹	To the public																														
	To the competition regulator																														
	To another regulator																														
	To government representative																														
	Other																														

¹²⁹ This title deals with the AVMSD transparency requirements.

3.3.4 Implementation of the transparency rules in a set of countries

This section concludes the analysis of transparency rules on media ownership with the in-depth development of six case studies. The six countries discussed are: Bulgaria, Estonia, France, Greece, Hungary and Italy. The selection relies on three criteria:

- geographic spread;
- the inclusion of countries with small, medium and large populations;
- the inclusion of Member States with very developed regulation and of Member States with no, or almost no, specific transparency rule on media ownership.

The structure follows, and develops, that of the framework table (see previous section). For Bulgaria and Estonia, we elaborate more extensively on media ownership as they were not selected as cases in section 0. For the other countries (France, Greece, Hungary, Italy) we have omitted information discussed in section 3.2.3.

3.3.4.1 Bulgaria¹³⁰

Bulgaria	
Relevant legislation: media-specific transparency rules	Bulgaria passed the Law on the Compulsory Deposit of Printed and Other Works and the Announcement of the Distributors and Providers of Media services in 2018, the so-called Delyan Peevski media law. The purpose of this act is to make media ownership transparent by leveraging funding in the media and its “real” owners. Details about the implementation of this law can be found in the best practices section 3.3.6. Media-specific rules that also affect media ownership and transparency can be found in the Radio and Television Act, as well as in the Mandatory Deposition of Press and Other Works Act. In addition, there are some general laws about the relationship between media ownership and transparency, e.g. the law on the Protection of Competition (LPC) of 2008, the Commercial Register Act and the Economic and Financial Relations Act (“Offshore Law”) of 2014, and the New Merger Guidelines of 2020. Currently, there are two public registers in Bulgaria: CEM for radio-TV stations and the Ministry of Culture for press.
Obligations on disclosure of financial information	Market shares and audience shares The merging parties need to provide information on relevant markets and market shares. However, under the simplified merger control, there is no need to provide very detailed information about the entire relevant market(s). Turnover/revenue/income The revenue of a media company is only important in the case of mergers. The merging parties need to provide the turnover figures so that the Commission (CPC) can establish jurisdiction. It is important to highlight that media companies are not obliged to disclose specific sources of income such as government funding, bank loans and cash coming from ‘normal’ market practices. This rule is stipulated in the Delyan Peevski media law.
The nature of the owner	N/A
Ownership structure	The Mandatory Deposition of Press and Other Works Act contains legal provisions for disclosure of media ownership, but often it is difficult or impossible to determine who owns the company. On the other hand, it seems to be applicable only to print media. The Mandatory Deposition of Press and Other Works Act does not make it possible to know the legal or natural persons who effectively own and ultimately control the media operating in Bulgaria because the size of shareholding is not made public. This information can only be obtained by cross-referencing the data provided under this Act with those available in the Company Register. The Council for Electronic Media (CEM) maintains a public register of radio and television ownership, but it does not require detailed elaboration of funding sources or beneficial owners. As a consequence, the identification of ultimate owners is not easy. Since November 2018, a separate Law on the Compulsory Deposit of Printed and Other Works and the Announcement of the Distributors and Providers of Media services has required the media to report the actual owner and any beneficial owner as well as all sources of funding, including loans and property to the Ministry of Culture. The law, also known as the Delyan Peevski media law is ostensibly designed to preserve cultural heritage but was modified to try to obtain some transparency in publisher and media services ownership as well. The act covers “works reproduced on paper or another medium by

¹³⁰ Insights are based on the input submitted by Dr Sally Broughton Micova, University of East Anglia

	<i>printing or similar means – printed works issued by Bulgarian natural or legal persons; works reproduced on a sound carrier whose producers are Bulgarian natural or legal persons; works reproduced on a film carrier whose producer, at least one of the co-producers or producers are Bulgarian natural or legal persons; works reproduced in electronic form by Bulgarian natural or legal persons; works in digital form, published in electronic communication networks, intended for reading or perception in other ways, distributed for public use by Bulgarian natural or legal persons.</i>” As providers of the works listed above are covered by the Law on Compulsory Deposit, AVMS providers are probably also covered by that law, but we found no evidence that this has been tested. Based on the wording of the Law on Compulsory Deposit, it seems VSPs and all online media could be covered by that law, but as implementation has not yet really been tested, this is still unclear. According to the Delyan Peevski media law, media companies must report to the Ministry of Culture by 30 June of each year the actual owner and any beneficial owner as well as all sources of funding, including loans and property. There are no indications yet as to how well enforced these new funding transparency rules are. Media companies can comply with their reporting obligation online using an electronic signature on the website of the Ministry.
How information is shared with the public	Under the Mandatory Deposition of Press and Other Works Act, any change in ownership needs to be declared by both the publisher and by the distributor of periodicals. The law requires the disclosure of the shareholder/s' name/s but not the size of the holding. The main issue around media ownership transparency regarding the disclosure of ownership information is that the legal requirements are constantly circumvented in practice and there are no fines or sanctions in case of non-compliance. By the Media Authority The CEM (Council for Electronic Media) under the Radio and Television Act keeps a public register on persons exercising control over operator management, but the data required is insufficient for the purpose of transparency because it does not require detailed elaboration of funding sources or beneficial owners. Not all changes are announced to the Ministry of Culture, and fines for such behaviour are either small or non-existent. The amount of capital can be deduced from a check in the Company Register, but if the Bulgarian company is owned by foreign persons registered offshore who have delegated the sole control to a Bulgarian board of directors, the ultimate owners of electronic media may still not be revealed. Using offshore companies to hide the true owners is a typical scenario. Direct notification of government representatives The Mandatory Deposition of Press and Other Works Act, under which the Ministry of Culture must announce any change in ownership once announced by the publishers, is a step towards more transparency but does not require information on the origin of the money and financial flows in acquisition. Thus the law can be circumvented and official owners and financial data can remain unknown. The Ministry of Culture must publish any change in ownership of a publisher on its website within 10 days of such a change being declared (see 3.3.2.3).
Factors influencing the different transparency regimes and their stringency: type of media player	Newspapers Pursuant to the Mandatory Deposition of Press and Other Works Act, the press and electronic media must submit a statement with the names of the owners to the Ministry of Culture. Any change in ownership of a publisher has to be declared and will also be announced on the website of the Ministry of Culture within 10 days. Television, Radio The Law on Radio and Television Article 116v para. (3) states that a national radio or TV licence cannot be given to someone who under

Competition Law already owns too much of a local or regional station. However, there are no specific media-related merger tests or conditions under competition law, so there is no specific threshold determining a dominant position. There are also no specific rules on the transparency of newspapers; media concentration is regulated merely by the competition law of 2008.

3.3.4.2 Estonia¹³¹

Estonia	
Relevant legislation: media-specific transparency rules	In Estonia, the regulation of media ownership transparency is based on several pillars: the Media Services Act, the Estonian Public Broadcasting Act and the General Part of the Economic Activities Code Act. There are media-specific competition rules in the Media Services Act and in the Estonian Public Broadcasting Act. Apart from these media-specific competition rules, there is no other media-specific law on ownership or media ownership transparency. Ownership transparency is mostly supported by the Commercial Code and the Central Register of Securities, since they contain data about the ownership details of media companies. Under the Commercial Code every legal entity has to submit certain data in the Commercial Register. The Register is accessible to the public and the Central Register of Securities contains data about the shares in the undertakings. Information regarding ownership of every company can be looked up – including all connections with other companies, certain individuals and foreign countries.
Obligations on disclosure of financial information	Market shares and audience shares As mentioned in point 1. the data about the shares in the undertakings are kept in the Central Register of Securities.
The nature of the owner	N/A
Ownership structure	Information about owners and other persons with an impact on the media company are made public in the Company Register in the so-called registry card (see below). Transparency requirements are high as point 8 describes, and companies are required to submit the names of beneficial owners. As of 2018, undertakings are obligated to store and collect data on beneficial owners and to publish beneficial owners through the business register. For this purpose, the shareholders of the undertaking or members of the management board must disclose the data on beneficial owners to the undertaking's management board. Sole proprietors are not obliged to submit this information. Information must be submitted about natural persons considered as beneficial owners who directly or indirectly hold or control in any way more than 25% of the shares of the undertaking. Concealing ownership (shadow owners or directors) is forbidden, but the lack of regulation on the ownership and concentration levels can make the market susceptible to concentration.
How information is shared with the public	By other means In Estonia, the rules on company ownership are easily accessible, so the transparency of media ownership is implemented by these regulations and not by media-specific rules. The most important means of sharing information are the Estonian Tax and Customs Board, the Commercial Register and the Central Register of Securities, although there is other information made public online on credit data reporting databases, in the Criminal Record Database, the Register of Judicial Decisions and providers of government grants and registries. The Commercial Code is considered to be the most important regulation, since it has, probably, the most detailed freely accessible data on company ownership. It thus makes Estonia the most transparent Member State of the Union. According to Section 28 of the Estonian Civil Code,

¹³¹ Insights are based on the input submitted by Prof. Dr Indrek Ibrus, Head at MEDIT, Tallinn University

Factors influencing the different transparency regimes and their stringency: type of media player	everyone has the right to examine the “registry cards” and the business files, and to obtain copies of registry cards and of documents in the business files. Some basic information, such as ownership, the area of business, and share capital, is freely available. Other data, listed above, is available for a small administrative fee (1-2 euro). Furthermore, there is an obligation to prepare and submit an annual report to the Commercial Register which gives a comprehensive overview of the company’s results in the previous financial year. In the practice of the Consumer Protection and Technical Regulatory Authority, the media market is generally understood either as a 'broadcasting market' or 'newspaper market' and we did not identify any specific factors regarding the type of media player influencing transparency.

3.3.4.3 France¹³²

France	
Relevant legislation: media-specific transparency rules	The French legislator has set ownership rules in different acts; therefore, the complexity of French regulation seems to satisfy the need to control media pluralism. The following laws apply to media ownership transparency: Law no. 2016-1524 aiming at strengthening the freedom, independence, and pluralism of the media; Law no. 86-1067 on the Freedom of Communication; Law of 29 July 1881 on the Freedom of the Press; Law no. 86-897 on the legal regime of the press.
Obligations on disclosure of financial information	Turnover/revenue/income Media outlets need to indicate the composition of their capital and provide information about the management once a year (Law n° 2016-1524). Notifications of mergers are based on the companies' turnover. Revenue is taken into account when calculating turnover. AVMS providers (and VSPs) listed on a public stock exchange have an obligation to publish their half-yearly financial reports and their quarterly revenues. This is monitored by the Autorité des Marchés Financiers (AMF). This is not a media-specific rule, but also affects the transparency of media ownership. The Sapin law (Law no. 2016-1691) provides obligations on disclosure and reporting requirements for financial transparency. Article 20 requires any purchase of advertising space to be made within the framework of a contractual written mandate (otherwise, there can be a fine of EUR 30 000). The law requires any purchase of advertising space made by a media agency or any other 'intermediary' to be made under a written agreement that specifies the services provided and the payment terms. The intermediary must act strictly on behalf of the advertiser and not on its own behalf. Any discounts the intermediary has been offered by the media owner must appear on the invoice to the advertiser, and those can be kept by the intermediary only with the advertiser's agreement. In addition, the invoice relating to the purchase of advertising space must be provided directly by the seller to the buyer even if the purchase is not directly paid for by the advertiser to the publisher. Similar rules apply to agencies offering media planning advice: they must not receive any payments or benefits from the media owner and must disclose any financial ties with media owners and the amount of the relevant shareholdings in their terms and conditions. This provision makes it possible to monitor the direct or indirect influence of political, economic interests, and thus contributes to transparency.
The nature of the owner	According to Law no. 2016-1524, any investment in which a foreign company acquires control or a branch of activity or 33.33% of rights in capital or voting rights of an undertaking established in France is considered "sensitive" and needs prior authorisation from, and hence disclosure of information about the foreign company to, the Ministry of Economy and Finance.
Ownership structure	In the audiovisual sector, service providers must provide the name of the legal representative and the three principal associates. In general, a great deal of information on media ownership is already available online in studies published by the audiovisual authority, CSA (Article 43-1 of the 1986 Léotard law). For the press sector, it is mandatory to inform readers about the identity of owners of at least 10% of the capital, as well as of the name of the director of the publication and that of the person responsible for editorial. There is also an obligation to inform readers year of ownership transfers leading to the transfer of at least 5% of share capital. Information must be given within 1 month if this is at least one third, as well as in the case

¹³² Insights are based on the input submitted by Dr Heritiana Ranaivoson, Senior Researcher and Project Leader at IMEC-SMIT, VUB

	of transfer of a title, or modification of the status of the publishing company, or any change in the directors or shareholders of the company. Law n° 2016-1524 contains a section on the transparency obligations of companies in both the press and audiovisual sectors. It states that each year, these companies must make the readers of their publications or online news services fully aware of the composition of their capital if any legal or natural person owns a holding of 5% or more, and of its governing bodies. The company must mention the identity and shareholding of each of its shareholders. Under Law no. 86-1067 on the Freedom of Communication, the allocation of frequencies for audiovisual services are conditional on the information on the owner of the service requesting it. Any editor of a broadcasting service or director of publication must keep certain information permanently available to the public, including ownership. The only problem is that it is not specified how and where this information must be made public; there is no central register where the ownership information collected is available.
How information is shared with the public	See above.
Factors influencing the different transparency regimes and their stringency: type of media player	As the previous point details, the audiovisual and radio sectors on the one hand and the press sector on the other hand are usually covered by different laws.

3.3.4.4 Greece¹³³

Greece	
Relevant legislation: media-specific transparency rules	The relevant regulation can be found in ownership-related rules, such as the media Law Nr. 3592/2007 (amended by Law 4279/2014) that mainly prevents horizontal and cross-media concentration of ownership in the TV, radio and newspapers sectors. Other important laws in the field of media are Law 2328/1995 ("Legal status of private television and local radio, regulation of the broadcasting market and other provisions"), and Law 2644/1998 that focuses on the provision of pay-TV/radio services. The Greek National Council for Radio and Television (ESR) is the regulatory body for broadcasting that deals with the relevant procedures and the transparency of media associations and thus also contributes to media pluralism.
Obligations on disclosure of financial information	Turnover/revenue/income According to Art. 14 para. (9) of the Greek Constitution "the ownership status, the financial condition and the financing means of the information media shall be disclosed, as specified by law". This also mandates national legislation to designate „the measures and restrictions necessary for fully ensuring transparency and plurality in information". The following reporting obligations vis-a-vis the ESR have been identified: TV, radio and pay-TV and pay-radio undertakings must submit a copy of their balance sheet and summary accounting statements to the Department of Transparency Control of the ESR. GEMI, the General Electronic Commercial Registry, is Greece's business register. The national gazette is designated to disclose commercial information. The following companies are required to publish their annual financial statements on GEMI: companies limited by shares, limited liability companies, private capital companies, cooperatives, European Economic Interest Groupings with their registered office in Greece, European companies with their registered office in Greece, and European cooperative societies with their registered office in Greece. TV and radio operators which fall under one of the abovementioned categories are required to publish their annual financial statements on GEMI. Companies limited by shares in particular are required to publish their financial statements, the related reports of their Board of Directors and the opinion of their auditors within 20 days of approval. Notifications of mergers are based on the companies' turnover, and revenue is taken into account when calculating turnover (see 3.2.4.5). Concentration is prohibited when a dominant position is held by one or more of the media undertakings concerned or when a dominant position is itself the result of concentration. The turnover thresholds for media mergers in Greece are three times lower than the thresholds applied to other industries, which significantly helps to prevent media concentration: a prior-notification requirement is imposed on concentrations when the turnover of at least two of the concerned undertakings is EUR 5 000 000 in the national market for each of them (instead of EUR 15 000 000 under general competition rules) and when the aggregate turnover of all the undertakings concerned is EUR 50 000 000 in the global market (instead of EUR 150 000 000 under general competition rules). The percentage of concentration of control is calculated in its entirety, for each media outlet concerned, and for its shareholders/partners and their 'intermediaries'. Furthermore, undertakings that are active in more than one medium of the same or other form are required to maintain separate advertising revenue accounts for each medium, in accordance with its range of coverage. The revenue accounts must all be listed in their balance sheet.

¹³³ Insights are based on the input submitted by Dr Evangelia Psychogiopoulou, Senior Research Fellow, Hellenic Foundation for European and Foreign Policy (ELIAMEP)

The nature of the owner	N/A
Ownership structure	Art. 14(9) of the Constitution states that „the ownership status, the financial condition and the financing means of the information media shall be disclosed, as specified by law“. It also mandates national legislation to designate „the measures and restrictions necessary for fully ensuring transparency and plurality in information“. Therefore the ESR is responsible for maintaining a Registry of Media Undertakings which provides detailed information on media undertakings and other undertakings that are active in the field of the media more broadly, including information with respect to ownership. The Registry includes information on radio undertakings, TV undertakings, advertising companies, audiovisual production companies, broadcasting market research companies and newspaper publishers (Art. 10a(1) of Presidential Decree 213/1995). The General Secretariat of Information and Communication also maintains a Registry of Online News Media with information on their ownership status (Art. 53 of Law 4339/2015).
How information is shared with the public	By the Media Authority The ESR published information on all radio and TV licences on its website but with very basic information: name, contact details, scope and coverage. Nevertheless, they receive a considerable amount of information from the identity of the applicants to their means of financing, and whether they are compliant with restrictions. The ESR keeps a record of the ownership information submitted to it by media undertakings in the form of a Registry of Media Undertakings. The Registry includes information on radio undertakings, TV undertakings, advertising companies, audiovisual production companies, broadcasting market research companies and newspaper publishers. In order to be on the Registry of the Regional and the Local Press, held by the General Secretariat of Information and Communication, regional and local newspapers must indicate on one of their first two pages the name, address, telephone number of the fax machine and the electronic address of their owners. Regional and local newspapers are obliged, both for their first registration in the Registry and for the annual renewal of their registration, to send electronically to the General Secretariat of Information and Communication a copy of each publication on the day after publication. The General Secretariat of Information and Communication also maintains a Registry of Online News Media with information on their ownership status. Access to these registries is allowed only for registered users. Other means TV undertakings must submit a copy of their balance sheet and summary accounting statements to the Department of Transparency Control of the ESR. Radio undertakings and pay-TV and pay-radio undertakings are under the same obligation. The national gazette is designated for the purpose of disclosure of commercial information. All companies, therefore including TV and radio operators, are required to publish their annual financial statements on the publicly and freely accessible GEMI register as mentioned in point 5. TV and radio operators are required to publish their annual financial statements. Moreover, the approved annual financial statements must be published on their website and remain available online for a period of at least two years from first publication. In the case of listed companies limited by shares, these documents also have to be submitted to the Hellenic Capital Market Commission. Persons falling within the ownership restrictions applicable to the press must make a statement explaining how they exceed the maximum requirements in the law to the Vice-Prosecutor of the Court of Cassation, the relevant press publishers union and the competent service of the minister that is responsible for the media. According to the national expert we consulted, they must comply with the rules within six months

	by transferring the relevant undertakings, partner shares or shares. The notarial documents proving such transfers, as well as a statement on the financial means made available by the buyers, are deposited with the Vice-Prosecutor of the Court of Cassation. Newspapers were obliged in the past to indicate their owner on their front page. This is no longer the case. Disclosure requirements only concern the publisher and the director of the newspaper. Regional and local newspapers are obliged, both for their first registration in the Registry of the Regional and the Local Press and for the annual renewal of their registration, to send electronically to the General Secretariat of Information and Communication a copy of each publication on the day after publication. Non-compliance with media ownership disclosure obligations in relation to the registration of media companies in the Registry of the Regional and the Local Press and the renewal of their registration entails non-registration and erasure from the registry respectively. The law does not stipulate any sanctions if a media outlet registered with the Registry of Online News Media refrains from notifying the General Secretariat of Information and Communication of any changes in its ownership structure. The National Council for Radio and Television (ESR) can impose administrative sanctions on private TV and radio broadcasters for violation of the rules on transparency of media ownership.
Factors influencing the different transparency regimes and their stringency: type of media player	The ESR keeps a record of the ownership information submitted to it by media undertakings in the form of a Registry of Media Undertakings. The Registry includes information on radio undertakings, TV undertakings, advertising companies, audiovisual production companies, broadcasting market research companies and newspaper publishers (Art. 10a(1) of Presidential Decree 213/1995). Non-compliance with media ownership disclosure obligations in relation to the registration of media companies in the Registry of the Regional and the Local Press and the renewal of their registration entails non-registration and erasure from the registry respectively (Art. 2(2)(5) and (7) of Law 3548/2007). If clarifications are required about the documents submitted, a period of ten (10) days is set for the media outlet concerned to provide them (Art. 2(6) of Law 3548/2007). Whilst non-compliance with media ownership disclosure obligations in relation to the registration of digital media to the Registry of Online News Media of the General Secretariat of Information and Communication will naturally entail non-registration, the law does not stipulate any sanctions if the registered media outlet refrains from notifying the General Secretariat of Information and Communication of any changes in its ownership structure (Art. 53(1) in conjunction with (2) of Law 4339/2015). The ESR can impose administrative sanctions to private TV and radio broadcasters for violation of the rules on transparency of media ownership. Non-compliance with media ownership disclosure obligations can lead to exclusion from a licensing procedure (Art. 12(1) of Law 4339/2015 on free-to-air digital terrestrial TV broadcasting and Art. 231(1) of Law 4512/2018 on free-to-air digital terrestrial radio broadcasting) or revocation of a licence (for instance Art. 14(9) of Law 4339/2015, read in conjunction with Article 3 of Presidential Decree 310/1996, Control of transparency in the broader media market, FEK A 214/1996). In the context of licensing procedures, the ESR may invite candidates to submit additional information or clarifications on the documents submitted (Art. 12(2) of Law 4339/2015 and Art. 231(2) of Law 4512/2018).

3.3.4.5 Hungary¹³⁴

Hungary	
Relevant legislation: media-specific transparency rules	There is no separate law in Hungary that regulates media transparency, however, the Act CLXXXV of 2010 on Media Services and on the Mass Media (hereinafter: the Media Act) contains rules for that. Section 4 of the Media Act as mentioned in the 'Relevant legislation' chapter of Media ownership section (see 3.2.4.6) sets out that the diversity of media services has a particularly important public value. The provision also stipulates that protection of diversity extends to avoiding the formation of ownership monopolies and any undue restriction of competition on the market. The above-mentioned provisions of the Media Act shall be interpreted in due consideration of the protection of pluralism. The existence of these rules on pluralism ensures the orderliness of media ownership in Hungary, as well as the rules on their transparency.
Obligations on disclosure of financial information	Market shares and audience shares This topic is particularly important in the examination of transparency rules, because the information on market and audience share says a lot about a country's media ownership status. A company may operate numerous brands (channels or titles) in the same market sector in Hungary. With regard to the disclosure of media ownership, the current regulation covers the registration of linear media service providers. On the tendering of linear radio media services, this regulation states that the prospective or tenderer's media service provider is required to disclose information on direct or indirect ownership. Among the interpretive provisions of the Media Act are to be found definitions of what audience share, indirect ownership and a qualifying holding mean (Section 203. point 28., 29. And 3 of Media Act). These provisions not only facilitate the interpretation of media ownership rules but also provide guidance on the interpretation of media ownership transparency issues. The disclosure of audience share to the Media Council is also important in the prevention of concentration and the identification of SPI media service providers as described in the 'Quantitative thresholds' chapter of the Media ownership section (see 3.2.4.6). Market reach The significance of this topic will be elaborated on under point 8. of this analysis under the title "Inspection of the Media Market by the Media Council". Turnover/revenue/income In our research we found related rules in merger control regulation described under the chapter 'Special merger rules and procedures and how they have been implemented' of the Media ownership section (see 3.2.4.6). Notifications of mergers to the competent authorities – in this case the GVH – are based on the companies' turnover.
The nature of the owner	According to Section 46 (3) of the Media Act, the notifier shall make a statement that no conflict of interest under the Media Act exists or would arise vis-à-vis him/her/it as a result of registration. In addition to this, in Hungary in the tendering procedure for analogue linear radio media services, the tender must include a bank certificate to verify that the tenderer has sufficient funds set aside to cover the costs of the proposed media services. (We note that linear radio media services are outside the scope of the Audiovisual Media Services Directive.)
Ownership structure	The Media Act introduced a two-foundation set of tools to effectively prevent the emergence of dominant position and pluralism in the media market, which has been partly described in in the chapter 'Quantitative thresholds' of the Ownership section (see 3.2.4.6). The obligation to

¹³⁴ Insights are based on the input submitted by Dr Krisztina Rozgonyi, University of Vienna.

	notify and register the audiovisual media and printed press promotes transparency by having an official registry on the relevant entities, including data on the ownership composition of the linear media service providers. There is a requirement to share information on a standard data reporting form published by the NMHH. Pursuant to Section 41 of the Media Act a media service provider may provide a linear media service if the service has been announced and has been registered by the NMHH. A press product falling within the scope of the Media Act must also be reported to NMHH for registration within sixty days of the start of the service or activity, but the service or publishing activity can be started even before registration. Pursuant to Section 41 (5), in the event a media service provider provides both linear and on-demand services, or if a press product publisher publishes both printed and online press products, it must notify each of its media services or press products separately. With regard to the disclosure of ownership, the current regulation on the registration of linear media service providers [Media Act Section 42 Paragraphs e)] and on the tendering of linear radio media services [Media Act Section 56 Paragraphs c)] states that the prospective or tenderer's media service provider is required to disclose the size of the direct or indirect ownership stake held by the notifier - or any other person maintaining a qualifying holding in the notifier's business enterprise - in any business enterprise providing media services, or applying for media service rights on the territory of Hungary. The media service provider is obliged to notify the Media Council within five days after the amendment notification in the Court of Registry if there is a change in the ownership structure of the media service provider or in the company data included in the public contract. In this context, we consider it important to note that all business associations have to be registered at the Court Registry. Thus this contains data about media companies which is available for free or in electronic format for a fee-based subscription through private companies. However, although the basic company information (company name, register number, tax number, the name of the managing director) is available for free, any information on ownership structure and ownership changes is only available in the paid version. In this version a document can be available for HUF 1 500-4 000.
How information is shared with the public	By the Media Council (NMHH) According to Section 41 of Media Act (4) the NMHH – as an administrative office – shall keep a publicly available register of a) linear audiovisual media services; b) linear radio media services; c) audiovisual media services, the providers of which obtained the media service provision rights via tendering; d) radio media services, the providers of which obtained the media service provision rights via tendering; e) on-demand audiovisual media services; f) on-demand radio media services; g) ancillary media services; h) printed press products; i) online press products and news portals; j) linear and on-demand media services and ancillary media services provided by public media service providers. Pursuant to Section 41 (6) of the Media Act the data recorded in the registers mentioned in Paragraph (4) concerning the names, contact information of media service providers, press product founders and publishers, as well as the names and titles of the media services and press products must be publicly available and accessible on the website of the NMHH. For the purposes of monitoring media services and press product publishing, the NMHH is required to handle the identification data of natural person media service providers and of natural persons founding and publishing press products until such data is deleted from the register. The Media Council – as an authority that makes decisions – may not disclose the data contained in the tenders to third parties prior to the conclusion of the public contract with the winning tenderer [Media Act Section 62 Paragraph 7]. The decision closing the tender procedure and the public contract concluded with the successful tenderer are available

	to anyone, except for personal data, secrets protected by law and protected data [Media Act Section 62 Paragraph 7c]. Inspection of the Media Market by the Media Council: With a view to assessing compliance with the provisions of the Media Act and revealing whether regulatory powers specified in the Media Act should be applied, when the price changes or other market circumstances suggest that competition in the media service market is being distorted or is restricted, the Media Council, in order to gather information on market trends and asses such trends, is required to institute a regulatory inspection by issuing an order [Section 169 of the Media Act]. This means that the Media Council is entitled to request all kinds of information from the media service providers concerned. In case of non- or improper provision of data, the Media Council has the right, and in the event repeated infringement, is obliged, to impose a fine on the executive officer of the breaching media service provider in the amount between fifty thousand and three million forints. The Media Council's regulatory inspection is similar to the GVVH's market analysis and sectoral inquiries, regulated in Article 43/C of the Competition Act. The GVVH's market analysis and sectoral inquiries rely on information in the public domain, data collected on a voluntary response basis and the involvement of external experts or consultants where required. The main difference between the two procedures is that the provision of data is voluntary in the GVVH's proceedings, but mandatory in the inspection of the Media Council. By the Hungarian Competition Authority (GVVH) Rules promoting the transparency of media ownership can be found in the Competition Act. According to Article 80 of the Competition Act (1), the GVVH shall, after rendering restricted access data unrecognisable, publish on its website (a) the definitive decision; (b) the definitive injunction closing a proceeding the opening of which was made public pursuant to Article 67(11), as well as the definitive order on the annulment of any injunction of first instance instructing the case handler who issued such an injunction to reopen the case. (2) Any definitive injunction not covered by paragraph (1) that lays down principles relating to law enforcement may be made public on the website of the Hungarian Competition Authority after the restricted access data therein have been rendered unrecognisable. Article 43/C (2) states that restricted-access data means data — with the exception of information which has to be accessible by the public as it is of public interest — which are qualified as secret in relation to the practice of a profession or qualified as other types of secrets by separate law (hereinafter collectively: privileged information), as well as personal data and other information to which access is restricted by virtue of this Act in the course of access to the file.
Factors influencing the different transparency regimes and their stringency: type of media player	Television and radio follow the same regulation. Most Member States choose a percentage-based threshold as a cross-media restriction to secure pluralism and transparency within the television sector. The percentages are calculated by taking different factors into account such as annual average audience share in Hungary. Further details shall be found in the chapter 'Quantitative thresholds' of the Media Ownership section (see 3.2.4.6). In order to clarify the facts and circumstances considered relevant for the purposes of the Administrative Procedure Act (to prevent concentration and identify SPI media service providers), the Media Council may order media service providers to disclose data by way of a ruling, in particular on audience shares. We have not identified any relevant, current legislation on press products apart from the obligation of registration and the merger control rules mentioned in the chapter 'Special merger rules & procedures & how they have been implemented' of the Media Ownership section (see 3.2.4.6). Chapter VIII of the previous Media Act, the Act I. of 1996. on Radio and Television did contain property rules in this regard. The size of the media group

As mentioned under chapter 'Quantitative thresholds' of the Media Ownership section (see 3.2.4.6), each year, the Media Council determines which media service providers are considered to have significant influence. Thus, during the process of reporting and monitoring aimed at the prevention of media market concentration, the Media Council gains important information on the ownership and control of media service providers with significant market power. Further details shall be found in the best practices section in 3.3.6.

3.3.4.6 Italy¹³⁵

Italy	Italy
Relevant legislation: media-specific transparency rules	The fundamental principle of ownership transparency in the media sector was established by the Italian Constitution in force since 1948, in particular by article 21, paragraph 5.
Obligations on disclosure of financial information	In addition to the Audiovisual Media Services Consolidated Act and the Italian Competition Law, AGCOM Law (1997) and legislative decrees (2005, 2007, 2010, 2012) regarding the AVMS consolidated Act regulate the transparency of media ownership. Complying with the law (l.249/97) and the AGCOM rules (666/08/CONS), AGCOM collects information on the ownership structure of media companies. AGCOM is in charge of managing the Register of Communications Operators (ROC), which includes a wide range of operators in the media and electronic communications sector, including advertising and internet companies. The ROC has as its purpose the guarantee of transparency of ownership structures supporting the application of the rules, and the procedures concerning the anti-concentration discipline and protection of information pluralism. Market shares and audience shares As all audiovisual providers, network operators, press, advertising agencies (registered in the ROC), etc., have to fill in the AGCOM Economic System Information (IES) annual declaration on personal and economic data on their activities, market share information is disclosed each year which is highly important for media ownership transparency. It is important to note that only the SIC share hold by the main actors is publicly disclosed. Turnover/revenue/income In Italy AGCOM monitors whether media operators have exceeded the defined thresholds and whether an operator has reached a dominant position within a given media market. To fulfill these tasks AGCOM collects information on the ownership structure of media companies and keeps this data in the ROC (see above), and collects information on personal and economic data on activities carried out by each media operator through the IES. Audiovisual media services providers are obliged to declare their annual revenues broken down by revenues from advertising, public service broadcasting fee, users' payment, sale of TV content to other operators, sale of network operator services to other operators, public funds and agreements with public actors. The audiovisual providers are required to indicate separately national and local revenues and communicate the names of their advertising sales agencies (integrated or external). Moreover, the providers need to declare the total costs of free-to-air and pay-TV activities at national and local level, in particular investments costs from broadcasting rights, sports rights and football major league broadcasting rights.

¹³⁵ Insights are based on the input submitted by Prof. Dr Francesco Marrazzo, Adjunct Professor, University of Naples "Federico II"

	Turnover Turnover has a significance in merger control that is described in the chapter 'Special merger rules & procedures & how they have been implemented' in the Media Ownership section (see 3.2.4.7). AGCOM itself authorises transfers of ownership in the media sector. Companies operating in the Integrated Communications System (SIC) are required to notify AGCOM of the merger and acquisition procedures if the parties reach the specified turnover thresholds. In merger control, AGCOM needs to cooperate and coordinate its decisions with the competition authority, AGCM, although they conduct separate investigations.
The nature of the owner	N/A
Ownership structure	As mentioned in point 2, AGCOM is in charge of managing the Register of Communications Operators (ROC). Pursuant to Art. 2 of resolution 666/08 / CONS the operators required to be registered in the ROC are: (i) network operators; (ii) audiovisual or radio media service providers (formerly content providers); (iii) suppliers of associated interactive services or conditional access services; (iv) operators exercising the broadcasting activity; (v) advertising concessionaires; (vi) companies producing or distributing radio and television programmes; (vii) national press agencies; (viii) publishers of daily newspapers, periodicals or magazines; (ix) electronic publishing operators; (x) companies providing electronic communication services; (xi) the economic operators of call center activity. In relation to online periodicals, it should be noted that companies that edit periodic publications produced exclusively on the internet and distributed electronically are only obliged to register in the ROC if they either achieve annual revenues from publishing activities greater than or equal to EUR 100 000 euros (revenues deriving from subscriptions and sales in any form, including the offer of individual paid content, advertising, sponsorships, contracts and agreements with public and private subjects) or have applied for public funds, contributions or subsidies. In practice, in order to register, forms available online have to be filled in and sent by post to AGCOM. The documentation must be accompanied by a photocopy of a valid identity document of the legal representative of the company (or of the owner of a sole proprietorship). The registration request must be presented within 60 days from the date of the start of the activity relevant to the purpose of registration. If the start of activity is subordinate to the issue of the required permits, the term for registration in the register must be calculated from the date of issue of the permit. Subjects to whom this obligation applies who do not request registration within the set term are subject to sanctions. The AGCOM Regulation on the management of the ROC provides that any subscribing company is obliged to communicate at registration the tax code, the company name, the legal venue and other data relating to the company, the corporate purpose (social object), the administrative body, the corporate structure, and the activities its carries out. Listed companies communicate only investments with voting rights exceeding 2% of the share capital, indicating for each of them the respective controlling interests. With the entry into force of the law of 26 October 2016, no. 198, the editors of online newspapers are required to register the publication at the chancery of the competent Court and subsequently to the ROC. The registered companies are obliged to communicate, within thirty days from occurrence of the circumstance, any variation affecting the declarations provided at registration. Furthermore, the registered companies are also obliged to send an annual communication with an update of company data, administrators in office, list of shareholders of the company registered,

How information is shared with the public	as well as the indication of any related fiduciary information, interposition of people, and other limits on shares or quotas. The public list of operators registered in the Register of Communication Operators is made available and anyone with a personal and concrete interest in the protection of legally relevant situations can exercise the right of access to documents held by AGCOM by sending a written and reasoned request. Information held by AGCOM, is available online for the public through the website: http://www.elencopubblico.roc.agcom.it/roc-epo/index.html for free. Partial information on media companies can be found in the Court of Registry for free or in electronic format for a fee/subscription. Disclosure or reporting requirements of actors involved in the advertising trade There are reporting requirements aimed at ensuring transparency of ownership and financial transactions in the programmatic trading system aimed at demand and supply side platforms, ad exchanges, ad servers or third-party trackers. Any advertising sales agency is obliged to subscribe to the Register of Communications Operators (ROC) and the same rules apply to them as for any other audiovisual company and media company. In general, therefore the reporting requirements are the same as mentioned above. Disclosure of prices, including any discounts or tariff advantages secured. According to Art. 25, paragraph 1, let. s), of the 2018-22 National Contract Service between the Ministry of Economic Development and the RAI (Italian public service broadcasting company), the RAI itself should enter into advertising contracts on the basis of competition, transparency and non-discrimination principles, in order to guarantee a correct market structure. AGCOM, also on the basis of data provided by the RAI on the sale price of advertising space actually applied net of discounts, is in charge of verifying compliance with these principles. In 2019, AGCOM has launched a specific procedure aimed at investigating mechanisms through which the RAI had processed advertising prices charged with respect to listed prices (Deliberation no. 42/19/CONS of 14 February 2019). At the end of the procedure, the AGCOM Board warned the RAI to immediately halt the contested actions, and to ensure respect of the principles of non-discrimination and transparency when entering into advertising contracts, in order also to allow AGCOM to verify the correct use of public resources for the financing of public service activities and programming. To this end, the RAI was required, within thirty days of notification of the provision adopted with Deliberation no. 61/20/CONS of 13 February 2020, to provide AGCOM with information and documentation describing the measures taken in the first instance to execute this warning. In March 2020, the RAI filed an appeal before the Regional Administrative Court (TAR) against the AGCOM decision. The Court has suspended the decision and has delayed the final decision until discussion of the merits of the appeal.
Factors influencing the different transparency regimes and their stringency: type of media player	N/A

3.3.5 Media Transparency – best practices and issues

3.3.5.1 Scope and objectives

In this last section, we provide a **reflection on the effectiveness of media transparency rules**, which revolves around the following points:

- Section 3.3.5.2 provides an overall discussion of the issue of the accessibility of information about media ownership structure.
- Section 3.3.5.3 provides an analysis the regulatory practices of different Member States from the perspective of constitutional provisions relating to media transparency;
- Section 3.3.5.4 provides an analysis the regulatory practices of different Member States from the perspective of general non-media specific transparency requirements regulating disclosure rules for company ownership (company registers, competition law);
- Section 3.3.5.5 discusses media-related provisions (Specific (media) ownership transparency acts, disclosure obligations of ownership information to authorities and to the public, disclosure of the names of ultimate beneficial owners (“real owners”), financial transparency of media companies);
- Section 3.3.5.6 treats the topic of organisations disclosing ownership data (including self-reporting);
- Section 3.3.5.7 provides important points on issues regarding media transparency, as expressed by stakeholders;
- Finally, section 3.3.5.8 provides a summary.

In this section, we focus on **best practices**, namely regulatory practices that can be seen as good examples to follow, or that make it possible to learn some useful lessons in terms of enforcing transparency of media ownership.

3.3.5.2 Accessibility of the information

The central question for the effectiveness of ownership transparency is whether these legal rules and regulations make it possible **to ensure that the public or authorities obtain accurate information about media ownership**. The right of access to information is a fundamental precondition for democratic debate and scrutiny of public institutions, of key importance to the media but also more generally for upholding the rule of law.¹³⁶ To comply with this condition, the **information should be easily accessible**, rather than buried several layers deep on a website or in paper-based official archives (Bárd, Bayer & Carrera, 2016). This is notably favoured by any way that ensures that the information is easily available (e.g. online) at the lowest cost possible.

Here it is worth referring to the results of the Media Pluralism Monitor (MPM). The results of MPM2020 show that the transparency of media ownership presents on average medium risk across the Member States, due to a lack of effectiveness of legal provisions and/or to the fact that information is provided only to public bodies, but not to the public. Only four countries are at low risk regarding transparency of media ownership, while five are at high risk. This shows a worsening of the situation compared to MPM2017, where 11 countries were at low risk on the indicator on ownership transparency, which was already seven fewer than the 18 countries that scored as low risk in 2016. Moreover, in MP2017, seven countries were high risk. This stands in sharp contrast to the fact that many countries have legislation dealing with transparency of media ownership (see 3.3.3) and shows that **while regulation is necessary, it may not be enough to ensure efficient implementation of transparency of media ownership**. This assessment is supported by the opinions expressed by experts and stakeholders, in particular in the Stakeholder Consultation and during the Focus Groups that we organised.

¹³⁶ European Commission (2020), Communication – 2020 Rule of law report – the rule of law situation in the European Union, Brussels, European Commission, https://ec.europa.eu/info/files/2020-rule-law-report-rule-law-law-situation-european-union_en.

Transparency is commonly perceived as important, notably to limit concentration. As one stakeholder stated, “it is impossible to take steps to address excessive media concentrations and conflicts of interest without the tools to identify the real owners.” The lack of transparency in ownership influences media policy in many European countries. Beyond that point of agreement, **regulatory frameworks to promote transparency of media ownership are only effective if properly implemented at national level.** There are differences according to the country, and the extent to which the regulation is actually implemented. **In addition, the information needs to be accessible to the public.** MPM2020 actually highlights the fact that information, even when made available to public bodies, is not always available to the public, as a factor of risk regarding transparency of media ownership.

A **small audience research exercise** was conducted to assess how well the public knows about media ownership to obtain insights into whether they know who owns the media they use. The results should be considered with caution, as the samples are not at all expected to be representative. In our sample, most respondents (58%) either were not able to identify the media they follow, or were not able to identify the owners. When asked how they knew the answer, most (49%) claimed they had known it previously, a significant minority had studied it (21%) and 10% had searched for it on the Internet. The AVMS Directive is known by only a minority of respondents (5% who know it well and 14% who know what it deals with). As the survey was sent to students, in particular of communication sciences, these figures probably largely overestimate the knowledge of the Directive in the population.

What is interesting in addition are **the respondents’ perceptions**. Even if they do not always know who the actual owners are (or cannot prove that they do), they often claim that there are ways to find the information about ownership. **They usually consider that information is available online:** it can be found using Google Search, or on Wikipedia, and some refer to the media company website. Since the consultation focused on students, a few referred to their studies, namely that they could ask their teachers, or that the information is in the courses they are following. A few comments are, however, worth highlighting.

One respondent wrote: *“I searched for the major media companies in Belgium. After that I went to each company's website and looked at which specific media they own. (Usually this was really easy to find under the tab 'merken'). Just to be sure I also searched for 'media concentration' in Belgium, which led me to some articles that talked about which media company owns what.”* This proves that quite some expertise is needed already in how to find information.

Another wrote: *“You can find some basic info on internet, but I acknowledge the fact that I never investigated it in depth. True interests are not written openly. For example, the investigative journalist group I follow also have some “suspicious” donors from political parties. Same with private companies.”* This reveals that the citizen is aware that it is not as easy as it seems or as it should be.

Finally, a Hungarian respondent wrote: *“I tried to Google them or check the impressum but I only found the Chief Editor there, then I tried checking the companies, but I couldn't find the relevant information, so I gave up.”* This may exemplify the actual difficulty for what should be an easy process.

These considerations illustrate the difficulties that remain as far as transparency of media ownership is concerned (in particular the accessibility by the public). The remainder of this section addresses some of the solutions or best practices, such as registers, tools related to media literacy.

3.3.5.3 Constitutional provisions relating to media transparency

Constitutional provisions relating to media ownership transparency can be identified in several Member States. **Assessing if media ownership transparency is concerned at the highest legislative level in**

a country's regulatory system could form a solid base for ensuring the effectiveness of further specific transparency rules. Our national experts' mapping shows that the respective Constitutions of Italy, Romania and Greece include important rules in this area:

- The fundamental principle of media ownership transparency in the media sector was established by the **Italian** Constitution in force since 1948, in particular by Article 21, paragraph 5 which set forth the basic principle of freedom of expression and freedom of the press. This section among others expressly emphasises that the financial sources of the press shall be disclosed.
- According to Art. 14 para. (9) of the **Greek** Constitution "the ownership status, the financial condition and the financing means of the information media shall be disclosed, as specified by law" (therefore including audiovisual media).
- **Romania** has constitutional provisions that relate to media transparency. According to Article 30(5) of the Romanian Constitution "[t]he law may impose upon the mass media the obligation to make public their financing source."

We note that a common feature of these constitutional rules is that none of these rules imposes an express positive obligation on the state to guarantee that the public has access to information on media ownership. **These provisions are solely concerned with the disclosure of financial sources, not of ownership details directly.** This obligation of disclosure of financial information alone is not able to ensure the effective enforcement of ownership transparency, even where it is a constitutional requirement. The value of the transparency provisions depends on how they are interpreted, for example to include shareholdings (Craufurd-Smith & Stolte, 2014). However, the recognition of media ownership transparency in a national constitution can be an effective measure for protecting transparency, because lower-level legislation cannot be in conflict with the rules contained in the Constitution.

3.3.5.4 General non-media specific transparency requirements regulating disclosure rules for company ownership

Company Registers

A Company Register is a database of organisations in the jurisdiction they operate under. The core administrative services provided by all registers are registering, examining and storing company information, such as information on a company's legal form, its seat, capital and legal representatives, as well as making this information available to the public. **All Member States have company registers.** Since media companies are commercial companies under national law, they are enrolled in the Company Registers. Therefore, the **basic business information about media companies is available to the public**, either for free or for a small procedure fee. However, complete information is generally available only upon request and against payment.

Figure 6 – Hungarian and Italian company registers

The image displays two screenshots of national company registers. The top screenshot is from the Italian website www.registroimprese.it. It features a search bar with fields for 'Nome impresa o ditta' and 'Provincia', a 'RICERCA' button, and a sidebar with 'ESTRAI ELENCHI DI IMPRESE'. The bottom screenshot is from the Hungarian website <https://www.e-cegjegyzek.hu/?cegkereses>. It shows a search form with fields for 'Cégnév kezdete', 'Cégjegyzékszám', and 'Adószám', along with a 'KERESÉS' button. Both websites have navigation menus and user account options.

Source: HU - <https://www.e-cegjegyzek.hu/?cegkereses>; IT - <http://www.registroimprese.it/>, 2020

Such general registers, which encompass all a Member State's officially registered commercial enterprises, cannot alone pursue the objective of media ownership transparency. Actually, **in practice, the ultimate beneficial owners cannot be easily detected** and it is often the journalists' task to decipher the name and the extent of the company stake of true owners.

However, **Estonia** is worth mentioning as it has one of the highest levels of transparency regarding the publicity of ownership data.¹³⁷ Estonia has established great transparency for all the companies registered. During one of our Focus Groups, one expert stated that media ownership structures are the most transparent in Estonia. However, this may be because the Estonian market is rather small,¹³⁸ and therefore it might be

¹³⁷ See: <https://medium.com/e-residency-blog/heres-why-estonian-companies-have-high-levels-of-transparency-3de97ce631ed>.

¹³⁸ Population: one million; three big media companies, as described below.

easier to enforce transparency. The data of the companies which must be disclosed can be found in the Commercial Code. The Business Register is available online for everyone. Therefore, information regarding ownership of every company can be looked up – including all connections with other companies, certain individuals and foreign countries. This is not a media-specific rule, it applies for all the companies registered in Estonia.

The accessibility of company data pursues the objective of so-called digital citizenship (Loit & Harro-Loit, (2016)). It would serve transparency in all Member States if the name of true owners were easily known. Otherwise, it is the task of journalists or researchers to decipher the identity of the true owner from the commercial register or from elsewhere. Since such registers are disclosed, revealing the natural persons behind complicated company structures takes time, while journalists and other members of society have less time and resources to investigate and reveal opaque ownership structures. So in many cases, ultimate beneficial owners of companies (not only of media companies) are hard to find. Moreover, some companies are not willing to disclose all information. For instance, one stakeholder indicated that in the **Netherlands**, media companies (like any other company) have the obligation to submit a yearly report to the Dutch Chamber of Commerce. However, in practice not every company follows through on this obligation, as they sometimes argue that such information about ownership and budgets is secret.

Competition law

The EU has strict rules protecting free competition, which apply directly in all Member States, so the courts of the Member States will uphold them. Competition regulation applies not only to companies, but to all organisations engaged in economic activity (such as trade associations, industry groupings, etc.) Under these rules, certain practices are prohibited. The fine for the infringement of EU competition rules can be as much as 10% of the annual worldwide turnover of the organisation.¹³⁹ Competition regulation can indirectly increase the transparency of media ownership as specific ownership information must be disclosed to the acting authority in the framework of competition specific proceedings.

All Member States supervise the **Mergers & Acquisitions** (M&A, see 3.2.1) **activities of media companies** by means of competition law. The competition authority has to approve the merger, after analysing important information about the merging companies, e.g. income, revenue, market shares, market reach and other important factors. In **Croatia**, the authorities need to be notified about mergers in the media sector, irrespective of whether the turnover thresholds are triggered and under the Media Act. Every year, publishers in Croatia have to report their financial transactions, data on the income and market share of the market of readers and/or viewers and/or listeners, data on the income and market share in the advertising market, data on advertisers or marketing agencies through which more than 10% of the publisher's annual marketing income was realised.

Member States also investigate alleged competition law breaches based on the applicable competition regulation. **Supervising media organisations in dominant positions could lead to a higher level of transparency**, and also play a significant role in preventing media concentration. Some Member States even have media-specific thresholds and measurements for dominant positions as well. Italian regulation can be signaled as a best practice in this regard, because in **Italy** the national regulatory authority (AGCOM) monitors whether a media operator exceeds 20% of the revenues of the *Sistema integrato delle comunicazioni*/Integrated Communications System (SIC) and checks whether an operator is exceeding a dominant position within a given media market. By comparison, in **Latvia**, the Law of Electronic Mass Media defines the dominant position of companies in the audiovisual sector as 35% of market share.

¹³⁹ See: https://europa.eu/youreurope/business/selling-in-eu/competition-between-businesses/competition-rules-eu/index_en.htm

3.3.5.5 Media-related provisions

Specific (media) ownership transparency acts

Transparency requirements are mostly regulated in the Member States' media acts, company and competition laws. Specific media ownership transparency acts have been introduced in **Bulgaria and Portugal**, and there is a special transparency act in **Sweden**, although based on surveys provided by national experts, the latter does not apply only to the media sector.

Swedish regulation is a well-functioning example as it fulfills the expectations of ownership transparency of media companies in the Member States. Media companies are included in and obligated to follow the general regulations of the Swedish Law of Financial Relations, the so-called Transparency Act (*SFS 2005:590*) that applies to all Swedish companies. This means that everyone can access the annual reports of Swedish companies, and therefore media companies as well, notably on their websites. These reports contain information on ownership structures. In addition to the Transparency Act, Swedish competition regulation is also rather effective. As there have been relatively few cases of violations of freedom of expression in Sweden in recent years, media ownership transparency in Sweden might be considered a best practice.

In **Bulgaria**, the purpose of the so-called Delyan Peevski media law is to make media ownership transparent by leveraging funding in the media and its "real" owners. However, the law is criticised for not obliging media outlets to disclose their sources of income, such as government funding, bank loans and cash coming from 'normal' market practices. Although it is formally aimed at increasing transparency of media ownership, this law is a massive attack on a specific group of media outlets. Some experts mentioned that they fear the Delyan Peevski media law could put pressure on media companies that are funded through foreign grants and donations (Dragomir & Altergot 2018). The legislative framework could help foster media ownership transparency, but according to national experts, in practice the implementation of laws is poor, there is no proper monitoring, not all changes are announced to the Ministry of Culture, fines are either small or non-existent for such behaviour, and cross-media ownership is also allowed and not regulated.

In **Portugal**, Law no. 78 (2015) regulates the transparency of ownership across all media markets. This law includes transparency obligations (e.g. disclosure provisions) requiring media companies to publish their ownership structures. The Transparency Act requires each media company to present the list of persons (singular or collective) who represent more than 10% of its total income, indicating the respective percentage and items to which they refer. Comparatively, this is considered to be a lower threshold that could facilitate media ownership transparency, since in other countries the thresholds are higher.

Specific transparency acts can facilitate higher level of transparency in the media sector as well, and it **can also limit concentration and prevent some cases of abuse**. However, the effectiveness of media ownership transparency depends on the enforcement of the applicable legislation.

Obligation to disclose ownership information to authorities and the public

Detailed disclosure requirements directly promote transparency in the media sector. State authorities have to be informed - as previously mentioned in section 3.2.2. - on the ownership structure, specifically if a statutory set percentage of shares are in a single hand. A direct disclosure obligation **to the authority** usually applies when a media company applies for a broadcasting licence (e.g. Spain, France, Dutch-speaking community of Belgium and Greece) or when there is a change in the ownership structure of a media company (including M&A) (e.g. Czechia) (see below).

The aim of this regulation is to monitor concentration and thus to avoid any distortion of media pluralism. The authorities also vary by Member State: a ministry or a media or competition authority may fulfil this

role. We have identified **the best practices in Member States where, in addition to the general competition rules, competition regulation specific to the media sector is also in force**. Sector-specific competition regulation enables the competent authority, generally media authorities, to analyse the important factors in a media merger in depth. In **Romania**, the sharing of competence between the audiovisual and competition regulators is assessed as an optimal solution in terms of transparency. Such sharing exists in other countries.

The notification obligation differs in the Member States by type of media company and by the statutory set percentage of shares of an owner or linked to a transfer. In most Member States, the broadcast and print sectors have notification obligations, and we have identified **a tendency for the online sector to be included more and more as well**. Disclosure obligations for online media could be considered as a best practice, as online media are an increasingly important part of media. In terms of transparency – and in particular the prevention of media concentration – **a reporting obligation in the media sector linked to low thresholds is considered to be best practice** (Further details on thresholds can be found in section 3.2.2.2.). For example, in **Austria** the so-called management report has to include shareholders as soon as they own at least 10% of the company. By comparison, in **Greece** any transfer of ownership above 1% of the capital has to be notified to the Greek National Council for Radio and Television (ESR). In **Romania**, a ratio of 10% or more of the acquisition of shares or voting rights has to be reported when applying for broadcasting and audiovisual licences. The ownership and shareholders structure are only important in some countries when obtaining a licence, e.g. **Croatia, Czechia or Germany**. In **Luxembourg**, it is only relevant as media companies concentrate. However, in **Cyprus**, the ownership structure is important in both licence granting and merging of media companies. **Slovenian** law permits the Ministry of Culture to approve an ownership concentration above 20% for radio, TV and newspapers, which is considered otherwise to be a threshold. Media companies in **Slovakia** must also inform the Ministry of Culture of their ownership structure in relation to every stakeholder with a stake of at least 20%.

A disclosure obligation includes all ways that make information available to the general public. The main means are communication in annual reports (e.g. as is usually the case in financial reports of companies that are listed on the stock exchange), on corporate websites and through registers managed e.g. by chambers of commerce. In general, this covers all cases where the public and the press can obtain information about media companies directly. Some countries oblige companies to publish information on their websites, while in other Member States, this is conditional, for example, in cases of mergers or concentration.

The **ex-post reports on media mergers** published by the **Broadcasting Authority of Ireland** include a table that describes the ownership and control arrangements of undertakings carrying on a media business in the State and describes the changes to ownership and control arrangements of such undertakings over the previous three years. In 2019, the BAI concluded a contract with Dublin City University to update and publish this table annually. Finally, the BAI tries to play a lead role in improving audience awareness and understanding of the potential importance of ownership and/or control in relation to operational decisions in different media sectors, through the Media Literacy Ireland Network, an initiative that emerged from its Media Literacy Policy (2016).

Austria follows the “ultimate-ownership-principle” as Section 25 § of the Media Act states that in addition to the information on ownership, shareholding, share and voting rights proportions of all persons holding a direct or indirect share in the media owner, any undisclosed shareholdings are to be listed as well, and fiduciary relationships must be disclosed for each level on the media company’s website, where the information must be easily and directly retrievable at all times.

Nevertheless, there are also cases of disclosure obligation that are not considered successful practices. For example in **Poland**, broadcasters are required to provide information on the identification of the entity and a media service provider is required to deliver their financial statement to the National Council (KRRiT) annually. However, the general public does not enjoy free and full access to the data about ownership and financial conditions of the media. Most data are collected by public agencies (such as KRRiT and UKE - Office of Electronic Communications), while **media users have very limited knowledge of media ownership and media financing structures.**

Another example is **Luxembourg**, where there is **no legal duty to inform the public about changes in ownership structure** in the press or audiovisual sector. In **Czechia**, a stakeholder pointed out, not only do transparency measures not seem to be sufficiently enforced, there is also a further risk in the choice of representatives of regulators and oversight boards.

Disclosure of the names of ultimate beneficial owners ("real owners")

An ultimate beneficial owner (UBO or real, true owner) is a natural person, a human being who owns the media company (or part of it) directly or indirectly through other companies owning the media company or a chain of such companies, whether there is a sole owner or more natural persons owning the same company. The definition of the UBO is taken from Article 3 Section (6) of EU's Anti-Money Laundering Directive as "any natural person who ultimately owns or controls the customer or any natural person on whose behalf a transaction or activity is being conducted". **Most countries require that media companies report the name of their owners or shareholders (of a specific percentage).** These are the countries that seem to be the most effective in allowing their citizens to find out the identity of ultimate owners. In addition to the Company Register mentioned above, **Luxembourg** also **has a specific Register of Beneficial Owners**, which was established to implement the money laundering directive's aims of preventing money laundering and terrorist financing. The related state act (Law of 13 January 2019 establishing a Register of Beneficial Owners (RBE) for Luxembourg registered entities was published on 15 January 2019 in the Luxembourg Official Gazette (Mémorial A) - RBE Law) regulates the obligations of the entities covered to obtain and hold information on their ultimate beneficial owners at their registered office. The Register includes adequate, accurate and up-to-date information accessible to the public and to the Luxembourg authorities within the scope of their duties. The Register is electronically available to national authorities with full access, and to any person with a limited access. In **Croatia**, according to the By-law on Register of Ultimate Beneficial Ownership, all **organisations need to submit information on their ultimate beneficial owners in a new "Register of Ultimate Beneficial Ownership"** maintained by the Croatian financial authority (FINA). This Register of Ultimate Beneficial Ownership has been publicly available since January 2020, and it is also based on the EU's Anti-Money Laundering Directive. However, it is worth mentioning that difficulties might occur in identifying the ultimate beneficial owners when shares are owned by public/individual investors and are traded on the stock exchange.¹⁴⁰ In other countries, such as in **Bulgaria**, the name of the "true owners" must be declared as well. In practice, the problem is with the application of existing legal requirements, and that true owners cannot be revealed due to lack of legal enforcement. For example, some publishers of newspapers can avoid complying with the law on declaring the ultimate owner of the company because there is no significant legal consequence of such behaviour. We note that Delyan Peevski, who pushed the Parliament to establish the so-called Delyan Peevski media law is a politician, oligarch, lawmaker from Bulgaria's Movement for Rights and Freedom (DPS) and media mogul who controls 80% of the print media distribution, thus has an interest in ensuring that **the identity of true owners remains unrevealed.**

¹⁴⁰ ERGA Analysis & Discussion Paper to contribute to the consistent implementation of the revised Audiovisual Media Services (AVMS). Directive Towards the application of the revised Directive by National Regulatory Authorities (NRAs), available at: erga-online.eu/wp-content/uploads/2018/11/ERGA-2018-08-SG3-Analysis-and-Discussion-Paper.pdf

In **Greece**, during the recent (2018) licensing procedure for the granting of six free-to-air nationwide licences, one of the applicants was excluded from the competition because the alleged ultimate owner (the alleged beneficial owner of the Cypriot limited company controlling the applicant) could not justify the investment with her income or by other lawful means, so it was concluded that she was acting on behalf of a third person. Ownership restrictions also apply to regional channels. Since the Greek market is small and regional channels are rarely profitable, some/a few owners try to create economies of scale through their participation in more channels that they are allowed to under the law. To achieve this, they usually hide behind Cypriot companies that allow them to use intermediaries (registered owners).

Financial transparency of media companies

Notification of mergers

Almost all Member States' notifications of mergers are based on the companies' turnover (the net sales revenue achieved by the parties concerned through media service provision activities in the course of the previous business year). It is important for state authorities – mostly for competition authorities – to be informed about the turnover of media companies, so that the financial information of media organisations can be supervised, which in turn might indirectly enhance media ownership transparency. Turnover data can also be used to assess whether a company has a dominant position – a potential threat to media pluralism. For example, in **Ireland, media merger decisions and all other media ownership decisions are reported publicly** by the relevant bodies, whether the Department of Communications (BAI) or the Competition Commission and are reported in the national and regional media. There are special rules, such as the Law on Control of Concentrations in Undertakings in **Cyprus**, which require the disclosure of any financial or other support received from any source by any of the participants in the concentration (Article 47).

Financial reporting obligation

There are also media-specific rules to ensure transparency of turnover/revenue/income beyond mergers. These rules include those that require an annual (or half yearly) reporting obligation about **financial transactions** (data on the income and market share in the market of readers and/or viewers and/or listeners, data on the income and market share in the advertising market, data on advertisers or marketing agencies through which more than 10% of the publisher's annual marketing income was realised), as set out in the Media Act of **Croatia**.

There are also reporting obligations about **revenue** in **Italy**. Since 2012, even online advertising sales agencies have been obliged to subscribe to the Register of Communications Operators (ROC). This notably includes Amazon Italy, Facebook Ireland and Microsoft Ireland. In 2019, in the context of Economic Information System (IES), AGCOM introduced some non-compulsory pieces of information that online advertising sales agencies could declare, with the aim of discovering the role anyone is having in the online advertising supply chain. In particular, any company that has a role in this supply chain is asked to complete the specific electronic model made available by AGCOM, including online advertising service providers (even for programmatic advertising).

Disclosure of income sources

Media outlets cannot exist without enough revenue and income. Media companies have various income streams, and in an ideal case, these can cover all expenses. However, problems emerge if a media company is not profitable and seeks some other source of income (for example, advertisements, direct or indirect state funding, even through agreements with private companies etc.), which are intended to influence the content, the direction or the structure of the media company. It is notably of particular importance that fair and transparent rules on the distribution of state resources and support are in place and effectively

implemented.¹⁴¹ To see how financial influences could distort or endanger media pluralism, most countries require a report from media companies declaring income and revenue. Some countries (for example, France and Italy) use strict regulation on the advertisements of media companies.

The solution of **France** could be highlighted as a best practice, where the so-called Sapin law that instills transparency into media buying requires that any purchase of advertising space be made within the framework of a written contractual mandate (otherwise, there can be a fine of EUR 30 000). The contract must specify the services provided and the payment terms. Similar rules apply to agencies offering media planning advice: they can neither receive any payment nor benefit from the media owner and must disclose any financial ties with media owners and the amount of the relevant shareholdings in their terms and conditions. This is a very interesting provision, since it allows state authorities to monitor the direct or indirect influence of political and economic interests, thus contributing to transparency. It is important to note that **the Sapin law was extended to digital advertising and media in 2015 with the wording "on any medium whatsoever" of Article 20 that covers online transactions**. Sellers of advertising space have an obligation to report their activities directly to the advertiser within one month following the broadcast of the advertising.

3.3.5.6 Organisations disclosing ownership data

As disclosure of information of media ownership to the public is a crucial factor for transparency, we consider it important to mention organisations that provide relevant information even without any legal obligation.

MAVISE – Database on TV and on-demand audiovisual services and companies in Europe is a free access public database – updated each year – on television channels (audiovisual services), on-demand services and licences in 41 European countries and Morocco. It provides the following data for audiovisual services: (i) name of service, (ii) type of service, (iii) licensing country, (iv) service provider, (v) final owner, (vi) status of service, (vii) genre, (viii) targeted countries, (ix) licence name and (x) competent authorities. The database provides (i) licence name, (ii) type of service, (iii) licensing country, (iv) licence holder, (v) final owner and (vi) competent authorities for licences. The type of service covers television channel (TV), FOD (Free on-demand service), TVOD (Transactional Video-on-Demand), SVOD (Subscription Video-on-Demand), UGC (Video-sharing platforms). As there is information on the final owner with the highest ownership level controlling the service or licence, the MAVISE database provides relevant ownership information around Europe. The database is managed by the European Audiovisual Observatory within the legal framework of the Council of Europe.¹⁴²

NGOs, civil society organisations and academics

NGOs, civil society organisations and academics without any legal obligation monitor the media, therefore media ownership as well, through research, analysis and publications. For example, some important actors are the following:

- Center for Media Pluralism and Freedom (CMPF),¹⁴³ as part of the European University Institute. The CMPF is a significant research and training centre that aims to develop innovative and relevant lines of research on media freedom and pluralism in Europe. It regularly updates its Media Pluralism Monitor, most recently [in 2020](#).

¹⁴¹ European Commission (2020), Communication - 2020 Rule of law report - the rule of law situation in the European Union, Brussels, European Commission, https://ec.europa.eu/info/files/2020-rule-law-report-rule-law-law-situation-european-union_en.

¹⁴² See: <http://mavise.obs.coe.int/>

¹⁴³ See: <https://cmpf.eui.eu/>

- Transparency International¹⁴⁴ is an organisation whose mission is to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society.
- International Press Institute¹⁴⁵ is a global network of editors, media executives and leading journalists who share a common dedication to quality, independent journalism. The Institute promotes the conditions that allow journalism to fulfil its public function, the most important of which is the media's ability to operate free from interference and without fear of retaliation.
- Freedom House¹⁴⁶ is non-profit non-governmental organisation that conducts research and advocacy on democracy, political freedom, and human rights.
- Open Society Foundations¹⁴⁷ financially supports civil society groups around the world, with a stated aim of advancing justice, education, public health and independent media.
- Media Ownership Monitor¹⁴⁸ is a global research and advocacy initiative launched by Reporter Without Borders to increase transparency about media ownership.

Self-reporting of media companies

Media companies that voluntarily share information on their ownership structure and financial sources to the public on their websites can also be found and highlighted as a best practice. Self-reporting is sometimes encouraged by professional or trade organisations. **However**, while establishing fundamental principles, **self-reporting provisions** established by these companies **will often not provide sufficient information about media ownership structure**. Information disclosed by these means is therefore not sufficiently systematic on its own, or extensive enough, to provide an adequate picture of media ownership in Europe (Craufurd-Smith & Stolte, 2014).

3.3.5.7 Issues regarding media transparency

In light of the best practices in the Member States, some crucial issues remain to be addressed.

Transparency regulation alone is not sufficient to ensure media transparency. The body of law is not the only measure of transparency. It also depends on how authorities apply the rules and how independent their decisions are of the government. As one stakeholder stated in the Consultation, "regulatory frameworks to promote transparency of media ownership are only effective if properly implemented on national level." In most Member States this is not a problem, thus the reasoning of the decisions of the authorities is adequate. In some countries, however, the practical monitoring of the rules presents some shortcomings. These may be mostly the result of media capture (Mungiu-Pippidi, 2013). The following cases highlight two main shortcomings mentioned above:

(1) the body of law is too general;

(2) the authority cannot evaluate a merger.

(1) In the case of **Bulgaria**, the competition authority approves the mergers of media companies and thus maintains the pluralism of the national media market. However, the problem is that, unlike most countries, there is no threshold which could serve as a clear indicator of a dominant position. There are also no other measurements or requirements that have to be checked so as to limit the authority's discretion and ensure consistency. This does not necessarily mean that the media market is distorted or that ownership, especially cross-media ownership, of media companies is not clear or transparent, but such drawbacks can more easily happen if the legal framework is not sufficiently specific. Hence, clear indicators are required for a uniform and predictable application of the law. An example where media capture has been alleged is the New Bulgarian Media Group (NBMG), co-owned by Delyan Peevski, a Member of Parliament, has been

¹⁴⁴ See: <https://www.transparency.org/en/>

¹⁴⁵ See: <https://ipi.media/>

¹⁴⁶ See: <https://freedomhouse.org/>

¹⁴⁷ See: <https://www.opensocietyfoundations.org/>

¹⁴⁸ See: <https://www.mom-rsf.org/>

expanded into the biggest player in the country's media market, controlling swathes of media outlets, including six newspapers and nearly 80% of the print media distribution network." (Dragomir, 2019)

(2) There are also other ways in which the control function of the authority can turn out to be insufficient. This is the case in **Hungary**, where the government declared the merger of some television and newspaper companies into KESMA (a government-related giant media company also responsible for public television and radio channels) to be of "national strategic importance", which is a specific concept set out in the Hungarian Competition Act, that made it **impossible for the competition authority (GVH) to scrutinise the merger**. It also indirectly prevented the Media Council's competent authority proceedings in the case. The GVH had to dismiss the case, and this decision was also found to conform with the Basic Law by the Hungarian Constitutional Court (*AB. II/313/2019.*).

In addition, in some countries, stakeholders mentioned a lack of information actually available on UBO. Thus, in **Poland**, there is a lack of information about the real beneficiary, lack of information visibility, lack of information about the entire group and its services portfolio. In **Czechia**, Taxparency has denounced a situation where there is a general lack of transparency of media ownership. They found that none of the biggest media houses in Czechia fully disclosed their ownership structure.¹⁴⁹ Small media outlets have arisen but, although they have a simple ownership structure (where the editor-in-chief is the owner), they do not disclose their sources of finance. Such small outlets can more easily spread fake news or disinformation, but are perceived by the public as more independent than the bigger media

Transposition of transparency requirements in the AVMSD

Some stakeholders pointed out that national media ownership transparency regulation based on the revised Audiovisual Media Services Directive has not yet been adopted.

The appropriate level of enforcement of media transparency regulation

Most stakeholders responded that enforcing transparency of media regulation should happen at EU level. **A challenge is to trace ownership beyond national borders.** One stakeholder commented that it "must be a task for the European institutions when we see the lack of political will or interest on national level and the direct pressure by national government on media regulatory bodies to influence and control local media." Another complemented that the "Commission has the advantage of distance with regard to local preferential relations." Some regulators complain that they have no grip on international players that aim at the market they are supposed to regulate. One wrote that: "As companies are free to establish and invest in any Member State, it is almost impossible for a Member State to solely impose such obligations as beneficial owners of media companies may hide behind complex and non-transparent partnerships established in other Member States.". Overall, the best solution seems to be "to have consistent rules across the EU because of the cross-border nature of media services."

It can also be difficult to provide transparency for sectors related to the media sectors. Thus, for Greece, one stakeholder pointed to the difficulty to "effectively capture connections with other parts of the ecosystem." **The situation is somehow made worse by the digital environment.** Regulators actually have no grip on the several digital media who do not (yet) fall under the transparency obligations vis-à-vis the media regulator. Therefore, they know little about their ownership structure. This led to difficulties such as:

- Finding out which company was behind which service, notably when implementing the investment obligation for non-linear broadcasters;
- Getting hold of a contact person from that company.

¹⁴⁹ <http://www.taxparency.eu/cz/structures/>

Thus one stakeholder pointed to the need in Czechia for a strategic approach to new media with regard to their objectivity, in/dependence and clear disclosure of their beneficial ownership and financial sources.

Finally, while regulations promoting transparency of media ownership are important; it is important to be aware of the **risks of misuse of transparency regulations**.

Sharing information between regulators

Almost all stakeholders responded that ownership information (especially ownership information on media players that are part of larger pan-European media conglomerates) should be shared with other regulators by the media/competition authorities. This is because concentration is international, namely “Media ownership by now certainly became a cross-country issue, with e.g. Czech media owners entering the market in France, Bulgaria etc.” Hence discussions should revolve around how to ensure that information-sharing and collaboration happen. the European Regulators Group for Audiovisual Media Services (ERGA)¹⁵⁰ is considered to be a very relevant forum. Standardisation of data to be shared should be favoured.

3.3.5.8 Summary

Transparency of media ownership consists in the authorities and the public having an easy access to accurate information about who owns media. This section has highlighted best practices in this area.

First, **(i) constitutional provisions** relating to media ownership transparency can guarantee transparency at the highest level, as lower-level legislation cannot be in conflict with these provisions. Additionally, we noted that in the practices of Member States, there are media-specific and non-media specific transparency regulations.

Among the rules that do not specifically regulate the transparency of media ownership, an interesting case is that one of **(ii) company registers**. All Member States maintain a registry for commercial enterprises, which is partially free to the public or accessible for a small administrative amount fee. These registers contain ownership-related information about media companies, for example the name of the owners, and sometimes their relative shares. In most cases, the problem is that the real Ultimate Beneficial Owners are hard to find, as they may hide behind a network of companies. Media transparency can also be better achieved in Member States where **(iii) the Anti-Money Laundering Directive** has been implemented. Another finding is that **(iv) competition authorities** have an important, but only incidental and indirect, role in ensuring transparency by preventing the establishment of a dominant position by examining the dominant thresholds. The only problem that emerged here was in Bulgaria, where the criteria for a dominant position is not clearly described by legal instruments. This makes the decisions on mergers unpredictable.

Among the ‘media-related provisions’, we discussed the role that **(v) specific media ownership transparency acts** can play. We then examined obligations to disclose ownership information to the competent authorities and to the public. **(vi) Obligations to notify the competent authorities** differ in the Member States based on the type of media company and the statutory set percentage of shares of an owner, or how it is linked to a transfer. In most Member States, the broadcast and print sectors have notification obligations, and we have identified a tendency to cover the online sector more and more as well. The main ways of **(vii) information disclosure to the public** are through communication in annual reports (e.g. as is usually the case in the financial reports of companies that are listed on the stock exchange), on corporate websites and through registers managed e.g. by chambers of commerce.

Furthermore, when it comes to **(viii) the disclosure of the names of ultimate beneficial owners**, the countries that require media companies to report the names of their owners or shareholders (of a specific

¹⁵⁰ <https://erga-online.eu>

percentage) seem to be the most effective in allowing their citizens to find out the identity of ultimate owners. Regarding **(ix) financial transparency of media companies**, it is important for state authorities to be informed about the turnover of media companies so that the financial information of media organisations can be supervised, which in turn might indirectly enhance media ownership transparency.

Finally we have identified **(x) other sources of information** (e.g. NGOs) that contribute to making ownership information more accessible to anyone.

3.4 Conclusion

This Chapter deals with media ownership rules and media transparency. While the AVMSD, in Article 5 and Recitals 15 and 16, focuses on transparency of audiovisual media ownership, **this Chapter goes well beyond** by providing a full analysis of **media ownership rules**, their implementation and their effectiveness in the EU; and by considering transparency for **all media** (not only audiovisual), and for **aspects other than ownership** (financial relationships and the nature of the owner). Two main findings are developed in this conclusion.

3.4.1 Different audiovisual markets across the EU

An important finding of this Chapter is that the EU Member States' audiovisual markets remain very different, in spite of some common trends. Previous research has shown that there is not (yet) a unified audiovisual single market at the EU level (see for example KEA & Cerna, 2010; De Voldere et al, 2017). The media sector is deeply rooted in the cultural or political sphere of a country, and each Member State can impose its own laws as it sees fit, as long as they comply with EU law. This Chapter complements these past studies, by its focus on media ownership rules and media transparency.

EU Member States' audiovisual markets are very different regarding their media ownership and media transparency rules. Media ownership rules stem from two main sources: EU competition policy and national media-specific legislation. There are very large differences in the latter across Member States. Such differences exist in terms of how common criteria are applied (for example thresholds in terms of market shares that trigger the validation by competition or media authorities) and go beyond that, for example, in the sheer nomenclature of these criteria. For example, only a handful of countries use the notion of "dominant power of opinion", while Greece makes the distinction between media according to whether they are information or non-information media. As a result, there is a broad diversity in the way media ownership rules are applied in the EU – as shown by the overview and the case studies – although the most common rules deal with audience shares and limitations on the number of licences a person can own.

Similarly, media ownership transparency rules differ greatly across Member States. This starts with the sheer existence of specific transparency acts or media-specific transparency rules: 9 Member States have no media-specific transparency rules, notably Nordic and Baltic countries. Another example: most Member States make it mandatory that information about media providers' ownership structure is made available to the public but some require a yearly update to be made available (such as Austria or France) while others require that *changes* in ownership are declared (such as Bulgaria).

Beyond the existence of rules, what matters is the **implementation of media ownership transparency requirements** also matters. In some Member States, information has to be provided directly by the media service provider, for example information on the media owner has to be available on the publication or on its website. While all Member States have company registers, the amount of information that is accessible to the public varies greatly from one Member State to the other, as does the cost of such access. More generally, **Member States will differ in the emphasis put by regulatory authorities and governments on transparency and more specifically media transparency.** Our overview and our case studies show that making information accessible to authorities (competition authority, media authority, government representatives) does not necessarily lead to accessibility to the public. Thus, Mergers & Acquisitions (M&A), as well as applications for broadcasting licences, require the disclosure of financial and ownership information that is not necessarily made available to citizens.

This does not prevent the existence of **some common trends**, as identified in this Chapter. It is beyond the scope of the study to analyse whether there is a trend towards convergence of media ownership and

media transparency rules in the EU. However, there seems to be a **trend towards deregulation**. The Netherlands are a clear example of this, but, in most if not all, countries, one can see that limitations on the market share that one company can hold are being relaxed. In other words, more concentration in media markets is being allowed. On the other hand, some Member States are amending the way they look at media mergers by either lowering the turnover thresholds for media mergers, so as to encompass even smaller M&A transactions that otherwise would fly under the competition authorities' radar, removing the turnover thresholds for media mergers altogether and even applying the thresholds not based on turnover but on revenues. **The impact of such a trend on media pluralism is however difficult to foresee.**

3.4.2 Harmonising and coordinating regulation at the EU level

The other crucial finding is that actions at the EU level can help promoting media transparency in the Member States. This allows further building on the conclusions of our sections reflecting on the effectiveness of media ownership and media transparency regulations.

Most stakeholders, in the online consultations and in the focus groups, have stated that **interventions at the EU level could help enforcing regulation on media transparency**. Actually, the challenge is to trace ownership beyond national borders, a situation somehow made worse in the digital environment. **Initiatives at the EU level to overcome such challenge** include the intervention of EU institutions, such as Directorate-General for Competition of the European Commission, and **collaborations of regulators across the EU**, notably via ERGA, to discuss standards and share information. Stakeholders have often mentioned the importance of such collaborations.

EU legislations play a role in harmonizing media transparency rules. The **5th EU Anti-money laundering Directive** – currently being transposed – will lead all countries to impose requirements on companies (including media companies) that will help in making the identification of Ultimate Beneficial Owners easier. **Competition legislation** makes it clear that in the EU, in order for an M&A transaction to be approved, companies (including media companies) need to disclose information about their market shares and their turnover to public authorities.

In the reflection on the effectiveness of media ownership rules, we apply an exploratory, quantitative and econometric analysis that shows that there is a strong correlation between the existence of media ownership rules and the concentration level: **the more the rules, the less concentrated the media market is**. For example, the most concentrated market is Denmark, where our mapping shows the absence of media ownership rules. In the same way, Romania and Greece are among the most-regulated countries and have among the least concentrated markets. Such a result needs of course to be contextualised, as several factors can influence media markets, from the Member State's socio-demographic profile to its history. Thus, although Nordic countries are among the most concentrated, they are also strongholds of public service tradition, where Public Service Broadcasters have the highest audience market shares. On the other side, France is a case where a well-developed policy cannot prevent market concentration.

While the sheer amount of (media) ownership rules appears to be important, it is interesting to consider the content of such rules. Thus, **the existence of media-specific ownership rules adds an extra layer in the search for the protection of pluralism and diversity**. What matters is also how such rules are **enforced**. The effectiveness of the rules is closely linked to how they are applied, and who makes sure they are respected and complied with. The independence of the authorities is of utmost importance in that respect, alongside the editorial production independence of the media companies and outlets. There are, in all cases, lessons to be learnt about how Member States apply some rules, and their effectiveness.

In particular, the reflection on the effectiveness of media transparency rules aimed at **identifying best practices**. These are rules and forms of implementation that could be worth considering applying in other

Member States. Actually, they may contribute to a greater transparency regarding media, in particular in terms of ownership and financial information. This is an important effort because, in spite of a general tendency for media ownership information to become more accessible, all the stakeholders consulted (experts, media professionals, citizens) expressed the view that transparency could be improved.

Each best practice identified is explained and illustrated based on examples from Member States, and discussed in terms of its efficiency, as none of them can solve transparency issues alone. More precisely, they can each contribute to improving the amount of information available on a given matter (ownership, revenues, market shares, etc.), or the accessibility of such information to the public, but they all come with limitations, such as their complexity or their cost.

While one may speak in favour of sharing information and learning from the experiences of others; **this does not mean one should aim for a uniform media ownership and transparency regulatory framework** across the EU. First, there are no specific EU rules on media ownership and cross-ownership regulation. Thus, it is within the competence of every Member State to set its own regulation consistent with EU law. Those rules are strongly linked to the historic and cultural background of each Member State.

Chapter 4

Signal integrity

Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD)



Authors:

Ir. Steven Dewaele
Prof. Dr Karen Donders

With contributions from Lea Ytrehus, Sally Broughton Micova, Adelaida Afilipoaie, Olivier Braet and Laura Dominguez

4 Signal Integrity

4.1 Introduction

4.1.1 Context

With Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 (*"the Directive"*)¹⁵¹ the EU adopted a review of the framework for Audiovisual Media Services (*"the AVMS Directive"*)¹⁵² in view of changing market realities. The Directive entered into force on 18 December 2019. Member States were granted until 19 September 2020 to transpose the new measures into national legislation.

One of the new measures, referred to as the *"signal integrity"* measure, is concerned with guaranteeing the integrity of programmes and audiovisual media services¹⁵³. From the Commission's public consultation *"A media framework for the 21st century"* (European Commission, 2016)¹⁵⁴, it appears that already in 2015 *"signal integrity"* rules were called for at EU level by a number of Member States, regulators and Public Service Broadcasters. More precisely in reaction to a question related to commercial communications:

"2. Providing for an optimal level of consumer protection (Commercial communications)

[...]

10 Member States and 6 regulators also favour other options, going in different directions (either keeping some of the current rules while clarifying and simplifying other provisions, or introducing rules on signal integrity, or further extending some of the current rules to on-demand services or other online services).

Public service broadcasters *mainly favour another option, with some calling for simplification and clarification, for the extension of the rules on audiovisual commercial communications to other players and for rules on signal integrity."*

At that time the Commission concluded that:

¹⁵¹ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities

¹⁵² 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)

¹⁵³ Recital 26 of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities

¹⁵⁴ European Commission (2016). Synopsis report of the Public consultation on Directive 2010/13/EU on Audiovisual Media Services (AVMSD) - A media framework for the 21st century, 06 July-30 September 2015, 25 May 2016. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1464618463840&uri=COM:2016:287:FIN>

"No clear consensus emerged amongst respondents across stakeholders categories when it comes to the preferred policy option on commercial communications. The respondents' views are almost equally split between the four options. However, those options are not necessarily mutually exclusive and could be combined to a certain extent."

On 25 May 2016, the European Commission proposed a revised Audiovisual Media Services Directive as part of its Digital Single Market strategy¹⁵⁵. With the proposal negotiations between the co-legislators began.

Because it believes that "[t]hird parties should not be allowed to modify programmes and services without the consent of the media service provider", the European Parliament introduced, on 10 May 2017, in first reading, Amendment 21¹⁵⁶:

"Recital (15a) In order to protect the editorial responsibility of the media service providers and the audiovisual value chain, it is essential that the integrity of the programmes and services supplied by media service providers be guaranteed. Programmes and services should be transmitted without being shortened, altered or interrupted. Programmes and services should not be modified without the consent of the media service provider."

On 2 May 2018 the European Parliament introduced a new article:

"Article 7b - Member States shall take appropriate and proportionate measures to ensure that audiovisual media services provided by media service providers are not, without the explicit consent of those providers, overlaid for commercial purposes or modified."

For the purposes of this Article, Member States shall specify the regulatory details, including exceptions, notably in relation to safeguarding the legitimate interests of users while taking into account the legitimate interests of the media service providers that originally provided the audiovisual media services."

The new article was accompanied by a recital:

"Recital (26) In order to protect the editorial responsibility of media service providers and the audiovisual value chain, it is essential to be able to guarantee the integrity of programmes and audiovisual media services supplied by media service providers. Programmes and audiovisual media services should not be transmitted in a shortened form, altered or interrupted, or overlaid for commercial purposes, without the explicit consent of the media service provider. Member States should ensure that overlays solely initiated or authorised by the recipient of the service for private use, such as overlays resulting from services for individual communications, do not require the consent of the media service provider. Control elements of any user interface necessary for the operation of the device or programme navigation, such as volume bars, search functions, navigation menus or lists of channels, should not be covered. Legitimate overlays, such as warning information, general public interest information, subtitles or commercial communications overlays provided by the media service provider, should also not be covered. Without prejudice to Article 3(3) of

¹⁵⁵ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, COM/2016/0287 final - 2016/0151

¹⁵⁶ Draft European Parliament Legislative Resolution on the proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, 10 May 2017. Available at: https://www.europarl.europa.eu/doceo/document/A-8-2017-0192_EN.html?redirect

Regulation (EU) 2015/2120 of the European Parliament and of the Council¹, data compression techniques which reduce the size of a data file and other techniques to adapt a service to the distribution means, such as resolution and coding, without any modification of the content, should not be covered either. Measures to protect the integrity of programmes and audiovisual media services should be imposed where they are necessary to meet general interest objectives clearly defined by Member States in accordance with Union law. Such measures should impose proportionate obligations on undertakings in the interest of legitimate public policy considerations.”

Negotiations between the co-legislators were concluded with informal agreement on the proposed rules, including the new Article 7b, reached on 6 June 2018.

4.1.2 Main research questions

For this report, we are looking to:

- Understand and map the technological and competitive contexts in which stakeholders are operating and which will serve as the building blocks of a reference framework for characterisation of cases:
 - The technological context needs to identify the processes that cause the signal hitting the screen to be different from the signal originally provided by the AVMS provider;
 - The competitive context needs to identify an AVMS provider's interests to protect its signal's integrity, respectively stakeholders' interests to modify an AVMS provider's signal or overlay it for commercial purposes.
- Introduce and characterise a number of abstract cases for illustrative purposes on the basis of the reference framework developed;
- Analyse and illustrate the functioning of the new Article 7b using the cases introduced earlier;
- Map and analyse existing and emerging signal integrity related legislation in the EU, the UK, the US and Canada;
- Map and analyse stakeholder opinions;
- Produce conclusions.

4.1.3 Methodology

The technological and competitive contexts in which the new measure will apply as well as the abstract cases on the basis of which the functioning of the new measure is illustrated, have mainly been developed on the basis of desk research.

A survey of national experts was the basis for a scan of national existing and emerging legislations as well as for the deeper analysis of related legislation in a number of countries.

A survey of stakeholders as well as their participation in a number of focus group sessions, provided us with a view on their understanding and positions on this topic.

We would like to thank both national experts and stakeholders for the time and efforts they have spent to help us better understand the intricacies of past and current situations as well as of the issues at stake.

4.1.4 Structure

Section 4.2 starts off with the results of desk research into the technological context. The purpose is to provide:

- a basis from which to understand why reference is made to an AVMS provider's signal;
- an overview of the different processes an AVMS provider's signal is or can be subjected to;
- a distinction between processes that leave the signal unchanged, processes that change the signal at the level of the data it is carrying, but leaves it unchanged at the level of the information it is conveying, and processes that effectively change the signal at data as well as at information level.

Section 4.3 describes the competitive context in which stakeholders may find themselves. Understanding the parties' respective interests may help characterise abstract cases.

Section 4.4 then moves on to introducing and characterising a number of cases in the light of the technological and competitive contexts that have been developed with a view to establishing which changes the signal has been subject to, if any, and what the competitive motives of stakeholders might be.

Section 4.5 analyses the new measure in detail in order to fully understand its functioning, illustrated on the basis of the cases introduced earlier.

Section 4.6 presents a scan of existing and emerging legislation in the EU, the UK, the US and Canada, and provides a deeper dive into the legislation of the countries which seemed to have the most advanced rules and regulations on the matter.

Section 4.7 presents main takeaways from stakeholder opinions.

Section 4.8 discusses legal implications.

Section 4.9 provides conclusions.

4.2 The technological context

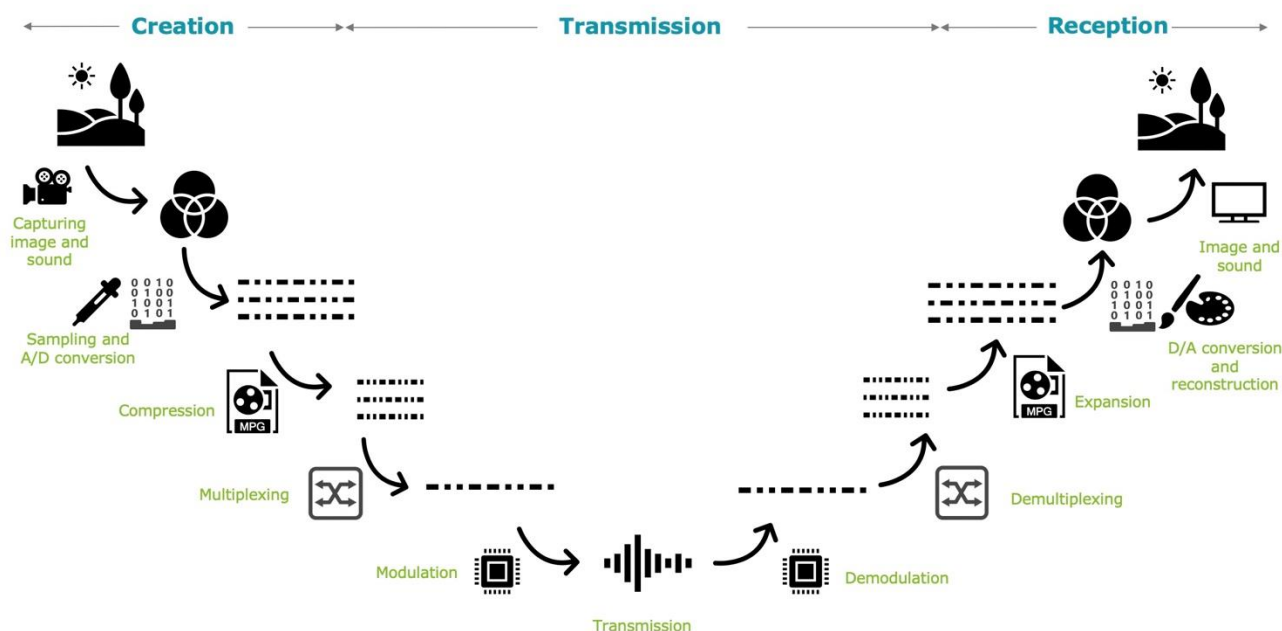
The section in brief

This section explores the relation between an AVMS provider's service and the signal. It provides an overview of the processes to which an AVMS provider's signal can be subjected and it explains how processes affect signals at their data and information level. With this exploration of the technological context, and in particular its focus on processes, this section develops the vocabulary of an unambiguous language which is required to analyse the new measure.

Programmes, and audiovisual media services in general, are a particular way of formatting and presenting content to an audience. This content, created or selected by an audiovisual media service provider, as well as the particular way it is formatted and presented by that provider, is 'captured' into a signal. The signal 'conveys' all of this information from a source (e.g. a TV camera) to a destination (a television set).

This relation between a broadcaster's programme (or an AVMS provider's service) and its signal, together with the objective of maintaining the integrity of programmes (or audiovisual media services) referred to in Recital 26, explains the use of the term 'signal integrity'. The term refers to an area of research and development in the field of electronics engineering, where, with ever increasing bitrates, the challenge is to keep pulsed signals as intact as possible throughout the paths on, e.g. a PC's motherboard.

Figure 7 - Digital Broadcasting Chain



Source: authors

On its path from source to destination, this technical signal can go through a number of different processes. These are processes that are necessary to convey the information as well as processes that are 'optional'. In this section we take a closer look at those processes. For the purpose of the AVMS Directive's new Article

7b, we pay particular attention to the questions of whether and to what extent these processes affect the data ‘carried’ by the signal and/or the information that is being ‘conveyed’.

Unless otherwise specified, we do not look into changes due to acts of piracy or force majeure. Nor will we be dealing with the possible legal consequences of these changes.

4.2.1 Source of the signal

The source of a signal could be anything from an episode of a TV series made available by a TV catch-up service to a documentary on a video-sharing platform ready to be streamed to a tablet, to the TV camera recording of the live “six o’clock news”, or to a TV ad scheduled for the commercial break during the prime time movie.

We will develop the technological context starting from the case of a live broadcast of the six o’clock news. In that case, the sources of the signal are the digital TV cameras and the microphones capturing the news being read and discussed in the TV studio. The signal is broadcast over managed closed networks as well as over the open internet. And the final destinations of the broadcaster’s signal are the screens and displays of television sets and other consumer devices.

4.2.2 Creating the signal

Capturing sound and images in electrical signals

Studio lights on, cameras ‘rolling’, microphones positioned and anchor-(wo)man ready at desk. The moment light hits the pixels of the digital cameras’ image sensors, the latter start producing analogue, electrical signals. These carry data about the intensity and hue of the light that is incident on those pixels (Fischer, 2020, pp. 18-19).

Digital cameras use the RGB colour model based on the Young–Helmholtz theory of trichromatic colour vision and on James Clerk Maxwell’s colour triangle that elaborated that theory (Feynman, Leighton & Sands, 2006, pp. 35-1 to 35-10). Each specific hue of light is obtained by an equally specific combination of the primary colours red, green, and blue.

Next, the analogue, electrical signals produced by the TV camera and carrying the RGB information are sampled and digitised.

Sampling the electrical signals

Sampling is done at a rate that allows for a perfect reconstruction of the signals. The minimum rate required for this is determined by the Nyquist-Shannon sampling theorem (Gibson, 1989, pp. 90-91). And the formula for perfectly reconstructing the original, analogue signal again, is developed on the basis of that same theorem.

This means that when the electrical, continuous signal carrying the video information is sampled at or above this minimum rate and subsequently reconstructed following the Nyquist-Shannon sampling theorem, the original signal reappears.

The sequence of discrete values resulting from the sampling process is subsequently converted to digital and the video data signal appears.

Sound captured by the studio microphones goes through a similar process and eventually results in an audio data signal.

Adding information to the signal

Even in the days of analogue television, the signal could already carry more than just sound (audio) and images (video). During the so-called 'blanks', periods of 'silence' during which the scanner moved to the next line or frame to be scanned, other information could be transmitted. In Europe these 'blanks' were used to develop the Teletext service.

In digital television there are no such 'blanks' anymore, but it is still possible to send additional information in addition to audio and video. This results in a third data signal.

The additional information may consist of a host of different data (short software programmes, ranging from simple graphics overlay controls to interactive navigation systems), signalling (control or status messages), media timing (to synchronize the presentation of different media), media sources (streams, graphic objects), and application servers (for interactive applications).

Below is a selection of data items (Harte, 2010, pp. 11-25) that can be sent along with the audio and video to the receiving devices (STB, TV set):

- Scheduling data – Scheduling data is used by e.g. (Interactive) Electronic Programming Guides and TV recommender Systems. ETS 300 707 is a European Technical Standard for the delivery of IEPG data over digital television broadcast signals (ETSI, 1996);
- Scene based metadata – Scene based metadata (also known as time-based metadata) are descriptions (in words) of programmes and commercial messages. These descriptions are used to trigger content dependent events (launch a supporting service, play a contextually optimal advertisement, ...);
- Cue messages – Cue messages indicate that an action or event is about to happen. Cue messages can be simple event-signals, or they can contain additional information about an event that is about to occur. They are e.g. used for the insertion of linear ads during a pre-scheduled commercial break;
- Triggers – Triggers are sets of rules specifically designed to decide/determine when a certain event should occur. Triggers are e.g. used to start ads when specific buttons on the remote control are pushed (e.g. the 'pause' button), or to select and play, on the basis of metadata, a contextual ad;
- Expansions – Expansions are audio and video that provide more information on a subject. They are usually triggered by a user action/request. With HbbTV, expansions are usually delivered over the internet connection. But when this connection is not available, expansions can also be delivered by the broadcaster's signal;
- Links – Links are connectable addresses that can be associated with specific media items in a display area and are inserted into a transport stream. A link can be selected by the viewer through remote controls, wireless keyboards, touch screens. The technique is frequently used for product placement;
- Bookmarks – Programs and commercials can be bookmarked for later viewing, further information or for referring them to family and/or friends. Expandable ads (see expansions) e.g. very specifically require bookmark information to be able to redirect the viewer back to where the programme left off when the 'view more' button was pushed;
- Viewer identification – Identification of the viewer and his/her profile is done by a manual process in which the viewer picks his/her name and profile from a list, or an automated process in which a profile is selected on the basis of the viewer's habits or what he/she is currently watching. The information, or the outcome of a local process using that information, may need to be communicated back to a non-local process deciding on the event that is to occur (personalised advertisement, personalised TV recommendation ...);

- TV widgets – TV widgets are independent software applications that can be added to TV systems to provide new features and services. Weather widgets are a well-known type of widgets. Widgets can be stored by the AVMS provider (broadcaster) and downloaded to the STB or TV set when needed or stored in the long term-memory of those devices and activated when an option is selected by the viewer or when a notification has been received;
- Event timing – Event timing is the information necessary to trigger events (start of a longer version of a commercial, display of contact or ordering information, display of TV coupons, display of background or historic information on a work of art in a documentary, ...). It can consist of time points or conditions. In the event of a commercial with interactivity, it could e.g. consist of the condition that a specific remote-control button is pushed during that commercial (see expandable ads);
- Application signalling – Applications may require messages or commands being sent back to the AVMS provider to acquire data needed to run the application, start or terminate software programs or perform identifications or verifications. In the example of a commercial with interactivity, where pushing a specific button on the remote control triggers an event, the event can e.g. consist of a longer or larger version of a commercial being streamed to the screen of the viewer (see expandable ads). Signalling in this case would consist of a message requesting this stream;
- User agents – Interactivity requires the viewers' devices (TV sets, STBs) to be able to understand and process interactivity instructions. That is where user agents come in: software that can request and process services on behalf of those devices. These user agents are also downloaded and installed over the connection carrying the signal.

The format and protocols used to send additional information along with the audio and video can be proprietary or standardised. The Hybrid broadcast broadband TV or HbbTV standard allows for additional information to be sent which enables broadcasters to, e.g. run services like enhanced teletext, catch-up services, video-on-demand, EPG, interactive advertising, personalization, voting, games, social networking, ... using an internet connection.

The elementary streams

In the end, an audiovisual media service (programme) is 'captured' by three separate data signals or elementary streams:

- a video data signal conveying the visual information (images, in a format created or selected by the audiovisual media service provider);
- an audio data signal (sound, again in a format created or selected by the audiovisual media service provider) that conveys the audio information;
- a third data signal conveying additional information (again created or selected by the audiovisual media service provider).

In principle, any change to the data carried by either one of these signals results in a change in the information conveyed.

There are, however, exceptions as we will see in the next subsection, which discusses how these signals are prepared for transmission or storage.

4.2.3 Transmitting the signal

Adaptation of resolution and aspect ratio

The data carried by the video signal is often adapted to the device on which the video will be displayed to ensure the best possible viewing experience. Nowadays the signal usually needs to be adapted to HDTVs

(which feature an aspect ratio of 16:9). On the open internet however, online video platforms usually need to adapt the video data to the typical resolutions and aspect ratios of tablets and smart phones.

The process by which resolution and aspect ratio of a video are changed involves adding data on new pixels or replacing data on old ones. This inevitably also implies a change of the visual information conveyed by the signal, however limited that change may be.

Coding the audio and video data signals

Coding refers to source and channel coding. While source coding (e.g. compression) is focussed on taking pressure of the transmission system, channel coding (forward error correction) is meant to bring the bit error ratio (BER) resulting from transmission back to a tolerable amount or, ideally, to zero.

- Source coding

Compression improves bandwidth efficiency (using as little bandwidth as possible, while maintaining an image that is to the eye's satisfaction). MPEG standards have played a massive role in this endeavour. MPEG-4, which already delivers very high on the desired balance between bandwidth and quality, is being widely deployed and used in the market (Fischer, 2020, pp. 36-40).

The signal resulting from the compression process - the elementary audio or video stream - will look very differently from the original audio or video data signal produced by the audiovisual media service provider. Compression changes the data carried by the video data signal.

The process used to compress the signal is, however, standardized, transparent and reversible (e.g. the ISO/IEC 14496 standard for coding of audiovisual objects, MPEG-4). Compression and the reverse process of expansion cancel out each other's effect on the data carried by the signal.

This also means that after compression, the original information remains available at any time by applying the reverse process of expansion. The information conveyed by the signal actually remains unchanged throughout.

- Channel coding

Before the data are sent on their way, protection is added (Forward Error Correction) against bit errors caused by *"interference such as noise, linear and non-linear distortion, discrete and wide-band interferers, intermodulation, multipath propagation, etc."* (Fischer, 2020, pp. 284-288).

The process in which protection against errors is added does not change the original data carried by the signal, but it does add new data. This new data leaves the information that is being conveyed unchanged. On the receiving end this new data is, however, used to try to cancel out changes to the original data caused by the phenomena mentioned above.

Multiplexing the elementary streams into a transport stream

The compressed signals actually come out in packets of variable length, called "packetised elementary streams" (PES). There is a PES for audio, for video and for any additional information that needs to be sent (see 4.2.2).

The audio and video could be multiplexed into one (MPEG-1) data stream. But, when the intention is to get a 'bouquet' of e.g. 20 different television programmes across to the receiving end, including any additional information, then the PES-packets are divided further into smaller, transmission-smart packets of constant

length, creating a transport stream. The transport streams of the different programs are then multiplexed into one overall (MPEG-2) transport stream (Fischer, 2020, pp. 41-51).

This is usually the story in DVB networks (Satellite, Cable and Terrestrial). In networks where the bandwidth in the last mile does not allow for this, only the signal of the programme chosen by the consumer is sent to the set-top box.

Once the overall transport stream has been created, it is ready to be either stored for later viewing or transmitted for immediate viewing.

Transmitting the transport stream

The overall transport stream is further divided over the transport containers that are proprietary to the transmission technology used (such as DVB, ATM and IP). These packets are then presented to the modulator where they are 'picked up' by a carrier wave to get them to the receiving end.

Modulation is again a transparent, reversible process (Fischer, 2020, pp. 261-301) from which the original signal is retrieved on the receiving end. Again, the appearance of the signal changes, but the information it is carrying remains the same.

4.2.4 Receiving the signal

Satellite, cable, terrestrial and IPTV-networks end in set-top boxes. The latter extract the original, digital signals carrying the audio, video and other information, by demodulating, correcting, demultiplexing and expanding the signal they received. Once extracted, they feed them to the TV sets through their HDMI or SCART connections.

In case of the open internet, the smart TV, internet TV box, desktop, laptop, tablet or smart phone connect directly to the internet. After demodulation and correction, these devices see IP-packets carrying the overall (MPEG-2) transport stream in. Once fully extracted again from the stream, the separate audio and video signals are fed into the audio and video cards to recreate the images and sound.

4.2.5 Storing or uploading the signal for on-demand services

MPEG-2 transport streams, carrying MPEG-4 compressed data, are stored in MP4-files. MP4 is part of the MPEG-4 standard and is the designated digital multimedia container file format for MPEG-4 content. In addition to (compressed) audio and video information, it can also store other data such as subtitles and still images. And, like most modern container formats, it allows its contents to be streamed, e.g. on the internet.

These MP4-files can e.g. be used by the audiovisual media service provider to provide catch-up services on either closed distribution networks, or the open internet. The file, which can e.g. be an episode of a broadcaster's TV series, is then at a consumer's request downloaded or streamed to the STB, Smart TV or other device.

- On DVB and IPTV-networks, it is often a distributor providing the infrastructure and system to create an on-demand service for a broadcaster such as e.g. a catch-up service;
- On the internet, next to internet Service Providers (ISPs) for the connections and content delivery networks (CDNs), the MP4-files are uploaded to a (third party) online video platform.

4.2.6 Modifying the signal

In addition to the different standardised processes involved with regular distribution and/or storage, the signal can be further processed at any time.

Adapting resolution and aspect ratio

Adapting the resolution and aspect ratio, referred to as resizing, or scaling video, is a commonly used video processing technique. The technique is not only used to adapt video data to the viewing device (see 4.2.3), but also in Interactive Electronic Programme Guides (IEPG), picture-in-picture views on TV sets, or 'squeeze back' type of TV ads.

- (Interactive) Electronic Programme Guides use video resizing to play the programme that is currently selected in a smaller window (frequently in a corner of the main screen);
- Picture-in-picture uses video resizing to show a downscaled version of a second, contemporarily running programme in a smaller window on the main screen. Both signals (main and secondary) are changed by the picture-in-picture view:
 - The data carried by the video signal of the secondary programme is changed by the resizing process. As discussed in subsection 4.2.3, this change also implies a change in the visual information conveyed by the signal, however small that change may be (considered);
 - Part of the data carried by the video signal of the main programme is replaced with the data of the window playing the secondary programme. This change in the main programme's video data also effectively changes the information conveyed by the main programme's signal, however little that change in the original information may be (considered);
 - Usually also only the sound of the main programme can be heard, while the audio stream of the second programme is interrupted.
- With 'squeeze back' types of TV ads the main programme is resized to smaller dimensions and the space on the display that is freed up by this process, is used to display an add (e.g. during closing credits to keep viewers' attention for the programme up next).

As discussed earlier, the process of video resizing or scaling (up or down) always involves new pixels that were not there before (Parker & Dhanani, 2013, p 29) (a new pixel replacing several original pixels, or several new pixels in addition to the existing ones). When the process is not reversed before the signal 'hits the screen' (which is usually the case), the video data reaching the screen is different from the video data originally broadcasted. Video resizing changes the signal at the level of the data it is carrying as well as at the level of the information it is conveying.

However, contrary to the processes discussed up until now, where impact on the information conveyed is binary (there either is impact or no impact), video resizing's impact on information seems to come in degrees. A number of factors play a role in that assessment, amongst which the nature of the information conveyed (e.g. sober images or, instead, rich in detail) and the 'eye of the beholder' (a viewer watching a documentary on the famous painters of the 20th century, a viewer watching a talk show, or, instead, a viewer simply keeping track of where his or her programme is at while checking the evening's programme schedules).

As will become apparent in the sections on national legislations and stakeholder opinions, opinions differ on the effect video resizing has on the information conveyed.

Editing the signal

Editing audio and/or video, i.e. where a particular set of video frames and related audio are selected for the viewer by a party other than the audiovisual media service provider (broadcaster) that originally provided the signal, is a process that changes the broadcaster's signal, not only at the level of the data it is carrying, but also at the level of the information it is conveying. The signal hitting the viewer's screen only conveys

part of the information originally provided by the broadcaster. The viewer does not get to see the entire programme originally provided by the broadcaster.

Merging the signal

Overlays are messages (text, graphics, animation) that are 'placed on top of' other media. They can be solid or transparent. They are increasingly present on nowadays television displays:

- advertising in the form of logos, graphics or scrolling text;
- graphics and text indicating the status of TV or STB functionalities (volume bars, channel numbers, play, pause, fast forward);
- graphics and text from other services, e.g. smart home services.

The name refers to the visual impression that is created of a video running in the background, unaltered, while another image seems to be in front, partly covering it. The visual impression is often considered stronger when the overlay is transparent.

Technically speaking, however, the original image and the overlay are merged together for the duration of the message. This means that part of the data which the signal originally carried is effectively replaced with data from the overlay message. The video data reaching the screen is different from the video data originally broadcast and, consequently, for the duration of the overlay message the viewer does not get to see the image as intended by the broadcaster. Overlays change the signal at its data and its information level.

As with video resizing, however, overlays' impact on the information conveyed seems to come in degrees. Assessments tend to again depend on the case and/or be prone to subjectivity. Assessments already tend to be different when the overlay at hand is transparent instead of solid. The position on the screen, the size and the content that happens to be covered are other factors playing a role in the degree to which an overlay can be considered problematic. Some factors lend themselves to being used normatively, such as position and size. Online, where overlays are omnipresent, they usually follow IAB ¹⁵⁷ standardised formats. Other factors, such as the content that happens to be covered by the overlay, are more subjective in nature. Assessments will depend on the nature and importance of the information covered, the interest of the viewer in the subject of the information and the duration of the overlay message.

Interrupting the signal

There are quite a number of different situations in which the broadcaster's signal is interrupted. The interruptions can be total or partial:

- When a viewer hits the distributor's 'Pause' button during a broadcaster's television programme, the last frame before the button was hit, remains frozen on the screen. Or maybe a different event is triggered, such as an ad provided by the distributor. In any case, during the 'pause' no part of the broadcaster's signal is reaching the viewer's screen anymore. The signal is fully interrupted;
- In the picture-in-picture example described earlier, the signal of the programme displayed in the smaller window is partially interrupted: a resized version of the video continues to play, but the audio is cut off;
- When audio and video are passing through, but additional information carried by the signal is filtered out, e.g. all information that is not purely audiovisual, the signal is partially interrupted.

¹⁵⁷ Interactive Advertising Bureau, www.iab.com, www.iabeurope.eu

Furthermore, an interruption of an audiovisual media service results in a different experience for the viewer, depending on whether the service involved is linear (for simultaneous viewing) or non-linear (for on-demand viewing).

- When a linear service such as a television broadcast is interrupted, then the part of the broadcaster's programme that ran during the time of the interruption, will effectively never hit the viewer's screen (at least, not until a recorded version is made available). This is e.g. the case when a mid-roll is inserted in a live television broadcast on the internet;
- However, when a non-linear service has been interrupted, the programme can, and usually does, immediately resume from where it left off.

4.2.7 Recording the signal

Services and functionalities such as personal video recorder, pause, rewind or fast forward offered by distributors are made possible by offering consumers individual storage capacity in either their STB or on the broadcast transmission network.

A personal video recorder (PVR) enables a viewer to record television programmes and watch these at his/her convenience. Functionalities such as play, stop, pause, rewind or fast-forward help the viewer to explore the recorded content at his/her own pace and degree of interest.

Functionalities such as pausing, rewinding or fast-forwarding all change the signal coming from the source (the recorded version of the programme):

- Hitting the pause-button results in a full interruption of the stream of images, sound and other data coming from the source. The last frame before the button was hit, remains 'frozen' on the screen. Or, e.g. in a more interactive setting, an ad starts to play. When the 'pause'-button is hit again, or when the 'play'-button is hit, the recorded version resumes from where it left off;
- With the 'rewind' and 'fast forward' functions, the viewer is able to go to a point earlier, respectively later in the recording. Often only a selected number of frames is shown during the process to give the viewer an idea of the point which he/she has reached. The signal hitting the viewer's screen is a shortened version of the recorded programme.

Recording a signal does not change the data it is carrying nor the information it is conveying. This does, however, change the purpose of the content from linear (simultaneous viewing) to non-linear (on-demand viewing).

The typical functionalities that come with PVR-services and offer the viewer the comfort of exploring the content at their own pace and degree of interest (pause, play, stop, rewind, fast forward) change the signal at its data as well as its information level. What the viewer gets to see on his/her screen is different from what the broadcaster intended him/her to see.

4.3 The competitive context

The section in brief

This section introduces the audiovisual media value chain and the different stakeholders (AVMS provider, distributor, online video platform, content delivery network, TV manufacturer, viewer).

It shows advertising is playing a role of significance for most of the stakeholders involved and it provides the reader with insights into what may drive different stakeholders' behaviour.

With the exploration of the competitive context, the report provides a basis for additional elements with which to enrich the language that will be used for further analysis.

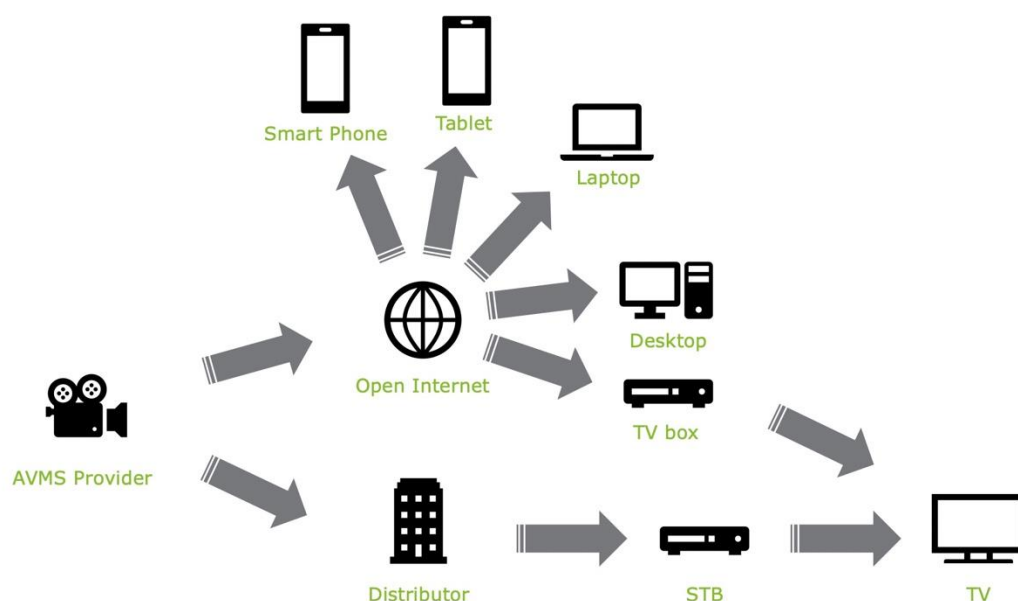
In this section, we will briefly explore the competitive forces that are at work in the audiovisual value chain. The purpose is to understand:

- The kind of incentives that may be at work:
 - when audiovisual media service providers insist on maintaining control over their programmes and audiovisual media services, or;
 - when other stakeholders are tempted to instead take control of those same programmes and audiovisual media services;
- And subsequently, how respective actions from stakeholders may affect the audiovisual value chain.

4.3.1 Value chain

The signal's value chain consists of creation, transmission and reception. These steps mainly involve audiovisual media service providers (broadcasters), operators of satellite, terrestrial, cable and IP networks, video-sharing platforms, content delivery networks and consumer device manufacturers.

Figure 8 - Distribution over a private network (DVB-T/C/S, IPTV) and the open internet



Source: authors

In this value chain, pressure from convergence is everywhere, creating both threats and opportunities and moving it away from its traditional equilibrium. Although stakeholders remain interdependent, they are not sure yet whether and where they still have joint interests. The new equilibrium, if any exists, has not been found yet, and while still moving, the current ecosystem is rather fragile.

In research on changes affecting commercial media, Donders et al (2018, pp. 89-107) found that legacy media managers are not fatalistic about the future of their market, but recognised “that the extent to which their companies and media ecosystems used to be shielded away from international trends and competition is over”.

4.3.2 Advertising

The shift in advertising spend away from television and towards digital or online displays, and more precisely towards programmatic online display advertising, is one of the factors weighing heavily on the context in which stakeholders now find themselves.

Digital Display or Online Advertising

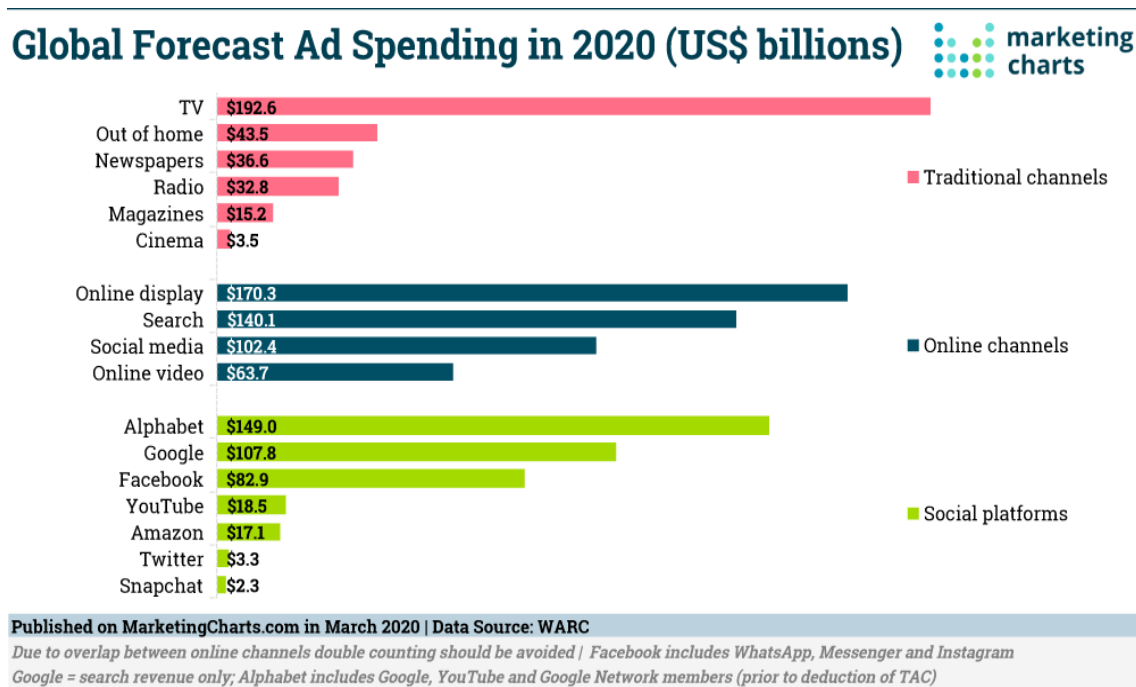
Inspired by the numerous intrinsic possibilities of online solutions to measure and quantify, advertising budgets are growing increasingly conditional upon the degree to which performance can be tracked. Even though TV advertising is still considered to be of very high, if not the highest value amongst all forms of advertising (Broughton Micova & Jacques, 2019, pp. 42-44), pressure to be able to quantitatively demonstrate impact and return is growing.

The European Audiovisual Observatory (2019) reported on an EU market for television advertising that was in decline at a rate of 1.1% in real terms between 2008 and 2017. The report points to the economic climate to account for this, but also at decreasing viewing time among young viewers and the proliferation of TV

channels (which causes competition in advertising tariffs and between advertisers with increasing market power).

Still according to the European Audiovisual Observatory, the internet has increasingly become a video medium and is currently the primary advertising medium in Europe¹⁵⁸.

Figure 9 - Global Forecast Ad Spending in 2020



Source: www.marketingcharts.com

According to forecasts from WARC¹⁵⁹ (Figure 9), half of the global ad spend, which is estimated to total USD 659.6 billion, is going on online advertising. And with USD 231.9 billion going to the duopoly of Alphabet (including Google, YouTube and Google Network members) and Facebook (including Instagram, WhatsApp and Messenger), advertisers will invest more in the duopoly than in TV (USD 192.6 billion)¹⁶⁰.

Programmatic Advertising

A growing share of digital display advertising budgets is finding its way to programmatic advertising. A report from Zenith (Figure 10) shows that while in 2012 still only 10.4% of global digital display spend was transacted programmatically (USD 3.9 billion of USD 37.8 billion), in 2019 this had already reached 65.3% (USD 106.0 billion of USD 162.3 billion). Zenith forecasts this will grow to 69.2% in 2020 and to 72% in 2021 (USD 147.1 billion of USD 204.4 billion)¹⁶¹.

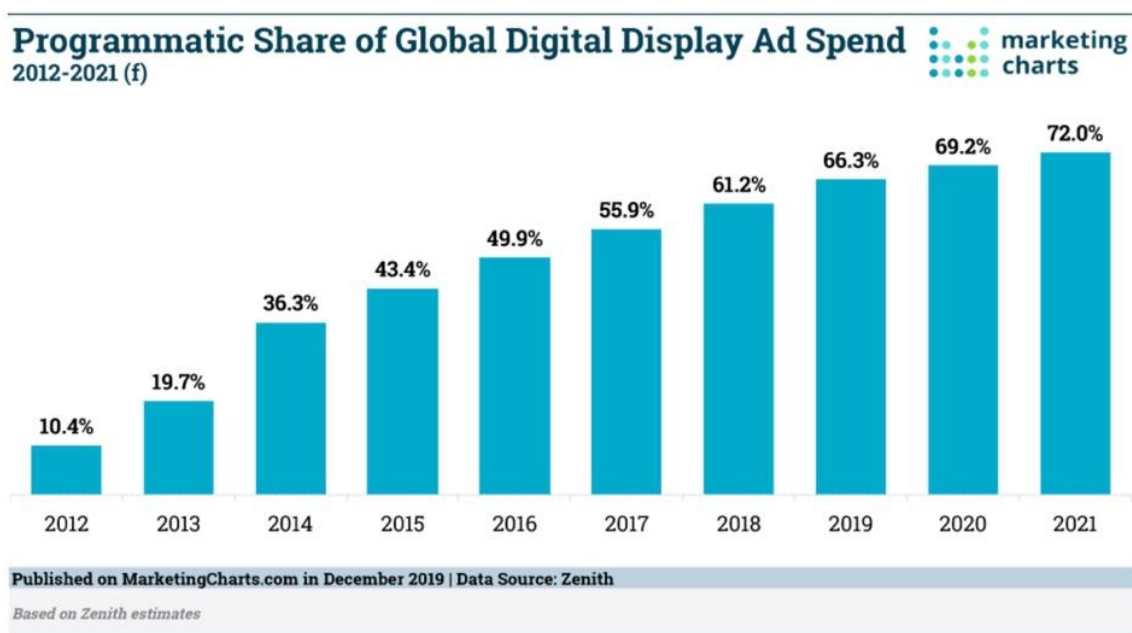
¹⁵⁸ EU-27 + UK, BA, GE, CH, MK, NO, RU, TR

¹⁵⁹ See: <https://www.warc.com>

¹⁶⁰ Marketing Charts (2020). The Duopoly Is Expected to Outpace TV in Global Ad Revenues This Year. Available at: <https://www.marketingcharts.com/advertising-trends/spending-and-spenders-112297>

¹⁶¹ Marketing Charts (2019, 1). Programmatic's Share of Global Digital Display Ad Spend Expected to Keep Climbing. Available at: <https://www.marketingcharts.com/advertising-trends/programmatic-and-rtb-111372>

Figure 10 - Rising share of programmatic advertising



Source: www.marketingcharts.com

The market value of programmatic advertising in Europe is reported to have evolved from USD 10.1 billion in 2017 to USD 14.7 billion in 2019¹⁶². Based on the numbers reported by Zenith, this would mean that in 2019 programmatic ad spend in Europe accounted for 9.1% of the global digital display spend.

User data

An essential ingredient for an addressable advertising campaign is high quality user data. Having access to such data is critical to be able to offer a credible addressable advertising solution.

With their independence of network, ease of use, high measurability, and quantifiable performance tracking, online advertising solutions offered by video-sharing platforms are difficult to compete with. But with television and the Internet converging, opportunities have developed for other players on the market for digital display or online advertising, such as broadcasters, to up their game and new players, such as distributors and TV set manufacturers, to step in.

Their challenge is, however, to reach a scale that makes their user data valuable enough to matter:

- Broadcasters can compile a rather complete view of viewers' choices when they resort to cookie-like technologies to track what viewers are doing while not watching their channels. But, to that end they depend on distributors and TV manufacturers agreeing to e.g. use technological standards such as HbbTV that allow them to install and run such technologies;
- An individual manufacturer of television sets can only obtain a part of the picture since it can only track the choices of viewers using its own sets - and only when those sets are connected to the internet;

¹⁶² Market value of programmatic advertising in Europe from 2017 to 2019 (in billion U.S. dollars). Available at: <https://www.statista.com/statistics/947562/programmatic-ad-market-value-europe/>

- The user data which individual distributors can have access to is limited in a similar way, since they can only track the behaviour of their own subscribers.

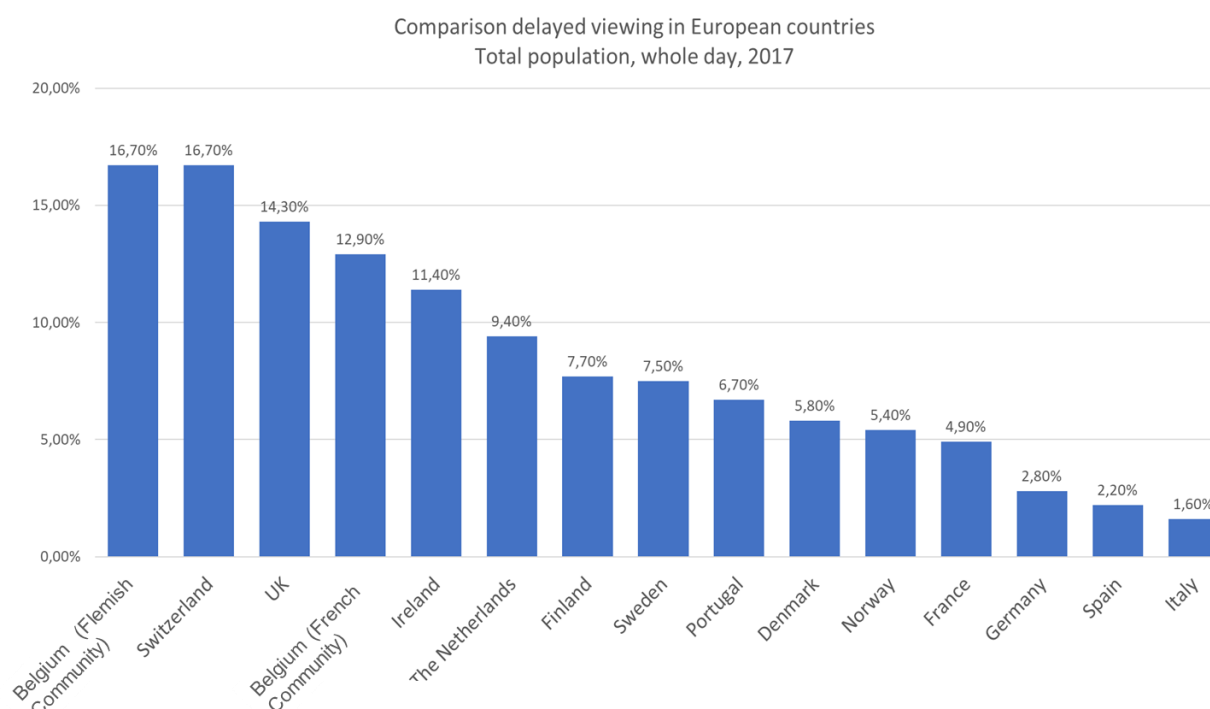
4.3.3 Broadcasters

Traditionally, broadcasters have competed with each other for audiences on the one hand and television advertising budgets on the other, with larger audiences meaning better chances of winning bigger budgets. But as the Directive states, market realities are changing.

Ad skipping

As discussed in the previous section, ad skipping is nothing more than fast-forwarding through the commercials in a programme that a viewer recorded through the PVR service offered by the distributor. However, with advertising being a key source of income for many private broadcasters, viewing behaviour continuing its shift towards non-linear, and on average 75-80% of people that viewed delayed content, skipping the ads (Van den Bulck & Donders, 2014) (Donders & Evens, 2014), ad skipping is weakening broadcasters' positions on the advertising market.

Figure 11 - Delayed viewing in the EU



Source: based on EBU figures for 2017; used in (Wauters et al., 2018)

Ad blocking

Ad blocking services are reported to be of growing concern to broadcasters, especially in Western Europe where in 2015 France and Germany are believed to have experienced ad blocking percentages of 27 and 24% respectively¹⁶³.

¹⁶³ Digital advertising in Europe - Statistics & Facts. Available at: <https://www.statista.com/topics/3983/digital-advertising-in-europe/>

Addressable advertising

In the last decade, broadcasters have been forced to share their audiences' attention with online media to an ever-growing extent. Up to the point even that the new AVMS Directive assumes AVMS providers and video-sharing platforms basically "compete for the same audiences and revenues"¹⁶⁴.

Contrary to television advertising, where advertisers pay on the basis of consumers' anticipated exposure to an ad (Broughton Micova & Jacques, 2019, p 20), the internet offers a different, more accurate set of tools. With these tools online advertising is not confined to mass advertising in the way traditional television advertising is:

- Through its increasing use of technologies such as programmatic advertising, big data and machine learning, digital display or online advertising is very capable of performing more targeted, or even individualised advertising;
- The digital nature of online video advertising inherently allows far more accurate assessments of impact and performance than is the case with television advertising where in its analogue legacy no technologies developed to track consumers' steps/behaviour after having been exposed to a commercial.

Aycock (2019, pp. 67-69) believes addressable advertising – as a combination of aggregated targeted microadvertising (ATMA), programmatic advertising and dynamic ad insertion – *"will be the way in which 21st Century Television viewers will receive their advertising"* and *"will lead 21st Century Television into a new 'golden age' of television advertising [...]"*. A number of broadcasters have in any case recently been announcing, launching or even rolling out addressable advertising.

As discussed earlier, for addressable advertising to work well, high quality user data is required. The better a broadcaster knows its audience, the more an addressable advertising campaign will pay off for the advertiser. As found by Donders et al (2018, pp. 88-107) *"Connecting with audiences is [...] of pivotal importance in developing [the] new business models"*.

Additional information

In the light of the strategic importance of addressable TV, and in particular addressable advertising, broadcasters can be expected to advocate an interpretation of the new measure that offers the broadest possible protection of the signal and the highest possible leverage in negotiations.

In practice their view may be at odds with that of distributors and smart TV manufacturers and lead to disputes over signal integrity that cannot be solved without more legal certainty with respect to the protection which additional information in the signal is entitled to.

Discriminatory behaviour

In case of (a certain degree of) vertical integration, organisations may (be tempted to) engage in discriminatory behaviour with respect to the new Article 7b of the AVMS Directive, more precisely by consenting to overlays or modifications by their own distributor (or video-sharing platform) while refusing the same overlays or modifications from other distributors (or video-sharing platforms).

¹⁶⁴ Recital 4 of the Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities

4.3.4 Distributors

Traditionally distributors behaved as platforms, bringing together broadcasters and viewers, while competing with each other for content and subscribers.

Commoditisation

With increased competition and pressure from Over-The-Top (OTT) media services, operators' traditional services have been as good as commoditised. Margins have eroded and revenues are still shrinking. Expectations with respect to volumes and demand for connectivity, however, keep rising, and will require significant new investments.

There remains little other choice than to venture into the upper layers where 'fast moving' applications and services roam (content, cloud, finance ...) and continuous innovation is key to remain relevant in the light of ever-evolving customer demand.

To be able to move at the speed with which digital applications and services evolve, operators need to transform themselves into organisations that are flexible by design. With ever-increasing complexity of management and operation this requires a smart approach combining strong interfaces between departments and sophisticated customer service systems.

Services, functions and features

Distributing audiovisual media fits this picture. Operators venturing into distribution have, on the one hand, a permanent interest in capturing their subscribers' wishes with regard to the service and come up with innovate features and functionalities in response. On the other, they need to keep a close check on costs, which, to a certain extent, depend on the bargaining power of the AVMS providers they are doing business with.

In the light of this, distributors might be especially happy to offer services, features or functionalities that help keep that power in check. Indeed, while it has become of key importance for broadcasters to build stronger relations with their audience, strategically deploy their editorial role and develop more of a brand to which viewers can relate and with which they can bond, distributors tend not to have an interest in broadcasters being too successful at this since it increases the latter's bargaining power. Distributors risk getting caught between powerful broadcasters and their loyal bases of viewers with a repetition of the OTT-scenario pushing them deeper into the dreaded valley of commoditisation.

However, capturing customers' wishes in terms of services and coming up with innovative functionalities and features is exactly also how smart TV manufacturers are trying to distinguish themselves. And many of those services, functionalities and features can serve as alternatives to what distributors are offering.

User data

Venturing into distribution, often as part of a wider portfolio of services, provides the average distributor with additional and valuable subscriber data, in addition to the subscriber data it potentially already had access to through its other service offerings (fixed and mobile telephony, Internet access).

However, the picture which a distributor can create is limited to its subscriber base. And this base is tied to the distributor through a variety of formulae ranging from stand-alone contract services to quadruple-play agreements.

Nonetheless, this data is valuable in the hands of agencies selling addressable advertising solutions and campaigns and beyond selling the data to those agencies, the distributor's infrastructure could prove to be a good platform from which, for selected purposes, to run a successful addressable advertising campaign.

Additional information

In view of the important role played by additional information in enabling broadcasters to offer more advanced advertising solutions and the possibilities it creates for broadcasters to offer services, functionalities and features with which distributors are trying to distinguish themselves, the latter may tend to advocate an interpretation of the new measure that offers as little protection as possible to the additional information in a broadcaster's signal and, on the contrary, seeks to minimise the leverage the new measure might offer broadcasters.

This may be at odds with the position taken by broadcasters and in practice lead to disputes over signal integrity that cannot be solved without more legal certainty with respect to the protection which additional information in the signal is entitled to.

Self-promotion

Where there is (a certain degree of) vertical integration, organisations may (be tempted to) e.g. overlay the signal of another broadcaster to promote their own broadcasters and channels.

Discriminatory behaviour

Where there is (a certain degree of) vertical integration, organisations may (be tempted to):

- Apply more advantageous technical and/or financial conditions for distributing the signal of their own broadcaster than when handling the signal of a different broadcaster;
- Introduce bias into their TV Recommender Systems in favour of their own broadcasters and channels.

4.3.5 Online video platforms

With online video platforms we mean, without prejudice to the definitions used in the AVMS Directive, online video-sharing platforms or online platforms offering on-demand video services.

White labels

In the case of 'White label' online video platforms leave the audiovisual media service provider in total editorial control of their service. The audiovisual media service provider keeps total editorial control over their service.

Advertising-based business models

As discussed earlier, online video platforms with an advertising-based business model, actually compete with audiovisual media service providers for the same audience and the same advertising budgets. There are nonetheless broadcasters present on such online video platforms, but mainly with permanent news channels or breaking news bulletins.

Contrary to the traditional broadcasters, these online video platforms have grown up with the ease of use and advanced possibilities of internet technologies to offer programmatic, dynamic, digital display advertising solutions.

In 2020, online ads will account for more than half of the total global ad spend. Of this, 35% is expected to go to Alphabet (including Google, YouTube and Google Network members) and Facebook (including Instagram, WhatsApp and Messenger). That would already be more than what advertisers will spend on TV advertising¹⁶⁵.

These organisations' businesses consist of selling inventory to advertisers that consists of (interactive) insertions and overlays on audiovisual media services which they are licenced to share.

Discriminatory behaviour

Similar to the case of distributors, organisations may, in case of (a certain degree of) vertical integration, (be tempted to):

- Apply more advantageous technical and/or financial conditions for distributing the signal of their own audiovisual media service provider (broadcaster or on-demand service provider) than when handling the signal of a different audiovisual media service provider;
- Introduce bias into their recommender systems in favour of their own audiovisual media service providers.

4.3.6 Smart TV manufacturers

Smart TV manufacturers used to compete with each other on the basis of their research in and development of advanced display technologies. And they still do. But internet connectivity has created new avenues for their businesses, be it with mixed success.

User data

The connection with the internet has made it worthwhile for manufacturers to enable their TVs to track their customers' viewing behaviour. As discussed earlier, this data is extremely valuable in the hands of agencies producing and selling addressable advertising solutions and campaigns. And when the TV is connected, the campaign can be run via the internet, independently of the traditional combination of broadcasters and distributors.

The main challenge is how to overcome the fact that manufacturers can only offer a fragmented view of viewers' behaviour. Indeed, only the behaviour of customers of the manufacturer can be followed, and only when those customers connect their smart TV to the internet. To get a fuller picture, TV manufacturers would have to put their data together.

Services, functions and features

As discussed earlier, manufacturers are (at least partly) providing an alternative to the services, functions and features offered by distributors.

This includes e.g. providing for a seamless integration into the TV environment of at least the most popular mobile applications (e.g. social network apps).

Additional information

¹⁶⁵ Marketing Charts, (2019, 2). The duopoly is expected to outpace TV in global ad revenues this year (Marketing Charts 2019) <<https://www.marketingcharts.com/advertising-trends/spending-and-spenders-112297>>. Available at: <https://www.marketingcharts.com/advertising-trends/spending-and-spenders-112297>

With the possibility of additional information enabling broadcasters to make similar service offerings to TV manufacturers, there may be tension there between broadcasters and manufacturers as well. Tension that can lead to disputes, or to negotiations and agreements.

4.3.7 Consumers

Consumers generally have an interest in obtaining user-friendly access to a rich diversity of voices and content as well as technologies, applications, services, functionalities and features that improve their viewing comfort, pleasure and experience, for an affordable price (fees, time, ...) and without their privacy and security being compromised.

Consumers have usually no interest in being locked in by broadcasters, distributors, video-sharing platforms or TV manufacturers.

They tend to do better when provided with timely and correct information and benefit from situations where different providers have to compete with each other on price and quality and are forced to be innovative, technologically and business-wise.

4.4 Cases

The section in brief

This section addresses a number of cases and expresses them in terms of processes.

The cases are further characterised by elements that echo the discussion of the competitive context.

By the end of the section all cases have been translated into the language developed for analysis.

To make our further discussions more tangible, this section will introduce a number of cases organised into a number of categories which feature, amongst others, some well-known services and functionalities:

- Regular distribution and storage - Services of distribution and storage offered by e.g. electronic communication networks, video-sharing platforms and content delivery networks;
- Irregular distribution - Full or partial interruption caused by electronic communication networks;
- Advertisements – Ads by parties other than the AVMS provider, such as electronic communications networks, video-sharing platforms and TV manufacturers;
- Electronic Programme Guides - More precisely, the EPG's offered by parties other than the AVMS provider, such as electronic communications networks, video-sharing platforms and TV manufacturers;
- Smart TV Systems – More precisely, TVs connected to both a private, closed distribution network and the open internet;
- TV Recommender Systems - More precisely, the service offered by electronic communications networks, video-sharing platforms and TV manufacturers;
- Home Security Systems – Services offered by parties other than the AVMS provider;
- Personal Video Recorders – Primarily the PVR services offered by electronic communications networks;
- TV Classification Systems – More precisely, the service offered by electronic communication networks and TV manufacturers.

In the next section, we will revisit all of the cases introduced under these categories and analyse them in the light of the AVMS Directive's new Article 7b. At this stage however, our intention is to:

- Try to establish, on the basis of the technical and competitive contexts developed in the earlier sections:
 - whether and at which level (data, information) the AVMS provider's signal has been changed; and,
 - what may be a stakeholder's motives for administering/inflicting that change.
- Gather the characteristics of the cases that we believe will be relevant for our further analyses.

4.4.1 Regular distribution and storage (RDS)

We invite the reader to go back to the situation described in section 4.2, more precisely the case of the live broadcast of the six o'clock news. Imagine we are watching this live broadcast on both our TV set in the living room and a tablet when walking out of the house e.g. into the street or into our garden.

The broadcaster's signal may reach our TV set over e.g. a DVB (cable, satellite, terrestrial) or IPTV network. It is streamed live over the open internet from a video-sharing platform to our tablet connected over Wi-Fi or 4G.

On its way to our respective displays, the signal is subjected to a number of processes that in some cases change the data carried by the signal, but not the information that is being conveyed (e.g. coding), in other cases change the data as well as the information (e.g. when resolution and aspect ratio are adapted to the viewer's device) and in still others simply leave data and information untouched (e.g. modulation).

The live broadcast was also made available for later viewing (stored on the distributor's IPTV network and/or uploaded to a 'white label' video-sharing platform), without any modification or overlay changing the broadcaster's original data or information.

When it comes to the question whether there are commercial purposes involved or not, we mainly monitor whether there is an intention to promote or sell a particular product or service (so, whether there is a commercial communication involved or not). In these cases, e.g., none of the processes have, beyond being part of a commercially offered service themselves, any further commercial purposes.

Table 19 - Cases RDS.1, RDS.2 and RDS.3

Case	Provider	Description	Process	Initiator	Commercial Purposes
RDS.1	Distributor	Technique used to ensure best viewing experience independent of consumer device	Adapting resolution and aspect ratio	Distributor	No
RDS.2	AVMS provider/Distributor	Technique used to take pressure of transmission system	Source Coding	AVMS provider/Distributor	No
RDS.3	AVMS provider/Distributor	Technique used to correct errors incurred during transmission	Channel Coding	AVMS provider/Distributor	No
RDS.4	AVMS provider/Distributor	Technique used to have an electromagnetic wave carry data	Modulation & Demodulation	AVMS provider/Distributor	No

RDS.5	AVMS provider/Distributor	Techniques used to record / preserve data	Storing & uploading	AVMS provider/Distributor	No

4.4.2 Irregular distribution (IRD)

The case of a distributor filtering out a so-called 'Red Button' solution

Additional information which a broadcaster sends along in its signal (e.g. in line with the HbbTV standard) to enable a so-called 'Red Button' solution¹⁶⁶ can be actively filtered out (e.g. by the distributor). In that case the solution will not function (even when a red button is displayed on the viewer's screen).

Filtering out part of the data carried by a signal, i.e. (partially) interrupting that signal, changes the signal at data as well as at information level. And there is no discussion possible as to the degree to which the interruption has an effect on the information conveyed: the situation switches from the information being conveyed to the information not being conveyed anymore.

Beyond being performed by an organisation that is driven by commercial considerations, the filtering's purpose is not to sell or promote a particular product or service.

Table 20 - Case IRD.1

Case	Provider	Description	Process	Initiator	Commercial Purposes
IRD.1	Distributor	'Red Button' solution is filtered out	Interruption	Distributor	No

The case of a distributor filtering out an 'Addressable Advertising' solution

This case is similar to the previous one, except that this case concerns so-called 'Addressable Advertising' instead of a 'Red Button' solution. To enable that solution the broadcaster needs to send additional information along with the images and sound. If that additional information is filtered out, i.e. should that part of the signal be interrupted, the solution is disabled.

Again, the filtering is performed by an organisation that is driven by commercial considerations. Its purpose, however, is not to sell or promote a particular product or service.

Table 21 - Case IRD.2

Case	Provider	Description	Process	Initiator	Commercial Purposes
IRD.2	Distributor	'Addressable Advertising' solution is filtered out	Interruption	Distributor	No

¹⁶⁶ 'Red Button' solution: a red or differently coloured button is displayed on the screen, inviting the viewer to push the same coloured button on the remote control in case he or she wishes further information on the subject at hand.

The case of a distributor not supporting a broadcaster's choice of technology

The situation is that of a broadcaster intending to offer all its viewers a free catch-up service. To that end, however, a viewer's smart TV or set-top box must support the HbbTV 2.0.1 standard and be connected to the internet.

When the set-top box or smart TV is not suited for the HbbTV 2.0.1 standard, or even not equipped to detect HbbTV information at all, the HbbTV information sent to enable the catch-up service is 'passively' filtered out of the broadcaster's signal. The information is not (fully) picked up or processed by the set-top box or smart TV. The broadcaster's signal is de facto partially interrupted.

In view of the discussion in section 4.3, one could expect the broadcaster to have an interest in seeing such cases resolved as soon as possible.

Table 22 - Case IRD.3

Case	Provider	Description	Process	Initiator	Commercial Purposes
IRD.3	Distributor	Catch-up service is filtered out	Interruption	Distributor	No

4.4.3 Advertising (ADV)

The case of an online video platform resizing video in favour of a so-called 'skin ad'

In this case we are looking at a situation in which the broadcaster's signal is scaled down by an online video platform to create space for a skin ad (an advertisement in the 'skin' of the media player).

Figure 12 - Case ADV.1 - Skin ad from online video platform



Source: authors

The resizing process changes the signal at data as well as at information level. In the discussion as to the extent to which the process affects the information being conveyed, opinions may again differ.

Table 23 - Case ADV.1

Case	Provider	Description	Process	Initiator	Commercial Purposes
ADV.1	Online video platform	Skin ads around the broadcaster's programme which is squeezed and pushed back	Adapting resolution and aspect ratio	Online video platform	Yes

The case of an online video platform interrupting a signal in favour of a pre-roll ad

This is the case of a broadcaster's signal being interrupted by an online video platform in favour of an ad that runs for a number of seconds. When the ad closes, the interruption is immediately lifted and the broadcaster's content starts again from where it had left off (in this case, from its start).

Contrary to previous cases, the changes caused by the interruption at data as well as at information level cannot be the source of differences in opinion as to the degree to which the information is changed. For the duration of an interruption, none of the broadcaster's data reaches the screen anymore and none of the information reaches the viewer anymore.

Table 24 - Case ADV.2

Case	Provider	Description	Process	Initiator	Commercial Purposes
ADV.2	Online video platform	Pre-roll ad during non-linear content on the open internet	Interrupting	online video platform	Yes

The case of an online video platform interrupting a live broadcast signal in favour of a mid-roll ad

In this case we consider a broadcaster broadcasting live on the open internet through a channel on an online video platform. The online video platform, however, regularly interrupts the broadcaster's signal to insert a mid-roll ad that has the appearance of a pre-roll ad and is skippable after five seconds.

During the ad, the broadcast is suppressed. That part of the programme is lost to the viewer (unless it is recorded at the same time). The broadcaster's signal meant for simultaneous viewing is fully interrupted.

Again the effect of the process (interruption) on the data as well as on the information does not come in degrees as with video resizing or overlays, but is simply binary: the situation switches from original data hitting the screen and information reaching the viewer to no data hitting the screen anymore and none of the information reaching the viewer anymore.

Table 25 - Case ADV.3

Case	Provider	Description	Process	Initiator	Commercial Purposes
ADV.3	Online video platform	Mid-roll ad during live broadcast on the open internet	Interrupting	Online video platform	Yes

The case of an online video platform interrupting a signal in favour of a pre-roll ad

The context is that of a catch-up version of a programme that was broadcast live on the open internet and in which now an expandable pre-roll ad has been inserted.

As discussed in section 4.2, when a non-linear programme is interrupted, it can resume from where it left off once the interruption is lifted. In this particular case, the catch-up version of the programme left off at its very beginning when it was interrupted by the pre-roll ad. When the ad closes (or is closed by the viewer), the catch-up version of the programme resumes (in this case, from its start). Even though in the end the pre-roll ad did not cause any information to be lost to the viewer, the broadcaster's signal has been postponed/delayed. This is the typical form of interruption in the case of a non-linear programme.

Table 26 - Case ADV.4

Case	Provider	Description	Process	Initiator	Commercial Purposes
ADV.4	Online video platform	Expandable pre-roll ad during non-linear content on the open internet	Interruption	Online video platform	Yes

The case of a smart TV independently playing overlay ads

The context is that of a TV manufacturer that has developed a taste for advertising as discussed in section 4.3 and has its smart TVs playing a series of overlay-ads (e.g. banner type) at regular intervals, regardless of what is being watched (linear or non-linear content).

Overlays change the signal at data as well as at information level. On the degree to which the information is affected, opinions may differ.

Table 27 - Case ADV.5

Case	Provider	Description	Process	Initiator	Commercial Purposes
ADV.5	TV manufacturer	Overlay ads	Merging	TV manufacturer	Yes

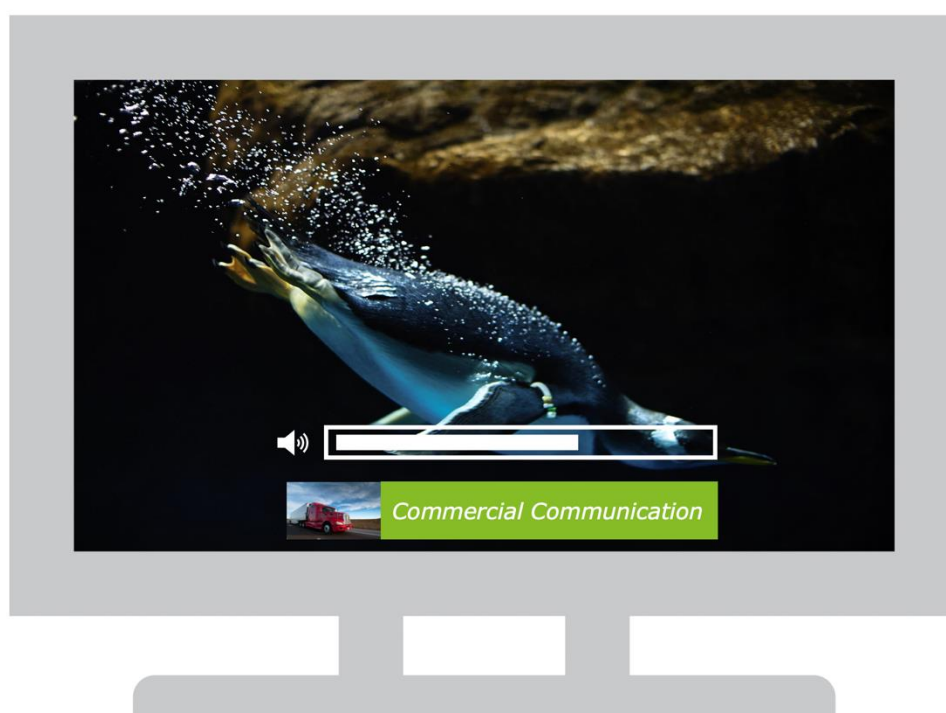
The case of a smart TV producing overlay ads when triggered by certain events

The case is another example of how TV manufacturers have stepped onto the advertising market. The situation is that of smart TVs playing banner ads at e.g. start-up and when adjusting the volume.

Because the ads start playing when the viewer performs an explicit action (starting up the TV, adjusting the volume), the situation may be confused with that of a viewer explicitly consenting to or even asking ads to be played. In reality, the cause is a default setting by the TV manufacturer triggering ads to be played when certain events occur. The initiator of the overlay ads is therefore actually the TV manufacturer.

In addition, we also consider the case in which it was unequivocally established that the viewer deliberately opted in and consented to the ads being played when certain events occur. In that case, the viewer would have to be regarded as the initiator.

Figure 13 - ADV.6 - Ad triggered when adjusting the volume



Source: Authors

Overlays change the signal at data and information level. On the degree to which the change is believed to affect the information, opinions may differ.

Table 28 - Cases ADV.6 & 7

Case	Provider	Description	Process	Initiator	Commercial Purposes
ADV.6	TV manufacturer	Overlay ads	Merging	TV manufacturer	Yes
ADV.7	TV manufacturer	Overlay ads	Merging	Viewer	Yes

4.4.4 Electronic Programme Guides (EPG)

EPG services offered by distributors or TV manufacturers do not as such change a broadcaster's signal but their user interfaces may well do so.

In all the EPG cases below, we assume that the EPG service is explicitly called up by the viewer and that we were able to establish this unequivocally.

The case of a video resizing EPG service offered by a distributor

This case consists of an interactive EPG service made available by an organisation that is set up by a number of free-to-air broadcasters and brings the latter together onto one exclusive and consistent marketing platform. By pooling their resources (viewer data), these broadcasters will be able to take stronger positions on the advertising market. Just as in the case of the organisation itself, this EPG serves the commercial interests of the broadcasters that set it up: it is promoting these broadcasters' channels exclusively. To that extent, we consider the EPG to have commercial purposes.

The user interface of our hypothetical platform consists of a solid, full screen image listing the channels while a resized version of the programme that is currently on, continues to play in the corner of the screen. The broadcaster's programme is squeezed and pushed back to create space for the EPG's information.

Figure 14 - Case EPG.1 - EPG with video resizing



Source: authors

As discussed in section 4.2, resizing video changes the signal at its data as well as at its information level. Opinions may, however, differ as to the degree to which resizing the video affects the information that is being conveyed by the signal.

Table 29 - Case EPG.1

Case	Provider	Description	Process	Initiator	Commercial Purposes
EPG.1	Distributor (which is an organisation set up by the broadcasters whose channels are the only ones featuring in the EPG)	EPG service producing a full screen image with an (interactive) list of channels, while the current programme continues to play in a smaller window	Adapting resolution and aspect ratio	Viewer	Yes

The case of a video resizing EPG service offered by an online video platform

This case consists of a linear, ad-supported on-demand video service (VoD) offering an interactive EPG service to its online viewers. In addition to possible adaptations to the viewer's screen, videos are again being resized to be displayed in a smaller window in the corner of that screen.

As discussed in section 4.2, video resizing processes change the signal at the level of the data it is carrying. Again, opinions may differ as to the degree to which resizing the video also affects the information which is being conveyed by the signal. The fact remains, however, that video resizing changes that information.

For this case, we assume there is no relation between the provider of the VoD service and the AVMS providers other than the fact that the service provider is distributing the AVMS providers' videos. The order in which channels are listed in the EPG is not influenced or determined by any commercial agreement. In the light of this, we consider the EPG not to have any commercial goals.

Table 30 - Case EPG.2

Case	Provider	Description	Process	Initiator	Commercial Purposes
EPG.2	Online video platform	EPG service producing a full screen image with an (interactive) list of channels with the current programme playing in a smaller window	Adapting resolution and aspect ratio	Viewer	No

The case of a video resizing EPG service offered by a hybrid distribution platform

This case consists of a hybrid television platform offering both linear as well as non-linear services on both private, closed networks as well as on the open internet. The platform offers an interactive EPG to its viewers in which it allows (linear and/or non-linear) channels to enjoy higher prominence against payment. Thus, the EPG is considered to have a commercial purpose. In this case there is, next to the viewer who launched the service, a second initiator: the hybrid distribution platform increasing certain channels' prominence (which actually makes them commercial communications).

The EPG's user interface again consists of a solid, full screen image. This time, however, there is no resized version of the current programme that continues to play in a smaller window. Only the sound continues to play. In view of this, we choose to proceed with this case as a solid overlay which is covering the entire screen while the sound continues to play.

Another way of seeing this case, however, is as a partial interruption of the broadcaster's signal (video is interrupted) in favour of the EPG's user interface, which is inserted, displaying a list of channels. In the remainder of this report we will refer to this alternative of case EPG.3 as case EPG.3.alt.

Table 31 - Case EPG.3

Case	Provider	Description	Process	Initiator	Commercial Purposes
EPG.3	Hybrid distribution platform	EPG service producing a full screen image with an (interactive) list of linear and non-linear services, completely covering the images of the programme that is on, but without cutting of its sound	Merging	Viewer and hybrid distribution platform	Yes

The case of an EPG producing a transparent overlay

Next, we consider an interactive EPG provided by a distributor or TV manufacturer that generates a transparent overlay featuring the list of channels.

We are more specifically looking at two scenarios:

- In the first scenario, the service simply offers an interactive list of channels. Apart from possible local legal obligations to provide specific channels with a certain prominence, the order in which channels are displayed is random. In this scenario, we assume the EPG has no commercial purposes;

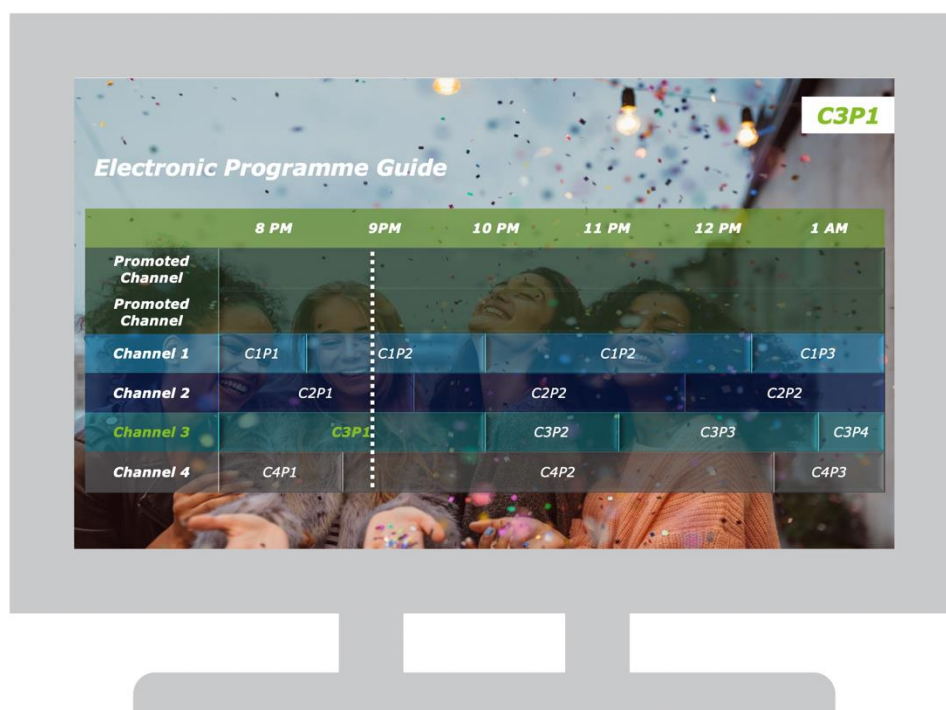
Figure 15 - Case EPG.4 - Transparent overlay carrying EPG



Source: authors

- In the second scenario, channels can obtain more prominent positions against payment. In this scenario, we consider the EPG does have a commercial purpose. In this second scenario, there is also a second initiator: the distributor/TV manufacturer increasing certain channels' prominence.

Figure 16 - Case EPG.5 – Transparent overlay carrying EPG with promoted channels



Source: Authors

Generating the overlays involves the process of merging. As explained in section 4.2, this process changes the signal at data as well as at information level.

Table 32 - Cases EPG.4 and EPG.5

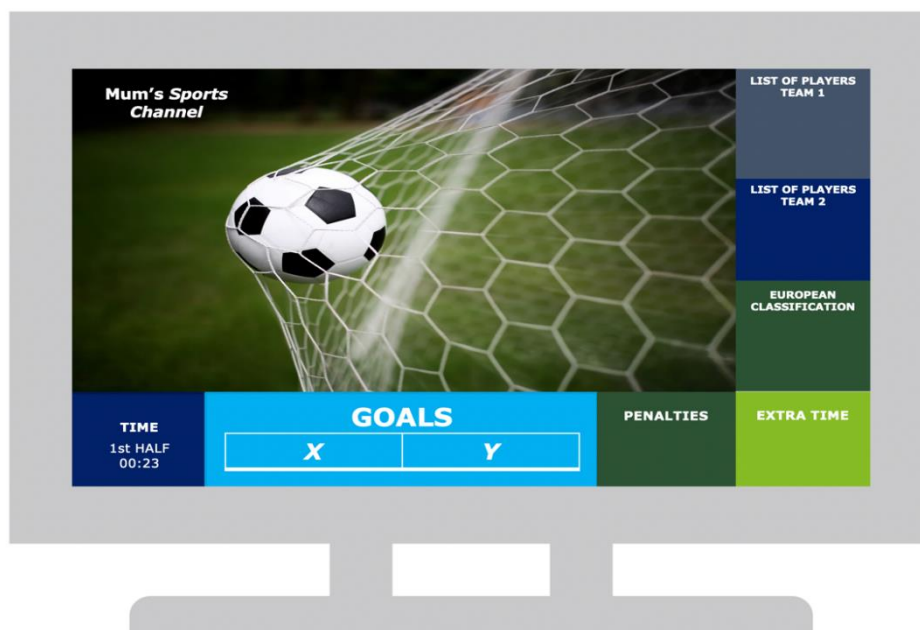
Case	Provider	Description	Process	Initiator	Commercial Purposes
EPG.4	Distributor or TV manufacturer	EPG service producing a transparent overlay with an (interactive) list of channels covering the current programme, without commercial purposes	Merging	Viewer	No
EPG.5	Distributor or TV manufacturer	EPG service producing a transparent overlay with an (interactive) list of channels covering the current programme, with commercial purposes	Merging	Viewer and distributor / TV manufacturer	Yes (improved prominence in list available against payment)

4.4.5 Smart TV systems (STV)

The case of a so-called 'split screen' generated by a smart TV

The situation is that of a smart TV system that squeezes and pushes back the broadcaster's programme and uses the freed-up space to display programme-related information which the TV set either received from the broadcaster or at an address on the open internet.

Figure 17 - Case STV.1 Split Screen



Source: authors

This involves resizing the broadcaster's video, a process that effectively changes the signal at data as well as at information level. On the degree to which the resizing process affects the information that is being conveyed by the signal, opinions may differ.

For illustrative purposes, we assume that the smart TV produces the split screen at the explicit request of the viewer.

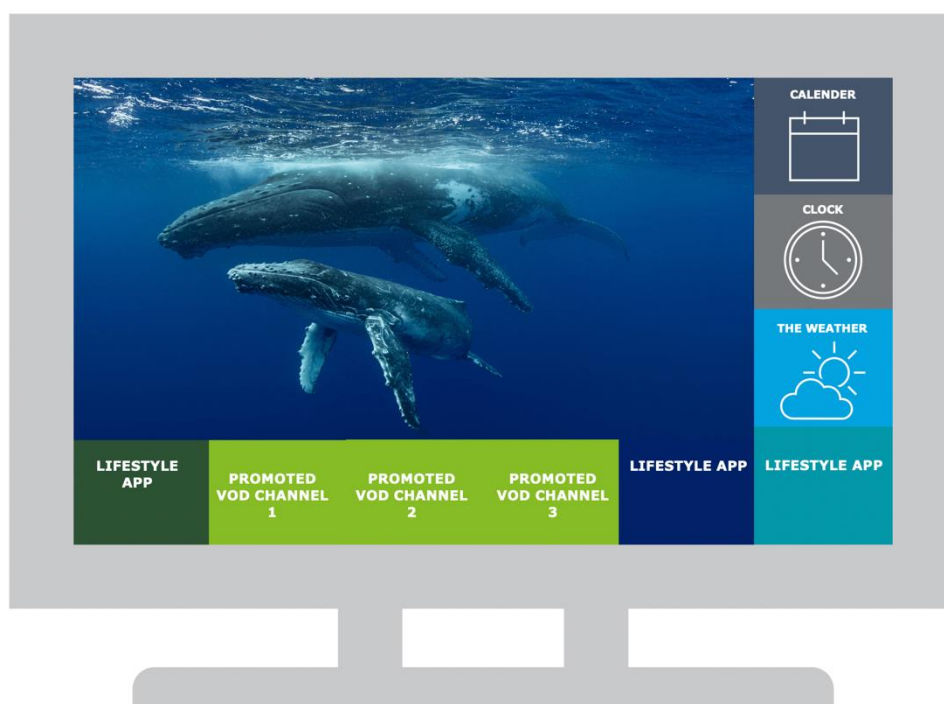
Table 33 - Case STV.1

Case	Provider	Description	Process	Initiator	Commercial Purposes
STV.1	TV manufacturer	Split screen in which the video is squeezed and pushed back, and the freed-up space is used to display information relating to the programme that is playing	Adapting resolution and aspect ratio	Viewer	No

Another case of a so-called 'split screen' generated by a smart TV

The case is that of a smart TV that, when turned on, opens on a lifestyle screen featuring a calendar, an analogue clock and a number of app tiles around a 'squeezed and pushed back' version of the broadcaster's programme. Some of the tiles are of a commercial nature (e.g. giving access to subscription or transaction-based on-demand services).

Figure 18 - Case STV.2 Split Screen



Source: Authors

For illustrative purposes we assume that the smart TV opening on the lifestyle screen is not an option (i.e. the viewer cannot change this setting) and the TV manufacturer can therefore be considered to be the initiator.

Squeezing and pushing back the broadcaster's programme involves resizing the broadcaster's video. This implies that the smart TV effectively changes the broadcaster's signal at data as well as at information level (with opinions on the degree to which the latter is true varying depending on the viewer).

Table 34 - Case STV.2

Case	Provider	Description	Process	Initiator	Commercial Purposes
STV.2	TV manufacturer	Split screen in which the video is squeezed and pushed back, and the freed-up space is used to display a number of app tiles of which some are of a commercial nature	Adapting resolution and aspect ratio	TV manufacturer	Yes (some tiles giving access to SVOD or TVOD services)

The case of an overlay generated by a smart TV's social networking app

The case is that of a TV manufacturer's social networking app allowing viewers to use e.g. their Skype video calling, Twitter or Facebook feeds while watching TV on the same screen.

The social network feeds are displayed in a second, smaller window 'hovering' over the broadcaster's programme. As discussed in section 4.2, overlays change the broadcaster's signal at the data as well as at the information level. However, opinions may again differ on the degree to which the overlay affects the information that is being conveyed by the signal.

Figure 19 - Case STV.3 Overlay by social networking app



Source: Authors

For illustrative purposes, we assume that the TV manufacturer's app only provides access to social networks with whom the TV manufacturer has concluded a commercial agreement. By virtue of this agreement, the manufacturer is getting paid for providing its users with access to the social network service. In spite of the commercial driver behind the app, the overlay which it produces, carries nothing more than the social network service's user interface. In addition to this, the overlay does not have any further commercial purpose. The overlay has no commercial purpose.

Table 35 - Case STV.3

Case	Provider	Description	Process	Initiator	Commercial Purposes
STV.3	TV manufacturer	TV Manufacturer's social networking app generating an overlay 'hoovering' over the broadcaster's programme and featuring the viewer's social network feeds	Merging	Viewer	No

The case of a Picture-in-Picture view generated by a smart TV

The case is that of a smart TV producing a picture-in-picture (PiP) view at the request of the viewer. A PiP view involves overlaying one broadcaster's programme with the resized version of another broadcaster's video and muting that other broadcaster's sound. Or in terms of broadcasters' signals: merging one broadcaster's signal with the signal from another broadcaster of which the video has been resized and the audio has been interrupted.

Merging, adapting resolution and aspect ratio and interrupting are processes that change a signal at data as well as at information level.

Table 36 - Case STV.4

Case	Provider	Description	Process	Initiator	Commercial Purposes
STV.4	TV manufacturer	Smart TV generating a PiP view	Merging, adapting resolution and aspect ratio and interrupting	Viewer	No

4.4.6 TV Recommender Systems (TVR)

There is considerable research going on in this field and the market is still in development with both distributors and TV manufacturers offering solutions. As discussed in section 4.3, there can also be a longer term, strategic interest in systems that can help keep broadcasters' bargaining power in check.

The recommendation service as such does not interfere with the signals of broadcasters, but the user interface communicating the recommendations may effectively do so.

Recommendations may be communicated through user interfaces which could be set to pop up when certain events occur (e.g. when a programme is ending) or, on the contrary, only at the viewer's request. Furthermore, these settings may be by-default settings or settings consciously programmed by the user/viewer. For the purpose of the cases below:

- When we consider the distributor/TV manufacturer to be the sole initiator, the system is by default set to function in line with the first option (events);
- When we consider the viewer to be the sole initiator, the system is:
 - Programmed by the viewer, or;
 - By default set to function in accordance with the second option (viewer's request).

To communicate its results, the system can e.g. (non-exhaustive list):

- use a full screen, but with a resized version of the programme (and its sound) continuing to run in a smaller window in the corner of that screen (squeeze and push back of broadcaster's video, using the freed-up space to display recommendations);
- use a full screen, while the sound of the programme that was on, continues to play¹⁶⁷;
- overlay the broadcaster's programme with solid banners partially covering the broadcaster's programme; or
- cover the broadcaster's programme with a transparent overlay listing the recommendations.

In all of these cases, the user interface effectively changes the broadcasters' signals, at data as well as at information level. Below, we are proceeding with the "squeeze and push back" (first) and "transparent overlay" (last) options.

¹⁶⁷ As mentioned under case EPG.3, when the broadcaster's video is completely covered while the sound continues to play, the situation can be approached as an overlay or as a partial interruption

The case of a video resizing TV recommender system invoked by the distributor/TV manufacturer

The first case we consider is a system whose user interface squeezes and pushes back the broadcaster's programme and presents its recommendations in the freed-up space at the request of the distributor/TV manufacturer (recommendations are rendered when certain events occur, e.g. the end of a programme).

This involves adaptation of resolution and aspect ratio which is a process that changes the signal at data and at information level.

Table 37 - Case TVR.1

Case	Provider	Description	Process	Initiator	Commercial Purposes
TVR.1	Distributor/TV manufacturer	The system's user interface squeezes and pushes back the broadcaster's video and uses the freed-up space to display the recommendations	Adapting resolution and aspect ratio	Distributor/TV manufacturer	No

The case of an overlay-producing TV recommender system invoked by the distributor/TV manufacturer

The second case we consider is a system whose user interface produces an overlay to present its recommendations at the request of the distributor/TV manufacturer (again, recommendations are rendered when certain events occur).

This involves merging, which is again a process that changes the signal at data and at information level.

Table 38 - Case TVR.2

Case	Provider	Description	Process	Initiator	Commercial Purposes
TVR.2	Distributor/TV manufacturer	The system's user interface overlays the broadcaster's programme to display the recommendations	Merging	Distributor/TV manufacturer	No

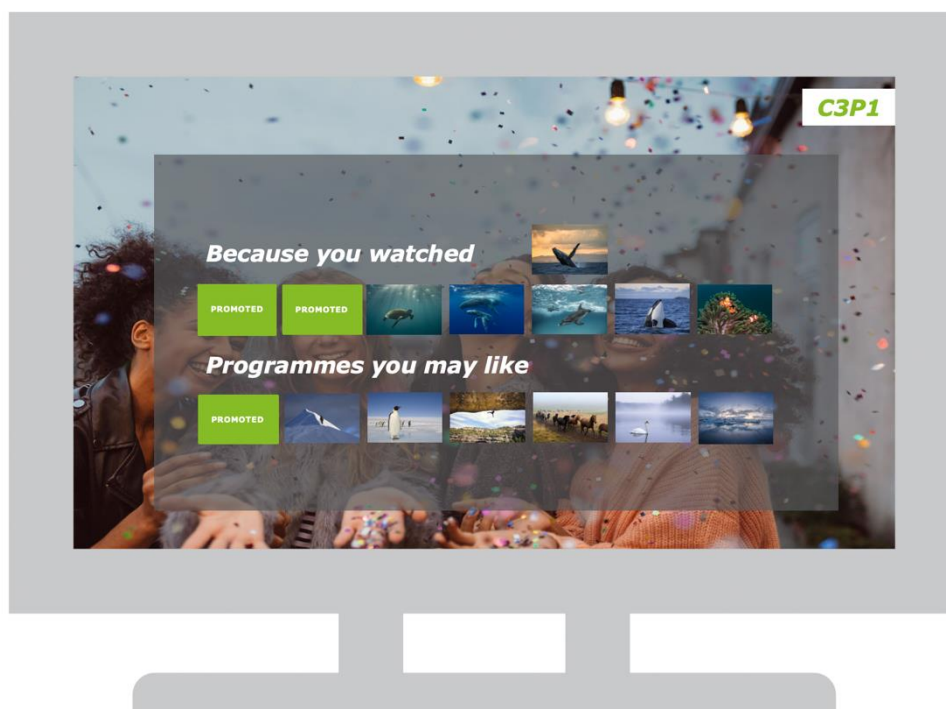
As discussed earlier, the systems could, on the contrary, need to be consciously invoked by the viewer. In that case the viewer is to be regarded as the initiator.

Table 39 - Case TVR.3 & 4

Case	Provider	Description	Process	Initiator	Commercial Purposes
TVR.3	Distributor/TV manufacturer	The system's user interface squeezes and pushes back the broadcaster's video and uses the freed-up space to display the recommendations	Adapting resolution and aspect ratio	Viewer	No
TVR.4	Distributor/TV manufacturer	The system's user interface overlays the broadcaster's programme to display the recommendations	Merging	Viewer	No

Another variation is that instead of being neutral, the systems could be biased in favour of e.g. own services (e.g. a pay-TV service, another television programme that can be ordered via TVOD or SVOD), those of an affiliated audiovisual media service provider or those of a service provider paying for higher visibility in the system's results.

Figure 20 - Cases TVR.5 & 6 - Overlays carrying recommendations and commercial communications



Source: Authors

In this case, overlays produced by the user interface need to be regarded as overlays for commercial purposes. After all, these overlays, or at least parts of these overlays, contain commercial communications.

Furthermore, in such cases, different parties are involved in initiating and/or authorising the overlay:

- In case TVR.5 the distributor/TV manufacturer is initiating the recommender service (e.g. having it triggered by certain events). The overlay it produces carries on the one hand the actual results of the recommender system, and on the other, e.g. non-linear content which the distributor/TV manufacturer is promoting against payment;
- In case TVR.6, on the other hand, the recommender system is launched by the viewer. However, just as in TVR.5, the overlay carries both the actual results from the recommender system, as well as, e.g. non-linear content promoted by the distributor/TV manufacturer. In that case, there are two initiators: the viewer launching the service and the distributor/TV manufacturer adding, e.g. the non-linear content, or increasing its prominence, to honour the commercial agreement with the provider of that non-linear content.

Table 40 - Case TVR.5 & 6

Case	Provider	Description	Process	Initiator	Commercial Purposes
TVR.5	Distributor/TV manufacturer	The system's user interface overlays the broadcaster's programme to display the recommendations – System produces results biased in favour of Distributor's/TV manufacturer's commercial interests	Merging	Distributor/TV manufacturer	Yes
TVR.6	Distributor/TV manufacturer	The system's user interface overlays the broadcaster's programme to display the recommendations – System produces results biased in favour of Distributor's/TV manufacturer's commercial interests	Merging	Viewer and Distributor/TV manufacturer	Yes

4.4.7 Home Security Systems (HS)

The case of a home security system generating overlays

The case is that of a platform allowing for 'Smart Home' devices to be seamlessly integrated with each other. The user interface of the security platform creates overlays with security information (video images, warnings, commands) covering part of the broadcaster's image.

Since this affects the security of the home, we assume the user has made conscious choices with respect to the settings of the system (e.g. with respect to allowing notifications to be displayed on the TV screen at any time).

Overlays effectively change the broadcaster's signal. As discussed in section 4.2, opinions may differ on the degree to which these overlays are believed to affect the information being conveyed by the signal.

Table 41 - Case HS.1

Case	Provider	Description	Process	Initiator	Commercial Purposes
HS.1	'Home Security' solutions provider	The system's user interface overlays the broadcaster's programme to display security information	Merging	Viewer	No

4.4.8 Personal Video Recorders (PVR)

The case of 'Ad Skipping'

With ad skipping, or fast-forwarding through TV commercials, the signal hitting the screen is indeed different from the original signal. Indeed, a fast-forward results in a shortened version of a broadcaster's programme being brought to the screen. Furthermore, during a fast forward, the viewer often gets to see a selected number of frames. So, ad skipping, or fast-forwarding in general for that matter, changes the broadcaster's signal at data as well as at information level at the request of the viewer.

For illustrative purposes, we consider two cases: one in which we fast-forward through a recorded programme, and another in which we specifically fast-forward through a broadcaster's commercials.

An important element distinguishing these PVR-related cases from others is that, this time, the source of the signal is a copy which the viewer made of a broadcaster's programme. For the cases below we assume that the viewer is respecting the conditions in force for these copies to be considered 'private'.

Beyond being part of a commercially offered service (PVR), the FFW functionality has no further commercial purpose.

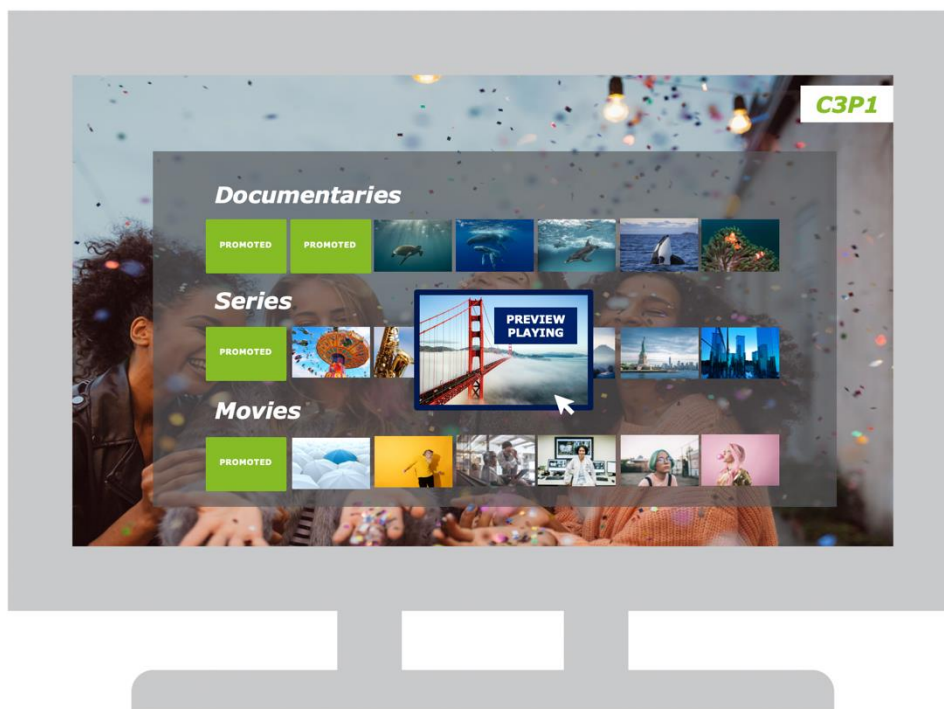
Table 42 - Cases PVR.1 & 2

Case	Provider	Description	Process	Initiator	Commercial Purposes
PVR.1	Distributor/TV manufacturer	Fast-forwarding through a recorded programme	Editing	Viewer	No
PVR.2	Distributor/TV manufacturer	Fast-forwarding through recorded TV commercials	Editing	Viewer	No

4.4.9 Classification Systems (CLS)

Like with TV recommender systems, TV classification systems as such do not interfere with the signals of broadcasters. The user interface of such systems may, however, effectively do so.

Figure 21 - Cases CLS.5 & 6 - Overlays carrying classifications with previews and commercial communications



Source: Authors

With respect to whom is regarded as the initiator of the service, we assume the same considerations we made for TV recommender systems.

However, with respect to how the system presents the results of its classifications, we now assume that this involves previews of broadcasters' programmes (e.g. when browsing through the catalogue of programmes classified into a certain category).

As in cases TVR.5 & 6, CLS.5 & 6 concern situations in which the system is biased in favour of e.g. own services, those of an affiliated audiovisual media service provider or those of a service provider paying for higher visibility in the system's results. In these cases, the overlays produced again need to be regarded as overlays for commercial purposes.

Table 43 - Case CLS.1

Case	Provider	Description	Process	Initiator	Commercial Purposes
CLS.1	Distributor/TV manufacturer	The system's user interface produces a full screen with a classification of programmes in categories, playing fragments of the programmes which the viewer is pointing at, while the programme that was actually on continues to play in a smaller window in the corner of the screen	Adaptation of resolution and aspect ratio & editing	Distributor/TV manufacturer	No
CLS.2	Distributor/TV manufacturer	The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, playing fragments of the programmes that the viewer is pointing at	Merging & editing	Distributor/TV manufacturer	No
CLS.3	Distributor/TV manufacturer	The system's user interface produces a full screen with a classification of programmes in categories, playing fragments of the programmes which the viewer is pointing at, while the programme that was actually on continues to play in a smaller window in the corner of the screen	Adaptation of resolution and aspect ratio & editing	Viewer	No
CLS.4	Distributor/TV manufacturer	The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, playing fragments of the programmes that the viewer is pointing at	Merging & editing	Viewer	No
CLS.5	Distributor/TV manufacturer	The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, playing fragments of the programmes that the viewer is pointing at	Merging & editing	Distributor/TV manufacturer	Yes

CLS.6	Distributor/TV manufacturer	The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, playing fragments of the programmes that - the viewer is pointing at	Merging & editing	Viewer and Distributor / TV manufacturer	Yes

Table 44 - Overview of cases

Category	Case	Process	Provider	Initiator	Change to data	Change to information	Commercial Purposes	Remark
Regular Distribution & Storage	RDS.1	Adapting video to viewer's device	Distributor	Distributor	Yes	Yes	No	Without adapting to the viewer's device, there is a risk of the viewing experience deteriorating significantly.
	RDS.2	Source Coding	AVMS provider / Distributor	AVMS provider / Distributor	No	No	No	Compression in combination with its reverse process, leaves the data as well as the information unchanged.
		Compression			Yes	No		
		Expansion			Yes	No		
	RDS.3	Channel Coding	AVMS provider / Distributor	AVMS provider / Distributor	Yes	No	No	Data is added, but without interfering with the original audio and video (which is compressed at that time). The added data serves to restore the signal on the receiving end in case it incurred errors during transmission.
	RDS.4	Modulation & Demodulation	AVMS provider / Distributor	AVMS provider / Distributor	No	No	No	Modulation and demodulation as well as their combination leave the data and information carried by the signal entirely unchanged.
		Modulation			No	No		
		Demodulation			No	No		

	RDS.5	Storing/uploading	AVMS provider / Distributor	AVMS provider / Distributor	No	No	No	Storing a programme and/or uploading it to an Online Video Platform leaves the data carried and information conveyed by the AVMS provider's signal unchanged.
Electronic Programme Guide (EPG)	EPG.1	Adapting resolution and aspect ratio	Distributor (which in this case is an organisation set up by the broadcasters whose channels are the only ones featuring in the EPG)	Viewer	Yes	Yes	Yes	EPG service producing a full screen image with an (interactive) list of channels, while the current programme continues to play in a smaller window
	EPG.2	Adapting resolution and aspect ratio	Online Video Platform	Viewer	Yes	Yes	No	EPG service producing a full screen image with an (interactive) list of channels with the current programme playing in a smaller window
	EPG.3	Merging	Hybrid distribution platform	Viewer	Yes	Yes	Yes	EPG service producing a full screen image with an (interactive) list of linear and non-linear services, completely covering the images of the programme that is on, but without cutting of its sound

	EPG.3. alt	Interruption	Hybrid distribution platform	Viewer	Yes	Yes	Yes	EPG service producing a full screen image with an (interactive) list of linear and non-linear services, completely covering the images of the programme that is on, but without cutting of its sound
	EPG.4	Merging	Distributor / TV Manufacturer	Viewer	Yes	Yes	No	EPG service producing a transparent overlay with an (interactive) list of channels covering the current programme, without commercial purposes
	EPG.5	Merging	Distributor / TV Manufacturer	Viewer and Distributor / TV Manufacturer	Yes	Yes	Yes	EPG service producing a transparent overlay with an (interactive) list of channels covering the current programme, with commercial purposes
Smart TV Systems	STV.1	Adapting resolution and aspect ratio	TV Manufacturer	Viewer	Yes	Yes	No	Split screen in which the video is squeezed and pushed back and the freed-up space is used to display information relating to the programme that is playing
	STV.2	Adapting resolution and aspect ratio	TV Manufacturer	TV Manufacturer	Yes	Yes	Yes	Split screen in which the video is squeezed and pushed back and the freed-up space is used to display a number of app tiles of

								which some are of a commercial nature
	STV.3	Merging	TV Manufacturer	Viewer	Yes	Yes	No	TV Manufacturer's social networking app generating an overlay 'hoovering' over the broadcaster's programme and featuring the viewer's social network feeds
	STV.4	Merging, adapting resolution and aspect ratio and interrupting	TV Manufacturer	Viewer	Yes	Yes	No	Smart TV generating a PiP view
Advertising	ADV.1	Adapting resolution and aspect ratio	Online Video Platform	Online Video Platform	Yes	Yes	Yes	Skin ads around the broadcaster's programme which is squeezed and pushed back
	ADV.2	Interruption	Online Video Platform	Online Video Platform	Yes	Yes	Yes	Pre-roll ad during non-linear content on the Open internet
	ADV.3	Interruption	Online Video Platform	Online Video Platform	Yes	Yes	Yes	Mid-roll ad during live broadcast on the Open internet
	ADV.4	Interruption	Online Video Platform	Online Video Platform	Yes	Yes	Yes	Expandable pre-roll ad during non-linear content on the Open internet
	ADV.5	Merging	TV Manufacturer	TV Manufacturer	Yes	Yes	Yes	Overlay ads

	ADV.6	Merging	TV Manufacturer	TV Manufacturer	Yes	Yes	Yes	Overlay ads
	ADV.7	Merging	TV Manufacturer	Viewer	Yes	Yes	Yes	Overlay ads
Irregular Distribution	IRD.1	Interruption	Distributor	Distributor	Yes	Yes	No	Filtering the AVMS-provider's 'Red Button' solution out amounts to a (partial) interruption of the provider's signal
	IRD.2	Interruption	Distributor	Distributor	Yes	Yes	No	Filtering the AVMS-provider's 'Addressable Advertising' solution out amounts to a (partial) interruption of the provider's signal
	IRD.3	Interruption	Distributor	Distributor	Yes	Yes	No	Filtering the AVMS-provider's 'Catch-Up' solution out amounts to a (partial) interruption of the provider's signal
TV Recommender Services	TVR.1	Adapting resolution and aspect ratio	Distributor / TV Manufacturer	Distributor / TV Manufacturer	Yes	Yes	No	The system's user interface squeezes and pushes back the broadcaster's video and uses the freed-up space to display the recommendations

	TVR.2	Merging	Distributor / TV Manufacturer	Distributor / TV Manufacturer	Yes	Yes	No	The system's user interface overlays the broadcaster's programme to display the recommendations
	TVR.3	Adapting resolution and aspect ratio	Distributor / TV Manufacturer	Viewer	Yes	Yes	No	The system's user interface squeezes and pushes back the broadcaster's video and uses the freed-up space to display the recommendations
	TVR.4	Merging	Distributor / TV Manufacturer	Viewer	Yes	Yes	No	The system's user interface overlays the broadcaster's programme to display the recommendations
	TVR.5	Merging	Distributor / TV Manufacturer	Distributor / TV Manufacturer	Yes	Yes	Yes	The system's user interface overlays the broadcaster's programme to display the recommendations – System produces results biased in favour of Distributor's/TV Manufacturer's commercial interests
	TVR.6	Merging	Distributor / TV Manufacturer	Viewer and Distributor / TV Manufacturer	Yes	Yes	Yes	The system's user interface overlays the broadcaster's programme to display the recommendations – System produces results biased in favour of Distributor's/TV

								Manufacturer's commercial interests
Home Security Services	HS.1	Merging	'Home Security' solutions provider	Viewer	Yes	Yes	No	The system's user interface overlays the broadcaster's programme to display security information
Personal Video Recorders	PVR.1	Editing	Distributor / TV Manufacturer	Viewer	Yes	Yes	No	Fast-forwarding through a recorded programme
	PVR.2	Editing	Distributor / TV Manufacturer	Viewer	Yes	Yes	No	Fast-forwarding through recorded TV commercials
Classification Systems	CLS.1	Adapting resolution and aspect ratio & Editing	Distributor / TV Manufacturer	Distributor / TV Manufacturer	Yes	Yes	No	The system's user interface produces a full screen with a classification of programmes in categories, playing fragments of the programmes which the viewer is pointing at, while the programme that was actually on continues to play in a smaller window in the corner of the screen
	CLS.2	Merging & Editing	Distributor / TV Manufacturer	Distributor / TV Manufacturer	Yes	Yes	No	The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, playing fragments of

								the programmes that the viewer is pointing at
	CLS.3	Adapting resolution and aspect ratio & Editing	Distributor / TV Manufacturer	Viewer	Yes	Yes	No	The system's user interface produces a full screen with a classification of programmes in categories, playing fragments of the programmes which the viewer is pointing at, while the programme that was actually on continues to play in a smaller window in the corner of the screen
	CLS.4	Merging & Editing	Distributor / TV Manufacturer	Viewer	Yes	Yes	No	The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, playing fragments of the programmes that the viewer is pointing at
	CLS.5	Merging & Editing	Distributor / TV Manufacturer	Distributor/TV Manufacturer	Yes	Yes	Yes	The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, playing fragments of the programmes that the viewer is pointing at

	CLS.6	Merging & Editing	Distributor / TV Manufacturer	Viewer and Distributor/TV Manufacturer	Yes	Yes	Yes	The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, playing fragments of the programmes that the viewer is pointing at

4.5 European regulations

The section in brief

This section turns to the new measure (Article 7b) to equally express it in the language developed for analysis.

Once the subject (service, feature, functionality) and rule (Article 7b) have found common ground, exploring the effect of the rule on the subject is straightforward.

By the end of the section all cases have been revisited, extensively illustrating the functioning of the new measure.

Contrary to what some stakeholders fear, the new measure is found to be innovation- friendly. This is on condition, however, that the innovation is not used as a launching pad for uncalled-for commercial communications.

The new measure seems to be unforgiving, on the other hand, of any attempt to edit or interrupt the AVMS provider's service as well as of most situations in which the provider's video is resized.

Now that we have developed the technological and competitive context and introduced and characterised a number of cases, we take a closer look at the details of the AVMS Directive's new Article 7b and the Directive's Recital 26.

For each of the cases introduced in the previous section, we will look at whether consent is required by virtue of the AVMS Directive or not, and whether and what leeway is left to Member States to further fine-tune their national policy on the matter.

4.5.1 What is the purpose of Article 7b?

Recital 26 explains that the new measure is considered to be an essential ingredient of a policy that seeks *"to **protect** the editorial responsibility of media service providers and the audiovisual value chain, [...]"* (highlight added by authors).

4.5.2 What exactly is the protection offered by Article 7b?

Article 7b of the AVMS Directive seeks to *"ensure that audiovisual media services provided by media service providers are not, without the explicit consent of those providers, overlaid for commercial purposes or modified."*

Recital 26 is more explicit with respect to the term "modified" stating that *"[p]rogrammes and audiovisual media services should not be **transmitted in a shortened form, altered or interrupted**, or overlaid for commercial purposes, without the explicit consent of the media service provider"* (highlight added by authors).

Recital 26 furthermore explains that what Article 7b is doing is *"to **guarantee the integrity of programmes and audiovisual media services** supplied by media service providers"* (highlight added by authors).

Article 7b offers AVMS providers the possibility of protecting their editorial responsibility and the audiovisual value chain by making these providers' consent mandatory in the case of transmissions of their programmes and audiovisual media services in shortened form, or altered or interrupted, or overlaid for commercial purposes.

4.5.3 Why translate this to the AVMS provider's signal?

In addition to what has already been discussed earlier when discussing the signal (see specifically the introduction to section 4.2 on the technological context), with references to technological concepts such as transmission, data compression, coding, ... Recital 26 also seems to hint to the most normative of interpretations for Article 7b's triggering criteria ('overlays', 'modifications'). More precisely, it touches on changes to the audiovisual media service provider's signal at data and information level.

4.5.4 How does this translate to the AVMS provider's signal?

The programmes and audiovisual media services referred to in Article 7b and Recital 26 are actually audiovisual and other information carried as data by a signal to the viewing devices of an audience. When a programme or audiovisual media service is modified within the meaning of Article 7b and Recital 26 (transmitted in shortened form, altered, interrupted or overlaid), i.e. when the information conveyed by the signal is changed, then the roots of these modifications will also be found in the data carried by the signal. There will be differences between the data that was originally broadcast and the data carried after the modification.

While a modification of the programme always implies a change in the data carried by the signal, the reverse is not always true. As discussed in section 4.2, there are cases in which a change in the data carried by the signal does not imply a modification of the programme (e.g. coding). Since those cases involve only a limited number of well known, deterministic and clearly identifiable processes, we can nonetheless assume, for the purpose of this report, that there is a one-on-one relation between a change in the data carried by the signal and a change in the information conveyed by that same signal.

In that light, the protection offered by Article 7b would then translate to the AVMS provider's signal as: protection of their editorial responsibility and the audiovisual value chain by making their consent mandatory in case of changes to the data carried by the signal stemming from and corresponding to transmissions of the audiovisual media service in a shortened form, or altered, interrupted or overlaid for commercial purposes.

To continue our analysis, Table 45 provides a mapping of the cases introduced in section 4.4 onto the signal changing processes discussed in section 4.2 and onto the four types of modifications referred to in Recital 26 (transmission in shortened form, or altered, interrupted or overlaid for commercial purposes). Table 45 also already provides a first view on the question of consent, without taking the out-of-scope cases listed by Recital 26 into account yet. Table 45 thus answers the following questions:

- What type of modification does the case concern: an overlay for commercial purposes or a transmission in shortened form, altered or interrupted?
- Which process is involved at signal level?
- While not taking the out-of-scope situations listed by Recital 26 into account yet, does the case require consent in accordance with Article 7b?

4.5.5 Which part of the signal is entitled to the protection offered by Article 7b?

Article 7b refers to the protection of programmes and audiovisual media services. As discussed in section 4.2, the audiovisual media service provider's signal can carry audio, video as well as other information. The question is, however, whether the protection offered by Article 7b is available to the entire signal or only to a part of it. And in the latter case, we need to understand to which part exactly the protection applies.

The AVMS Directive (first Article, first paragraph, point (a)) defines an 'audiovisual media service' as:

- "(i) *a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where **the principal purpose of the service or a dissociable section thereof** is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC; such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;*
- (ii) **audiovisual commercial communication.**" (Highlight added by authors)

Table 45 – Mapping of modifications, processes & cases (consent versus no consent, only taking the wording of Article 7b into account)

Modification	Process	Categories of cases as introduced in section 4.4	
		Cases (or case elements) <i>requiring consent</i>	Cases (or case elements) <i>not requiring consent</i>
Shortened	Editing	Personal Video Recorders	
		<i>PVR.1 - Fast Forwarding through a recorded programme</i>	-
		<i>PVR.2 - Fast Forwarding through recorded TV commercials, a.k.a. 'Ad Skipping'</i>	-
		TV Classification Systems	
		<i>CLS.1 - The system's user interface ... playing fragments of the programmes which the viewer seems to focus on, ...</i>	-
		<i>CLS.2 - The system's user interface ... playing fragments of the programmes which the viewer seems to focus on</i>	-
		<i>CLS.3 - The system's user interface ... playing fragments of the programmes which the viewer seems to focus on, ...</i>	-
		<i>CLS.4 - The system's user interface ... playing fragments of the programmes which the viewer seems to focus on</i>	-

		CLS.5 - The system's user interface ... playing fragments of the programmes which the viewer seems to focus on	-
		CLS.6 - The system's user interface ... playing fragments of the programmes which the viewer seems to focus on	-
Altered	Source Coding	Regular Distribution & Storage	
		-	RDS.2 - Technique used to take pressure of transmission system (Data Compression)
	Channel Coding	Regular Distribution & Storage	
		-	RDS.3 - Technique used to correct errors incurred during transmission (Forward Error Correction)
	Modulation & Demodulation	Regular Distribution & Storage	
		-	RDS.4 - Technique used to have an electromagnetic wave carry data
	Storing & Uploading	Regular Distribution & Storage	
		-	RDS.5 - Technique used to record / preserve data
		Regular Distribution & Storage	

	Adapting resolution and aspect ratio	<i>RDS.1 – Technique used to ensure best viewing experience independent of consumer device</i>	-
		Electronic Programme Guides	
		<i>EPG.1 – EPG service producing a full screen image with an (interactive) list of channels, while the current programme continues to play in a smaller window – Viewer as initiator – There is commercial purpose involved with the EPG since it does not list channels other than those of the broadcasters that own and run the distributor</i>	-
		<i>EPG.2 – EPG service producing a full screen image with an (interactive) list of channels while the current programme continues to play in a smaller window – Viewer as initiator – No commercial purpose involved (distributor is not promoting one channel over another against payment)</i>	-
		Smart TV environment	
		<i>STV.1 – Split screen in which the video is squeezed and pushed back and the freed-up space is used to display information relating to the programme that is playing</i>	-
		<i>STV.2 – Split screen in which the video is squeezed and pushed back and the freed-up space is used to display a number of app tiles of which some are of a commercial nature</i>	-

		STV.4 – Smart TV generating a PiP view	-
		Advertising	
		ADV.1 – Skin ads around the broadcaster’s programme which is squeezed and pushed back	-
		TV Recommender Systems	
		TVR.1 – The system’s user interface squeezes and pushes back the broadcaster’s video and uses the freed-up space to display recommendations - Distributor/TV Manufacturer as initiator	-
		TVR.3 – The system’s user interface squeezes and pushes back the broadcaster’s video and uses the freed-up space to display recommendations – Viewer as initiator	-
		Classification Systems	
		CLS.1 - The system’s user interface ... while the programme that was actually on continues to play in a smaller window in the corner of the screen – Distributor/TV Manufacturer as initiator	-
		CLS.3 - The system’s user interface ... while the programme that was actually on continues to play in a smaller window in the corner of the screen – Viewer as initiator	-
Interrupted	Interrupting	Irregular Distribution	

		<i>IRD.1 – 'Red Button' solution is filtered out</i>	-
		<i>IRD.2 – 'Addressable Advertising' solution is filtered out</i>	-
		<i>IRD.3 – Catch-up service is filtered out</i>	
		Electronic Programme Guides	
		<i>EPG.3.alt – Case EPG.3 seen as an (partial) interruption of the broadcaster's signal</i>	-
		Advertising	
		<i>ADV.2 – Pre-roll ad during non-linear content on the Open internet – Online Video Platform as initiator – There is commercial purpose, but it is not an overlay</i>	-
		<i>ADV.3 – Mid-roll ad during a live broadcast on the Open internet – Online Video Platform – There is commercial purpose, but it is not an overlay</i>	-
		<i>ADV.4 – Expandable pre-roll ad during non-linear on the Open internet – Online Video Platform initiator – There is commercial purpose, but it is not an overlay</i>	-
		Smart TV Systems	

		STV.4 – Smart TV generating a PiP view	-
		Personal Video Recorders	
		PVR.1 - Fast Forwarding through a recorded programme	-
		PVR.2 - Fast Forwarding through recorded TV commercials, a.k.a. 'Ad Skipping'	-
Overlaid for commercial purposes	Merging	Smart TV Systems	
		-	STV.3 – TV Manufacturer's social networking app generating an overlay 'hoovering' over the broadcaster's programme and featuring the viewer's social network feeds - TV Manufacturer receives payment from the social networks for providing viewers access to their services – overlay is however not for commercial purposes
		-	STV.4 – Smart TV generating a PiP view
		Advertising	
		ADV.5 – Overlay ads played independently – TV Manufacturer as initiator – commercial purpose	-
		ADV.6 – Overlay ads triggered by user actions – TV Manufacturer as initiator – commercial purpose	-

		ADV.7 - Overlay ads triggered by user actions – Viewer as initiator – commercial purpose	
		TV Recommender Systems	
	-		TVR.2 – The system’s user interface overlays the broadcaster’s programme to display recommendations – Distributor/TV Manufacturer as initiator – results are unbiased (no commercial purpose)
	-		TVR.4 – The system’s user interface overlays the broadcaster’s programme to display recommendations – Viewer as initiator – results are unbiased (no commercial purpose)
	TVR.5 – The system’s user interface overlays broadcaster’s programme to display the recommendations – Distributor / TV Manufacturer as initiator - The system produces biased results in favour of Distributor’s/TV Manufacturer’s commercial interests (e.g. higher prominence in results against payment) (commercial purpose)	-	
	TVR.6 – The system’s user interface overlays broadcaster’s programme to display the recommendations – Viewer and Distributor / TV Manufacturer as initiator - The system produces biased results in favour of Distributor’s/TV Manufacturer’s commercial interests (e.g. higher prominence in results against payment) (commercial purpose)	-	

		Home Security Services	
		-	<i>HS.1 – The system’s user interface overlays the broadcaster’s programme to display security information (no commercial purpose)</i>
		Electronic Programme Guides	
		<i>EPG.3 – EPG service producing a full screen image with an (interactive) list of linear and non-linear services, amongst which some pay for higher prominence, completely covering the images of the programme that is on, but without cutting of its sound – Viewer and Distributor/TV Manufacturer as initiators – Overlay with commercial purpose</i>	-
		-	<i>EPG.4 – EPG service producing a transparent overlay with an (interactive) list of channels covering the current programme – Viewer as initiator - Overlay without commercial purposes</i>
		<i>EPG.5 – EPG service producing a transparent overlay with an (interactive) list of channels covering the current programme – Viewer and Distributor/TV Manufacturer as initiators - Overlay for commercial purposes, allowing channels to obtain more prominent positions against payment</i>	-
		Classification Systems	
			<i>CLS.2 - The system’s user interface overlays the broadcaster’s programme to display a classification of programmes in</i>

		CLS.5 - The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, ... - Distributor/TV Manufacturer as initiator - Overlay for commercial purposes, allowing channels to obtain more prominent positions against payment CLS.6 - The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, ... - Viewer and Distributor/TV Manufacturer as initiator - Overlay for commercial purposes, allowing channels to obtain more prominent positions against payment	categories, ... - Distributor/TV Manufacturer as initiator - No commercial purpose CLS.4 - The system's user interface overlays the broadcaster's programme to display a classification of programmes in categories, ... - Viewer as initiator - No commercial purpose - -

In view of this definition, information should not be entitled to the protection offered by Article 7b when it:

- Does not help fulfil the audiovisual media service's principal purpose; but instead
- Is related to secondary purposes of the service or to 'other' sections of an audiovisual media service that are not "*devoted to **providing programmes**, under the **editorial responsibility** of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC*" (highlight added by authors);

Any other interpretation would result in a disproportionate measure.

Then what exactly does "providing programmes" encompass in terms of the information conveyed by the audiovisual media service provider's signal?

Point (b) under the first paragraph of the AVMS Directive's first Article defines 'a programme' as:

*"a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of **television broadcasting**. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama"* (highlight added by authors).

Point (c) defines 'editorial responsibility' as:

*"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**. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided"* (highlight added by authors).

Point (e) defines 'television broadcasting' or 'television broadcast' (i.e. a linear audiovisual media service) as:

"an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule."

Point (g) defines an 'on-demand audiovisual media service' as:

"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."

Point (h) defines an 'audiovisual commercial communication' as:

"images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video 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."

In conclusion, the information conveyed by the signal that is entitled to the protection offered by Article 7b must be intended to enable simultaneous (linear) or on-demand (non-linear) viewing, by the general public, of sets of moving images with or without sound (which includes audiovisual commercial communications) of which the form and content are comparable to the form and content of television broadcasting, under the editorial responsibility of a media service provider, in order to inform, entertain or educate by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC.

In view of this conclusion, the parts that are first and foremost entitled to Article 7b's protection are all audio and video data carried by the AVMS provider's signal (the images and sound).

Secondly, it must include all additional information, which the broadcaster sent along to enable viewing of the images and sound. For example:

- Already in the 'elementary streams' (see 4.2.3.) additional information is inserted that goes beyond pure audio and video. The headers in the 'packetised elementary streams' e.g. can include 'presentation' and 'decoding time stamps'. Time stamps are neither video nor audio data, but pieces of information that are important for the correct synchronisation of images and sound ¹⁶⁸;
- As acknowledged by Recital 23 of Directive 2010/13/EU, which clarifies that the notion of an audiovisual media service also covers text-based content which accompanies programmes, it must also include subtitles or electronic programme guides;
- Data added by the audiovisual media service provider to enable a viewer to switch from e.g. a TV-documentary (linear) to graphics presenting background information on an item featuring in that documentary (non-linear). Such data would e.g. consist of (see 4.2.2.):
 - The sound and images of the clip or graphic that would be displayed when e.g. the viewer clicks the 'read more'-button on the TV-screen (or one of the colour-buttons on the remote control);
 - The trigger monitoring the 'read more'-button, and;
 - Signalling to inform relevant systems on the status of the trigger;
- Similar and even more sophisticated data is added by the audiovisual media service provider in the event of e.g. addressable advertising solutions. For an ad-supported AVMS provider, the additional data is not only necessary to help enable correct viewing of the commercial communications. As discussed in section 4.3, addressable advertising technologies are very probably going even to be the motors of business models that are able to keep the principal purpose of ad-supported AVMSs sustainable.

In each of the cases introduced in section 4.4, where part of the broadcaster's signal was filtered out, the data fulfilled the condition discussed above: it served to help enable the provision of the broadcaster's programme. In that light, filtering out that data would require the broadcaster's consent.

It would on the contrary be more difficult, not to say impossible, to regard data with which the broadcaster would e.g. install and run a 'number-independent interpersonal communication service' within the meaning of the Electronic Communications Code (software programme, signalling, ...), as

¹⁶⁸ Fischer, W. (2020). Digital Video and Audio Broadcasting Technology, A Practical Engineering Guide (p. 44). Springer Nature Switzerland.

serving to help fulfil the primary purpose of the audiovisual media service or a dissociable section thereof (which is providing programmes). If such data were entitled to the protection of Article 7b, the measure would become disproportionate.

4.5.6 Is the protection offered by Article 7b technology-dependent?

As discussed earlier, the protection offered by Article 7b consists in requiring the AVMS provider's consent in cases of changes to the data carried by the signal that stem from and correspond with transmissions of the audiovisual media service in a shortened form, or altered, interrupted or overlaid for commercial purposes.

There are no grounds in Article 7b or Recital 26 for going beyond this level of protection and assuming that the measure also protects the choice of technology used by the signal to carry that data. Nor do Article 7b or Recital 26 promote or create more advantageous conditions for one technology over another.

In that light, we can conclude that the measure is technology-neutral.

4.5.7 When is a signal entitled to the protection offered by Article 7b?

Cases that are by their nature out of Article 7b's scope

From Table 45 it would appear that there are a number of cases from different categories that by their nature alone already seem to be out of the scope of Article 7b. Apart from case RDS.2 to 5, which involve processes that do not change signals at both data and information level, all these cases concern overlays that have, before anything else (such as e.g. the considerations made by Recital 26), no commercial purpose (STV.3 & 4, TVR.2 & 4, HS.1, EPG.4 and CLS.2 & 4) and are therefore a priori not in the new measure's scope. These cases are analysed separately below.

Cases placed out of Article 7b's scope by Recital 26

After explaining the rationale for Article 7b (first two sentences), Recital 26 lists a number of specific cases which the EU legislators believe not to be in the scope of Article 7b¹⁶⁹. In our approach to these out-of-scope cases, we have taken a restrictive stance (e.g. not going beyond the lists of examples provided by the Recital, even though the frequent use of "such as" to introduce the examples clearly indicates that these lists do not have the intention to be exhaustive):

- "[O]verlays solely initiated or authorised by the recipient of the service for private use, such as overlays resulting from services for individual communications"

Cases such as EPG.5, TVR.6 and CLS.6 in which the viewer calls upon a service for private use (such as a TV guide, a TV recommender system or a classification system) spring to mind. However, in none of these cases has the viewer been the sole initiator or authoriser: the overlays produced were (i) the result of certain settings programmed by the distributor/TV manufacturer and (ii) promoting certain (linear or non-linear) channels against payment. We, therefore, considered them to

¹⁶⁹ Another interpretation is that the cases listed by Recital 26 are 'exceptions to the general rule of Article 7b'. This interpretation seems to amount to the same results as the one used in this report. Example with the first set of cases listed by Recital 26: "overlays solely initiated or authorised by the recipient of the service for private use". In this interpretation the overlay which Recital 26 refers to, can be either commercial or non-commercial of nature. In case its nature is commercial the overlay should be carrying a commercial communication of some sort that is "solely initiated or authorised by the recipient of the service for private use". Cases in which the TV manufacturer initiated or authorised the commercial communication (e.g. when the TV manufacturer programmed the TV set to play an ad when the viewer launches a service for private use), are therefore excluded from this exception and remain subject to Article 7b.

be commercial communications initiated or authorised by the distributor/TV manufacturer. As a consequence, next to the viewer these overlays have a second initiator or authoriser: the distributor or TV manufacturer. Recital 26 does *not* exempt such cases from obtaining consent.

For Recital 26 to be able to exempt these cases, the viewer should effectively have been given the possibility to consciously and explicitly refuse or call for the commercially driven listings, recommendations or classifications. Only then can the entire overlay (the service's neutral or objective result as well as the commercial communications) be considered to be initiated or authorised by the viewer.

- *"Control elements of any user interface necessary for the operation of the device or programme navigation, such as volume bars, search functions, navigation menus or lists of channels"*

Such control elements often come as overlays (e.g. a volume bar, a time bar, a list of channels) which are therefore exempted from obtaining consent. However, any commercial communication that would come together with such control elements would remain in the scope of Article 7b. After all, having, e.g. a commercial communication accompanies a volume bar or the result of a recommender system cannot be qualified as "necessary" for operating the device's volume or navigating programmes.

- *"Legitimate overlays, such as warning information, general public interest information, subtitles or commercial communications overlays provided by the media service provider"*

Such overlays have again no commercial purpose or are overlays with a commercial purpose but are provided by the audiovisual media service provider. They are therefore a priori outside of Article 7b's scope;

- *"[D]ata compression techniques which reduce the size of a data file and other techniques to adapt a service to the distribution means, such as resolution and coding, without any modification of the content"*

As discussed in section 4.2, these are techniques that leave the signal completely unchanged or only change the signal at data level, but not at information level. They are therefore also a priori outside of Article 7b's scope.

Table 46 provides a mapping between, on the one hand, the programme modifications (shortened, altered, interrupted or overlaid for commercial purposes) and corresponding processes, and, on the other, the specific citations listed in Recital 26.

Table 46 also reflects the authors' view on which of the cases introduced in the previous section might qualify as being placed outside the scope of Article 7b by Recital 26. The cases that are, as discussed earlier, already by their nature out of Article 7b's scope (no change of signal at data and information level or overlays without commercial purposes) and do not feature in this table.

Table 46 – Mapping between ‘modifications’, ‘processes’, Recital 26 ‘out-of-scope situations’ and ‘cases which are possibly out-of-scope’

Modification	Process	Recital 26 out-of-scope situation	Cases possibly out-of-scope according to Recital 26	Rationale
Shortened	Editing	Control elements of any user interface necessary for the operation of the device [...], such as [...] search functions [...], should not be covered	<i>PVR.1 - Fast Forwarding (FFW, >>) through a recorded programme</i> <i>PVR.2 – Fast Forwarding through recorded TV commercials</i>	The shortened version of the programme (with limited number of frames shown instead of all frames) generated by the Fast Forward and Rewind functions, offer viewers a visual control element to see where their search for a particular point in a recorded programme is at
Altered	Adapting resolution and aspect ratio	[...] techniques to adapt a service to the distribution means, such as resolution [...], without any modification of the content, should not be covered either.	<i>RDS.1 - Technique used to ensure best viewing experience independent of consumer device</i>	-
		Control elements of any user interface necessary for [...] programme navigation [...] should not be covered	<i>EPG.2 - EPG service producing a full screen image with an (interactive) list of channels with the current programme playing in a smaller window</i>	Going beyond the (non-exhaustive) list of examples provided by Recital 26, we consider the resized video to be a control element of the EPG’s user interface which is helping the viewer to keep track of the programme he or she is watching while checking the programme schedules
			<i>STV.4 – Smart TV generating a PiP view</i>	Going beyond the (non-exhaustive) list of examples provided by Recital 26, we consider the resized video involved in the Pip view to be a control element of a Smart TV’s user interface which is helping the viewer to navigate programmes (in this case, by helping the viewer to keep track of where another programme of his / her interest is at).

			<i>TVR.1 - The system's user interface squeezes and pushes back the broadcaster's video and uses the freed-up space to display the recommendations, Distributor or TV Manufacturer as initiator</i>	Going beyond the (non-exhaustive) list of examples provided by Recital 26, we consider the resized version of the broadcaster's video to serve as control elements for the viewer to keep track of the programme that he / she is watching while checking the results of the recommender system.
			<i>TVR.3 - The system's user interface squeezes and pushes back the broadcaster's video and uses the freed-up space to display the recommendations – Viewer as initiator</i>	
			<i>CLS.1 - The system's user interface ... while the programme that was actually on continues to play in a smaller window in the corner of the screen – Distributor/TV Manufacturer as initiator</i>	Going beyond the (non-exhaustive) list of examples provided by Recital 26, we consider the resized version of the broadcaster's video to serve as control elements for the viewer to keep track of the programme that he / she is watching while checking the results of the classification system.
			<i>CLS.3 - The system's user interface ... while the programme that was actually on continues to play in a smaller window in the corner of the screen – Viewer as initiator</i>	
Interrupted	Interrupting	Control elements of any user interface necessary for the operation of the device or programme navigation, such as volume bars, search functions,	STV.4 – Smart TV generating a PiP view	Cutting the audio of the programme that is displayed in the corner of the screen is an inevitable part of creating the control element of the Smart TV's user interface that helps the viewer navigate programmes.

		navigation menus or lists of channels, should not be covered		
Overlaid for commercial purposes	Merging	Legitimate overlays, such as warning information, general public interest information, subtitles or commercial communications overlays provided by the media service provider, should also not be covered.	<i>Commercial communications overlays by the media service provider triggered by interaction with viewer ("Red Button", "Learn More", "Pause", ...)</i>	Commercial communications overlays by the media service provider (including triggers, signalling, ...) are part of the media service provider's programme / signal
		Overlays solely initiated or authorised by the recipient of the service for private use, such as overlays resulting from services for individual communications, do not require the consent of the media service provider.	<i>ADV.7 – Overlay ads triggered by certain viewer actions and for which it has been possible to unequivocally establish that the viewer has consented to these ads being played</i>	The viewer is the sole initiator/authoriser of the overlay ads triggered by his/her actions

4.5.8 The cases revisited

With the possible out-of-scope cases in mind (see Table 46) we will now revisit the cases which we introduced in the previous section and perform a final analysis to determine which of those cases would, by virtue of Recital 26 of the Directive, be outside the scope of Article 7b and, consequently, also which of those cases would be left for individual Member States to decide upon.

Table 47 provides a mapping of the modifications of audiovisual media services (programmes) referred to by Article 7b and Recital 26, the processes as discussed in section 4.2 and the cases as introduced in section 4.4. Table 47 also provides the outcome for said cases with respect to the question whether they need consent or not.

When reading these outcomes, one should bear in mind that:

- These outcomes are the result of a particular understanding of the modifications and processes and how they relate to each other (see section 4.2 on the technological context and section 4.4 introducing the cases), as well as a particular interpretation of Article 7b and Recital 26 (see this section). Different understandings and/or interpretations may result in different outcomes, or not. We have tracked the sensitivity of the outcome to such variations in three cases:
 - Case EPG.3 (and its variation EPG.3.alt) - The technological context described in section 4.2 allows a full screen EPG, not resizing video and not cutting sound, to be interpreted as either an overlay or an interruption. In spite of this difference, both cases require consent. It seems the commercial nature of the EPG washes away any impact this variation might have had on the outcome;
 - Cases IRD.1, 2 & 3 – Depending on whether the part of the signal that is filtered out is considered to be entitled to the protection of Article 7b, the outcome of these cases switches between requiring consent and not requiring consent;
 - Cases EPG.2, STV.4, TVR.1 & 3 and CLS.1 & 3 – In these cases we went beyond the (non-exhaustive) list of examples provided by Recital 26 for “control elements of any user interface necessary for operation of the device or programme navigation”. Not accepting this interpretation would change the outcome for these cases into requiring consent.
- Even though some 40 cases have been tracked and analysed, statistically speaking still no definitive conclusions can be drawn yet.

There are nonetheless strong indications that:

- Independent of the technology used (private network or Open internet), the new measure does not allow a distributor or TV manufacturer to modify or overlay the service of an AVMS provider, whether linear or non-linear, for the purpose of commercial communications, without said AVMS provider’s consent;
- Subject to the above, the new measure does not block distributors’ or TV manufacturers’ innovations such as interactive EPGs, TV recommender or classification systems.

Table 47 - Mapping of modifications, processes & cases (consent versus no consent, taking the exceptions prescribed by Recital 26 into account)

Modification	Process	Category of case		Remarks
Shortened	Editing	Personal Video Recorders		
		Consent ¹⁷⁰	No consent	
		PVR.1	-	<i>Fast Forwarding encompasses two aspects: on the one hand it results in a shortened version of a broadcaster's programme, and on the other, during the action, it sometimes produces a selection of images provided by the broadcaster (somewhat resembling a tape with images that is being sped up).</i>
		PVR.2	-	<i>Fast Forwarding can be regarded as a search function. And the selection of images displayed during search, can be seen to function as a way for the user / viewer to see where the search is at. In other words, a control element, not requiring consent according to Recital 26.</i> <i>However, with:</i> - <i>Recital 26 not mentioning any cases in which actions resulting in a shortened version of a programme would be considered out-of-scope, and;</i> - <i>The Recital 26 out-of-scope case of 'private use only' not applying here (since it does not concern an overlay),</i> <i>Fast Forwarding, whether through a programme or through a TV commercial, would in the end nonetheless seem to require consent from the audiovisual media service provider.</i>

¹⁷⁰ But which individual Member States may still decide to exempt from requiring consent

When, on the other hand, taking into account that the Fast Forward function is performed on a viewer's private copy of a programme or a TV commercial, it is very likely that the conclusion would be different. Consideration would very probably be that Article 7b of the AVMS Directive does not apply.

TV Classification Systems

Consent ¹⁷¹

No consent

CLS.1

-

The resized version of a broadcaster's video in a Classification System's user interface qualifies as a "[c]ontrol element of [a] user interface necessary for [...] programme navigation". The resized video helps the viewer keep track of where the programme he or she was watching is at while checking the results of the Classification System. However, case CLS.1 involves editing for which Recital 26 does not provide any out-of-scope case or situation.

CLS.2

-

CLS.3

-

Just as in case CLS.1, the resized version of a broadcaster's video in a Classification System's user interface qualifies as a "[c]ontrol element of [a] user interface necessary for [...] programme navigation". The resized video helps the viewer keep track of where the programme he or she was watching is at while checking the results of the Classification System. However, just like in all CLS cases in this report, case CLS.3 involves editing for which Recital 26 does not provide any out-of-scope case or situation.

CLS.4

-

CLS.5

-

¹⁷¹ But which individual Member States may still decide to exempt from requiring consent

		CLS.6	-	
Altered	Source Coding	Regular Distribution & Storage		
		Consent ¹⁷²	No consent	
		-	RDS.2	Recital 26 confirms the earlier conclusion that data compression does not require consent.
	Channel Coding	Regular Distribution & Storage		
		Consent ¹⁷³	No consent	
		-	RDS.3	Recital 26 confirms the earlier conclusion that coding does not require consent.
	Modulation & Demodulation	Regular Distribution & Storage		
		Consent ¹⁷⁴	No consent	
		-	RDS.4	Recital 26 does not refer to the processes of modulation and demodulation. These processes were however already out-of-scope since they do not even change the signal at data level.
		Regular Distribution & Storage		

¹⁷² But which individual Member States may still decide to exempt from requiring consent

¹⁷³ But which individual Member States may still decide to exempt from requiring consent

¹⁷⁴ But which individual Member States may still decide to exempt from requiring consent

Storing & Uploading	Consent ¹⁷⁵	No consent	
	-	RDS.5	<i>This technique applies other techniques (such as compression, coding and modulation) that do not change the signal at information level.</i>
	Regular Distribution & Storage		
	Consent ¹⁷⁶	No consent	
Adapting resolution and aspect ratio	RDS.1	RDS.1	<i>As discussed earlier, adapting resolution and aspect ratio changes the signal at data as well as at information level. Assessments of the extent to which a particular adaptation affects the information conveyed, depends on different factors, amongst which viewer-dependent and thus subjective factors.</i>
			<i>In case RDS.1 video is adapted to ensure an optimal viewing experience for the user of a particular viewing device. Recital 26 considers such cases out-of-scope ("... to adapt a service to the distribution means, such as resolution and coding, ...").</i>
	Electronic Programme Guides		
	Consent ¹⁷⁷	No consent	
	EPG.1	-	<i>Although the resized video would qualify as a control element of the EPG's user interface enjoying exemption from consent, the list of channels produced by the EPG would not because it contains commercial communications. However, the broadcasters are vertically integrated with the distributor that is producing the commercial</i>

¹⁷⁵ But which individual Member States may still decide to exempt from requiring consent

¹⁷⁶ But which individual Member States may still decide to exempt from requiring consent

¹⁷⁷ But which individual Member States may still decide to exempt from requiring consent

			communication. The latter could therefore be considered to be provided by the broadcasters. Nonetheless, the case is not entitled to the exemption provided by Recital 26 for "legitimate overlays [...] such as [...] commercial communications overlays provided by the media service provider" since it does not involve the use of an overlay. In conclusion, this very particular case does not seem to be exempted from consent by the AVMS Directive. In view of the vertical integration involved, consent is however very likely to be readily available.
	EPG.2	EPG.2	Both the list of channels and the resized video qualify as control elements of the EPG's user interface and the case seems to be exempted from consent by the AVMS Directive.
	Smart TV environment		
	Consent ¹⁷⁸	No consent	
	STV.1	-	Resolution and aspect ratio are being adapted in case STV.1, changing the signal of the broadcaster at data as well as at information level. The adaptation is not performed to ensure an optimal viewing experience, but rather to create room on the display for other information. Recital 26 does not consider cases like this to be out-of-scope. The 'private use only' argument does not play here either since there is no overlay involved. The AVMS Directive would seem to leave the ultimate decision on whether a case such as STV.1 requires consent or not, to the individual Member States.
	STV.2	-	Again, resolution and aspect ratio are being adapted for purposes other than ensuring an optimal viewing experience. This time room is created for, amongst others, commercial messages. For this case we also assumed having established that the adaptation was initiated by the TV manufacturer. It would seem cases such as STV.2 are not exempted by the AVMS Directive from requiring consent. The final decision is ultimately left to the individual Member States.

¹⁷⁸ But which individual Member States may still decide to exempt from requiring consent

	-	STV.4	Again, resolution and aspect ratio are being adapted for purposes other than ensuring an optimal viewing experience. This time a control element of the Smart TV's user interface is created which helps the viewer navigate programmes.
	Advertising		
	Consent ¹⁷⁹	No consent	
	ADV.1	-	The question whether an alteration of a broadcaster's programme performed by an Online Video Platform in favour of an advertisement requires that broadcaster's consent seems to be left up to individual Member States to decide.
	TV Recommender Systems		
	Consent ¹⁸⁰	No consent	
	TVR.1	-	On the basis of Recital 26's reference to "control elements" it would seem that an alteration of the broadcaster's video initiated by the distributor or TV manufacturer to display recommendations (not containing information of a commercial nature) can be exempted by the AVMS Directive from requiring that broadcaster's consent. The resized version of the broadcaster's programme is provided for the user not to lose track of his / her programme.
	TVR.3	-	In case TVR.3, where the viewer has been established as initiator instead of the distributor or TV manufacturer, the resizing can again be exempted on the basis of Recital 26's reference to "control elements". Condition is again that the results listed do not contain commercial communications. Presence of commercial communications in the list (see cases TVR.5 and TVR.6) changes the outcome significantly.

¹⁷⁹ But which individual Member States may still decide to exempt from requiring consent

¹⁸⁰ But which individual Member States may still decide to exempt from requiring consent

	Classification Systems	
	CLS.1	- <i>The resized version of a broadcaster's video in a Classification System's user interface qualifies as a "[c]ontrol element of [a] user interface necessary for [...] programme navigation". The resized video helps the viewer keep track of where the programme he or she was watching is at while checking the results of the Classification System.</i>
	CLS.3	- <i>Since there is no overlay involved in case CLS.3, the same conclusion is true as in CLS.1, even when the system has been called upon by the viewer.</i>
Interrupted	Interrupting	Irregular Distribution
	Consent ¹⁸¹	No consent
	IRD.1	- <i>Actively (IRD.1 & 2) or passively (IRD.3) filtering out a 'solution' from a broadcaster's signal boils down to partially interrupting that signal. When the information corresponding with that 'solution' is considered part of the signal that is entitled to the protection of Article 7b, then the AVMS Directive does not exempt filtering that 'solution' out from requiring the broadcaster's consent.</i>
	IRD.2	-
	IRD.3	
	Electronic Programme Guides	
	Consent ¹⁸²	No consent

¹⁸¹ But which individual Member States may still decide to exempt from requiring consent

¹⁸² But which individual Member States may still decide to exempt from requiring consent

	EPG.3.alt	-	When the EPG in case EPG.3 is considered to be interrupting the broadcaster's signal instead of overlaying it, the EPG cannot be exempted on the basis of it being a list of channels as referred to by Recital 26. Having certain channels promoted over others for commercial reasons cannot be called necessary for programme navigation. It may even work to the detriment of the help a viewer is expecting from an EPG.
	Advertising		
	Consent ¹⁸³	No consent	
	ADV.2	-	
	ADV.3	-	Recital 26 does not exempt Online Video Platforms intending to interrupt linear or non-linear content with commercial communications from requiring consent from the audiovisual media service provider of that content.
	ADV.4	-	
	Smart TV environment		
	Consent ¹⁸⁴	No consent	
	-	STV.4	Together with its video being resized, the sound of a broadcaster's programme is being muted to create a control element of a Smart TV's user interface to assist viewers navigate programmes.
	Merging	Smart TV Systems	

¹⁸³ But which individual Member States may still decide to exempt from requiring consent

¹⁸⁴ But which individual Member States may still decide to exempt from requiring consent

Overlaid for commercial purposes	Consent ¹⁸⁵	No consent	
	-	STV.3	<i>The overlay has no commercial purposes.</i>
	Advertising		
	Consent ¹⁸⁶	No consent	
	ADV.5	-	<i>A TV manufacturer intending to play ads in overlay mode during a broadcaster's programme is to request the latter's consent.</i>
	ADV.6	-	<i>In case ADV.6 the overlay produced when a viewer launches or authorises a service, a function or a feature (such as checking the social network feed, adjusting the volume, calling up the TV set's menu, ...) may be confused with the overlay meant in the 'private use only' situation provided by Recital 26 ("...overlays solely initiated or authorised by the recipient of the service for private use ..."). These overlays are however two very different things:</i> <i>• The first is an overlay carrying commercial information, in this case initiated by the TV Manufacturer;</i> <i>• The second is the user interface of the service initiated or authorised by the viewer.</i> <i>The first is programmed by the TV Manufacturer to be triggered by a viewer's certain actions. Since the viewer did not initiate or authorise the overlay ad, the TV Manufacturer is the initiator and required to obtain consent from the broadcaster.</i>

¹⁸⁵ But which individual Member States may still decide to exempt from requiring consent

¹⁸⁶ But which individual Member States may still decide to exempt from requiring consent

<i>The situation would have been different if and when the viewer would effectively have had the chance to explicitly refuse or call for the commercial communication to be played (as a general setting or every time he or she performs the action).</i>														
-	ADV.7	<i>This case is identical to ADV.6 except for the fact that the viewer is given the chance (as a general setting or every time he or she performs the action) to explicitly refuse or call for the commercial communication to be played. In this case we have assumed that we were able to unequivocally establish that the viewer has effectively consented to or asked for commercials being played. The overlay ads are solely initiated or authorised by the viewer and do not require the broadcaster's consent.</i>												
TV Recommender Systems														
<table> <tr> <th>Consent ¹⁸⁷</th><th>No consent</th><th></th></tr> <tr> <td>-</td><td>TVR.2</td><td> <i>When a TV Recommender System produces an overlay with unbiased recommendations, no consent is required from the broadcaster, irrespective of whether the distributor / TV manufacturer (case TVR.2) or the viewer (case TVR.4) has been identified as having launched the service. After all, the overlay does not have commercial purposes.</i> </td></tr> <tr> <td>-</td><td>TVR.4</td><td></td></tr> <tr> <td>TVR.5</td><td>-</td><td> <i>When a TV Recommender System, at the request of the distributor / TV manufacturer, produces an overlay containing commercial communications (e.g. recommendations that are biased for commercial reasons), the distributor / TV manufacturer is to obtain the broadcaster's consent.</i> <i>The overlay, or at least part of it, has a commercial purpose and is not exempted by Recital 26's reference to "[c]ontrol elements of any user interface necessary for [...] programme navigation, such as [...] lists of channels". Having certain channels and content promoted over the actual, objective results of the recommender system</i> </td></tr> </table>			Consent ¹⁸⁷	No consent		-	TVR.2	<i>When a TV Recommender System produces an overlay with unbiased recommendations, no consent is required from the broadcaster, irrespective of whether the distributor / TV manufacturer (case TVR.2) or the viewer (case TVR.4) has been identified as having launched the service. After all, the overlay does not have commercial purposes.</i>	-	TVR.4		TVR.5	-	<i>When a TV Recommender System, at the request of the distributor / TV manufacturer, produces an overlay containing commercial communications (e.g. recommendations that are biased for commercial reasons), the distributor / TV manufacturer is to obtain the broadcaster's consent.</i> <i>The overlay, or at least part of it, has a commercial purpose and is not exempted by Recital 26's reference to "[c]ontrol elements of any user interface necessary for [...] programme navigation, such as [...] lists of channels". Having certain channels and content promoted over the actual, objective results of the recommender system</i>
Consent ¹⁸⁷	No consent													
-	TVR.2	<i>When a TV Recommender System produces an overlay with unbiased recommendations, no consent is required from the broadcaster, irrespective of whether the distributor / TV manufacturer (case TVR.2) or the viewer (case TVR.4) has been identified as having launched the service. After all, the overlay does not have commercial purposes.</i>												
-	TVR.4													
TVR.5	-	<i>When a TV Recommender System, at the request of the distributor / TV manufacturer, produces an overlay containing commercial communications (e.g. recommendations that are biased for commercial reasons), the distributor / TV manufacturer is to obtain the broadcaster's consent.</i> <i>The overlay, or at least part of it, has a commercial purpose and is not exempted by Recital 26's reference to "[c]ontrol elements of any user interface necessary for [...] programme navigation, such as [...] lists of channels". Having certain channels and content promoted over the actual, objective results of the recommender system</i>												

¹⁸⁷ But which individual Member States may still decide to exempt from requiring consent

			cannot be considered necessary for programme navigation. Offering the viewer biased results can even work to the contrary of the help a viewer expects to receive from a recommender system.
	TVR.6	-	For the same reason as in case TVR.5. the overlay cannot be exempted by Recital 26's reference to "[c]ontrol elements of any user interface necessary for [...] programme navigation, such as [...] lists of channels". As in case ADV.6 the overlay generated when a user launches or authorises a TV Recommender System that produces results that are biased for commercial reasons, may be confused with the overlay meant in the 'private use only' situation referred to in Recital 26 ("...overlays solely initiated or authorised by the recipient of the service for private use ..."). Again, these overlays are very much two different things. In the particular situation of case TVR.6 the overlay produced by the biased system consists: • on the one hand, of the actual, objective results, if any, initiated or authorised by the viewer, and; • on the other, commercial communications (consisting of linear or non-linear channels and / or content promoted by the Distributor / TV Manufacturer against payment). Again, the situation would have been different if the viewer had effectively been given the chance to explicitly refuse or call for such commercially driven suggestions.
	Home Security Services		
	Consent ¹⁸⁸	No consent	
	-	HS.1	Since the overlay does not have commercial purpose, it is not within the scope of Article 7b.
Electronic Programme Guides			

¹⁸⁸ But which individual Member States may still decide to exempt from requiring consent

	Consent ¹⁸⁹	No consent	
	EPG.3 (*)	-	The EPG in EPG.3 takes the form of a solid overlay completely covering the broadcaster's video, but without muting the sound. It displays linear and non-linear channels and we assumed some of them were paying for a higher prominence in the list. Part of the EPG is therefore actually displaying commercial communications and the overlay carrying the EPG actually has commercial purpose. EPG.3 cannot be considered to be out-of-scope on the basis of its EPG being a 'list of channels'. The latter is supposed to be a control element of a user interface necessary for the operation of the device or programme navigation. That is true for a part of the EPG in EPG.3, but for the part in which certain channels are given higher prominence in the list, it is not. Having certain channels or content promoted over others for commercial reasons cannot be called necessary for programme navigation. Nor can EPG.3 be considered to be out-of-scope on the basis of the viewer having solely initiated or authorised the EPG. Unless the viewer has effectively had a chance to explicitly refuse or call for the EPG to display said commercial communications, the latter are actually initiated or authorised by the hybrid distribution platform. (*) See case EPG.3.alt to see the outcome for when the case is regarded as an interruption.
	-	EPG.4	Since the overlay does not have commercial purpose, it is not within the scope of Article 7b.
	EPG.5	-	As in the cases EPG.3, ADV.6 and TVR.6, the commercial nature of a part of the EPG-overlay initiated by the Distributor / TV Manufacturer forces the latter to obtain broadcasters' consent, even when the viewer has launched the service. The outcome would be different if and when the viewer would effectively have had a chance to explicitly refuse or call for the EPG to display information of a commercial nature.

¹⁸⁹ But which individual Member States may still decide to exempt from requiring consent

Classification Systems			
	Consent ¹⁹⁰	No consent	
-	CLS.2	CLS.4	When a TV Classification System produces an overlay with an unbiased classification, no consent is required from the broadcaster, irrespective of whether the distributor / TV manufacturer (case CLS.2) or the viewer (case CLS.4) has been identified as having launched the service. The overlay is not within the scope of Article 7b.
CLS.5	-		When a TV Classification System, at the request of the distributor / TV manufacturer, produces an overlay with a biased classification, the distributor / TV manufacturer is to obtain the broadcaster's consent. After all, the overlay has a commercial purpose.
CLS.6	-		For similar reasons as those mentioned in the cases ADV.6 and TVR.6, the provider of the system is believed to have to obtain broadcasters' consent, unless viewers are effectively given a chance to explicitly refuse or call for commercially driven classifications.

¹⁹⁰ But which individual Member States may still decide to exempt from requiring consent

4.5.9 Leeway for Member States to further tune their national policy

Now that we have covered the application of Article 7b's first paragraph as well the considerations in Recital 26 that relate to that paragraph, and identified which of the cases introduced in section 4.4 are a priori outside the Article's scope and which of those cases are left to the Member States to decide on, we turn to Article 7b's second paragraph and the final sentence of Recital 26.

From that paragraph and sentence, it would appear that the EU legislators do not believe that a signal's entitlement to the protection offered by Article 7b is absolute. On the contrary, Article 7b uses rather imperative language, particularly in invoking user interests, to make it clear that it takes more than merely establishing whether a programme or audiovisual media service has been transmitted in shortened form, altered, interrupted or overlaid for commercial purposes:

"For the purposes of this Article, Member States shall specify the regulatory details, including exceptions, notably in relation to safeguarding the legitimate interests of users while taking into account the legitimate interests of the media service providers that originally provided the audiovisual media services."

Recital 26 reformulates this principle using more general terms: *"Measures to protect the integrity of programmes and audiovisual media services should be imposed where they are necessary to meet general interest objectives clearly defined by Member States in accordance with Union law."*

In conclusion, the AVMS Directive leaves Member States the possibility of exempting certain cases from the requirement to obtain the audiovisual media service provider's consent on condition that the decision is the result of weighing legitimate user interests against the legitimate interests of the audiovisual media service provider.

4.5.10 Will a harmonised approach be possible?

Since the AVMS Directive's Article 7b and the Directive's Recital 26 leave room for interpretation, there is a risk that similar or even identical cases will eventually have different outcomes depending on the Member State.

The divergence between Member States may occur only at the stage of weighing user interests against those of the AVMS provider. Member States may consider different sets of users and AVMS provider interests or they may attribute different relative importance to those respective interests.

The divergence may, however, also already start at the stage of developing an understanding of the modifications and related processes or when assessing whether a case is within the scope of Article 7b or maybe qualifies as out-of-scope according to Recital 26, e.g.:

- One Member State may e.g. consider an EPG displaying the currently selected programme in a smaller window (adaptation of resolution and aspect ratio, not with a view on optimising the viewing experience) to be a positive, but non-essential feature, and therefore subject to the broadcaster's consent. Another Member State may, however, value this as a 'traditional' and 'necessary' control element of an EPG's user interface (allowing the viewer to keep track of the programme that is on while checking the programme schedule) and therefore out-of-scope;
- One Member State may accept that displaying a selected number of frames during fast forwarding or rewinding is actually a control element helping the viewer with his or her search.

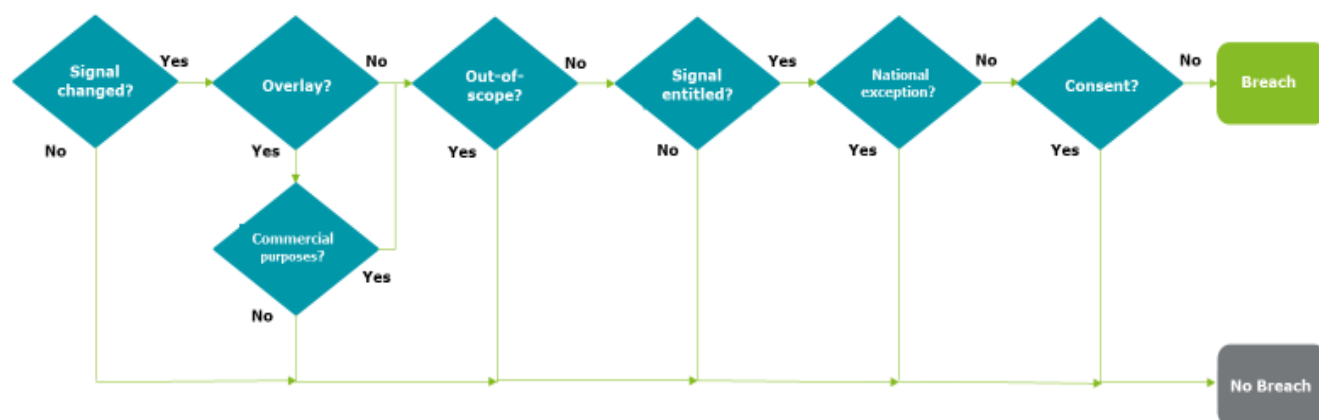
Another Member State may however not accept this view, but instead regard it as a functionality whose use is subject to the audiovisual media service provider's consent.

A harmonised approach will therefore require continued efforts from the EU to find common ground in the different possible interpretations and approaches.

4.5.11 Flow of Article 7b

In summing up, we take a step back to see how the elements discussed in this section fit together in Article 7b and what they tell us about how to approach assessment of actual cases.

Figure 22 - Flow of Article 7b (AVMS Directive)



Source: Authors

The first fact which needs to be established is whether the audiovisual media service provider's signal has effectively been changed by one or other process. For the purpose of Article 7b, both data carried by the signal as well as the information conveyed need to be changed by the process. If no change has been made to the audiovisual media service provider's signal, there is neither a need for the audiovisual media service provider's consent, nor are there grounds for disagreement, at least not in the light of Article 7b.

When a change of the signal has effectively been established, the next step is to check whether the change is caused by an overlay. And if this is indeed the case, the overlay should be for commercial purposes. Otherwise, the case is not within the scope of Article 7b.

The case handler should also check whether the case qualifies as one of the out-of-scope situations listed by Recital 26 or not.

The case can also be closed when:

- the signal is not entitled to the protection of Article 7b;
- the case qualifies as an exception as defined by the Member State involved;
- there is consent from the relevant audiovisual media service provider(s).

4.6 National regulations

The section in brief

This section provides a scan of national regulation in the EU-27, the UK, the US and Canada.

It subsequently dives deeper into a number of selected national regulations in search of more detail as to the degree to which these countries have had experience with signal integrity issues and how they have responded to them.

From the contributions by national experts and stakeholders, it seems issues have not spread widely across the EU-27 and only a very few countries have put measures in place.

Although electronic communication and intellectual property/copyright frameworks have already been considered (theoretically or academically) by some of the selected countries, in practice, signal integrity issues are mostly dealt with from a media law perspective.

Before the EU adopted its new measure on signal integrity, a number of countries had already encountered similar integrity-related issues. Their respective approaches to trying to solve them have, however, been different.

This section starts with a scan of the Member States of the EU as well as the UK, Canada and the US. The scan reveals existing and emerging legislation which can be considered related, even if only remotely, to signal integrity as defined in the new AVMS Directive. Subsequently, we will zoom in on a number of countries.

The input for this section was provided by a team of national experts in response to our qualitative survey enquiring about the details of existing and upcoming rules and regulations related to signal integrity: legal framework (media, copyright, competition ...), references to and full text of (draft) provisions, rationale for the measures and the manner in which compliance is enforced, if any. The survey also took the opportunity to enquire about any cases of negotiations, disputes or infractions which the national experts may or happen to know more about.

Some of the information, more precisely on the existence of past or ongoing negotiations, disputes and/or litigations, has been supplemented with input provided by stakeholders.

4.6.1 Scan of existing or emerging legislation

On the basis of the input submitted by our national experts, the table below provides a snapshot of the situation with respect to rules and regulations in force and under way in the Member States of the EU, the UK, Canada and the US.

The table maps everything which national experts considered related to signal integrity as defined in the AVMS Directive, even if only remotely. However, the table distinguishes between rules and regulations that are clearly (very close to) signal integrity measures as defined by the revised AVMS Directive and other integrity-related rules and regulations.

We considered rules and regulations to be signal integrity measures as defined by the revised AVMS Directive when:

1. They are part of a country's regulatory framework for media; and,
2. Their purpose is to protect editorial responsibility and the audiovisual value chain.

At the time of reporting by the national experts, the following countries had signal integrity related measures in place:

- Belgium (Flemish Community), Denmark and Hungary actually had signal integrity measures in place as defined by the revised AVMS Directive;
- France, Germany, Spain, Canada and the US all had measures in place that were, to a higher or lower degree, related to the revised AVMS Directive's signal integrity measure.

From the input of the national experts it would seem, however, that most EU Member States have not yet dealt with integrity-related issues and have no signal integrity (-related) measures in place at the time of writing.

Table 48 - Scan of legislation in force and under way (based on input and updates until September 2020 by national experts and stakeholders, as well as on own research)

Country	In force/under way					
	Signal integrity/other	Scope	Rationale	Framework	Authority	Under way/cases
Austria	No	-	-	-	-	-
Belgium	In force: Signal Integrity	Flemish Community – Modifications, Overlays, Timing	Editorial Responsibility, Value Chain	Media Law	Media Regulator	Disputes, Litigations, Commercial Negotiations / Contracts
	Under way: Signal Integrity	Flemish Community – Modifications, Overlays, Timing	Editorial Responsibility, Value Chain	Media Law	Media Regulator	
Bulgaria	No	-	-	-	-	-
Croatia	No	-	-	-	-	-
Cyprus	Under way: Signal Integrity	Overlays, Modifications	Editorial Responsibility, Value Chain	Media Law	Media Regulator	-
Czechia	Under way: Signal Integrity	Overlays, Modifications	Editorial Responsibility, Value Chain	Media Law	Media Regulator	-
Denmark	In force: Signal Integrity	Overlays, Modifications	Editorial Responsibility, Value Chain	Media Law	National Courts	-

Estonia	In force: Other	Modifications, Timing	-	Media Law	Ministry of Industry, Business and Financial Affairs	
	No	-	-	-	-	Commercial Negotiations / Contracts
Finland	Under way: Signal Integrity	-	-	Copyright Law	-	-
France	In force: Other	Modifications	Quality	-	-	Commercial Negotiations / Contracts
	Under way: Signal integrity	Overlays, Modifications	Editorial Responsibility, Value Chain	Media Law	Media Regulator	
Germany	In force: Other	Modifications (Overlays)	Quality (Editorial Responsibility)	Media Law (Competition Law, Copyright Law)	Media Regulator, Competition Authority	Disputes, Commercial Negotiations / Contracts
	Under way: Signal integrity	Overlays, Scaling, Framing, RePackaging, Redistribution	Editorial Responsibility, Value Chain	Media Law	Media Regulator	
Greece	No	-	-	-	-	Disputes
Hungary	In force: Signal Integrity	Modifications, Overlays	Editorial Responsibility, Value Chain	Media Law	Media Regulator	-
Ireland	No	-	-	-	-	-

Italy	No	-	-	Media Law	Media Regulator	-
Latvia	Under way : Signal Integrity	Overlays, Modifications	Editorial Responsibility, Value Chain	Media Law	Media Regulator	-
Lithuania	No	-	-	-	-	-
Luxembourg	No	-	-	-	-	-
Malta	No	-	-	-	-	-
Netherlands	Under way: Signal Integrity	Overlays, Modifications	Editorial Responsibility, Value Chain	Media Law	Media Regulator	Disputes
Poland	No	-	-	-	-	Commercial Negotiations / Contracts
Portugal	No	-	-	-	-	-
Romania	No	-	-	-	-	-
Spain	In force: other	Deformation, Modification, Alteration or Attack	Moral rights	Copyright Law	National courts	Disputes
Slovenia	No	-	-	-	-	-
Slovakia	No	-	-	-	-	-

Sweden	-	-	-	-	-	-
Canada	In force:	Retransmission, Modifications, Overlays	Privacy of Communications, Value Chain, Public Safety	Electronic Communications Law, Copyright Law, Media Law	Media Regulator, National Courts	Commercial Negotiations / Contracts, Disputes, Litigations
	Other					
	Under way:	Retransmission, Modifications, Overlays	Privacy of Communications, Value Chain, Public Safety	Electronic Communications Law, Copyright Law, Media Law	Media Regulator, National Courts	
	Other					
UK	Under way: Signal Integrity	Overlays, Modifications	Editorial responsibility, Value Chain	-	-	-
USA	Other	Alterations or deletions of the content	-	Electronic Communications Law	Federal Communications Commission	Disputes

4.6.2 Analyses of national legislation

Further to the scan, we now take a closer look at the situation in those countries which, at the time of reporting by the national experts, had rules and regulations in place that were to a greater or lesser extent related to the AVMS Directive's new signal integrity measure.

4.6.2.1 Member States of the European Union

Belgium¹⁹¹

Table 49 – Provisions in force and under way in Belgium

Framework	Provision	Rationale
Media Law - Flemish Decree on Media ¹⁹²	Art. 180	Parliamentary document 1703 (2011-2012) – Nr. 8 of July 1, 2013, Report by the Parliamentary Commission on Culture, Youth, Media and Sport ¹⁹³
Media Law - Decree of 19 July 2013 (on signal integrity) amending the Flemish Decree on Media ¹⁹⁴	Art. 2	

In 2013, Belgium's Flemish Community amended its Decree on Media. Since then, the latter has explicitly dealt with signal integrity, its Article 180 stating that (translations by authors):

- "Distributors must transmit the linear television broadcasting programmes that are part of their range of television services in the Flemish Community, unabridged, unaltered and in their entirety at the time they are broadcast;"
- "Any functionality that a service provider offers to the end users and that makes it possible to watch the linear television broadcasting programmes referred to in the first paragraph in a postponed, shortened or modified manner, is subject to the prior permission of the relevant television broadcaster;"
- "The television broadcaster and service provider concerned negotiate in good faith and must exercise their consent in a reasonable and proportionate manner;"
- "If an agreement on this leads to financial compensation from the service providers to the television broadcasters, then these must be used for Dutch-language European productions;"
- "Functionalities that detract from the editorial autonomy and responsibility of the television broadcasters involved may always be refused."

Article 180 also provides for a mediation procedure which parties are to rely on if it is not possible to reach an agreement on permission within a period of three months from the time that the distributor informed the

¹⁹¹ Insights on Belgium are based on input from Stephanie Tintel, PhD researcher and Teaching Assistant at IMEC-SMIT, VUB, as well as on own research.

¹⁹² Vlaams Mediadecreet, available, in Dutch only, at:

https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_27_maart_2009_17.pdf

¹⁹³ Flemish Parliament, Commission Culture, Youth, Sport and Media (2013). Report w.r.t. a proposal for a decree amending the Flemish Decree on Media. Document 1703 (2011-2012), Nr.8. Available in Dutch only, at:

<http://docs.vlaamsparlement.be/pfile?id=1039683>

¹⁹⁴ Decreet Signaalintegriteit, available, in Dutch only, at: https://www.etaamb.be/nl/decreet-van-19-juli-2013_n2013204469.html

television broadcaster, in detail and by registered letter, of his intention to offer a functionality for which permission is required from the television broadcaster.

The Flemish Regulator for the Media will assume the role of mediator, taking no longer than three months to reach a conclusion. If no agreement can be reached, the mediator will conclude with a recommendation. Parties are free to take the matter to court.

Van den Bulck and Donders (2014) provide an account of the path leading to the Flemish decree on signal integrity which starts in August 2010 with an open letter by the main Flemish broadcasters *"to the dominant cable operator Telenet, which holds an 80% share in the multi-channel television distribution market."*¹⁹⁵

From an analysis of the open letter and the subsequent discussions in the Flemish Parliament¹⁹⁶ by Van den Bulck and Donders (2014), it appears broadcasters are claiming ownership of the signals and that their demand for integrity of this signal actually builds on two arguments, more precisely 'content integrity' and 'economic integrity':

- The argument of 'content integrity' was mainly made by the public broadcaster, pointing out that digital convergence is allowing third parties to intervene in broadcasters' content without permission. The public broadcaster considered this to be a threat to, on the one hand, *"the ongoing creative process that is a television channel"*, and, on the other, to *"broadcasters' compliance with legal obligations per content regulation, regarding minors or commercial communication in the case of commercial broadcasters, and the public service remit in the case of public broadcasters"*;
- The argument of 'economic integrity' was mainly advocated by the commercial players. The latter perceived certain new digital services as a threat to their business model. They were particularly worried by services enabling 'ad-skipping'. According to Van den Bulck and Donders (2014), cable operator Telenet originally *"charged costumers €4.95 per month for additional consumer services (including ad-skipping) and shared those revenues with broadcasters. In 2008, however, Telenet unilaterally terminated this deal and started offering the same services for free to consumers in a move to strengthen customer loyalty by using television content as an incentive for triple-play service packages. Broadcasters claim that the success of the digital packages and of ad-skipping undermines their revenues – thus affecting content. In the same period, according to the broadcasters, Telenet's own revenues rose by 350%, largely generated from broadcasters' content, but entirely passed on as dividend to Liberty Global."*

In their paper Van den Bulck and Donders (2014), point out that during a public hearing organised by the Flemish Parliament's Commission for Culture, Youth, Sport and Media¹⁹⁷, the CEOs of SBS Belgium and VMMA referred to Flemish fiction series to illustrate the point: *"These perform key social-cultural functions because they are widely popular with audiences and crucial in (re-) articulating local culture and identity, are the most expensive television genre to produce, are most subject to ad-skipping, and are difficult to exploit through pay television because of the limited size and revenue potential of the Flemish television market. This jeopardizes future investment in local content, fictional or otherwise. Both CEOs objected to others (distributors) controlling their revenue streams and taking advantage of their gatekeeper positions without financial compensation, thus undermining broadcasters' business models and hampering their*

¹⁹⁵ Van den Bulck, H., Donders, K. (2014). Pitfalls and obstacles of media policymaking in an age of digital convergence: the Flemish signal integrity case. In: Journal of Information Policy (4), p. 451.

¹⁹⁶ Flemish Parliament, Commission Culture, Youth, Sport and Media (2013). Report w.r.t. a proposal for a decree amending the Flemish Decree on Media. Document 1703 (2011-2012), Nr.4. Available, in Dutch only, at: <http://docs.vlaamsparlament.be/pfile?id=1038307>

¹⁹⁷ Ibidem (pp.3-6).

potential for innovation. As owner of the signal, broadcasters want autonomy over decisions about the economic exploitation beyond free-to-air delivery of content”.

The Members of Parliament who initiated the decree on signal integrity justified their proposal as follows:

"Article 185, §1, second paragraph, of the Media Decree [...] imposes the obligation on certain service providers (using networks which are the main means of receiving broadcasting programmes for a significant number of end users) to provide a certain number of linear broadcasting programmes (which they must include in their basic offer, the so-called 'must-carry') in full and in their entirety [...]", but, "[a]ctually, every service provider must pass on every linear broadcasting programme (whether or not 'must carry') in its offer, in full and in its entirety. This is determined in the first sentence of the draft decree; [...].

If the service providers want to offer users functionalities relating to these linear broadcasting programmes, they must obtain the explicit and special permission of the broadcaster concerned in advance. This applies, for example, to functionalities such as delayed viewing, signal coverage ('overlays'), search engine setting, programme suggestions, social media integration, social EPG applications (EPG: electronic programme guide) and the like. This is regulated in the third sentence of the draft decree.

With this draft decree, a certain integrity of the programme signal (signal integrity) of linear broadcasting programs is guaranteed. [...] Indeed, it is essential for a variety of reasons that a linear broadcasting programme be transmitted and viewed in a linear fashion. In the first place, this must provide the end user with the guarantee that he / she can view the linear broadcasting programme offered under a specific brand or title and to which he / she consciously tunes, as initially intended by the broadcaster on the basis of its programme schedule [...].

Subsequently, this must ensure the end user that the linear broadcasting programme that he / she views in this way and that has been compiled by the broadcaster under its editorial responsibility, complies with the Media Decree. After all, the broadcaster compiles its linear broadcasting programme in a precise manner, taking into account all the requirements of the Media Decree. The Media Decree reflects the sometimes fragile balance that the Flemish legislator has sought between all the legitimate interests of all parties involved (not only broadcasters, service distributors and network operators, but also the public, including minors).

Finally, this must guarantee the end user that a qualitative programme offer will continue to exist and will moreover continue to be offered free of charge. This should encourage the creation of Dutch-language productions and therefore secure employment in the creative sector in Flanders. In accordance with Article 185, § 1, second paragraph, of the Media Decree, this must also ensure pluralism and cultural diversity in the provision of broadcasting services in a sustainable manner.

For all these reasons, broadcasters should be able to maintain control over the programme signal of their linear broadcast programmes. The transmission of linear broadcasting programmes and the functionalities offered by service providers with regard to linear broadcasting programmes must not jeopardize the editorial autonomy and control of broadcasters. Any breach of this will erode any safeguards that the Media Decree offers to users of broadcasting services in the short or medium term.

This proposal for a decree complies with the principle of "fairness of trade transactions". Service providers who wish to offer functionalities with regard to the linear broadcasting programmes that

they have passed on to their customers cannot do so at the expense of the editorial autonomy and control of the broadcasters concerned and of the guarantees that the Media Decree wishes to grant to the end users.” (translation by authors)

The report by the Flemish Parliament’s Culture, Youth, Media and Sport Commission on the final version of the proposal mainly repeats the initiators’ original justification and provides background to the mostly technical amendments to the original draft. However, during the reading of the amendments and before the Commission proceeded to a final vote, most members took the opportunity to share their political groups’ views on the final version of the draft decree as well as on the current and future state of the matter in general ¹⁹⁸:

- The then President of this Parliamentary Commission pointed out that:
 - *“It is not the intention to make functionalities impossible for the end user. By introducing reasonableness, proportionality and mediation, the authors of the amendments want to demonstrate that the intention is not for the end user to have fewer functionalities;”*
 - *“The scope to reach a balanced and negotiated agreement should in no way lead to an increase in the price for the consumer. This element of price was included because of its social importance and because it was a frequently heard comment. Some even argued for a reintroduction of viewing and listening taxes. That is most certainly not the intention, neither directly nor indirectly. [...]”*
- One member of this Parliamentary Commission was happy with the amended version, because he was expecting it to provide a legal basis for the principle of broadcasters being the owners of their signal;
- Several members expressed concern at the fact that the Flemish Community appeared to be settling a dispute between private parties;
- However, together with others, several of those same members also expressed their satisfaction with the decree for providing a framework for private parties to negotiate and resolve such disputes;
- Other members expressed the opinion that intervention in this case was necessary to safeguard and protect the unique Flemish audiovisual ecosystem, the interests of Flemish viewers and cultural identity;
- A number of members expressed the opinion that the decree would soon be overtaken by technological developments;
- A number of members expressed the opinion that the real threat to the Flemish audiovisual ecosystem comes from the so-called OTTs;
- One member called for a strengthening of the regulator’s dispute resolution capacities with a view to avoiding such disputes dominating the market for too long.

Both the Flemish parliament and the Flemish media regulator have followed the implementation and functioning of this decree since its adoption. Some of the most recent discussions provide further insights into the rationale for the decree and are listed below:

- In reaction to a statement made by the Flemish Minister in charge of Media in 2018 on ad skipping, a member of the Flemish Parliament’s Culture, Youth, Sport and Media Commission asked the minister

¹⁹⁸ Flemish Parliament, Commission Culture, Youth, Sport and Media (2013). Report w.r.t. a proposal for a decree amending the Flemish Decree on Media (pp 9-12). Document 1703 (2011-2012), Nr.8. Available, in Dutch only, at: <http://docs.vlaamsparlement.be/pfile?id=1039683>

whether the decree on signal integrity had already been evaluated¹⁹⁹: *"If there are difficulties, there is also a kind of mediation procedure attached to it. Should obstacles arise, there are additional possibilities to apply what we have now and use it fully before we do new things. Is it technically possible to prohibit passing on? Do you not think that such a government intervention goes too far? The Signal Integrity Decree seemed to me to be at the limit of what you can impose as a parliament or as a government. Of course we supported it, certainly because we want to safeguard those resources for our own Flemish productions. Isn't it more interesting that providers leave it to the viewer to choose whether he wants a package with fast forward options or without? By the way, that model exists. Spotify is already doing that. We already put that model on the table during the discussion of the Signal Integrity Decree."* The minister responded that *"The Signal Integrity Decree must be viewed in the context of that time (2013), a context that has of course evolved very quickly, because delayed viewing has meanwhile taken on immense proportions. However, the decree was based on an all-or-nothing logic and the mediation procedure that was planned did not lead to solutions or was not applied even then. In other words, I now want to delve deeper into the question whether the Signal Integrity Decree will be a straw or a lifebuoy based on its evaluation. I agree that we should now get the most out of it."* (translation by authors);

- During a parliamentary debate in April 2019 on access to a paying, non-linear broadcasting service (in the light of a Flemish Netflix-like initiative) one of the Members of Flemish Parliament recalled that *"The existing decree on signal integrity gave explicit priority to free negotiations between the actors in the chain. If they do not reach an agreement, there is a mediation assignment for the VRM. Parliament expressly opted for this because the free market must be able to play its role. In such a rapidly evolving media landscape, a regulating government should be cautious, it was then considered. In a moving landscape, regulation, although it is intended to stimulate, can have an unintended limiting effect"*.²⁰⁰
- In its October 2019 report on media concentration in Flanders²⁰¹, the Flemish media regulator stated that *"Television viewers can easily skip ads via delayed viewing, which reduces the effective reach of spots and prevents advertisers from reaching the desired audience via television. Following discussions between network operators and broadcasters who see their business model changed, a decree on signal integrity was issued. A number of agreements between both parties are arranged in this."* According to the Regulator the new Article 180 *"established that television channels own their television signal and distributors must therefore ask for permission to allow interventions on that signal, such as delayed viewing"*.

In 2014, Telenet challenged the signal integrity decree in the Constitutional Court. According to the latter, the decree violates the principle of equality in that it imposes obligations on Telenet that other providers of 'delayed television viewing', such as sellers of DVD players with hard disks, do not have to comply with. Telenet therefore believed that the decree was unconstitutional. In its judgment of 12 February 2015, the Constitutional Court ruled, however, that the decree is not in conflict with the principle of equality and non-discrimination. The Court believed that the specific situation of service providers, in comparison with other providers of 'delayed television viewing', justified only service providers needing to obtain the prior consent of the relevant broadcasters for this.

¹⁹⁹ Flemish Parliament, Commission Culture, Youth, Sport and Media (2018). Parliamentary question with respect to the Minister's intention to prohibit 'ad skipping'. Available, in Dutch only, at:

<https://www.vlaamsparlament.be/commissies/commissievergaderingen/1243667/verslag/1245812>

²⁰⁰ Flemish Parliament, Commission Culture, Youth, Sport and Media (2019). Report w.r.t. a proposal for a decree on access to a paying, non-linear broadcasting service (p. 6). Available, in Dutch only, at:

<http://docs.vlaamsparlament.be/pfile?id=1476419>

²⁰¹ VRM (2019). Mediaconcentratie in Vlaanderen, rapport 2019. October 2019. Available, in Dutch only, at:

https://www.vlaamseregulatormedia.be/sites/default/files/pdfversions/mediaconcentratierapport_2019_zonder_afloop.pdf

In its financial reports up until 2018, Telenet continued to identify the signal integrity decree as a liability stating that "[t]here is a risk that this [signal integrity] legislation will have a negative impact on Telenet's ability to launch new innovative services and that Telenet's financial contribution to television channels increases. The current distribution agreements with SBS, VRT and Medialaan (now DPG Media), which came into operation in 2014, enable Telenet to distribute the signal of the broadcasters in an unaltered manner. The concerned broadcasters have given Telenet the right to let their customers watch 'slightly delayed' and offer them personal video recorder (PVR) facilities. Telenet has to pay a higher fee for every customer using these features"²⁰². The financial report for 2019, however, no longer mentions the decree.

At the time of this reporting by the national experts, the Flemish Government had already started preparing for the transposition of the revised AVMS Directive ^{203,204}, but no specifics were formally available on the transposition of the signal integrity measure. It is, however, likely that except for the addition of the word 'overlays', the Flemish Community will leave its current provisions on signal integrity unchanged.

Denmark²⁰⁵

Table 50 – Provisions in force and under way in Denmark

Framework	Provision	Rationale
Media Law - The Radio and Television Broadcasting Act ²⁰⁶	Section 5	-
Media Law – Act amending the Radio and Television Broadcasting Act and the Film Act ²⁰⁷	Section 1, point 18	Transposition of Article 7b of the revised AVMS Directive
Media Law - Executive Order no. 945 of 18 June 2020 ²⁰⁸	-	Providing the exceptions to the rule of consent as required by new section 89 of the Radio and Television Broadcasting Act

Section 5 of The Radio and Television Broadcasting Act states that:

²⁰² Telenet (2019). Financial Report 2018 (p. 164). Available, in English, at: <https://investors.telenet.be/static-files/9d4e3c15-5434-4471-b11a-c1bd5036bc8b> (last visited on August 11, 2020)

²⁰³ Strategic Advisory Council for Culture, Youth, Sports and Media – SARC (2019). Advise on the transposition of the revised AVMS Directive. Available, in Dutch only, at:

https://cjsm.be/sarc/SR_media/adviezen/20191118_Advies_omzetting_herziene_AVMD-richtlijn.pdf

²⁰⁴ Flemish Parliament, Commission Culture, Youth, Sport and Media (2019). Parliamentary question with respect to the transposition of the revised AVMS Directive. Available, in Dutch only, at:

<https://www.vlaamsparlament.be/commissies/commissievergaderingen/1313657/verslag/1315708>

²⁰⁵ Insights on Denmark are based on the input submitted by Em. Prof. Dr Frands Mortensen, University of Aarhus, Institute for Communication and Culture

²⁰⁶ Bekendtgørelse af lov om radio- og fjernsynsvirksomhed. Available, in Danish only, at:

<https://www.retsinformation.dk/eli/lt/2019/248>

²⁰⁷ Lov om ændring af lov om radio- og fjernsynsvirksomhed og lov om film. Available, in Danish only, at:

<https://www.retsinformation.dk/eli/lt/2020/805>

²⁰⁸ Bekendtgørelse om forsyning af tv og on demand audiovisuelle medietjenester med overliggende indslag til kommercielle formål m.v.. Available, in Danish only, at: <https://www.retsinformation.dk/eli/lt/2020/945>

"[d]istribution in common antenna systems of Danish and foreign audio and visual programmes received directly by antenna or transmitted to the system by cable systems may only be made without modification and at the same time, that the broadcast or conveyance takes place".

The Ministry of Industry, Business and Financial Affairs which is in charge of enforcing compliance with this rule is mandated to fine offenders.

However, on February 5, 2020, the Danish Government tabled a proposal to amend the Radio and Television Broadcasting Act with a view to transposing the new measures in the AVMS Directive. Point 18 of the first section of the government's text proposed to insert a new section 89 basically saying that:

- programmes must not be overlaid for commercial purposes or changed without the consent of the companies providing those programs;
- the Minister in charge of culture will determine whether and which exceptions there may be to this rule.

At that same time a consultation was launched inter alia on a draft regulation providing exceptions to the rule of consent, as required by the proposed new section 89.

On 1 July, 2020 and amongst other new sections and regulations transposing the revised AVMS Directive, both the Radio and Television Broadcasting Act's new section 89 and the related regulation (Executive Order no. 945 of 18 June 2020) came into force. Together the latter two pieces of legislation implement the AVMS Directive's new signal integrity measure. As required by the new section 89, the Executive Order provides exceptions to the rule of consent. The Danish Minister in charge of Media appears to have chosen the out-of-scope cases provided by Recital 26 of the Directive:

- Overlays which are solely initiated or permitted by the recipient of the service for private use, including overlays as a result of services for individual communication;
- Control elements of any user interface which are necessary for the operation of the equipment or for programme navigation such as volume bars, search functions, navigation menus, or channel overviews;
- Overlays by way of warning messages, information in the public interest, subtitles, or commercial communication such as advertising etc. which is delivered by the company providing programmes;
- Data compression techniques that reduce the size of a data file, and other techniques that can adjust a service to the distribution agent such as resolution and coding without any change of the content, subject to the EU Regulation 2015/2120 on laying down measures concerning open internet access etc.

France²⁰⁹

Table 51 – Provisions in force and under way in France

Framework	Provision	Rationale
Media Law – Law on the Freedom of Audiovisual Communication (1986 L��otard Law) ²¹⁰	Art. 34-2	Services for people who are deaf or hard of hearing and people who are blind or visually impaired.
Media Law - Draft law on audiovisual communication and cultural sovereignty in the digital era ²¹¹	Art. 41	Impact Assessment, Draft law on audiovisual communication and cultural sovereignty in the digital era, Article 41, NOR: MICE1927829L/Bleue-1, 4 d��cembre 2019 ²¹²

French law already provides for a signal integrity related measure. Article 34-2 of the 1986 L  otard Law protects the integrity of programme related services that are intended for the deaf or hard of hearing and the blind or visually impaired. That Article requires distributors to make the components of the signal that enable these services available to the public free of charge (distributors are to provide all the technical systems necessary to enable these services).

However, according to the impact assessment accompanying the draft Law on audiovisual communication and cultural sovereignty in the digital era (see table above), different disagreements have been observed in the market between broadcasters and distributors on the conditions for retransmission of programmes. The impact assessment mentions broadcasters denouncing 'degraded' conditions under which certain distributors have retransmitted their programmes and attributing this to an imbalance in power between players. The impact assessment concludes that this shows that the current legal framework is not able to provide broadcasters with the guarantee required by the revised AVMS Directive, more precisely that the programme accessed by the end user is in conformity with the programme designed by the broadcaster or that changes made by the distributor are made with the broadcaster's consent.

The impact assessment recommends following an approach which is able to adapt to different distribution methods as well as future innovations and therefore proposes to give the regulator, ARCOM, a new mission in terms of protecting the integrity of the signal. The draft of Article 41 states the following:

"After article 20-4 of the same law, an article 20-5 and an article 20-6 shall be added as follows:

"Art. 20-5. - The conditions for the fight against the illicit retransmission of sports events and competitions are defined in Article L. 333-10 of the Sports Code.

²⁰⁹ Insights on France are based on the input provided by Dr Heritiana Ranaivoson, Senior Researcher and Project Leader at IMEC-SMIT, VUB

²¹⁰ Loi n   86-1067 du 30 septembre 1986 relative    la libert   de communication (la Loi L  otard). Available, in French only, at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930#LEGIARTI000033388676>

²¹¹ Projet de loi relatif    la communication audiovisuelle et    la souverainet   culturelle    l'  re num  rique. Available, in French only, at: http://www.assemblee-nationale.fr/dyn/15/textes/l15b2488_projet-loi

²¹² Etude d'Impact, Projet de loi relatif    la communication audiovisuelle et    la souverainet   culturelle    l'  re num  rique. NOR : MICE1927829L/Bleue-1. Available, in French only, at: http://www.assemblee-nationale.fr/dyn/15/textes/l15b2488_etude-impact

Art. 20-6. - On-demand radio, television and audiovisual media services may not be interrupted or modified without the explicit consent of their publishers.

The Audiovisual and Digital Communication Regulatory Authority takes appropriate and proportionate measures to ensure compliance with this principle. It specifies in particular the flows, functionalities or data considered as an integral part of these services". (translation by authors)

The new Article 20-6 would entrust ARCOM with defining the conditions and technical rules for the retransmission of audiovisual services with a view to avoiding any interruption or modification without the express agreement by the broadcaster. ARCOM would in particular have to specify the flows, functionalities or data which are considered to be an integral part of these services.

The impact assessment adds that *"the impact of the rules published by the regulator on distributors must be proportionate. The regulator will, for example, need to list the prohibited practices or specify what will come under a change in the signal, such as the removal of a linguistic component associated with the programme or the insertion of an advertising banner". (translation by authors)*

In his report, Dr Ranaivoson draws attention to two features in particular:

- As mentioned before, ARCOM would be charged with the implementation of the new mission. This would mean that, according to the draft law, the ARCOM will specify the technical conditions for split-screen television advertising during sports broadcasts (or for teleshopping programmes), for example, by capping the part of the screen area likely to be used for the dissemination of advertising or spots, and to adapt them when technological or editorial innovations justify it.
However, by virtue of Articles 27 and 33 of the Léotard 1986 law, determining the rules applicable to advertising is a matter for the Conseil d'Etat. The latter has currently prohibited split-screen television advertising in France (décret n° 92-280 du 27 mars 1992, article 14, first paragraph);
- Signal integrity will not only cover television, but also radio.

Germany²¹³

Table 52 – Provisions in force and under way in Germany

Framework	Provision	Rationale
<i>Media Law – RStV, The Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty) ²¹⁴</i>	<i>Article 52a (3)</i>	<i>Justification for the 10th Interstate Broadcasting Treaty ²¹⁵</i>
<i>Competition Law – UWG, Act against Unfair Competition ²¹⁶</i>	<i>Articles 3, 4 No 3, 4 (discussed in academia)</i>	-
<i>Copyright Law – UrhG, Act on Copyright and Related Rights ²¹⁷</i>	<i>Article 14 (partially discussed in academia for extreme cases like a deformation of a work protected by IP rights)</i>	-
<i>Media Law – Draft Interstate Treaty on Media ²¹⁸</i>	<i>Draft Article 80</i>	-

In his report, Dr Dreyer refers to three different frameworks as possible avenues along which to approach signal integrity issues:

- The Unfair Competition Act;
- The Copyright and Related Rights Act, and;
- The Interstate Treaty on Broadcasting and Telemedia.

On the German Unfair Competition Act, Dr Dreyer reports that points (3) and (4) of both Articles 3 and 4 have been considered in academia to solve signal integrity issues in the sense of the revised AVMS Directive. Legal scholars have argued that web framing (in which external content is included in a website) can be

²¹³ Insights on Germany are based on input provided by Dr Stephan Dreyer, Head of Research Programme "Transformation of Public Communication", Leibniz-Institute.

²¹⁴ Staatsvertrag für Rundfunk und Telemedien (Rundfunkstaatsvertrag - RStV) vom 31. August 1991 in der Fassung des Zweiundzwanzigsten Staatsvertrages zur Änderung rundfunkrechtlicher Staatsverträge (Zweiundzwanzigster Rundfunkänderungsstaatsvertrag) in Kraft seit 1. Mai 2019, of which on July 7, 2020, a translation in English was available at: https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/RStV_22_english_version_clean.pdf

²¹⁵ Begründung zum 10. Rundfunkänderungsstaatsvertrag, available at:

<http://www.urheberrecht.org/law/normen/rstv/RStV-10/materialien/>

²¹⁶ Gesetz gegen den unlauteren Wettbewerb, UWG, of which on July 7, 2020, a translation in English was available at: https://www.gesetze-im-internet.de/englisch_uwg/englisch_uwg.html

²¹⁷ Urheberrechtsgesetz, UrhG, of which on July 7, 2020, a translation in English was available at: https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html

²¹⁸ Staatsvertrag

zur Modernisierung der Medienordnung in Deutschland, Entwurf. Available, in German only, at:

https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/ModStV_MStV_und_JMStV_2019-12-05_MPK.pdf

structurally compared to overlays, with the platform provider using a media provider's content as an "attention infrastructure". However, this approach has not been used in practice yet.

With respect to the German Copyright and Related Rights Act, it appears that in legal literature some attention has gone to Article 14 as applicable to "cases in which overlays deform / deface the IP protected media content in a way that contradicts the IP owners' intention". Dr Dreyer pointed out, however, that "[t]he objective here rather concerns the (personal) integrity of the creator than the integrity of the transmission".

Because the discussions on the Unfair Competition Act and the Copyright and Related Rights Act are of a rather academic nature, Dr Dreyer has focussed his further reporting on the German Interstate Treaty on Broadcasting and Telemedia, more precisely on the third paragraph of Article 52a on "Provisions on Platforms" which states that:

"The provider of a platform must not alter the editorial and technical content of the service of the respective broadcaster or comparable telemedia provider without the approval of the provider and must not include individual broadcasting services or contents in channel packages or must not market such services against remuneration or free of charge. Technical alterations which exclusively serve a more efficient use of capacities and do not impede the agreed quality standard are permitted."

Article 53 on Statutes and Directives states that:

"The State media authorities shall specify the details for the provisions of this Section being put in concrete terms by means of statutes and directives with the exception of Article 51. In so doing, the relevance for the formation of public opinion concerning the respective audiences in relation to the respective route of transmission shall be taken into consideration."

In 2016, the State media authorities have indeed issued a statute on platform regulation. However, with respect to Article 52a (3), the statute merely copied the text of that article into its Article 17a on modification and marketing prohibition in accordance with Article 52a (3) of the Interstate Treaty²¹⁹.

When it comes to enforcing compliance with Article 52a (3), Dr Dreyer refers to the following elements:

- Article 52e on presentation of documentation and cooperation with the regulatory authority for telecommunications states that:

"(1) Providers of platforms are required to present the necessary documentation to the competent state media authority upon request. Articles 21 to 24 shall apply accordingly."

"(2) In the case of platform providers who simultaneously are also providers of telecommunications services, the competent state media authority shall decide in cooperation with the regulatory authority for telecommunications⁴³ whether the provisions of Article 52c (1) sentence 2 no. 1 or no. 2 or Article 52d have been violated."

⁴³ now called Bundesnetzagentur: <http://www.bundesnetzagentur.de>

²¹⁹ Satzung über die Zugangsfreiheit zu digitalen Diensten und zur Plattformregulierung gemäß § 53 Rundfunkstaatsvertrag (Zugangs- und Plattformsatzung). Available at: https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Satzungen_Geschaefte_Verfahrensordnungen/Zugangs-und_Plattformsatzung.pdf

In the light of this article, platforms starting businesses are required to notify the competent State media authority, inter alia, by means of a statement on how they will fulfil the requirements of Article 52a (3);

- Infringements of Article 52a (3) are deemed administrative offences (Article 49 (1) s. 2 No 8) and can be penalised by a fine of up to EUR 500 000 (Article 49 (2));
- The Commission on Licensing and Supervision ("Kommission für Zulassung und Aufsicht - ZAK"), the central body established by the State Media Authorities for *"supervising platform operations pursuant to Article 51b (1) and (2) as well as Articles 52a to f"* (article 36 (2) No 5) is entitled to *"take the measures required. Measures include in particular admonition, prohibition, withdrawal and revocation."* (Articles 54f and 38 (2)).

Dr Dreyer explains that the provision of Article 52a (3) drawn up in 2008, was originally regarded as being of a technical nature: a measure to protect the broadcast signal against interference by platforms or end devices, e.g. by changing the technical quality / bitstream rate of the signal or by marketing it in other bundles / multiplexes. When its application to signal integrity issues was first considered, the idea immediately met with opposition:

- One of the reasons for this opposition appears to be a widely shared position that, as Dr Dreyer puts it, "overlays do not alter the editorial content in itself but rather change the form of display and / or visual context of the editorial content (e.g. scaling, masking, concealing)";
- Another reason is also that from a teleological point of view, its application to overlays is not a matter of course. Article 52a is located in a chapter of the treaty which is specifically concerned with securing pluralism on platforms (mustcarry rules, technical capacity management, etc.). With content integrity not being an issue of pluralism, some scholars say the article cannot be applied to such cases.

Dr Dreyer reports, however, on new issues which have emerged over time and added to the discussion on whether and how Article 52a (3) applies to cases involving signal integrity issues:

- In 2015, a Public Service Broadcaster (ARD) filed a complaint with the State media authorities against a cable provider (Kabel Deutschland) who actively filtered out certain information from broadcasters' signals before distributing it over its cable ^{220,221,222}.
- The information concerned was sent along in the PSB's signal in accordance with to the HbbTV standard and was intended to enable a 'Red Button' solution in some of its programmes. This solution offered viewers the possibility of using their remote control to take part in polls and vote or select further offers from the broadcaster, such as the PSB's media libraries. By actively filtering out this information from the PSB's signal, the 'Red Button' solution was no longer available to the viewer.
- The PSB claimed that this was an infringement of Article 52a (3) of the Interstate Treaty. This in its turn raised the question of whether the information that was filtered out by the cable provider was actually part of the *"service of the respective broadcaster or comparable telemedia provider"* as specified by the article.
- The ZAK concluded that this was not the case explaining that the notion of 'service' ('Programm') only refers to the transmitted broadcasting content. Since the information that was filtered out by the cable

²²⁰ See:

https://www.dwdl.de/nachrichten/51498/kabel-deutschland-darf-hbbtv-signal-rausfiltern/?utm_source=&utm_medium=&utm_campaign=&utm_term=

²²¹ See: <https://www.digitalfernsehen.de/news/empfang/kabel/kabel-deutschland-filtert-hbbtv-signale-von-ard-und-zdf-417113/>

²²² See: <https://www.iptv-anbieter.info/iptv-news/hbbtv-kabel-deutschland-blockt-signale-von-ard-und-zdf/>

provider only consisted of URLs, the ZAK did not consider these to be part of the editorial content. The ZAK instead regarded the information as (belonging to) accompanying services ("programmbegleitende Dienste").²²³

- In 2015, there was also turmoil resulting from ads showing up on the start page of Samsung Smart TV hubs which *"consumers complained [about] and the consumer protection agency promised to take a second look"*.^{224,225,226,227}
- Over the years, media companies have started demanding that Article 52a's be extended to applicability to platforms on the open internet (with 'pirate platforms' in mind).

Dr Dreyer also reported that in the meantime standard contract clauses prohibiting platform providers (cable providers and end device manufacturers) from implementing any measures that interfere with the signal and / or the transmission as well as the visible content are now considered a basic requirement for listing a broadcasters' programmes on a platform.

As to new legislative initiatives, Dr Dreyer reports that a complete overhaul of the current broadcasting law as established by the Interstate Treaty on Broadcasting and Telemedia is planned by September 2020, in the form of a convergent Interstate Treaty on Media²²⁸.

The draft, which Dr Dreyer believes will become the official treaty, *"also contains a revamped and extended provision on signal and content integrity as well as accompanied services, specifically HbbTV signals"*. The draft provision in question, the new Article 80, prohibits *"any technical or editorial interference (a), any full or part overlays, any scaling or framing measures (b), and any redistributing or repackaging for marketing or making it publicly available (c) without the broadcasters consent. Exempted are measures that are technically necessary for efficient capacity management, overlays requested by the user or for individual communication purposes (except advertising)"*.

Dr Dreyer believes that this new provision will also address most of the issues which the current provision (Article 52a (3)) has been confronted with over the course of time (see discussion above).

²²³ See: <https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/news/zak-pressemitteilung-062015-zak-trifft-grundlegende-entscheidungen-zur-plattformregulierung/>

²²⁴ See: <https://www.inside-digital.de/news/veraergerte-nutzer-samsung-fernseher-zeigen-werbung-im-hauptmenue>

²²⁵ See: <https://www.theverge.com/2015/2/11/8017771/samsung-smart-tvs-inserting-unwanted-ads>

²²⁶ See: <https://www.extremetech.com/computing/199152-samsung-smart-tvs-inject-ads-where-they-dont-belong>

²²⁷ See: <https://www.businessinsider.com/samsung-tv-pop-up-ads-2014-1?IR=T#ixzz3RQ6KGCM2>

²²⁸ See: https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/ModStV_MStV_und_JMStV_2019-12-05_MPK.pdf

Hungary ²²⁹

Table 53 – Provisions in force and under way in Hungary

Framework	Provision	Rationale
Media Law - Act CLXXXV of 2010 on Media Services and on the Mass Media (Hungarian Media Act) ²³⁰	Measures to Protect the Integrity of Audiovisual Media Services, Section 36/A	Transposition of Article 7b of the revised AVMS Directive

Section 36/A of the English version of the Hungarian Media Act specifies the following:

"(1) Broadcasters shall ensure that media services disseminated via its transmission system cannot be transmitted in a shortened form, altered or interrupted without the explicit consent of the media service provider, not including data compression intended to reduce the size of a data file and other techniques, such as resolution and coding, whose purpose is to adapt a service to the distribution means without any modification of the content.

(2) Broadcasters shall ensure that media services disseminated via its transmission system cannot be transmitted overlaid for commercial purposes without the explicit consent of the media service provider, except:

- a) for overlays solely initiated or authorized by the recipient of the service for private use,*
- b) for any user interface necessary for the operation of the device or programme navigation, or*
- c) for overlays, such as warning information, general public interest information or subtitles."*

The Section mentioned above explicitly deals with signal integrity. It was enacted by Section 20 of Act LXIII of 2019 effective as of 1 August 2019. This Section implements Article 7b of the AVMSD.

The detailed justification of Act LXIII of 2019 which amended the Hungarian Media Act states that:

"In order to ensure the editorial responsibility of media service providers and the protection of the audiovisual value chain, the law, in line with the AVMS Directive, prohibits the modification of audiovisual media services by various techniques, providing for exceptions to the prohibition."

The National Media and Infocommunications Authority has jurisdiction regarding this provision.

²²⁹ Insights on Hungary are based on the input provided by Dr Krisztina Rozgonyi

²³⁰ 2010 évi CLXXXV törvény a médiaszolgáltatásokról és a tömegkommunikációról, of which on July 7, 2020, a translation in English was available at: http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf

Spain²³¹

Table 54 – Provisions in force and under way in Spain

Framework	Provision	Rationale
IPR Law – The Intellectual Property Act ²³²	Art. 14.4	-
Media Law – General Audiovisual Communication Act (7/2010 of March 31, 2010) ²³³	Art. 14.4	-

In his report Prof. Llorens refers, amongst others, to the Spanish Intellectual Property Act. Article 14.4 of that act states:

"The author is hereby vested with the following rights which cannot be waived or assigned: [...] 4. The right to demand respect for the integrity of the work and to object to any distortion, modification or alteration of it or any act in relation to it that may be prejudicial to his legitimate interests or to his reputation; [...]"

In case of violations of the measure according to 14.4 of the Intellectual Property Act, authors can take the matter to court.

However, Prof. Llorens reports, Spain has actually been dealing with signal integrity from an "old advertising and broadcasting point of view". Article 14.4 of the Law 7/2010 of March 31, the General Audiovisual Communication Act, says:

"Advertising messages on television must respect the integrity of the programme in which it is inserted and of the units that comprise it.

The transmission of films for television (excluding series, serials and documentaries), feature films and television news programmes may be interrupted once for each scheduled period of thirty minutes. In the case of children's programmes, interruption is possible once for each planned uninterrupted period of thirty minutes, if the programme lasts more than thirty minutes.

Television broadcasts of sporting events may only be interrupted by isolated advertising messages when the event is stopped. In said retransmissions, whether or not they have autonomous parts, advertising messages may be inserted as long as they allow the development of the event to be followed.

²³¹ Insights on Spain are based on the input provided by Prof. Carles Llorens, Universitat Autònoma de Barcelona

²³² Ley de Propiedad Intelectual. Available, in Spanish, at: <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>.

An unofficial translation in English provided by the Spanish government is available at:

<https://www.mjusticia.gob.es/cs/Satellite/Portal/1292426984404?blobheader=application%2Fpdf&blobheadername1=Content->

[Disposition&blobheadervalue1=attachment%3B+filename%3DThe Intellectual Property Act %28Ley de Propiedad Intelectual%29.PDF](Disposition&blobheadervalue1=attachment%3B+filename%3DThe+Intellectual+Property+Act+%28Ley+de+Propiedad+Intelectual%29.PDF)

²³³ Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual. Available, in Spanish only, at:

<https://www.boe.es/buscar/pdf/2010/BOE-A-2010-5292-consolidado.pdf>

No television advertising or teleshopping shall be inserted during religious services.” (translation by authors)

The Comisión Nacional de los Mercados y la Competencia (CNMC) - National Markets and Competition Commission - is charged with enforcing the General Audiovisual Communication Act. In the event of infringements, offenders can be fined from EUR 100 001 to EUR 500 000.

The cases of infringement and the fines imposed by the CNMC on the main Spanish broadcasters have been numerous and important, Prof. Llorens reports. However, it appears that many of them have been appealed and overturned. Prof. Llorens listed a number of them:

- SNC/DTSA/008/15: PRESUNTA AFECTACIÓN A LA INTEGRIDAD DE PROGRAMAS POR PARTE DE MEDIASET - The Spanish Supreme Court annulled the CNMC fine - <https://www.cnmc.es/expedientes/sncdtsa00815>;
- SNC/DTSA/047/15: ATRESMEDIA - Fine of 300.000€ to be paid by Atresmedia - <https://www.cnmc.es/expedientes/sncdtsa04715>;
- SNC/DTSA/014/15: ATRESMEDIA - Fine of 150.000€ to be paid by Atresmedia - <https://www.cnmc.es/expedientes/sncdtsa01415>.

Since the measures laid down by Article 14.4 of the General Audiovisual Communication Act are addressed to broadcasters, the measures of the Spanish Intellectual Property Act are actually closer to the AVMS Directive's new signal integrity measure. However, Prof. Llorens has not been able to find any broadcasting, telecommunications or audiovisual related cases that were approached from the angle of Article 14.4 of the Spanish Intellectual Property Act.

Prof. Llorens believes this issue is actually *"not a problem in Spain because of the DTT predominance. Even if SmartTV household penetration is important as it is with Netflix-like platforms, no integrity debate has surged in the last years. For instance, the main pay-tv operator, Movistar, is interested in integrity protection of content, because it produces as well quite an important catalogue of series and films each year and its model is based on subscription not on advertising. The same happens with Netflix, HBO or other platform providers"*.

4.6.2.2 Canada²³⁴

Table 55 - Provisions in force and under way in Canada

Framework	Provision	Rationale
<i>Electronic Communications Law - Radiocommunication Act</i> ²³⁵	<i>Section 9, subsection 1, paragraphs (c) and (d)</i>	-
<i>Copyright Law - Copyright Act</i> ²³⁶	<i>Section 24</i>	-

²³⁴ Insights on Canada are based on the input provided by Benjamin Klass and Prof. Dr Dwayne Winseck, Carleton University

²³⁵ Canadian Radiocommunication Act. Available at: <https://laws-lois.justice.gc.ca/eng/acts/r-2/>

²³⁶ Canadian Copyright Act. Available at: <https://laws-lois.justice.gc.ca/eng/acts/C-42/>

<i>Media Law – Broadcasting Act</i> ²³⁷	-
<i>Media Law – Broadcast Section 7 Distribution Regulations</i> ²³⁸	-
<i>Electronic Communications Law – Section 36 Telecommunications Act</i>	-

In their report, Winseck and Klass call the Canadian measures to maintain signal integrity *"very well developed for traditional broadcasting services but not online video services"*. According to the scholars, there is an imbalance between the two when it comes to the obligations they have to live up to: *"licensed broadcasters are expected to meet the same obligations for the online versions of their service, while online video services such as Netflix, Amazon, Crave, etc. do not have such obligations"*.

Winseck and Klass refer to different frameworks and their interactions through which signal integrity is upheld in Canada:

- The Radiocommunication Act;
- The Copyright Act;
- The Broadcasting Act;
- The Broadcast Distribution Regulations, and;
- The Telecommunications Act.

The Radiocommunication Act (1985) – In the chapter on offences and punishment paragraphs (c) and (d) of section 9 (1) state that:

"No person shall [...] decode an encrypted subscription programming signal or encrypted network feed otherwise than under and in accordance with an authorization from the lawful distributor of the signal or feed [...] operate a radio apparatus so as to receive an encrypted subscription programming signal or encrypted network feed that has been decoded in contravention of paragraph (c)".

Winseck and Klass point out, however, that *"[in] essence, these prohibitions are intended to address piracy of satellite television signals"*.

The Copyright Act – in the second part thereof (Copyright in Performers' Performances, Sound Recordings and Communication Signals and Moral Rights in Performers' Performances), more precisely in its chapter on Ownership of Copyright, section 24 states that:

"The first owner of the copyright [...] (c) in a communication signal, is the broadcaster that broadcasts it".

In the act's third part (Infringement of Copyright and Moral Rights and Exceptions to Infringement), more precisely in the chapter on Infringement of Copyright, section 27 (1) generally states:

²³⁷ Canadian Broadcasting Act. Available at: <https://laws.justice.gc.ca/eng/acts/B-9.01/page-1.html>

²³⁸ Canadian Broadcasting Distribution Regulations. Available at: <https://laws.justice.gc.ca/eng/regulations/SOR-97-555/page-8.html>

"It is an infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that by this Act only the owner of the copyright has the right to do".

As such the ability to alter broadcast signals is limited to the rights holders. There are, however, several crucial exceptions. Winseck and Klass identify section 31 as *"the most important such exception and [...] the foundation upon which the entire cable, direct-to-home and IPTV services (known formally as broadcasting distribution undertakings, or BDUs) rests"*. They explain that this section *"allows BDUs licensed by the CRTC to distribute broadcast signals without the permission of the broadcasters whose signals are retransmitted but in return for paying a compulsory license fee that is administered by the Copyright Board"*.

The Broadcasting Act, according to Winseck and Klass, does not explicitly address the issue of signal integrity. They believe, however, that the way a specific framework has been created for broadcasting, separate from that for telecommunications, de facto *"does address the issue of signal integrity in several important ways"*.

Similar to the Copyright Act, the Broadcasting Act permits broadcast licence holders to retransmit a broadcast signal. Winseck and Klass explain that *"[t]he retransmission rules in the Broadcasting Act and the Copyright Act both say, in essence, that if a signal is available in Canada, Canadians can receive it and cable systems can pick it up and retransmit it in return for paying a fee to the copyright collective"*. According to the scholars, this is the reason why there are no "retransmission fees" in Canada unlike many other countries. And as a consequence, *"[a]ny other unlicensed service provider has to negotiate with individual rights holders—a process that is time consuming and costly"*.

Winseck and Klass also shed some light on key events impacting the scope and application of these retransmission rules in the Broadcasting and Copyright Acts:

- The scholars explain that "in the late-1990s and early-2000s, the Canadian Radio-television and Telecommunications Commission (CRTC) generally took a permissive approach to retransmission of broadcast signals over the internet". In a public notice on internet retransmission ²³⁹ the CRTC had pointed out that signals were already available for 'free' over the air, and that their retransmission over the internet would complement established broadcasters activities rather than threaten them, "if territorial rights are respected". Winseck and Klass believe this was "a core part of the Commission's 1999 New Media Exemption Order (NMEO) that exempted radio and television services broadcast over the internet from the usual requirement to obtain a license from the Commission and meet the obligations that such licenses entail under the Broadcasting Act. The NMEO, in effect, was an assertion of the CRTC's jurisdiction to regulate broadcasting services delivered over the Internet but also amounted to a decision by the regulator to forbear from doing so for the time being in order to encourage the development of new broadcasting technologies and business models";
- In 1999 and 2001, iCrave TV, respectively Jump TV started rebroadcasting programming over the internet (iCrave TV rebroadcast programming from 16 different services, including the CBC, CTV, ABC, CBS, NBC, PBS and Fox, without the permission of the rights holders). Both iCrave TV and Jump TV believed they were entitled to do so based on the NMEO. There were however several obstacles:
 - Neither iCrave TV or Jump TV were licensed to operate as Broadcasting Distribution Undertakings (BDU) (i.e. a cable company) by the CRTC and did not pay into the copyright collective;

²³⁹ Canadian Radio-television and Telecommunications Commission (2003). Broadcasting Public Notice CRTC 2003-2, para 24. Internet retransmission: Report to the Governor General in Council pursuant to Order in Council P.C. 2002-1043. Available at: <https://crtc.gc.ca/eng/archive/2003/pb2003-2.htm>. Last visited September 3, 2020.

- The Canadian Association of Broadcasters, the Canadian Film and Television Production Association, several U.S. broadcasters and the National Football League offered fierce opposition which ran down two tracks:
 - Legal - Several US and Canadian broadcasters launched a court challenge in the US which was dropped in return for iCraveTV shutting down²⁴⁰;
 - Political – In December 2002 an amendment to the Copyright Act was adopted which according to the scholars explicitly specified *"that the category of broadcasting distribution undertakings (BDU) included only cable and direct-to-home satellite providers and not services engaged in retransmitting signals over the internet and whose existence was only made possible by the CRTC's 1999 New Media Exemption Order"*²⁴¹.

Winseck and Klass conclude that *"[s]ince iCrave TV and Jump TV were not licenced as BDUs, they could not obtain a compulsory license from the Copyright Board"*;

- In its 2003 report, the CRTC observed that "recent amendments to the Copyright Act exclude Internet retransmitters from the compulsory licensing regime embodied in section 31 thereof. Accordingly, Internet retransmitters will be obliged to negotiate with copyright holders and obtain their consent in order to retransmit the programming of over-the air broadcasters" (para 77);
- As a result, iCrave TV and Jump TV had to "negotiate retransmission licenses with copyright holders on a one-by-one, commercial basis. Given how rights are tied to specific territories and the long-standing relationship between rights holders and established broadcasters, it was obvious that being able to build a successful business on this basis would be extremely difficult, if not impossible. iCraveTV folded. Jump TV continued operations but only by retransmitting signals obtained outside the US and Canada, i.e. from Europe, Asia."²⁴²²⁴³

The scholars believe that *"[t]his history suggests that Smart TV overlays—an activity singled out in Task C—could potentially be considered an infringement under the Copyright Act"*. However, they also point out that *"the applicability of these rules with respect to smart television manufacturers have not yet been worked out or tested in the Canadian context"*. Winseck and Klass are saying that what the EU considers to be a signal integrity issue, Canada would consider to be a copyright issue.

The Broadcast Distribution Regulations – Winseck and Klass explain that these regulations *"also address the relationship between broadcasting programme services and BDUs"*. Section 7 on Alteration or Deletion of Programming Service states the following:

"[...] a licensee shall not alter the content or format of a programming service or delete a programming service in a licensed area in the course of its distribution [...]".

Section 7 also provides a list of seven exceptions to that general rule. Winseck and Klass provided some background to each of the seven exceptions which they qualify as *"meant to further the aims of the Broadcasting Act"*:

²⁴⁰ Armstrong, R. (2010). *Broadcasting Policy in Canada* (1st ed), p. 199. Toronto: University of Toronto.

²⁴¹ Canada (2002). An Act to Amend the Copyright Act. Ottawa: Author. https://laws-lois.justice.gc.ca/eng/annualstatutes/2002_26/page-1.html. Last visited September 3, 2020.

²⁴² Armstrong, R. (2010). *Broadcasting Policy in Canada* (1st ed), p. 200-201. Toronto: University of Toronto.

²⁴³ Geist, M. (2000). iCraveTV and the New Rules of Internet Broadcasting. Presented to the University of Alberta Law Review New Media Conference, Available at: <http://cdn.michaelgeist.ca/wp-content/uploads/2002/01/icraveualr.pdf>. Last visited September 3, 2020.

"(a) as required or authorized by a condition of its licence or under the Simultaneous Programming Service Deletion and Substitution Regulations."

Winseck and Klass explain that "[t]he simultaneous substitution rules (commonly referred to as the SimSub rules) are the biggest example where the 'signal integrity' of broadcasts, typically from the US, is deliberately set aside to protect the commercial value of programming rights acquired by Canadian broadcasters". The SimSub rules are typically used to protect the commercial value of programming rights acquired by Canadian broadcasters: "They allow the signal of a US broadcaster to be temporarily replaced by a Canadian one, or a distant signal in Canada to be replaced by a local signal. In essence, the SimSub rules allow the holder of Canadian geographic rights to audiovisual programming to substitute their own advertising for the original advertisements aired on American broadcast stations carried by Canadian cable, IPTV, and direct-to-home (DTH) satellite distributors".

According to the scholars "[t]he SimSub rules were first introduced for cable BDUs in 1972 and then extended to DTH services in 1995 and IPTV services thereafter. The SimSub rules (see *Simultaneous Programming Service Deletion and Substitution Regulations* (2015)) are referred to in sections 7, 38, and 51 of the *Broadcast Distribution Regulations*. An attempt by the CRTC in 2015 to exempt the NFL's annual Super Bowl from the SimSub rules so that Canadians could watch the high profile, annual event with its original high production value commercials intact was struck down by the Supreme Court of Canada after being challenged by Bell. The Supreme Court's ruling confirmed the Commission's authority to apply the SimSub rules generally, but held that the CRTC could not target specific programs held by individual broadcasters who would suffer (or benefit) from the rules".

"(b) for the purpose of complying with subsection 328(1) of the Canada Elections Act;"

Winseck and Klass: "Broadcasting signals can be altered in order to ensure that they comply with the Canada Elections Act";

"(c) for the purpose of deleting a programming service to comply with an order of a court prohibiting the distribution of the service to any part of the licensed area;"

Winseck and Klass: "Broadcasting signals can be altered in order to ensure that they comply with a court order";

"(d) for the purpose of altering a programming service to insert a warning to the public announcing

- (i) any danger to life or property if the insertion is provided for in an agreement entered into by the licensee with the operator of the service or the network responsible for the service, or*
- (ii) an imminent or unfolding danger to life if there is no agreement with the operator of the service or the network responsible for the service;"*

Winseck and Klass: "Broadcasting signals can be altered in order to insert a public service announcement regarding matters that threaten life, death or imminent danger to property";

(e) for the purpose of preventing the breach of programming or underlying rights of a third party, in accordance with an agreement entered into with the operator of the service or the network responsible for the service;

Winseck and Klass: *"Broadcasting signals can be altered in order to prevent the breach of rights held under an agreement";*

(f) for the purpose of deleting a subsidiary signal, unless the signal is, itself, a programming service or is related to the service being distributed;

Winseck and Klass: *"A BDU can delete elements of the signal that are not related, or integral, to the programming service, i.e. white space, elements intended when distributing in a public place, etc. The key here is to distinguish elements of the programme service that must be retained, e.g. close captioning, from those that are peripheral and which BDUs could delete to avoid unnecessary technical and financial burdens";*

(g) for the purpose of inserting a commercial message, if the insertion is in accordance with an agreement between the licensee and the operator of a Canadian programming service or the network responsible for that Canadian programming service and that agreement pertains to commercial messages directed at a target market of consumers.

Winseck and Klass: *"Broadcasting signals can be altered in order for BDUs to provide 'local avails', i.e. a limited amount of advertising time that BDUs themselves sell".*

The Telecommunications Act – Winseck and Klass explain that *"[t]he Telecommunications Act and its section 36 regarding common carriage (i.e. the core of net neutrality) are also peripherally engaged by the 'signal integrity' question".* The section on Content of Messages states:

"Except where the Commission approves otherwise, a Canadian carrier shall not control the content or influence the meaning or purpose of telecommunications carried by it for the public".

According to the scholars the situations in which the CRTC 'approves otherwise' are *"mainly limited to matters related to communications that are illegal under the Criminal Code (1985), i.e. hate speech, or matters of public safety".* They explain that *"[i]n practice, this section of Canadian telecommunications law has never been engaged, with the few appeals made to its authority being disposed of without providing an informative result. However, it does operationalize a prima facie prohibition against interference in content by telecommunications common carriers, a prohibition that is generally respected. While we are aware that there are some examples of Canadian carriers interfering in internet content accessed by their users, such as injection of user-account related information bulletins into web browsers, these issues have tended to involve minor administrative concerns and have not provoked action by the regulator or formal complaints by third parties".*

In this light, Winseck and Klass also report on the so-called Fairplay case in which there was an attempt *"to expand the CRTC's involvement in creating or enabling exemptions to the common carriage regime in order to block access to websites and internet services deemed to be infringing copyright".* The CRTC, however, declined to *"authorize a website blocking scheme [...] on the grounds that enforcing copyright laws was not within its remit".* Winseck and Klass conclude that *"[i]nstead, absent the legislative authority for such a role for the CRTC, it is the courts that are responsible for such matters".*

When it comes to the subject of compliance monitoring and enforcement, Winseck and Klass explain that *"[s]ignal integrity is enforced either through the CRTC or the courts, depending on which of the mechanisms described above is engaged".* The scholars believe that *"[t]he biggest enforcement tool is likely the licensing regime under both the Radiocommunication Act and the Broadcasting Act".*

In the case of section 36 of the Telecommunications Act, enforcement would fall to the CRTC. But *"it is unknown at this time what measures compliance enforcement might take"*.

Winseck and Klass report that when it comes to:

- Commercial negotiations, *"there are long-standing contractual arrangements between Canadian and foreign programming services and between the former and BDUs. These often relate to quality of signal, i.e. high or low definition, and differ in different areas of the country, which distant signals are brought in by which BDU, etc"*. According to the scholars *"[t]he CRTC's Distant Signal Policy involves contractual arrangements between programming services and BDUs in relation to signals that are local in one location are broadcast in another region"*;
- Disputes, there are *"[d]isputes over signal quality, where and when signals can be retransmitted, ongoing cross border disputes re. SimSub and retransmission fees"*. They draw particular attention to the fact that Canada does not have retransmission fees, whereas the US does: *"These are critically important sources of revenue for US broadcasters but non-existent for their Canadian counterparts. The simultaneous substitution policy and refusal of Canada to require Canadian Broadcast Distribution Undertakings to pay retransmission fees to US broadcasters has been a significant bone of contention since the rules were first implemented in 1972. The SimSub rules have also become a significant source of contention in every bilateral and multilateral trade agreement in which the US and Canada are both involved ever since, including the most recently concluded Canada-US-Mexico Agreement"*;
- Litigations, they refer to the Bell Canada Supreme Court of Canada case (discussed above) regarding the application of simultaneous substitution rules to the Superbowl broadcast.

Winseck and Klass report that *"[t]here are no legislative moves currently afoot addressing these issues but there are two locations where the issue has emerged"* driven by *"[r]elentless pressures by copyright holder groups to obtain broader, stronger and longer protections for intellectual property that they have otherwise been unable to achieve in previous revisions to the Copyright Act or via the CRTC"*:

- Broadcasting and Telecommunications Legislative Review (BTLR) (February 2020) report, Canada's Communication Future: Time to Act report ²⁴⁴;
- Parliamentary Standing Committee on Industry, Science and Technology (INDU) (2019) Statutory Review of the Copyright Act²⁴⁵.

On the latter, Winseck and Klass explain that *"[t]he report [...] examines retransmission and other rights at pp. 47-54. Pages 94 and 95 reprise the Fairplay petition reviewed above in relation to whether or not the CRTC should have new legislative authority to carve out an exception to the common carrier principles in section 36 of the Telecommunications Act to enable a website blocking scheme in order to prevent piracy and enforce copyright law"*. (Note by authors: the page numbers mentioned, refer to the pdf-version of the report).

²⁴⁴ See: <https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>

²⁴⁵ See: <https://www.ourcommons.ca/Committees/en/INDU/StudyActivity?studyActivityId=9897131>

4.6.2.3 United States²⁴⁶

Table 56 - Provisions in force and under way in the USA

Framework	Provision	Rationale
<i>Electronic Communications Law – Communications Act of 1934</i> ²⁴⁷	<i>Section 325 – False distress – signals; Rebroadcasting; Studios of foreign stations</i>	
	<i>Section 614 – Carriage of local – commercial television signals</i>	
<i>Electronic Communications Law – Cable Television Consumer Protection and Competition Act of 1992 (also known as Cable Act of 1992)</i> ²⁴⁸ amending the <i>Communications Act of 1934</i>	<i>Section 6 – Retransmission consent for cable system</i>	<i>To provide increased consumer protection and to promote increased competition in the cable television and related markets, and for other purposes.</i> ²⁴⁹
	<i>Section 4 – Carriage of local commercial television signals</i>	

In her report, Prof. Van den Bulck refers, on the one hand, to what is known in the Communications Act as 'retransmission consent'. On the other, she refers to what the Federal Communications Commission calls the 'manner of carriage':

- Retransmission consent

Section 325 of the Communications Act of 1934, as amended by the so-called Cable Act of 1992, more precisely the first paragraph of its subsection (b), "prohibits cable operators and other multichannel video programming distributors from retransmitting commercial television, low power television and radio broadcast signals without first obtaining the broadcaster's consent" ²⁵⁰.

The same paragraph also provides in two possible exceptions to this prohibition:

- When there is express consent from the broadcaster to retransmit the signal, or;
- When the broadcaster has chosen to assert the right to carriage (cfr. section 614 of the Communications Act, equally introduced by the Cable Act of 1992).

- Manner of carriage

What the FCC calls 'manner of carriage' actually refers to Section 614 of the Communications Act of 1934, as amended by the so-called Cable Act of 1992, and more precisely to the third paragraph of subsection (b). On its website, the FCC explains:

²⁴⁶ Insights on the USA are based on the input provided by Prof. Dr Hilde Van den Bulck, Head of Department of Communication, Drexel University, Philadelphia, Pennsylvania, USA

²⁴⁷ Communications Act. Available at: <https://transition.fcc.gov/Reports/1934new.pdf>

²⁴⁸ Cable Television Consumer Protection and Competition Act of 1992. Available at: https://transition.fcc.gov/Bureaus/OSEC/library/legislative_histories/1439.pdf

²⁴⁹ Ibidem.

²⁵⁰ Source: <https://www.fcc.gov/media/cable-carriage-broadcast-stations>

- On the one hand, that “[s]ubject to the Commission's network non duplication, syndicated exclusivity and sports broadcasting rules, cable systems must carry the entirety of the programme schedule of every local television station carried pursuant to the mandatory carriage provisions or the retransmission consent provisions of the 1992 Cable Act”;
- On the other, that when “the carriage in the entirety rule applies”, which is not always the case since not all stations are eligible for must carry rights:
 - “the primary video and accompanying audio of all television broadcast stations must be carried in full, without alteration or deletion of their content”;
 - “[a]ncillary services such as closed captioning and programme-related material in the vertical blanking interval must be carried”;
 - “other information contained in the vertical blanking interval need not be carried”.²⁵¹

As Prof. Van den Bulck pointed out in her report, the second reference (‘manner of carriage’) is certainly closer to the AVMS Directive’s signal integrity measure than the first (‘retransmission consent’). The latter is about the right to pick up and retransmit a signal. The former actually specifies what is required for the integrity of the signal to be considered intact (must be carried in full, without alteration or deletion of their content, services such as closed captioning and programme-related material must be carried).

However, Prof. Van den Bulck also pointed out that “most of the conflicts have been about permission to carry which is different from integrity of a signal that is being carried”. One case that specifically did deal with ‘violating the signal’ refers to Delta Airlines editing audiovisual content.^{252,253}

4.6.3 General conclusions

At the time of reporting by the national experts, most Member States of the EU had apparently not dealt with signal integrity related issues yet. Nor did most Member States of the EU have signal integrity- related measures in place.

From the countries for which national experts and / or stakeholders reported being aware of past or ongoing commercial negotiations, disputes or litigations on the matter (Belgium, Estonia, France, Germany, Greece, Netherlands, Poland, Spain, Canada and US), only Belgium has come up with signal integrity measures within the meaning of the revised AVMS Directive (and even before the subject was put on the agenda of the revision of the AVMS Directive).

The signal integrity measures in Denmark (since July 2020) and Hungary (since August 2019) were not driven by issues in the market but are the result of transposing Directive 2018/1808.

Estonia and Poland reported being aware of past and/or ongoing commercial negotiations or contractual arrangements on the issue and not feeling a need to come up with specific rules and regulations.

Markets in France, Germany, Greece, Netherlands and Spain have already experienced issues similar or related to those which occurred in Belgium, but national authorities have up until now either not been formally called upon yet (France, Greece, Netherlands, Spain) and/or have approached (or tried to approach) matters from a different angle (Germany, Spain).

²⁵¹ Source: <https://www.fcc.gov/media/engineering/cable-television>

²⁵² See: <https://www.theguardian.com/us-news/2019/nov/02/delta-airline-lgbtq-booksmart-rocketman-olivia-wilde>

²⁵³ See: <https://www.washingtonpost.com/nation/2019/10/31/delta-booksmart-olivia-wilde-lesbian-scene-cut/>

Both Canada and the US have already been confronted with issues and questions related to signal integrity as defined in the revised AVMS Directive. However, up until now both have approached matters from different angles.

Table 57 - Rules and regulations in force at the time of reporting (excluding early transpositions of the AVMS Directive)

Country	Legal Framework	Measure	Purpose
Belgium	Media Law	Prohibiting distributors to transmit linear broadcasts in a modified or non-simultaneous way. Prohibiting modifications (including overlays) without consent from the audiovisual media service provider.	To protect broadcasters' editorial responsibility and the audiovisual value chain.
Denmark	Media Law	Prohibiting distributors to transmit linear broadcasts in a modified or non-simultaneous way.	To protect broadcasters' editorial responsibility.
France	Media Law	Distributors must make components of the signal enabling programme related services for deaf or hard of hearing and blind or visually impaired people available to the public, free of charge.	To protect the integrity of programme related services intended for deaf or hard of hearing and blind or visually impaired people.
Germany	Media Law	Prohibiting platform providers: - to alter editorial and technical content without the audiovisual media service provider's consent; - to include individual broadcasting services or contents in channel packages; - to market such services against remuneration or free of charge. Technical alterations which exclusively serve a more efficient use of capacities and do not impede the agreed quality standard are permitted.	To protect the broadcast signal against interference by platforms or end devices, e.g. by changing the technical quality / bitstream rate of the signal or by marketing it in other bundles / multiplexes.

Hungary	-	-	-
Spain	Copyright Law	Confirming authors' right to demand respect for the integrity of their work and to object against any distortion, modification or alteration of their work or against any act related to it to protect their legitimate interests and their reputation.	To protect the legitimate interests of authors and their reputation.
Canada	Media Law	Prohibiting distributors to alter the content or the format of broadcasts or to delete them.	To protect the content and the format of programmes with as most important exception: the SimSub rules in which the signal integrity of broadcasts, typically from the US, is actually set aside to protect the commercial value for Canadian broadcasters.
US	Electronic Communications Law	Forcing distributors to carry the entirety of broadcasts when the broadcasters are indeed eligible for 'must carry' rights, and in that case: - carry primary video and accompanying audio in full, without alteration or deletion of their content; - carry ancillary services (e.g. closed-captioning, programme-related material); - no need to carry other information.	To protect the content of programmes.

4.7 Stakeholder opinions

The section in brief

This section builds on stakeholder contributions to an online survey as well as a number of focus groups and strategic interviews with these stakeholders.

- There seems to be some consensus between broadcasters and distributors on the insertion of ads and on the technologically neutral nature of the new measure.
- There is, however, disagreement on the actual existence and occurrence of signal integrity issues, on what are considered to be problematic modifications and on the interpretation of the out-of-scope cases provided by Recital 26.

The section also provides an account of the little information that was shared on the subject of contractual arrangements. Broadcasters were most vocal on the subject, claiming that they did not have sufficient bargaining power to force contractual arrangements on signal integrity.

While some stakeholders believe the new measure has already had some deterrent effect in older disputes (e.g. on filtering, on overlay ads by smart TVs), technological convergence and innovation have already created new issues (e.g. recommender and classification systems). Some stakeholders believe that these new issues are of a nature to seriously frustrate the possibilities of ever reaching new commercial agreements respectful of the integrity of an AVMS provider's signal.

4.7.1 Stakeholder survey and focus groups

In the framework of this study, stakeholders were invited through direct mailing and social media to submit contributions to an online survey with respect to signal integrity and participate in one of the three focus groups on the matter. The survey delivered eleven (11) contributions from both individual companies as well as sector organisations. A total of nineteen stakeholders, again, individual companies as well as sector organisations, participated in the different focus groups.

After identification of the respondent, the online survey gauged for opinions on a number of questions:

- (2) Have you already experienced difficulties (disputes, litigations, ...) with respect to programmes or audiovisual media services being overlaid for commercial purposes or transmitted in a shortened form, altered or interrupted (see Article 1(12) and Recital 26 of Directive 2018/1808 on the integrity of programmes and audiovisual media services, a.k.a. "signal integrity", footnotes (1) & (2))? Please, be as specific as possible about what exactly these disputes, litigations were about and what their outcome was, if any.
- (3) Are there, besides these overlays and modifications, other types of overlay or changes to the transmission of programmes or audiovisual media services that you (would) consider problematic?
- (4) Which overlays or changes to the transmission of programmes or audiovisual media services do you consider not to be problematic and should be left out of the scope of the "signal integrity" article?

- (5) In case you have concluded contractual agreements that stipulate how the media service provider's audiovisual media service (e.g. a television broadcast) is to be handled, can you tell us whether these stem from existing national rules and regulations, from commercial negotiations, or from a combination of both? If none of your contractual agreements contain such provisions, then skip to question 8.
- (6) For the provisions stemming from existing national rules and regulations, can you refer us to those rules and regulations?
- (7) For the provisions stemming from commercial negotiations, can you tell us what exactly you agreed upon?
- (8) In cases where you conducted negotiations with another party on such provisions, but remained unsuccessful, can you please explain to us what exactly prevented parties from reaching an agreement? If you have no such cases, please skip to question 9.
- (9) In cases where there was no agreement to negotiate such provisions from the start (one party wanted it, the other did not), can you tell us what was the reason for this a priori disagreement? If you have no such cases, please skip to question 10.
- (10) In cases where neither party expressed a wish to have such provisions, can you tell us what this was due to? If you have no such cases, please skip to question 11.
- (11) In light of your responses to questions 1-10 above, what would you want your contractual arrangements on the matter to look like ideally? Please, be as specific as possible.
- (12) In light of your response to question 11, how would you want your government to transpose article 7b (1) of the revised AVMS Directive? Please, be as specific as possible.
- (13) Is there any other information or material not captured by our questions, but which you wish to share?

The Focus Groups, which were organised per sector (broadcasters, distributors, TV manufacturers) gauged with participants for more detail on the following topics:

- (1) Which data carried / information conveyed by the signal is entitled to the protection of article 7b?
- (2) Services, function and features offered by distributors;
- (3) Services, functions and features offered by TV manufacturers.

4.7.2 Points of consensus/disagreement

There were only very few points on which stakeholders agreed:

- *On the insertion of ads*
 - Some distributors agreed with broadcasters that their programmes should not be changed or interrupted for advertisements without the broadcaster's consent;

- However, the reader should bear in mind that 1) some distributors are vertically integrated with a broadcaster and 2) that complaints are usually related to the behaviour of VSPs to this respect.
- *On technological neutrality*
 - There was some agreement between broadcasters and distributors on the technologically neutral character of Article 7b: protection of the broadcaster's signal does not imply that the Article allows the former to impose its choice of technology on the latter;
 - Nonetheless, some broadcasters also pointed out that on the basis of this principle, Article 7b could easily be side-lined.

Stakeholders tended to disagree:

- *On the existence of actual signal integrity cases*
 - Broadcasters reported cases of bias in promotion, bias in recommender systems, bias in classification systems, filtering out content related services, deletion of logos, changing of colours, reversal of images and overlay ads;
 - Distributors and TV manufacturers did not report having experienced real difficulties yet.
- *On the occurrence of signal integrity cases*
 - Broadcasters believed that the occurrence of such issues having slowed down is due to the prohibitive effect of the new measure;
 - Distributors and TV manufacturers, while claiming not to have experienced difficulties yet, did not agree with this view.
- *On what are considered to be problematic modifications*
 - Broadcasters discussed ad skipping, TV recommender and classifications systems, filtering out of services, resizing, editing, piracy and quality;
 - Distributors agreed that inserting ads should require the broadcaster's consent;
 - TV manufacturers identified overlays as problematic when it is not clear to the viewer who is responsible.
- *On the interpretation of the out-of-scope cases provided by Recital 26*
 - Broadcasters tended to advocate a restrictive interpretation of those cases;
 - Distributors demanded a broad interpretation that places inter alia TV recommender systems and resizing of previews outside the scope of Article 7b;
 - TV manufacturers believed features and functions, which the viewer has already grown accustomed to or which the viewer is actually asking for, should be exempted from consent.

Table 58 brings a number of this study's findings together in a way that could be the format for a practical guide. It provides an overview of, on the one hand, stakeholder positions on modifications appearing in services, features and functionalities offered by distributors and TV manufacturers and, on the other, the findings of this report with respect to these modifications (which are shaped and determined by the understanding of modifications and processes as developed in section 4.2 and the interpretation of Article 7b and Recital 26 as discussed in section 4.5).

4.7.3 Contractual arrangements to date

From stakeholders' contributions to the survey, it would seem that in practice there are still very few contractual arrangements made with respect to the integrity of the signal. Broadcasters claim that this is mainly due to not having enough bargaining power to impose a signal integrity clause. On the distributors' side, the basic principle is reported to be that restrictions on functionality are the subject of commercial negotiations.

The situation in Belgium (Flanders) seems, however, to be an exception to this general situation. In the light of the Flemish Community's Media Decree, contractual arrangements are reported to go beyond the AVMS Directive's new measure, requiring a distributor to obtain the broadcaster's consent for any TV functionality *"that is in any way linked to the linear TV signal"* of the broadcaster, even when *"initiated or authorised by the subscriber"*. This is a situation which apparently usually results in the distributor having to pay the broadcaster to obtain this consent.

Some contracts in Belgium (Flanders) are reported to:

- Prohibit overlaying the broadcasting signal with:
 - Recommendations relating to content from third party broadcasters or context-related contents;
 - Moving image content (picture-in-picture);
 - Any other content unless specifically authorised in writing by the broadcaster;
- Specify rules on how long control elements (e.g. volume bars) may be displayed;

In that same geographical area, individual arrangements were reported to have been made with respect to:

- Due prominence', '(N)PVR' and 'time-shifted viewing', including additional fees for these functionalities;
- How television channels are distributed technically, and in particular how they are integrated in e.g. the TV platform, the EPG, the UI and the commercial offers.

Table 58 - In summary

	IRD				ADS				STV				EPG				TVR				HS				PVR				CLS			
	B	D	T	R	B	D	T	R	B	D	T	R	B	D	T	R	B	D	T	R	B	D	T	R	B	D	T	R				
Shortened																																
(editing)																																
	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A			N/O				N/O				N/O	N/O			N/O	(4)			N/O	
Altered																																
(resizing)																																
	N/A	N/A	N/A	N/A							N/O	(1)			(1)				(1)			N/O	N/O	(1)			N/O	(4)			(1)	
Interrupted																																
(interrupting)																																
											N/O				N/O	N/O			N/O	N/O			N/O	N/O			N/O	(4)			N/O	
Overlaid for commercial purposes																																
(merging)																																
	N/A	N/A	N/A	N/A							N/O	(2)			(2)				(2)			N/O	N/O	(3)	N/A	N/A	N/A	N/A			(2)	

No consent required Consent required Not applicable or no opinion

B: broadcasters, D: distributors, T: TV manufacturers, R: this report

IRD: Irregular Distribution; ADS: Advertisements; STV: Smart TV; EPG: Electronic Programme Guides; TVR: TV Recommender Systems; HS: Home Security Systems; PVR: Personal Video Recorders; CLS: TV Classification Systems

- (1) Consent is required, unless it concerns a resized video that is offered to the viewer as a control element of a user interface for operation of the device or programme navigation (e.g. picture-in-picture, smaller window playing current programme while viewer consults TV guide, recommender system or classification system)
- (2) Consent is required, unless it can be unequivocally established that the viewer has solely initiated or authorised commercial communications
- (3) The overlay has no commercial purpose: situation is not in the scope of the new measure
- (4) The FFW and RW functionalities are performed on private copies of programmes

4.8 Understanding the legal implications

The section in brief

This section shows that a legal framework providing new 'tools' to protect the integrity of audiovisual media services effectively will also raise a number of new questions for the AVMS provider, more precisely with respect to liability, ownership and competition.

A legal framework providing new 'tools' to effectively protect the integrity of audiovisual media services also brings with it a number of new questions for the AVMS provider with respect to liability, ownership and competition.

4.8.1 Legal liability

A recurring argument for signal integrity measures, acknowledged by Recital 26, is the protection of the editorial responsibility of audiovisual media service providers (regarding this issue, most likely broadcasters). This editorial responsibility includes, amongst others, the obligations which the AVMS provider may have with respect to any relevant rules and regulations in force and applicable to broadcasting audiovisual content in the geographical area where it is licensed.

Broadcasters, especially Public Service Broadcasters, seem to claim that they cannot take editorial responsibility for their work, unless they have the instruments at their disposal to keep control over what happens with the signal carrying that work.

Signal integrity is one of the measures they claim to need to live up to this responsibility. But better, stronger, more adequate tools to control what happens to the signal also shed a new light on the question of liability.

Can the AVMS provider be held liable for e.g. damages caused by other parties in the value chain tampering with its signal (for example, when rules and/or regulations with respect to TV commercials have been breached due to additional advertisements inserted or overlaid by e.g. a distributor, an online video platform or a TV manufacturer)?

Without signal integrity rules in force, and effectively enforced, the answer seems to be straightforwardly negative. However, when signal integrity rules and regulations are in force, avoiding being found liable becomes a matter of vigilance: neglecting to enforce the rules and chasing the offenders could become a reason for being found liable for damages caused by another stakeholder in the audiovisual value chain.

4.8.2 Ownership of the signal

The new measure may also revive discussion about the ownership of the signal. The existence of an instrument to control and enforce respect for the integrity of the signal also offers broadcasters a tool to live up to their claim of being the owners of the signal.

This subsequently also puts the relation with copyright and the protection of intellectual property back on the radar. A number of national experts have reported the copyright avenue in their country to be explored. However, mostly still as a purely academic exercise.

4.8.3 Competition

From stakeholders' contributions to our survey and participation in the focus groups, it would appear that managing signal integrity matters through commercial negotiations is everybody's preferred option. However, broadcasters confirm that such negotiations still do not run at all smoothly.

Broadcasters feel that they do not have sufficient bargaining power to get distributors to accept signal integrity clauses in the contracts. Some report that, even when contracts *do* contain clauses with relevance to the signal integrity matter (e.g. in which the distributor has agreed to keep the broadcaster abreast of changes in user interfaces and services in a timely manner), they are ignored and not respected in practice. Broadcasters believe distributors have gatekeeper-positions and the situation will not be solved without regulatory intervention.

From distributors' contributions and participations it would appear that they have not encountered any signal integrity related difficulties yet and do not see any need for regulation. If anything, they would want rules in the other direction, e.g. to control the behaviour of broadcasters with market positions that allow the latter to demand exclusivity from distributors (e.g. distributor is to promote the broadcaster's services exclusively).

The question whether governments should actually intervene and regulate the relations between these players from different sectors has been asked more than once. It has been a recurring topic in the Parliament of the Flemish Community in Belgium, for example, which has been the first to adopt signal integrity measures.

Many participants expressed concern, to a greater or lesser degree, about government actively interfering in negotiations between private parties. Some felt it to be at the very limit of what is acceptable in terms of government intervention. Others felt it is absolutely justified to protecting the Flemish ecosystem, enabling it to put out unique Flemish productions. Still others praised the fact that the Flemish measure not only provides rules, but also a mechanism to foster and support negotiations in this area.

4.9 Conclusion

To avoid our analysis of the new measure getting entangled in subjective appreciations and instead be able to unequivocally establish whether a service, feature or functionality offered by a distributor, TV manufacturer, online video platform, effectively changes the programme of an AVMS provider, we turned to the processes to which AVMS providers' audiovisual signals are subjected. When the services, features or functionalities under study involve processes that change the signal at information level, the AVMS provider's service (the broadcaster's programme) will indeed be changed. Regardless of whether opinions on the degree of change differ or not.

In addition to expressing services, features and functionalities in terms of the processes they involve, we further characterised the former by identifying the party that initiates or authorises their use (the viewer, the distributor, the online video platform, the TV manufacturer).

To create a common ground for analysis, we subsequently also mapped the processes onto the modifications referred to by Article 7b (alteration, shortening, interruption and overlays).

On that basis we analysed a number of abstract, but relevant cases. This allowed us to conclude that as a result of the new measure, the following actions by distributors, online video platforms or TV manufacturers, are not allowed without the AVMS provider's consent:

- Filtering out information from a signal that is intended to enable viewing of the AVMS provider's service. In view of the new measure's technologically neutral nature, this outcome should not be confused with an ability to impose a particular choice of technology;
- Commercial communications by distributors, online video platforms and TV manufacturers while a viewer is watching an AVMS provider's service (a broadcaster's programme);
- User interfaces of EPGs, TV recommender systems and TV classification systems serving as platforms for commercial communications. Unless it is unequivocally clear that the viewer has consented to this. The new measure does not stifle innovation, but does not allow the latter to be used as a pretext for uncalled for commercial communications either;
- Resizing, unless it is used to provide the viewer with a control element (split screens are not allowed; resizing video to provide the viewer with a possibility to keep track of the programme he/she is watching while checking a different programme, a TV guide, recommendations ... is allowed);
- Edited versions of an AVMS provider's service (e.g., previews);
- Ad blocking.

Ad skipping would not be accepted by the new measure either, if it were not for the fact that the situation concerns private copies and is therefore out of its scope.

In several cases identification of who exactly has initiated or authorised the service, feature or functionality is key, in some cases to the extent of determining the outcome. However, the report did not get into the question of which methods should be used to unequivocally establish this.

Nor did the analysis delve deeper into the role which bias may play in the analysis of cases involving e.g. AI-driven TV recommender or classification systems. What can a viewer legitimately expect with respect to

bias in such systems? And when the system does not live up to that expectation, can the list produced by the system then nonetheless legitimately be regarded as solely initiated or authorised by the viewer?

From the contributions by national experts and stakeholders, it seems issues have not spread widely across the EU and only very few countries have measures in place (not counting transpositions of the new measure). Furthermore, some of the early issues (e.g., filtering by distributors, commercial overlays by TV manufacturers) have subsided, while others (e.g., ad skipping) are persisting. There are indications that the new measure has already had some deterring effect. Nonetheless, new issues have turned up in sync with evolving technological convergence and innovation. According to some stakeholders, these new issues are of a nature to seriously frustrate commercial negotiations and have already proven new agreements impossible to reach.

With a view on a consistent application of the new measure across the EU, there are a number of aspects that ideally should be 'harmonised' first. The report has proposed a way to avoid analyses of cases getting clogged by subjective appreciations of what exactly constitutes a change of an AVMS provider's service. The processes to which the AVMS provider's signal is subjected by services, features and functionalities have been used as the 'vocabulary' of a common, normative language. And this language has been used to unequivocally establish whether an AVMS provider's service has been changed or not and subsequently to analyse whether the AVMS provider's consent was required or not. The cases discussed have shown that variations in how processes, modifications and interpretations of Article 7b and Recital 26 are believed to relate to each other may result in different outcomes for the same case. To ensure a consistent and predictable application of the new measure across the EU, the following elements would therefore require prior coordination:

- The identification of a common, normative 'language', using an unambiguously defined 'vocabulary';
- Mapping services, features and functionalities as well as Article 7b and Recital 26 on this common ground for analysis;
- Validation of methods to unequivocally establish the initiator/authoriser of a service, feature or functionality;
- A common approach to dealing with bias (e.g., in AI-driven recommender and classification systems);
- A common approach in establishing a balance between viewer and AVMS provider interests.

In view of the different, opposing interests and incentives of stakeholders involved as well as reports of significant differences between those stakeholders in negotiating power, none of these elements seem to be ready for self-regulation and only few could be considered for more involvement by industry (e.g., identifying and agreeing on methods to unequivocally establish initiation/authorisation).

Annex A – Final Progress Report

Introduction

Purpose of the document

This deliverable represents the Final Progress Report of the “Study on the implementation of the new provisions in the revised audiovisual media services directive (AVMSD)”.

The report is intended to explain the status of the project activities and the progress towards final delivery (until 02/10/20). More specifically, it details the work performed, any challenges encountered, and potential adjustments or improvements made to improve our approach (if any.)

Structure of the document

This deliverable entails the following:

- a description of the purpose and structure of the document;
- the status of all activities;
- the risks and mitigation measures;
- the main decisions made.

Progress, status of the activities and their completion

Progress and status of the activities

Table 59 - Progress of activities*

Task	Activity	Target completion	Percentage Completion
Task A			
A.1	A1 - Snapshot of the market situation in the EU	100%	100%
	A1(a)/ Mapping of video-sharing platforms present/developed in the EU	100%	100%
	A1(b)/ Analysis of audiovisual commercial communications on video-sharing platforms (12 case studies)	100%	100%
A.2	A2 - Mapping of the existing and planned relevant measures adopted by VSPs	100%	100%
	A2(a)/ Mapping of existing self-regulatory measures of video-sharing platforms	100%	100%
	A2(b)/ Assessment of the outcome and impact of the self-regulatory measures (5 case studies)	100%	100%

A.3	A3 - Mapping of the existing and planned legislative measures in EU MS, incl. co-regulatory relevant measures	100%	100%
	A3(a)/ Mapping of legislative measures and co-regulatory systems (10 case studies)	100%	100%
	A3(b)/ Assessment of the outcome and impact of legislative measures and co-regulatory systems (5 case studies)	100%	100%
Task B			
B.1	B1 - Mapping of ownership rules and their implementation	100%	100%
	B1(a)/ A detailed analysis of the current national (or regional) legislation and rules governing media ownership structures in all EU Member States	100%	100%
	B1(b)/ A description of implementation of the legislative frameworks identified in B1(a) (In-depth analysis of 10 MS)	100%	100%
B.2	B2 - Mapping of existing and planned measures in the EU MS as regards transparency of media ownership	100%	100%
	B2(a)/ An overview of transparency and disclosure provisions with regard to media ownership in all EU Member States (6 case studies)	100%	100%
	B2(b)/ A description of the implementation of the rules identified in B2(a) and the effectiveness thereof	100%	100%
	Step B2(c)/ A study on the access public authorities and the public have to information regarding ownership structures and actors	100%	100%
B.3	B3 - Understanding the legal implications	100%	100%
	B3(a)/ A reflection on the effectiveness of media ownership rules in the EU Member States and identification of best practices (focus groups)	100%	100%
	B3(b)/ A reflection on the effectiveness of media ownership transparency rules in the Member States and identification of best practices (focus groups)	100%	100%
B.4	B4 - Interactive database	90%	90%
Task C			
C.1	C1 - Snapshot of the market situation in the EU, US and possible other relevant countries	100%	100%
	C1(a)/ Description of the technical possibilities	100%	100%

	C1(b)/ Description of actual use of overlays in different countries (15 case studies)	100%	100%
C.2	C2 - Mapping of existing and planned measures in the EU MS and selected countries	100%	100%
	C2(a)/ Mapping of existing or emerging legislation	100%	100%
	C2(b)/ Contractual relations between companies (interviews)	100%	100%
	C2(c)/ Explorative analysis of results of legislation and contractual relationships so far (focus groups)	100%	100%
C.3	C3 - Understanding the legal implications	100%	100%

*progress as per 02/10/20.

Progress and status of the deliverables and meetings

The table below indicates the status of deliverables and meetings.

Table 60 - Progress and status of deliverables and meetings

Meeting/Deliverable	Status
Inception report	Completed
Draft interim study report	Completed
Interim meeting	Completed
Interim study report	Completed
Final study report	Completed
Final meeting	Completed
Interactive Database	Completed
Final Dataset	Completed

Note:

Risks log and mitigation measures

Table 61 - Risks and mitigation measures

Risk number	Description	Task	Likelihood	Potential impact	Mitigation measures
1	Lower response rate to stakeholder consultations than expected	Tasks A, B	High	Medium	Sending e-mail reminders and potentially identifying additional stakeholders.
2	Limited time frame to analyse responses to consultations, due to delays in approval and dissemination	Tasks A, B	Medium	Low	Analysis of data will happen on a continuous basis and commence in advance of the closing of the consultations.
3	The measures taken due to COVID-19 affecting legislative and regulators' agendas leading to limited available case studies	Task A3	High	Low	The study team will focus its attention to cases where there is available data and conduct in-depth analysis for these.
4	Social restrictions linked to COVID-19 preventing travel for focus groups	Task B, C	High	Low	Carrying out the focus groups virtually.
5	Social restrictions linked to COVID-19 preventing physical meetings for focus groups	Task B, C	Medium	Low	Carrying out the focus groups virtually.
6	Delay in national transposition	Tasks A,B, C	High	Low	Four-week extension of the project for more complete data collection.

Decision log

The table below lists all main scope, content and management decisions which have been take so far.

Table 62 - Decision Log

Decision number	Date	Description	Comments
1	20/03/2020	DG CNECT will provide the study team with a letter of support for contacting stakeholders.	Letter transmitted.
2	08/04/20	Project delays due to COVID-19, led the study team to request extension of the delivery of the draft interim report.	The Commission confirmed the delivery of the draft inception report on 22/05/20 via e-mail.
3	23/07/20	Final report extension requested for the study team to obtain all the necessary data, to best accommodate for the transposition deadline and mitigate the delaying effects experienced during this time (read: Covid-19)	Commission approved four-week extension by e-mail on 31/07/20.

Annex B - Methodology and project management

This annex provides an elaborate explanation of the methodology and project management processes that underpin the study on the implementation of the new provisions in the revised audiovisual media services directive (AVMSD). It is structured in the following manner:

- Methodology - including approach, scope, national expert consultations and stakeholder consultations;
- Challenges and mitigation actions – including challenges related to data collection and challenges related to project management;
- Additional methodological background – in order to provide additional information on certain data collection methods.

Methodology

The overarching methodology of this assignment is the application of a **funnel-based approach**. The study team started with a scan or mapping exercise, after which relevant cases (whether companies or countries) were investigated more into detail. This way, the reader can get a sound overview of what is happening in all Member States in the areas of the study and an elaborate description of regulatory and commercial/contractual practices in countries where relevant regulation has been implemented.

By examining industries (small and large players alike) and all EU Member States and beyond, the study team carried out regulatory scans, market scans and mappings to demonstrate the variety of approaches that can be found in the implementation processes and transposition of the AVMSD. This approach also allowed the study team to obtain an overarching idea of where similarities and differences lie, and better target the selection of case studies. The case studies are based on information from numerous sources: from national experts, to policy analysis and desk research. The following sections give a detailed view of the key elements underpinning the methodology of this study.

Approach and scope

The scope of the study is the EU Member States, with additional mapping of the United Kingdom, the United States and Canada due to the global importance of the English-speaking media industry.

For Task A, the scope has covered a wide selection of VSPs in order to reflect as much diversity as possible. In brief terms, the methodology employed is based on quick scan analysis, stakeholder consultations, national expert consultations, mapping and document analysis.

Regarding Task B, the study team covered all EU Member States, the UK, Canada and the US, and conducted case studies of countries of varied sizes, economies, media industries and geographical location. The methodology for this task was mainly based on mappings, quick scan analysis, desk research, stakeholder consultations, national expert consultations and focus groups.

Task C covered the 27 EU Member States, along with the UK, Canada and the US. With the focus being placed on identifying, documenting and analysing cases of signal integrity breaches, the scope of the task

was focused on categories of breaches to be explored. The main methodological tools employed for this task is stylized models, desk research and analysis, stakeholder consultations, national expert consultations and focus groups.

Table 63 - Approach and Scope

Task	Scope	Methodology
Task A		
<i>Task A1</i>		
Task A1(a)	27 EU MS + UK	Mapping of key players; Quickscan of functionalities
Task A1(b)	YouTube, Facebook, Vimeo, Dailymotion, Veoh, Flickr, D.tube, IGTV, TikTok, LiveLeak, Snap and Twitch	Stakeholder consultation Business modelling Case studies
<i>Task A2</i>		
Task A2(a)	YouTube, TikTok, Twitch, Facebook, Vimeo, Snap, Dailymotion, Veoh, Flickr, Instagram/IGTV, Liveleak, Archive.org	Quickscan of self-regulatory measures; Mapping of platforms and their measures
Task A2(b)	YouTube, Vimeo, IGTV, Facebook and Tiktok	Stakeholder consultation Case studies
<i>Task A3</i>		
Task A3(a)	27 EU MS In-depth analysis of Ireland, Germany, Italy, Hungary, Lithuania, Bulgaria, United Kingdom, France, Denmark, Spain, Czechia (Alternates – Slovenia, Greece)	Mapping of legislative measures and co-regulatory systems Policy document analysis Stakeholder consultation Case studies
Task A3(b)	Germany, Ireland, Denmark, France, Czechia, Hungary, Slovenia, Spain, UK(non-EU)	Case studies Policy document analysis Stakeholder consultation
Task B		
Task B1		
Task B1(a)	27 EU MS In-depth analysis of Austria, France, Greece, Hungary, Italy, Germany, The Netherlands, Poland, Spain and the UK.	Quickscan of media-specific ownership rules Case studies Legal analysis
Task B1(b)	EU MS with relevant legislation in place in this area	Legal analysis (case law) Stakeholders consultation
<i>Task B2</i>		
Task B2(a)	27 EU MS + UK In-depth analysis of min. six EU MS case studies, including Bulgaria, Estonia, France, Greece, Hungary and Italy.	Quickscan of transparency and disclosure provisions Case studies Legal analysis Policy document analysis
Task B2(b)	Same as B2(a) for the in-depth analyses	Case studies Stakeholder consultation
Task B2(c)	27 EU MS + UK	Stakeholder consultation Small audience research in min. 5 EU MS.
<i>Task B3</i>		
Task B3(a)	27 EU MS + UK	Stakeholder consultation Focus groups Quantitative analysis of concentration indexes
Task B3(b)	27 EU MS + UK	Stakeholder consultation Focus groups Identification of min. 5 best practices
<i>Task B4</i>		
Task B4(a)	27 EU MS + UK	N/A
Task C		

Task C1		
Task C1(a)	27 EU MS + UK	Stylized model with visualization technical possibilities.
Task C1(b)	27 EU MS + UK+ US & Canada In-depth analysis of min. five cases across three types of breach: Commercial overlay Recommendation of a TV distributor Interruption by the distributor	Case studies Stylized model with visualization of the overlay process and involved companies. Min. 25 Stakeholder consulted
Task C2		
Task C2(a)	27 EU MS + UK In-depth analysis of Belgium, Denmark, France, Germany, Hungary, Spain, Canada and US	Quicksan of overlay (legal definition and regulation) Case studies Policy document analysis
Task C2(b)	18 companies in 3 categories (6 per category): broadcasters, distributors, smart TV companies	Stakeholder consultation Document (contract) analysis
Task C2(c)	3 focus groups	Focus groups
Task C3		
Task C3(a)	27 EU MS + UK and beyond	Policy analysis

National expert consultation

The creation of a network of national experts was a cornerstone of the data collection methodology for this study. The national experts worked on extensive and detailed questionnaires, one for each of the three tasks, and assisted in reviewing the analysis related to their country of expertise.

These reviews were critical, as the study was carried out in a period where many countries were still early in their process of implementing the AVMSD when the project started, but may have advanced at the course of the project duration. Moreover, some countries may have adapted their approach and/or timeline in response to issues arising in the COVID-19 crisis.

Table 64 - List of National Experts

Country	National Expert - designation
Austria	Prof. Dr Josef Trappel and Dr Corinna Gerard-Wenzel, Paris Lodron Universität Salzburg
Belgium	Stephanie Tintel, PhD researcher and Teaching Assistant, IMEC-SMIT, VUB
Bulgaria	Dr Sally Broughton Micova, University of East Anglia
Croatia	Prof. Dr Zrinjka Peruško, Head of the Centre for Media and Communication Research, University of Zagreb
Cyprus	Dr Antigoni Themistokleous, Officer, Cyprus Radio Television Authority
Czechia	Filip Rozanek, Journalist and Analyst focused on Media
Denmark	Em. Prof. Dr Frands Mortensen, University of Aarhus, Institute for Communication and Culture
Estonia	Prof. Dr Indrek Ibrus, Head at MEDIT, Tallinn University

Finland	Dr Riku Neuvonen, University of Helsinki and Tampere University
France	Dr Heritiana Ranaivoson, Senior Researcher and Project Leader at IMEC-SMIT, VUB
Germany	Dr Stephan Dreyer, Senior Researcher Media Law & Media Governance, Leibniz Institute for Media Research Hans-Bredow-Institut
Greece	Dr Evangelia Psychogiopoulou, Senior Research Fellow, Hellenic Foundation for European and Foreign Policy (ELIAMEP)
Hungary	Dr Krisztina Rozgonyi, University of Vienna
Ireland	Marie McGonagle, National University of Ireland Galway
Italy	Prof. Dr Francesco Marrazzo, Adjunct Professor, University of Naples "Federico II"
Latvia	Prof. Dr. Anda Rožukalne, Head of the Department, Faculty of Communication, Rīga Stradiņš University
Lithuania	Dr Deimantas Jastramskis, Associate professor, Vilnius University
Luxembourg	Prof. Dr Tim Raats, Head of Media Economics and Policy Unit, IMEC-SMIT, VUB
Malta	Dr Karsten Xuereb, L-Università ta' Malta
The Netherlands	Dr Ben Van Rompuy, Assistant Professor (Task B), Leiden University Prof. Dr Tim Raats, Head of Media Economics and Policy Unit, IMEC-SMIT, VUB (Tasks A & C)
Poland	Prof. Dr Alicja Jaskiernia, University of Warsaw
Portugal	Elsa Costa e Silva, Universidade do Minho
Romania	Catalina Iordache, PhD researcher and Teaching Assistant, IMEC-SMIT, VUB
Spain	Dr Carles Llorens, Associate Professor, Universitat Autònoma de Barcelona
Slovakia	Juraj Polák, Senior lawyer ve spoločnosti Markiza - Slovakia (CME)
Slovenia	Dr Marko Milosavljevic, Associate Professor, Chair of Journalism, University of Ljubljana
Sweden	-

The United Kingdom	Dr Sally Broughton Micova, University of East Anglia
Canada	Prof. Dr Dwayne Winseck and Benjamin Klass, Carleton University
USA	Prof. Dr Hilde Van den Bulck, Head of Department of Communication, Drexel University, Philadelphia, Pennsylvania, USA

Stakeholder consultations

The answers and input provided by stakeholders were treated in an aggregated form, unless otherwise explicitly stated, and were anonymised in line with the EU data protection rules [Available at: https://ec.europa.eu/info/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules/eu-data-protection-rules_en].

For the purpose of obtaining both wide representation and a few targeted organisations' input in our consultations, the study team opted for a dual approach to the stakeholder consultation strategy. This strategy consists of, on the one hand, an overall approach to reach out to the study team's vast network of organisations and academic communities for input. While on the other hand, and in parallel, specifically targeting certain stakeholders whose input is of particular interest to the study. The approach is outlined in the sections below.

Overall dissemination strategy

The overall dissemination strategy consists of pooling the study team's networks in the AVMS sector to obtain the widest possible representation of respondents. The online consultations for all tasks were circulated internally in a number of relevant organisations and networks, and the study team thereby ensured that the consultations have been disseminated to a large pool of relevant and interested actors. For example, as part of Task A, the ad demand side stakeholders were contacted through the European Association of Communications Agencies (EACA) (newsletter and additional mailing). The ad supply side stakeholders were contacted through the Association of Commercial Televisions in Europe (ACT), and all members of the VUB Media Network were contacted. For Task B, the online consultation was circulated amongst members of Egta, the European Broadcasting Union, European Regulators Group for Audiovisual Media Services and ACT. For Task C, the study team contacted several European level associations (European Telecommunication Network Operators, European Competitive Telecommunications Association, Cable Europe, GSM Association, the European Broadcasting Union, ACT and DIGITALEUROPE), some of whom circulated the relevant stakeholder consultation. The associations also received e-mail reminders.

Targeted stakeholder consultation strategy

In addition to the wider overall dissemination strategy, the study team initiated a targeted parallel approach to obtain input from organisations identified as particularly relevant to each individual consultation. Based on in-depth desk research, the study team activated the targeted stakeholder consultation strategy by directly contacting 238 organisations and companies. For the audience research exercise as part of Task B, the study team reached out to university students directly and obtained responses from students based in eight different countries (Belarus, Estonia, Finland, Hungary, Italy, Netherlands, the United States). This approach consisted of personalized e-mails and reminders sent to relevant mailboxes (personal when possible) and via social media. Please refer to the table below for an overview of the targeted stakeholder consultation strategy.

Table 65 - Targeted Online Consultation Tracker

Task	Consultation	Status	Publication date	Stakeholder group	# of stakeholders contacted	# of responses	Link (if any)
All	Survey on legislative and co-regulatory measures related to video-sharing platforms	Active	11/02/20	National experts	30	29	https://www.surveymonkey.com/r/vsp1
All	Survey on legislations and regulations of media ownership and transparency of ownership structures	Active	11/02/20	National experts	30	29	https://www.surveymonkey.com/r/mediaownership1
All	Survey on the legislation or other measures addressing signal integrity	Active	11/02/20	National experts	30	29	https://www.surveymonkey.com/r/signalintegrity1
A	Questionnaire 1 (Ad demand side actors)	Active	02/04/20	Media buyers in media agencies, Media buyers or marketing teams in major advertisers, Representatives of a range of SMEs advertising on VSPs	49	2	https://www.surveymonkey.com/r/VSPSC1
	Questionnaire 2 (Ad supply side actors-vsp & avms)	Active	02/04/20	Individuals responsible for selling advertising inventory at VSPs	15	4	https://www.surveymonkey.com/r/VSPSC-2
	Questionnaire 3 (vsp responsible for content moderation)	Active	02/04/20	Individuals within VSPs responsible for content moderation	15	2	https://www.surveymonkey.com/r/VSPSC-3
	Questionnaire 4 (vsp responsible for protection of minors and/or parental controls)	Active	02/04/20	Individuals within VSPs responsible for protection of minors/parental controls measures	15	2	https://www.surveymonkey.com/r/VSPSC-4

	Questionnaire 5 & 5a (Consumer & Child protection groups and FoE orgs)	Active	02/04/20	Consumer associations or consumer champions, child protection organisations and watchdog groups, freedom of expression or digital right organisation, consumer associations or consumer champions, child protection organisations and watchdog groups	114	4	https://www.surveymonkey.com/r/VSPSC-5_(child_protection_groups) https://www.surveymonkey.com/r/VSPSC-5a_(FoE_and_cons._Protection_groups)
Task B	Questionnaire stakeholders	Active	30/03/20	General stakeholders	43	19	https://www.surveymonkey.com/r/TaskBsc
	Questionnaire students	Active	19/06/20	Students	N/A	66	https://www.surveymonkey.com/r/citizensmedia-test
Task C	Consultation on signal integrity	Active	26/02/20	General stakeholders	17	11	https://www.surveymonkey.com/r/consultationsignalintegrity

Focus Groups

For the purpose of this study, six focus groups were organised in total. The overall purpose of the focus groups was to present the study team's findings on effectiveness of media ownership and media ownership transparency rules and best practices, and test these findings with small groups of experts, in order to validate and complement our analysis and potential conclusions. The table below provides an overview of the focus groups conducted.

Due to the current situation (read: Covid-19), the study team was unable to gather groups of stakeholders physically. For this reason, all six sessions were held virtually through Microsoft Teams. The focus groups were designed to mitigate the challenge of virtual meetings, by employing tools such as live polling and effective communication tools to maintain a high level of interaction.

The study team carried out three focus groups under Task B3, as part of the activities of B3(a) "A reflection on the effectiveness of media ownership rules in the EU Member States and identification of best practices," and B3(b) "A reflection on the effectiveness of media ownership transparency rules in the Member States and identification of best practices." Lastly, the remaining three focus groups were carried out under Task C2(c), the explorative analysis of results of legislation and contractual relationships so far (focus groups).

Table 66 - Focus groups

Focus group	Topic	Rationale	Participants	Location
B1	The Directive and its impact on transparency	Exploring one of the novel/innovative objectives of the Directive, which is becoming crucial in media. There are large differences among EU MS, a lack of research showing the importance and effectiveness of transparency measures and lastly, there is the pivotal question of implementation.	Regulators, media, researchers	Virtual
B2	The Directive and its impact on transparency	Exploring one of the novel/innovative objectives of the Directive, which is becoming crucial in media. There are large differences among EU MS, a lack of research showing the importance and effectiveness of transparency measures and lastly, there is the pivotal question of implementation.	Regulators, media, researchers	Virtual
B3	Media ownership rules in the platform era, the Directive and its impact on transparency (combined session)	Exploring the issue of how many MS (have) had media-specific ownership rules, notably to limit concentration or mitigate its drawbacks, and one of the novel/innovative objectives of the Directive, that is becoming crucial in media.	Regulators, media, researchers	Virtual
C1	Hybrid broadcast broadband TV (HbbTV)	Exploring the impact of Article 7b on HbbTV developments.	Broadcasters, Distributors and Smart TV Manufacturers	Virtual
C2	Services, functionalities and features offered by distributors	Exploring user versus broadcaster interests, with special attention for the cases of Ad-Skipping and TV Recommender Systems.	Broadcasters and Distributors	Virtual
C3	Services, functionalities and features offered by smart TV manufacturers	Exploring user versus broadcaster interests.	Broadcasters and Smart TV Manufacturers	Virtual

Challenges and mitigation actions

In the context of COVID-19, the study team has worked to find solutions to conduct our activities as planned. However, certain challenges have inevitably appeared at the course of the past few months. In this section, the study team lays out the main challenges related to data collection, stakeholder engagement, project management and planning. For an overview and related mitigation actions, please refer to Table 61 - Risks and mitigation measures.

Challenges related to data collection and stakeholder engagement

In light of the difficulties faced by the AVMS sector, challenges related to stakeholder engagement have emerged during the course of the assignment. This may be caused by stakeholders adapting to new ways of working, changes in employment status or other health, social or economic challenges. In precise terms, the study team has experienced a significant challenge in obtaining the target response rate of stakeholders. It is reasonable to consider this as, at very least, partly due to the impacts of the corona virus on the AVMS industry.

The consultations for Task A were directly distributed to 178 stakeholders, the Task B consultation was distributed to 43 stakeholders and the Task C to 17 stakeholders. Despite continuous efforts, such as sending e-mail reminders and adding additional stakeholders, 16% of total stakeholders contacted participated in our consultations. In anticipation of such challenges, the study team implemented a dual strategy for stakeholder engagement.

Moreover, many of the national experts experienced professional and personal challenges as a consequence of the virus outbreak. One national expert fell sick, and many others experienced challenges in continuing their professional activities as usual. Some were unable to participate in the study, and the study team had to find replacements (see Table 64 - List of National Experts for the updated list). Upon multiple requests from the experts, the study team saw the need to extend the deadline of the surveys in order to obtain complete information. This challenge was largely offset by the extension of the deadline for delivery of this document.

Challenges related to project management and planning

Due to the elements outlined above, the study team experienced challenges in maintaining the original planning of the activities. As a mitigation action, there was a joint decision by the Commission and the study team to postpone the delivery of the interim report and extend the project duration by four weeks. Reflecting this decision, please refer to Table 67 for the final version of project planning.

Project planning

For the purpose of detailing the project management of this study, this section provides the overall project planning. For an overview of the progress indicators, kindly refer to Annex A.

The table below provides a snapshot of the activities conducted throughout this assignment. Moreover, it reflects the joint decision made by the Commission and the study team to extend the deadline of the delivery of the final report (see Table 62 - Decision Log).

Table 67 - Project Planning

SMART 2018/0066 - New provisions AVMSD		Jan				Feb				Mar				Apr				May				Jun				Jul				Aug				Sep				Oct				
Nr.	Type of Activity	W1	W2	W3	W4	W5	W6	W7	W8	W9	W10	W11	W12	W13	W14	W15	W16	W17	W18	W19	W20	W21	W22	W23	W24	W25	W26	W27	W28	W29	W30	W31	W32	W33	W34	W35	W36	W33	W34	W35	W36	
0.	Task 0: Inception phase																																									
0.1	Preparatory work																																									
0.2	Desk research/Literature review																																									
0.3	Strategic interviews																																									
0.4	Fine-tuning of methodology																																									
0.5	Inception meeting																																									
0.6	Inception report																																									
A.	Task A: Video-sharing platforms																																									
A.1	A1 - Snapshot of the market situation in the EU																																									
	Step A1(a)/ Mapping of video sharing platforms present/developed in the EU																																									
	Step A1(b)/ Analysis of audiovisual commercial communications on video-sharing platforms (12 case studies)																																									
A.2	A2 - Mapping of the existing and planned relevant measures adopted by VSPs																																									
	Step A2(a)/ Mapping of existing self-regulatory measures of video sharing platforms																																									
	Step A2(b)/ Assessment of the outcome and impact of the self-regulatory measures (5 case studies)																																									
A.3	A3 - Mapping of the existing and planned legislative measures in EU MS, incl. co-regulatory relevant measures																																									
	Step A3(a)/ Mapping of legislative measures and co-regulatory systems (10 case studies)																																									
	Step A3(b)/ Assessment of the outcome and impact of legislative measures and co-regulatory systems (5 case studies)																																									
B.	Task B: Media ownership rules and transparency																																									
B.1	B1 - Mapping of ownership rules and their implementation																																									
	Step B1(a)/ A detailed analysis of the current national (or regional) legislation and rules governing media ownership structures in all EU Member States																																									
	Step B1(b)/ A description of implementation of the legislative frameworks identified in B1(a) (In-depth analysis of 10 MS)																																									
B.2	B2 - Mapping of existing and planned measures in the EU MS as regards transparency of media ownership																																									
	Step B2(a)/ An overview of transparency and disclosure provisions with regard to media ownership in all EU Member States (6 case studies)																																									
	Step B2(b)/ A description of the implementation of the rules identified in B2(a) and the effectiveness thereof																																									
	Step B2(c)/ A study on the access public authorities and the public have to information regarding ownership structures and actors																																									
B.3	B3 - Understanding the legal implications																																									
	Step B3(a)/ A reflection on the effectiveness of media ownership rules in the EU Member States and identification of best practices (focus groups)																																									
	Step B3(b)/ A reflection on the effectiveness of media ownership transparency rules in the Member States and identification of best practices (focus groups)																																									
B.4	B4 - Interactive database																																									
C.	Task C: Signal integrity and overlays																																									
C.1	C1 - Snapshot of the market situation in the EU, US and possible other relevant countries																																									
	Step C1(a)/ Description of the technical possibilities																																									
	Step C1(b)/ Description of actual use of overlays in different countries (15 case studies)																																									
C.2	C2 - Mapping of existing and planned measures in the EU MS and selected countries																																									
	Step C2(a)/ Mapping of existing or emerging legislation																																									
	Step C2(b)/ Contractual relations between companies (interviews)																																									
	Step C2(c)/ Explorative analysis of results of legislation and contractual relationships so far (focus groups)																																									
C.3	C3 - Understanding the legal implications																																									
D	Deliverables																																									
D1	Inception report																																									
D2	Interim study report																																									
D3	Final study report																																									
D4	Interactive Database																																									
D5	Final Dataset																																									
M/W	Meetings & Workshops																																									
M1	Inception meeting																																									
M2	Interim meeting																																									
M3	Final meeting																																									
MM	Monthly conference calls																																									
PM	Project management & Quality control																																									

Additional methodological background

Market scans

The market scans are based on the available survey data on user adoption rates, and gross revenues estimates from sectors. The market is defined broadly, if platforms and media (tech) firms from different sectors are competing for the attention or payments of the same audience. We attempt to estimate the total market size, and the respective market shares of the most important market participants in a more multi-market approach.

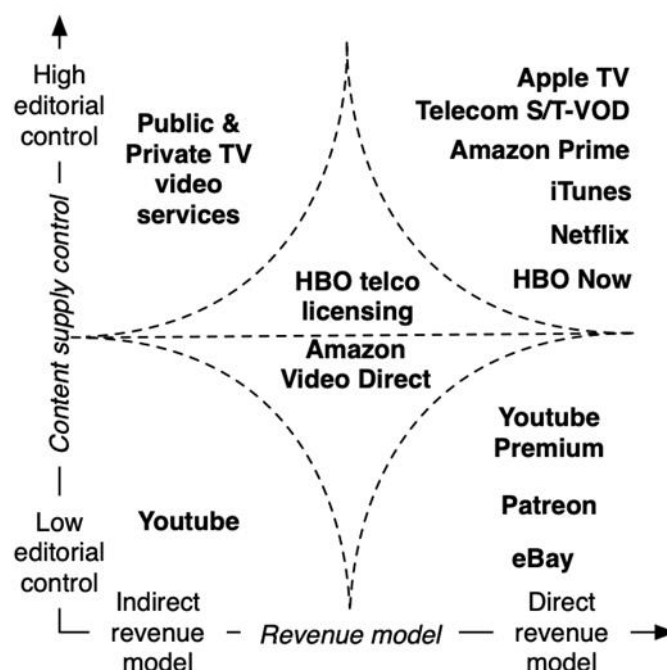
The gross revenue and turnover estimates are sourced from industry reports. The multi-market approach takes into account that there are revenue streams coming from often separately considered industrial sectors such as the private and public broadcasting industry (which is also moving into online video), the pre-roll video advertising market, native video internet advertising, various subscription video-on-demand (SVOD) and transactional video-on-demand (TVOD) initiatives.

The media firms are grouped into stylized models by looking at the two defining features of revenue model and editorial content control model. The revenue model can vary from completely consisting of direct revenues from the end-user to completely consisting of indirect revenues, with hybrid revenue models (such as the freemium model) in between. The content control can vary from a closed model where no input is collected from end-users to a completely open model where all end-users can upload any kind of content. Even the most open platforms such as YouTube have content removal procedures for unwanted or illegitimate content, so most legitimate initiatives fall somewhere on this continuum.

Media firms face two core management decisions: which media goods they will offer to the market and which revenue model (direct, indirect, or a combination) they will employ to collect revenues. The type of goods is often already intrinsically related to the type of revenue model that can be implemented.

This approach allows mapping different video platforms on two axes: the degree they exert editorial control on which content will be produced/purchased and offered to the public (varying from strong editorial control to low editorial control), and whether they predominantly earn indirect revenues (advertising or state funding) or predominantly earn direct revenues from the end-users.

Figure 23 - Mapping video platforms on the content control and revenue model axes



Regulatory scans

Within broader case study research, quick-scan analysis “allows for cross-case analysis of a more extensive amount of smaller qualitative case studies (20-40 cases)”. It “describes multiple small case studies on the basis of a limited set of variables”. By “mapping the variables and its indicators in a single matrix the analysis of similarities, differences and variances over the cases becomes possible.”²⁵⁴ The method is often used as a first phase in a more comprehensive and more selective case study research.

As said by Van Audenhove et al. (2016) “Quick-scan analysis is particularly useful when researching topics that are new and/or not well documented in scientific and other publications. It is useful to get to grips with areas in which variance is suspected and cross-case comparative analysis of a larger number of cases can reveal the scope of variance or the different types of cases/models present.” In other words, the method is very useful in each of the main tasks outlined above.²⁵⁵

Calculation of HHI indices and Concentration Ratios:

The HHI (Herfindahl-Hirschman) index and the Concentration Ratios are the two most known traditional structural measures of market concentration (based on market shares).

The HHI is probably the most well-known means to measure media ownership concentration, as it serves as an indicator of the amount of competition among firms. It is defined as the sum of the squares of the market shares of the firms within a given industry, where the market shares are expressed as fractions. It can range from 0 to 1.0 or in whole numbers from 0 to 10.000, moving from a huge number of very small firms to a single monopolistic producer. In general, an HHI Index below 0.15 indicates an unconcentrated industry, whereas one above 0.25 indicates high concentration. The Flemish Regulator for the Media (VRM) calculated

²⁵⁴ Van Audenhove, L. ; Mariën, I. and Baelden, D. (2016). Quick-scan analysis of multiple case studies. Paper published on https://www.researchgate.net/publication/293332232_Quick-Scan_Analysis_of_Multiple_Case_Studies?enrichId=rgreq-7e2382d2df115869e5c8e82064246bd9-XXX&enrichSource=Y292ZXJQYWdOZi5MzMzMjIzMjBUzozMjY0OTgyNzY5MjEzNDQ1NDY2Mzk2MQ%3D%3D&el=1_x_2&_esc=publicationCoverPdf.

²⁵⁵ Idem.

in its most recent published annual report an HHI Index of 0.16 for Flemish television channels based on market shares, indicating moderate concentration (VRM, 2018, p. 185)

On top of that, there are two 'Concentration Ratios' often used as well: C4 and C8, which means the extent of market control of the four and the eight largest firms in a given industry in a given market, and illustrate the degree to which an industry is oligopolistic. Ratios are expressed in percentages, and any percentage below 40% indicates low concentration, while over 70 percent indicates high concentration and 100 percent stands for total concentration (e.g. a monopoly). Again using the VRM figures, the percentages for Flemish television channels in C4 is 62.4%, indicating here as well moderate concentration

Annex C - Media legislation in the EU-27 Member States + UK

Table 68 - Relevant (media and non-media) legislation in the EU-27 + UK Member States

Federal Act on Audiovisual Media Services, also known as the Private Television Act (Audiovisuelle Mediendienste-Gesetz), 2001 (Consolidated 08.01.2015)
[The Cartel Act](#) (Kartellgesetz) 2005
[The Competition Act](#) (Wettbewerbsgesetz) 'GWB' (Consolidated 30.10.2017)
[Telecommunications Act](#) (Telekommunikationsgesetz) 2003 'TKG'
[Private Radio Act](#) (Privatradiogesetz) 2001 (Consolidated 2015) 'PrR-G'
 Decree for Audiovisual Media Services (Décret coordonné sur les services de médias audiovisuels), 2009 (Consolidated 21.08.2018)
[The Competition Act](#) 2013 part of the Federal Code of Economic Law
 Act of 14 July 1997 on the Belgian radio and television community 'FrAMSA' (Consolidated in 2017)
 Media Decree concerning Radio Broadcasting and Television (Decreet betreffende radio-omroep en televisie), 2009 (Consolidated in 2014) 'FIRTA'
 Implementation Decision of 21 March 2014 (Besluit van de Vlaamse Regering betreffende de stimuleringsregeling voor de audiovisuele sector, vermeld in artikel 184/1 van het decreet van 27 maart 2009 betreffende radio-omroep en televisie)
 Implementation Decision of the Flemish Government concerning the participation of private non-linear television broadcasters in the production of Flemish audiovisual works (Besluit van de Vlaamse Regering betreffende de deelname van de particuliere niet-lineaire televisieomroeporganisaties aan de productie van Vlaamse audiovisuele werken)
[The Competition Act](#) 2013 part of the Federal Code of Economic Law
 Decree concerning radio broadcasting and television (Decreet betreffende radio-omroep en televisie), 2005
[The Competition Act](#) 2013 part of the Federal Code of Economic Law
 Act of 27 June 1986 on the Belgian radio and television centre of the German-speaking Community 'BRF-Act'
 Law on radio and television (ЗАКОН за радиото и телевизията), (Supplemented, SG No. 93/2005, amended in 2018)
 Mandatory Deposition of Press and Other Works Act
[Compulsory Deposit of Printed and Other Products and Law on the Declaration of Distributors and other Media Providers](#) 2018
[Law on the Protection of Competition](#) 2008 'LPC'
[Commercial Register Act](#)
[The Delyan Peevsky media law](#) – on media ownership transparency 2018
[The Economic and Financial Relations Act](#), also known as the Offshore Law 2014
 Electronic Media Act (Zakon o elektroničkim medijima), 2009, (amended in 2013)
 Law on Audiovisual Activities (Zakon o audiovizualnim djelatnostima), 2011 (in effect from 2018)
 Media Law (Zakon o medijima), 2004, amended in 2014
[The Competition Act](#) 2009
[The By-law on Register of Ultimate Beneficial Ownership](#) 2019, pursuant to the EU's AML Law
 The Radio and Television Organizations Laws (Ο περί Ραδιοφωνικών και Τηλεοπτικών Οργανισμών Νόμος), 1998 (Amended 2012)
[Law on Control of Concentrations in Undertakings](#) 2014 (The Concentration law)
[The Protection of Competition Laws](#) 2014 (The Competition law)

Act 132/2010 on On-demand Audiovisual Media Services Act (Zákon o audiovizuálních mediálních službách na vyžádání a o změně některých zákonů (zákon o audiovizuálních mediálních službách na vyžádání)), 2010

Act No. 496/2012 on Audiovisual Works and Support for Cinematography and on Amendment to Certain Acts (Audio/Video Act), 2012, (in effect 01.01.2016)

Decree No. 127/2005 on electronic communications, 2005

Act on the Protection of Economic Competition 2001 (consolidated in 2005)

The Act on Radio and TV Broadcasting 2001 (consolidated 2017)

The Press Act 2000

Act on Conflict of Interests 2006 (amended 2017)

Decree on program activities based on registration and on-demand audiovisual program activities of the Act on Radio and Television Activities (Bekendtgørelse om programvirksomhed på grundlag af registrering samt on-demand audiovisuel programvirksomhed - Radio-og fjernsynsvirksomhed), 2014 (Amended 2016)

The Radio and Television Broadcasting Act 2010

The Media Liability Act 1998 (Consolidated 11.08.2014)

The Danish Competition Act 2013 (Consolidated 08.07.2015)

The Danish AML Act 2017

Media Services Act (Meediateenuste seadus), 2010 (Amended 2011)

The Estonian Public Broadcasting Act 2007

General Part of the Economic Activities Code Act

The Law on Competition

Information Society Code (Tietoyhteiskuntakaari), 2014, Art. 209

The Competition Law 2011

The Broadcasting Act 2013

The Company Law 2011

The Finnish Money Laundering Act

General Law 86-1067 on the Freedom of Communication (Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard)), 1986 (Consolidated 08.01.2019)

Law 86-897 on the legal regime of the press (Amended 24.05.2019)

Law 2016-1524 on strengthening the freedom, independence and pluralism of the media 2016

Law 2016-1691 on anti-corruption, known as the Sapin II Law

On-demand Audiovisual Services Decree No. 2010-1379 (Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande), 2010

TCA - Tax on sales and rentals of video recordings for the private use of the public (TCA - Taxe sur les ventes et les locations de vidéogrammes destinés à l'usage privé du public), 2010

Decree No. 2010-747 on the contribution to the production of cinematographic and audiovisual works of terrestrial television services (Décret n° 2010-747 du 2 juillet 2010 relatif à la contribution à la production d'œuvres cinématographiques et audiovisuelles des services de télévision diffusés par voie hertzienne terrestre), 2010 (Consolidated 08.01.2019)

Decree No. 2017-1364 (Décret n° 2017-1364 du 20 septembre 2017 fixant l'entrée en vigueur des dispositions du III de l'article 30 de la loi n° 2013-1279 du 29 décembre 2013 de finances rectificative pour 2013 et des I à III de l'article 56 de la loi n° 2016-1918 du 29 décembre), 2017

Interstate Broadcasting Agreement (Rundfunkstaatsvertrag (RStV)), 1991 (amended 2016, in force 25.05.2018)

Network Enforcement Act (Netzdurchsetzungsgesetz, NetzDG), 2017

Telemedia Act (Telemediengesetz) 2007, (amended 2017)

Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia (In force since 2016)

The Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen) 'GWB'

Presidential Decree (Προεδρικό Διάταγμα) 109/2010

Presidential Decree on e-commerce 131-2003 (Amended by Law 4403/2016)

Presidential Decree 310/1996 for keeping records on media ownership

Law 3592/2007 (Amended by Law 4279/2014 and Law 4487/2017) on concentration, licensing of media undertakings and other provisions

Law 2644/1998 (Amended by Law 4506/2017) on the provision of pay-radio and pay-TV services and other provisions

Media Legislation Law 2328/1995 (Amended by Law 4506/2017) on the legal status of private television and local radio, regulation of issues of the broadcasting market and other provisions

Law 3959/2011 on free competition
 Law 3110/2005 on the concentration of control of media outlets by 'intermediaries' e.g. spouses, relatives in a direct line, etc.
 Law 4339/2015 (Amended by Law 4496/2017 and Law 4635/2019) on the licensing of content providers of free-to-air DTT
 Law 4512/2018 on implementing structural reforms and other provisions including provisions on the licensing of content providers of free-to-air DTT
 Law 3548/2007 on state bodies' publications in the regional and local press and other provisions
 Law 2190/1920 (Amended by Law 4403/2016) on financial obligations for companies limited by shares
[Law 3419/2005](#) on financial obligations in the General Electronic Commercial Registry
 Law 1746/1988 (Amended by Law 4635/2019) on the control of the ownership limitations applicable to the press
 Act CLXXXV of 2010 on Media Services and Mass Communication, also known as the Hungarian Media Act (2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról), 2010 (Consolidated 1 July 2015)
 The Competition Act
 S.I. No. 247/2012 - European Communities (Audiovisual Media Services) (Amendment) Regulations 2012
[The Competition and Consumer Protection Act](#)
[The Broadcasting Act 2009 \(to be amended by the Online Safety and Media Regulation Bill 2019\)](#)
[BAI's new policy on media plurality and revised ownership and control policy 2019](#)
 Consolidated Law of Audiovisual and Radio Media services (Decree-Law No. 177) (Testo unico dei servizi di media audiovisivi e radiofonici), 2005
 Resolution No. 66/09/CONS of 13 February 2009 (Regolamento in materia di obblighi di programmazione ed investimento a favore di opere europee e di opere di produttori indipendenti adottato ai sensi degli articoli 6 e 44 del decreto legislativo 31 luglio 2005, n. 177), Annex A
 Decree-Law No. 44 of 15 March 2010 (Attuazione della direttiva 2007/65/CE relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri concernenti l'esercizio delle attività televisive)
 Law no. 220 of 14 November 2016 (Disciplina del cinema e dell'audiovisivo)
 Decree-Law no. 204 of 7 December 2017 (Riforma delle disposizioni legislative in materia di promozione delle opere europee e italiane da parte dei fornitori di servizi di media audiovisivi, a norma dell'articolo 34 della legge 14 novembre 2016 n.220), 2017
 The Press Law (Law n.416 of 5 August 1981 amended by Law n.67 of 25 February 1987)
 Electronic Mass Media Law (Elektronisko plašsaziņas līdzekļu likums), 2010 (Consolidated 12.07.2018)
[Law on the Press and Other Mass Media](#)
[Competition Law](#)
[Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing](#)
 Law on the Provision of Information to the Public (Visuomenės informavimo įstatymas), 1996 (Consolidated 12.01.2018 and 2020)
[Law on Electronic Communications](#) 2004
[Law on Competition](#) 2019
[Law on Funding of, and Control over Funding of, Political Parties and Political Campaigns](#) 2020

 Grand-ducal regulation(Règlement grand-ducal du 2 février 2015 fixant le montant et les modalités de paiement des taxes à percevoir par l'Autorité luxembourgeoise indépendante de l'audiovisuel en matière de surveillance des services de médias audiovisuels et sonores), 2015
 Act of 17 December 2010 amending the amended law of 27 July 1991 on electronic media
 Broadcasting Act Chapter 350, 1991 Consolidated in 2015 and amended by Act XVI of 2018), Art. 16N
 Subsidiary legislation 350.34 – Notification of on-demand audiovisual media service order, 2012
[The Maltese Companies Act](#) 1996
[Electronic Communications Networks and Services](#) 2011, Cap 399
 Media Act of 2008 as amended by Act no 552 - Art. 3.29c (Mediawet 2008)
 The Dutch Telecommunications Act 1988 (Telecommunicatiewet)
[The Dutch Competition Act](#) 1997
[The Dutch Commercial Register Act](#) (Handelsregisterwet)

Broadcasting Act of December 29, 1992 ([USTAWA z dnia 29 grudnia 1992 r. o radiofonii i telewizji](#) Rozdział 1 Przepisy ogólne) (Consolidated in 2016)
[The Act on Competition and Consumer Protection](#) 2007 (Ustawa o Ochronie Konkurencji i Konsumentów)
[National Media Council Act 2016](#)
[Code of Commercial Partnerships and Companies](#) (Kodeks spółek handlowych)
[Act on National Register 1997](#)
 Law no. 27/2007, on Television and Audiovisual Service On-Demand ([Lei da Televisão e dos Serviços Audiovisuais a Pedido](#)), 2007 (Consolidated in 2015)
 Law no. 55/2012, the Cinema Act ([Lei da arte cinematográfica e do audiovisual](#)), 2012
 Decree-Law 124/2013 ([Decreto-Lei n.º 9/2013](#)), 2013
[The Press Law n.2/99](#) (n.18/2003 and n.19/2012)
[The Radio Law n.54/2010](#)
 General Law on Consumer Protection
[The Media Ownership Transparency Law](#)
[Electronic Communications Law n.5/2004](#) (last amended by Law n.138/2016 on June 2016)
 The Audiovisual Law 504/2002 ([Legea audiovizualului](#)), 2002 (Consolidated 17.11.2017)
[The Competition Law](#) (Legea Concurenței) 1996
[The Government Ordinance](#) 39/2005 on Cinematography
[Decision 320 of 29 May 2012 on the supply of on-demand audiovisual media](#)
[Decision 286 of 14 April 2014 with regard to the publication of the codes of professional conduct adopted by the audiovisual media services providers](#)
 Act 308/2000 on Broadcasting and Retransmission and on the amendment of Act No. 195/2000 on Telecommunications ([Zákon zo 14. septembra 2000 o vysielaní a retransmisii a o zmene zákona č. 195/2000 Z. z. o telekomunikáciách](#)), 2000 (Consolidated in 2016, 2018)
 Media Law ([Zakon o medijih](#)) 2001 (Amended 2016)
 Act on Audiovisual Media Services ([Zakon o avdiovizualnih medijskih storitvah \(ZAvMS\)](#)), 2011
 The Media Act, also known as the General Act No. 7/2010 of 31 March on Audiovisual Communication ([Ley General de la Comunicación Audiovisual](#))
 Royal Decree 988/2015 of October 30 ([Real Decreto 988/2015, de 30 de octubre, por el que se regula el régimen jurídico de la obligación de financiación anticipada de determinadas obras audiovisuales europeas](#)), 2015
 Spanish Competition Act
 The General Telecommunications Law
 The Radio and Television Act ([Radio- och tv-lag 2010:696](#)), 2010 (Consolidated in 2018)
[The Transparency Act SFS 2005:590](#), also known as the Swedish Law of Financial Relations
[The Competition Act SFS 2008:579](#)
 Communications Act 2003
[Enterprise Act 2002](#)
[Companies Act 2006](#)
[Small Business, Enterprise and Employment Act 2015](#)

Table 69 - Relevant media, competition and other authorities in the EU-27 Member States + UK

Federal Competition Authority (Bundeszweibewerbsbehörde) 'FCA'
 The Competition Commission (Wettbewerbskommission) – Advisory body to the 'FCA'
 Austrian Communications Authority (Kommunikationsbehörde Austria) 'TKK'
 Austrian Broadcast and Telecommunication Regulatory Authority (Rundfunk und Telekom Regulierungs-GmbH) 'RTR'
 The Cartel Court and Supreme Cartel Court
 The Belgian Competition Authority 'WER'
 The Walloon Regulator for audiovisual (Conseil Supérieur de l'Audiovisuel) 'CSA'
 The Belgian Institute for Postal Services and Telecommunications 'BIPT'
 The College of Authorization and Control 'SMA'

The Belgian Competition Authority 'WER'
The Flemish Regulator for media (Vlaamse Regulator voor de Media) 'VRM'
The Belgian Institute for Postal Services and Telecommunications 'BIPT'

The Belgian Competition Authority 'WER'
Media Council (Medienrat)
The Belgian Institute for Postal Services and Telecommunications 'BIPT'

The Bulgarian Commission for Protection of Competition 'CPC'
The Council for Electronic Media 'CEM'
Ministry of Culture
The Croatian Competition Agency 'CCA'
Council for Electronic Media 'VEM'
Agency for Market Competition Protection 'AZTN'
Croatian Chamber of Economy 'HGK'
The Commission for the Protection of Competition 'CPC'
The Cyprus Radio Television Authority 'CRTA'

The Office for the Protection of Competition
The Council for Radio and Television Broadcasting 'RRTV'

The Danish Competition and Consumer Authority 'DCCA'
The Press Council
The Radio and Television Board
Ministry of Culture
The Danish Business Authority
The Consumer Protection and Technical Regulatory Authority
The Competition Authority

The Finnish Competition and Consumer Authority 'FCCA'
The Finnish Communications Regulatory Authority, also known as the Finnish Transport and Communications Agency 'Ficora'
The Competition Authority 'CSA'
Autorite de Regulation des Communications Electroniques et de Postes 'ARCEP'
Autorité des Marchés Financiers 'AMF'
The German Commission on Concentration in the Media
The Federal Cartel Office (Bundeskartellamt)
Federal Administrative Court 'BVerwG'
The Constitutional Court (Bundesverfassungsgericht) 'BVerfG'
Federal Minister for Economic Affairs and Energy
The Greek National Council for Radio and Television 'ESR'
Hellenic Competition Commission 'HCC'
Ministry of Transport and Communications
National Regulatory Authority for Telecoms and Post
General Secretariat of Information and Communication
The Media Council
The Media Authority
The Hungarian Competition Authority 'GVH'
Minister for Communications, Energy and Natural Resources
Broadcasting Authority of Ireland 'BAI'
The Competition and Consumer Protection Commission
National Regulatory Authority for audiovisual media services, postal services and electronic communications (Autorità per le Garanzie nelle Comunicazioni) 'AGCOM'
Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato) 'AGCM'
The National Electronic Mass Media Council 'NEMMC'
The Competition Council

Radio and Television Commission of Lithuania 'RTCL'
Ministry of Culture

The Independent Audiovisual Authority (Autorité Luxembourgeoise Indépendante de l'audiovisuel) 'ALIA'

The Broadcasting Authority
The Competition and Consumer Affairs Authority
Minister responsible for Culture
The Dutch Media Authority (Commissariaat voor de Media) 'CvdM'
The Dutch Authority for Consumers and Markets (Autoriteit Consument & Markt) 'ACM'
The Minister of Economic Affairs
Council of Ministers

Chamber of Commerce
The National Broadcasting Council 'KRRiT'
Office of Competition and Consumer Protection 'UOKiK'
The Chamber of Press Publishers (Izba Wydawców Prasy)
Office of Electronic Communications (UKE)
Ministry of Culture
Media Regulatory Agency
The Regulatory Entity for Social Communication (Entidade Reguladora para a Comunicação Social) 'ERC'
The National Authority for Competition
The Portuguese Regulatory Authority for Postal Communications and Electronic Communications 'ANACOM'
The National Audiovisual Council (Consiliul National al Audiovizualului) 'CNA'
The Romanian Competition Council
The National Authority for Management and Regulation in Communications 'ANCOM'
The National Center of Cinematography 'CNC'
The Council for Broadcasting and Retransmission of the Slovak Republic (Rada pre vysielanie a retransmisiu) 'CBR'
Ministry of Culture
Agency for Communication Networks and Services (Agencija za komunikacijska omrežja in storitve Republike Slovenije) 'AKOS', formerly called the Post and Electronic Communications Agency
Competition Protection Agency
Ministry of Culture
State Council for the Audiovisual Media (CEMA)
The National Commission of Markets and Competition (La Comisión Nacional de los Mercados y la Competencia) 'CNMC'
Ministry of Economy
Swedish Press and Broadcasting Authority (Myndigheten för press radio och tv) 'MPRT'
Ministry of Culture
Swedish Competition Authority 'SCA'
Communications Regulator Ofcom
Competition and Markets Authority 'CMA'
Secretary of State

Audiovisual Media Service Directive (Audiovisuelle Mediendienste-Gesetz), 2001 (Consolidated 08.01.2015)

Decree for Audiovisual Media Services (Décret coordonné sur les services de médias audiovisuels), 2009 (Consolidated 21.08.2018)

Media Decree concerning Radio Broadcasting and Television (Decreet betreffende radio-omroep en televisie), 2009 (Consolidated in 2014)

Implementation Decision of 21 March 2014 (Besluit van de Vlaamse Regering betreffende de stimuleringsregeling voor de audiovisuele sector, vermeld in artikel 184/1 van het decreet van 27 maart 2009 betreffende radio-omroep en televisie)

Implementation Decision of the Flemish Government concerning the participation of private non-linear television broadcasters in the production of Flemish audiovisual works (Besluit van de Vlaamse Regering betreffende de deelname van de particuliere niet-lineaire televisieomroeporganisaties aan de productie van Vlaamse audiovisuele werken)

Decree concerning radio broadcasting and television (Decreet betreffende radio-omroep en televisie), 2005

Law on radio and television (ЗАКОН за радиото и телевизията), (Supplemented, SG No. 93/2005, amended in 2018)

Electronic Media Act (Zakon o elektroničkim medijima), 2009, (amended in 2013)

Law on Audiovisual Activities (Zakon o audiovizualnim djelatnostima), 2011 (in effect from 2018)

Media Law (Zakon o medijima), 2004, amended in 2014

The Radio and Television Organizations Laws (Ο περί Ραδιοφωνικών και Τηλεοπτικών Οργανισμών Νόμος), 1998 (Amended 2012)

Act 132/2010 on On-demand Audiovisual Media Services Act (Zákon o audiovizuálních mediálních službách na vyžádání a o změně některých zákonů (zákon o audiovizuálních mediálních službách na vyžádání)), 2010

Act No. 496/2012 on Audiovisual Works and Support for Cinematography and on Amendment to Certain Acts (Audio/Video Act), 2012, (in effect 01.01.2016)

Decree No. 127/2005 on electronic communications, 2005

Decree on program activities based on registration and on-demand audiovisual program activities of the Act on Radio and Television Activities (Bekendtgørelse om programvirksomhed på grundlag af registrering samt on-demand audiovisuel programvirksomhed - Radio-og fjernsynsvirksomhed), 2014 (Amended 2016)

Media Services Act (Meediateenuste seadus), 2010 (Amended 2011)

Information Society Code (Tietoyhteiskuntakaari), 2014, Art. 209

General Law 86-1067 on the Freedom of Communication (Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Loi Léotard)), 1986 (Consolidated 08.01.2019)

On-demand Audiovisual Services Decree No. 2010-1379 (Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande), 2010

TCA - Tax on sales and rentals of video recordings for the private use of the public (TCA - Taxe sur les ventes et les locations de vidéogrammes destinés à l'usage privé du public), 2010

Decree No. 2010-747 on the contribution to the production of cinematographic and audiovisual works of terrestrial television services (Décret n° 2010-747 du 2 juillet 2010 relatif à la contribution à la production d'œuvres cinématographiques et audiovisuelles des services de télévision diffusés par voie hertzienne terrestre), 2010 (Consolidated 08.01.2019)

Decree No. 2017-1364 (Décret n° 2017-1364 du 20 septembre 2017 fixant l'entrée en vigueur des dispositions du III de l'article 30 de la loi n° 2013-1279 du 29 décembre 2013 de finances rectificative pour 2013 et des I à III de l'article 56 de la loi n° 2016-1918 du 29 décembre), 2017

Interstate Broadcasting Agreement (Rundfunkstaatsvertrag (RStV)), 1991 (amended 2016, in force 25.05.2018)

Network Enforcement Act (Netzdurchsetzungsgesetz, NetzDG), 2017

Telemedia Act (Telemediengesetz) 2007, (amended 2017)

Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia (In force since 2016)

Presidential Decree (Προεδρικό Διάταγμα) 109/2010

Presidential Decree on e-commerce 131-2003 amended by Law 4403/2016

Act CLXXXV on Media Services and Mass Communication (2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról), 2010 (Consolidated 1 July 2015)

S.I. No. 247/2012 - European Communities (Audiovisual Media Services) (Amendment) Regulations 2012

Consolidated Law of Audiovisual and Radio Media services (Decree-Law No. 177) (Testo unico dei servizi di media audiovisivi e radiofonici), 2005

Resolution No. 66/09/CONS of 13 February 2009 (Regolamento in materia di obblighi di programmazione ed investimento a favore di opere europee e di opere di produttori indipendenti adottato ai sensi degli articoli 6 e 44 del decreto legislativo 31 luglio 2005, n. 177), Annex A

Decree-Law No. 44 of 15 March 2010 (Attuazione della direttiva 2007/65/CE relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri concernenti l'esercizio delle attività televisive)

Law no. 220 of 14 November 2016 (Disciplina del cinema e dell'audiovisivo)

Decree-Law no. 204 of 7 December 2017 (Riforma delle disposizioni legislative in materia di promozione delle opere europee e italiane da parte dei fornitori di servizi di media audiovisivi, a norma dell'articolo 34 della legge 14 novembre 2016 n.220), 2017

Electronic Media Law (Elektronisko plašsaziņas līdzekļu likums), 2010 (Consolidated 12.07.2018)

Law on the Provision of Information to the Public

(Visuomenės informavimo įstatymas), 1996 (Consolidated 12.01.2018)

Grand-ducal regulation(Règlement grand-ducal du 2 février 2015 fixant le montant et les modalités de paiement des taxes à percevoir par l'Autorité luxembourgeoise indépendante de l'audiovisuel en matière de surveillance des services de médias audiovisuels et sonores), 2015

Act of 17 December 2010 amending the amended law of 27 July 1991 on electronic media

Broadcasting Act Chapter 350, 1991 Consolidated in 2015), Art. 16N

Subsidiary legislation 350.34 – Notification of on-demand audiovisual media service order, 2012

Media Act of 2008 as amended by Act no 552 - Art. 3.29c (Mediawet 2008)

Broadcasting Act of December 29, 1992 (USTAWA z dnia 29 grudnia 1992 r. o radiofonii i telewizji Rozdział 1 Przepisy ogólne) (Consolidated in 2016)

Law no. 27/2007, on Television and Audiovisual Service On-Demand (Lei da Televisão e dos Serviços Audiovisuais a Pedido), 2007 (Consolidated in 2015)

Law no. 55/2012, the Cinema Act (Lei da arte cinematográfica e do audiovisual), 2012

Decree-Law 124/2013 (Decreto-Lei n.º 9/2013), 2013

The Audiovisual Law 504/2002 (Legea audiovizualului), 2002 (Consolidated 17.11.2017)

Act 308/2000 on Broadcasting and Retransmission and on the amendment of Act No. 195/2000 on Telecommunications (Zákon zo 14. septembra 2000 o vysielaní a retransmisii a o zmene zákona č. 195/2000 Z. z. o telekomunikáciách), 2000 (Consolidated in 2016, 2018)

Media Law (Zakon o medijih) 2001 (Amended 2016)

Act on Audiovisual Media Services (Zakon o avdiovizualnih medijskih storitvah (ZAvMS)), 2011

General Act No. 7/2010 of 31 March on Audiovisual Communication (Ley General de la Comunicación Audiovisual)

Royal Decree 988/2015 of October 30 (Real Decreto 988/2015, de 30 de octubre, por el que se regula el régimen jurídico de la obligación de financiación anticipada de determinadas obras audiovisuales europeas), 2015

The Radio and Television Act (Radio- och tv-lag 2010:696), 2010 (Consolidated in 2018)

Communications Act 2003

Annex D – List of references

Task A references (Chapter 2)

- Adshead, S., Forsyth, G., Wood, S., & Wilkenson, L. (2019). *Online Advertising in the UK*. UK Department of Media Culture and Sport.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777996/Plum_DCMS_Online_Advertising_in_the_UK.pdf
- Alexa. (2020). *The Top 500 sites on the web*. <https://www.alexa.com/topsites>
- Anand, P. (2020, January 8). How Big Is Amazon's Twitch? Revenues Reveal Ad Struggles. *The Information*. <https://www.theinformation.com/articles/how-big-is-amazons-twitch-revenues-reveal-ad-struggles>
- Anderson, S. P., & Jullien, B. (2015). The Advertising-Financed Business Model in Two-Sided Media Markets. In *Handbook of Media Economics* (Vol. 1A). Elsevier.
- Article 19 (12 March 2020) Spain: Briefing on the Penal Code and threats to freedom of expression. Article 19, London <https://www.article19.org/resources/spain-briefing-on-the-penal-code-and-threats-to-freedom-of-expression/>
- Australian Competition and Consumer Commission. (2019). *Digital Platforms Inquiry: Final report*. ACCC.
<https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>
- Avia, L. (19 June 2019) REPORT ON BEHALF OF THE COMMISSION FOR CONSTITUTIONAL LAWS, LEGISLATION AND THE GENERAL ADMINISTRATION OF THE REPUBLIC ON THE PROPOSED LAW, AFTER THE ACCELERATED PROCEDURE HAS BEEN UNDERTAKEN, to fight against the hatred on the Internet (No. 1785) http://www.assemblee-nationale.fr/dyn/15/rapports/cion_lois/l15b2062_rapport-fond
- Backaler, J. (2018). *Digital influence: Unleash the power of influencer marketing to accelerate your global business* /. Palgrave Macmillan; UEA Library catalogue.
<https://search.ebscohost.com/login.aspx?direct=true&db=cat07845a&AN=uea.1049802542&site=eds-live&scope=site>
- Belavusau, U., Boutin, B. Grozdanova, R., van Noorloos, M., Paulussen, C., (2 November 2019) A comparative research study on radical and extremist (hate) speakers in European Member States, International Centre for Counter-Terrorism Publications, The Hague. https://icct.nl/wp-content/uploads/2019/11/NCTV_Report.pdf
- Bishop, S. (2020). Algorithmic Experts: Selling Algorithmic Lore on YouTube. *Social Media + Society*, 6(1), 2056305119897323. <https://doi.org/10.1177/2056305119897323>
- Broughton Micova, S., & Jacques, S. (2019). *The Playing field for audiovisual advertising: What does it look like and who is playing*. Centre on Regulation in Europe (CERRE).
- Broughton Micova, S. and Jacques, S. (2020) "Platform power in the video advertising ecosystem" Internet Policy Review 9(4).
- Broughton Micova, S., & Jacques, S. (2020). *Platform power in the video advertising ecosystem*.
- Brown, A. (2020). *Models of Governance of Online Hate Speech*. Council of Europe.
<https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d>
- Cannon, B., & Chung, H. (2014). A framework for designing co-regulation models well-adapted to technology-facilitated sharing economies. *Santa Clara Computer & High Tech. LJ*, 31, 23.
- Clement, J. (2020a, February 12). Number of Vimeo subscribers worldwide from 1st quarter 2015 to 4th quarter 2019. *Statista*. <https://www.statista.com/statistics/705598/vimeo-subscribers-worldwide/>
- Clement, J. (2020b, April 24). Most popular social networks worldwide as of April 2020, ranked by number of active users. *Statista*. <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>

- Competition & Markets Authority (CMA). (2019). *Online platforms and digital advertising market study: Observations on the CMA's interim report*.
https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim_report.pdf
- Competition Council of the Republic of Lithuania (29 April 2019) Konkurencijos taryba will Transfer its Functions Related to Misleading and Comparative Advertising.
<https://kt.gov.lt/en/news/konkurencijos-taryba-will-transfer-its-functions-relating-to-misleading-and-comparative-advertising>
- Conseil supérieur de l'audiovisuel (CSA), (July 2020) *Combating the dissemination of false information on online platforms: an evaluation of the application and effectiveness of the measures implemented by operators in 2109* <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Lutte-contre-les-infox-le-CSA-publie-son-premier-bilan>
- Crawford, B. (31 December 2019) Chan Culture and Violent Extremism Past and Present. Global Network on Extremism & Technology Insights <https://gnet-research.org/2019/12/31/chan-culture-and-violent-extremism-past-present-and-future/>
- Craufurd Smith, R. (2019) Fake news, French Law and democratic legitimacy: lessons for the United Kingdom?, *Journal of Media Law*, 11:1, 52-81
- Dailymotion. (2020). *About Dailymotion*. <https://www.dailymotion.com/gb/about>
- Doyle, G. (2018). Television and the development of the data economy: Data analysis, power and the public interest. *International Journal of Digital Television*, 9(1), 53–68.
- European Commission. (2016). *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Online Platforms and the Digital Single Market Opportunities and Challenges for Europe*. European Commission. <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1466514160026&uri=CELEX:52016DC0288>
- 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, Directive 2000/31/EC (2000). <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031>
- DIRECTIVE (EU) 2018/1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities, 2018/1808 (2018). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN>
- EASA (30 September, 2015) EASA response to the EU Commission Consultation on Directive 2010/13/EU on audiovisual media services (AVMSD) - A media framework for the 21st century.
https://www.easa-alliance.org/sites/default/files/EASA%20position%20on%20the%20AVMSD%20consultation_30SEP2015.pdf
- Facebook. (2020). *Facebook Reports Fourth Quarter and Full Year 2019 Results*. Facebook.
https://s21.q4cdn.com/399680738/files/doc_news/Facebook-Reports-Fourth-Quarter-and-Full-Year-2019-Results-2020.pdf
- Finck, M. (2018). Digital co-regulation: designing a supranational legal framework for the platform economy. *European law review*
- Fontaine, G., Grece, C., & Jimenez Pumarez, M. (2018). *Online video sharing: Offerings, audiences, economic aspects*. European Audiovisual Observatory.
- Gandolfi, E. (2016). To watch or to play, it is in the game: The game culture on Twitch. Tv among performers, plays and audiences. *Journal of Gaming & Virtual Worlds*, 8(1), 63–82.
- Gebhart, G. (2019). *Who Has Your Back? Censorship Edition 2019*. Electronic Frontiers Foundation.
<https://www.eff.org/wp/who-has-your-back-2019>
- Geradin, D., & Katsifis, D. (2019). Google's (Forgotten) Monopoly – Ad Technology Services on the Open Web. *SSRN ELibrary*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3391913
- Global Internet Forum to Counter Terrorism (July 2020) Transparency Report
<https://www.gifct.org/transparency/>
- Gorwa, R. (2019). What is platform governance? *Information, Communication & Society*, 22(6), 854-871.

- Helberger, N., Pierson, J., & Poell, T. (2018). Governing online platforms: From contested to cooperative responsibility. *The Information Society*, 34(1), 1–14.
- Human Rights Watch (10 September 2020). "Video Unavailable" Social Media Platforms Remove Evidence of War Crimes
https://www.hrw.org/sites/default/files/media_2020/09/crisis_conflict0920_web_0.pdf
- Hutchinson, A. (2020, April 28). Instagram Adds Live Donations Feature for Fundraising via Instagram Live. *Social Media Today*. <https://www.socialmediatoday.com/news/instagram-adds-live-donations-feature-for-fundraising-via-instagram-live/576951/>
- IAB. (2016). *Digital Video In-Stream Ad Format Guidelines*. IAB. https://www.iab.com/wp-content/uploads/2016/01/DVAFG_2015-01-08.pdf
- Internet Watch Foundation (2019) IWF 2019 Annual Report | Zero Tolerance
<https://www.iwf.org.uk/report/iwf-2019-annual-report-zero-tolerance>
- Iqbal, M. (2020a, March 24). Facebook Revenue and Usage Statistics. *Business of Apps*.
<https://www.businessofapps.com/data/youtube-statistics/>
- Iqbal, M. (2020b, March 24). YouTube Revenue and Usage Statistics. *Business of Apps*.
<https://www.businessofapps.com/data/youtube-statistics/>
- Jacobides, M. G., Cennamo, C., & Gawer, A. (2018). Towards a theory of ecosystems. *Strategic Management Journal*, 39(8), 2255–2276.
- Koehler, Daniel. (2019) The Halle, Germany, Synagogue Attack and the Evolution of the Far-Right Terror Threat, *The CTC Sentinel*. West Point, USA 2(12), 14–19.
- Latzer, M., Just, N., & Saurwein, F. (2013). Self-and co-regulation. In M. E. Price, S. G. Verhulst, & L. Morgan (Eds.), *Routledge handbook of media law*. Routledge.
- Latzer, M., Saurwein, F., & Just, N. (2019). Governance-Choice Method: In Search of the Appropriate Level of State Intervention. *Palgrave Handbook of Methods for Media Policy Research*. Palgrave.
- Marsden, C.T. (2012) Internet co-regulation and constitutionalism: Towards European judicial review. *International Review of Law, Computers & Technology*, 26(2-3), 211–228.
- Milosavljević, M., & Broughton Micova, S. (2016). Banning, blocking and boosting: Twitter's solo-regulation of expression. *Medijske Studije*, 7(13), 43–57.
- Owler. (2020a, May 15). Dailymotion. Owler. <https://www.owler.com/company/dailymotion>
- Owler. (2020b, May 15). Flickr. Owler. <https://www.owler.com/company/flickr>
- Owler. (2020c, May 15). Liveleak. Owler. <https://www.owler.com/company/liveleak>
- Panchadar, A., & Aripaka, P. (2019, February 7). Vimeo revenue jumps 54 percent in 2018, paying subscribers near 1 million. *Reuters Technology News*. <https://www.reuters.com/article/us-vimeo-results/vimeo-revenue-jumps-54-percent-in-2018-paying-subscribers-near-1-million-idUSKCN1PW2OJ>
- Polański, P. P. (2018). Rethinking the notion of hosting in the aftermath of Delfi: Shifting from liability to responsibility? *Computer Law & Security Review*, 34(4), 870–880.
<https://doi.org/10.1016/j.clsr.2018.05.034>
- Polyak, G., & Rozgonyi, K. (2015). Monitoring media regulators' independence—Evidence-based indicators, Hungarian experience. *International Journal of Digital Television*, 6(3), 257–273
- Reuters (19 December 2019) Germany shooting: data on online spread of live streamed attack kept secret, *The Guardian* <https://www.theguardian.com/media/2019/oct/19/germany-shooting-data-on-online-spread-of-livestreamed-attack-kept-secret>
- Reynders, D. (June 2020) Countering illegal hate speech online 5th evaluation of the Code of Conduct Factsheet, European Commission Directorate General for Justice and Consumers, Brussels.
https://ec.europa.eu/info/sites/info/files/codeofconduct_2020_factsheet_12.pdf
- Rochefort, A. (2020) Regulating Social Media Platforms: A Comparative Policy Analysis. *Communication Law and Policy*, 25(2), 225–260.
- Rubinstein, I. (2018). The Future of Self-Regulation is Co-Regulation. In E. Selinger, J. Polonetsky, & O. Tene (Eds.), *The Cambridge Handbook of Consumer Privacy*. Cambridge, UK: Cambridge University Press.
- Shao, G. (2009). Understanding the appeal of user-generated media: A uses and gratification perspective. *Internet Research*.

- SimilarWeb. (2020a, May 15). Dailymotion Traffic Overview. *SimilarWeb*.
<https://www.similarweb.com/website/dailymotion.com#overview>
- SimilarWeb. (2020b, May 15). Liveleak Traffic Overview. *SimilarWeb*.
<https://www.similarweb.com/website/liveleak.com#overview>
- SimilarWeb. (2020c, May 15). Twitch Traffic Overview. *SimilarWeb*.
<https://www.similarweb.com/website/twitch.com#overview>
- SimilarWeb. (2020d, May 15). Veoh Traffic Overview. *SimilarWeb*.
<https://www.similarweb.com/website/veoh.com#overview>
- Simonite, T. (2020, May 12). Facebook's AI for Hate Speech Improves. How Much Is Unclear. *Wired*.
<https://www.wired.com/story/facebook-ai-hate-speech-improves-unclear/>
- Turow, J., & Couldry, N. (2018). Media as data extraction: Towards a new map of a transformed communications field. *Journal of Communication*, 68(2), 415–423.
- Tworek, H. & Leerssen, P. (15 April, 2019) *An Analysis of Germany's NetzDG Law*. Transatlantic High Level Working Group on Content Moderation Online and Freedom of Expression.
https://www.ivir.nl/publicaties/download/NetzDG_Tworek_Leerssen_April_2019.pdf
- Vidgen, B., Margetts, H. & Harris, A. (27 November, 2019) *How much online abuse is there?: A systematic review of evidence for the UK*. Alan Turing Institute, London. <https://www.turing.ac.uk/news/how-much-online-abuse-there>
- Wagner, K., & Molla, R. (2018, October 9). Facebook will soon rely on Instagram for the majority of its ad revenue growth. *Vox Recode*. <https://www.vox.com/2018/10/9/17938356/facebook-instagram-future-revenue-growth-kevin-systrom>
- Wilson, H. (2020) Youtube is Unsafe for Children: Youtube's Safeguards and the Current Legal Framework are Inadequate to Protect Children from Disturbing Content. *Seattle Journal of Technology, Environmental & Innovation Law* Vol 10 no. 1
- Woodcock, J., & Johnson, M. R. (2019). The affective labor and performance of live streaming on Twitch. *Tv. Television & New Media*, 20(8), 813–823.
- Yilun Chen, L., & Wang, S. (2019, January 15). Bytedance Hits Lower-End of Sales Goal Amid Slowdown. *Bloomberg*. <https://www.bloomberg.com/news/articles/2019-01-15/bytedance-is-said-to-hit-lower-end-of-sales-goal-amid-slowdown>

Task B references (Chapter 3)

- Acton, M. (2020). "European champions" policy likely to focus on more competition, not less. Retrieved August 31, 2020, from <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/antitrust/european-champions-policy-likely-to-focus-on-more-competition-not-less>
- Ashenfelter, O., & Hosken, D. (2010). The effect of mergers on consumer prices: Evidence from five mergers on the enforcement margin. *Journal of Law and Economics*, 53(3), 417–466.
<https://doi.org/10.1086/605092>
- Bárd, P., Bayer, J., & Carrera, S. (2016). A comparative analysis of media freedom and pluralism in the EU Member States. Study for the LIBE Committee. Retrieved from [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571376/IPOL_STU\(2016\)571376_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571376/IPOL_STU(2016)571376_EN.pdf)
- Bátorfy, A. (2019). Hungary: A country on the Path towards an Authoritarian Media System. In A. Giannakopoulos (Ed.), *Media, Freedom of Speech, and Democracy in the EU and Beyond* (Vol. Research Paper No.10). Tel Aviv. Retrieved from [https://dacenter.tau.ac.il/sites/abraham.tau.ac.il/files/Media%2C Freedom of Speech Text_0.pdf](https://dacenter.tau.ac.il/sites/abraham.tau.ac.il/files/Media%2C%20Freedom%20of%20Speech%20Text_0.pdf)
- Berg, C. E., & Lund, A. B. (2012). Financing public service broadcasting: A comparative perspective. *Journal of Media Business Studies*, 9(1), 7–22. <https://doi.org/10.1080/16522354.2012.11073533>
- Bradford, A., Jackson, R. J., & Zytnick, J. (2018). Is E.U. Merger Control Used for Protectionism? An Empirical Analysis. *Journal of Empirical Legal Studies*, 15(1), 165–191. <https://doi.org/10.1111/jels.12176>
- Council Regulation (EC) 139/2004, 2004. On the control of concentrations between undertakings. Off. J. Eur. Union. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0139&from=EN>

- Court of Justice of the European Union. The provision of Italian law preventing Vivendi from acquiring 28% of the capital in Mediaset is contrary to EU law (September 3, 2020). Retrieved from <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-09/cp200099en.pdf>
- Craufurd-Smith, R., & Stolte, Y. (2014). The Transparency of Media Ownership in the European Union and Neighbouring States: Report on a Project by Access Info Europe and the Open Society Program on Independent Journalism. Open Society Foundation. Retrieved from http://avada.access-info.org/wp-content/uploads/Transparency_of_Media_Ownership_in_the_EU_24sep2014.pdf
- Christopher McIntosh & Stefan Hellmer (2012) Necessary and sufficient conditions in merger control: the use of HHI and threshold value, *Applied Economics*, 44:7, 867-878, DOI: 10.1080/00036846.2010.524632
- Dams, T. (2020). Dutch court delays Mediaset merger decision till September . Retrieved August 3, 2020, from <https://www.ibc.org/news/dutch-court-delays-mediaset-merger-decision-till-september/6315.article>
- De Voldere, I., Romainville, J.-F., Knotter, S., Durinck, E., Engin, E., Le Gall, A., Kern, P., Airaghi, E., Pletosu, T., Ranaivoson, H., & Hoelck, K. (2017). Mapping the Creative Value Chains A study on the economy of culture in the digital age Final report. European Commission, Directorate-General for Education and Culture Directorate D – Culture and Creativity Unit D.1 – Cultural Policy.
- Dobek-Ostrowska, B. (2012). Italianization (or Mediterraneanization) of the Polish media system?: reality and perspective. In D. C. Hallin & P. Mancini (Eds.), *Comparing media systems beyond western world*. Cambridge University Press. Retrieved from <https://www.cambridge.org/be/academic/subjects/politics-international-relations/comparative-politics/comparing-media-systems-beyond-western-world?format=HB&isbn=9781107013650>
- Dragomir, M. (2019). Media capture in Europe. Center for Media Data & Society (CMDs). Retrieved from <https://www.mdif.org/wp-content/uploads/2019/07/MDIF-Report-Media-Capture-in-Europe.pdf>
- Dragomir, M., & Altergot, M. (2018). Media Influence Matrix: Bulgaria - Government, politics and regulation, Center for Media, Data & Society (CMDs).
- Ernst & Young LLP. (2016). The future of Channel 4 in a changing market environment. London. Retrieved from https://www.channel4.com/media/documents/press/news/Desktop/EY_C4_report_FINAL_160316.pdf
- European Audiovisual Observatory. (2019). The internationalisation of TV audience markets in Europe. Strasbourg. Retrieved from <https://rm.coe.int/the-internationalisation-of-tv-audience-markets-in-europe/168094ea72>
- European Commission (2020), Communication -- 2020 Rule of law report -- the rule of law situation in the European Union, Brussels, European Commission, https://ec.europa.eu/info/files/2020-rule-law-report-rule-law-law-situation-european-union_en.
- European Audiovisual Observatory. (2020). Yearbook Key Trends 2019/2020 - Television, cinema, video and on-demand audiovisual services - The pan-European picture. Strasbourg. Retrieved from <http://yearbook.obs.coe.int/s/document/key-trends>
- Evens, T., & Donders, K. (2020). Regulating digital platform power. *Journal of Digital Media & Policy*, 11(3), 235-239. https://doi.org/10.1386/jdmp_00024_2
- Evens, T. and Donders, K., (2018). Regulating the Retransmission Swamp. In *Platform Power and Policy in Transforming Television Markets* (pp. 167-199). Palgrave Macmillan, Cham.
- Gálik, M. (2010). Regulating Media Concentration within the Council of Europe and the European Union. In B. Klimkiewicz (Ed.), *Media freedom and pluralism : media policy challenges in the enlarged Europe* (p. 336). Budapest: Central European University Press. Retrieved from <http://books.openedition.org/ceup/2177?lang=en>
- Genakos, C., Valletti, T. M., & Verboven, F. (2017). Evaluating Market Consolidation in Mobile Communications (CESifo Working Paper Series No. 6509). Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2992480
- German Federal Ministry of Economics and Technology, 2019. Modernising EU Competition Policy. Retrieved from https://www.bmwi.de/Redaktion/DE/Downloads/M-O/modernising-eu-competition-policy.pdf?__blob=publicationFile&v=4

- Gupta, P. K. (2012). Mergers And Acquisitions (M&A): The Strategic Concepts For The Nuptials Of Corporate Sector. *Innovative Journal of Business and Management*, 60–68. Retrieved from https://www.researchgate.net/publication/283316000_MERGERS_AND_ACQUISITIONS
- Hallin, D. C., & Mancini, P. (2004). *Comparing media systems: three models of media and politics*. Cambridge University Press. Retrieved from https://books.google.be/books/about/Comparing_Media_Systems.html?id=954NJChZAGoC&redir_esc=y
- Harcourt, A. (2007). Institution-Driven Competition: The Regulation of Cross-Border Broadcasting in the EU. *Journal of Public Policy*, 27(3), 293–317. Retrieved from <http://www.jstor.org/stable/40072028>
- Hendrickx, J., & Ranaivoson, H. (2019). Why and how higher media concentration equals lower news diversity – The Mediahuis case. *Journalism*. <https://doi.org/10.1177/1464884919894138>
- Herrero, L. C., Humprecht, E., Engesser, S., Brüggemann, M. L., & Büchel Florin. (2017). Rethinking Hallin and Mancini Beyond the West: An Analysis of Media Systems in Central and Eastern Europe | Castro Herrero | . *International Journal of Communication*, 11. Retrieved from <https://ijoc.org/index.php/ijoc/article/view/6035>
- Iosifidis, P. (2014). Pluralism, Media Mergers and European Merger Control. In K. Donders, C. Pauwels, & J. Loisen (Eds.), *The Palgrave Handbook of European Media Policy* (pp. 461–475). Palgrave Macmillan UK. https://doi.org/10.1057/9781137032195_25
- Iosifidis, P. (2016). The Greek broadcaster ERT: a state or public service broadcaster? . Retrieved August 3, 2020, from <https://blogs.lse.ac.uk/medialse/2016/12/15/the-greek-broadcaster-ert-a-state-or-public-service-broadcaster/>
- Iosifidis, P. & Papathanassopoulos. (2019). Media, politics and state broadcasting in Greece. *European Journal of Communication*, 34(4), 345–359. Retrieved from: <https://journals.sagepub.com/doi/10.1177/0267323119844414>
- KEA, & Cerna. (2010). *Multi-Territory Licensing of Audiovisual Works in the European Union*. Final Report. European Commission, DG Information Society and Media.
- Leigh, A., & Triggs, A. (2016). Markets, Monopolies and Moguls: The Relationship between Inequality and Competition. *Australian Economic Review*, 49(4), 389–412. <https://doi.org/10.1111/1467-8462.12185>
- Loit, U., & Siibak, A. (2013). *Mapping Digital Media: Estonia*. Retrieved from <https://www.opensocietyfoundations.org/uploads/f64bd958-d259-4f5d-aeb9-f58a882a316c/mapping-digital-media-estonia-20130903.pdf>
- Loit, U., & Harro-Loit, H. (2016). *Media Pluralism Monitor 2016. Monitoring Risks for Media Pluralism in the EU and Beyond*. Country report: Estonia. Centre for Media Pluralism and Media Freedom. Retrieved from <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/estonia/>
- Media Pluralism Monitor. (2016a). *Monitoring Risks for Media Pluralism in the EU and Beyond Country report: Estonia*. Retrieved August 3, 2020, from <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/estonia/>
- Media Pluralism Monitor. (2016b). *Monitoring Risks for Media Pluralism in the EU and Beyond Country report: Italy*. Retrieved from <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/italy/>
- Media Pluralism Monitor. (2020). *Media Pluralism Monitor Results*. Retrieved from <https://cmpf.eui.eu/mpm2020-executive-summary/>
- Media Reform Coalition. (2013). “The elephant next door”: new report on media ownership abroad. Retrieved from <https://www.mediareform.org.uk/media-ownership/the-elephant-next-door-new-report-on-media-ownership-abroad>
- Mungiu-Pippidi, A., (2013). Freedom without Impartiality: The Vicious Circle of Media Capture. In P. Gross & K. Jakubowicz, (Ed.) *Media Transformations in the Post-Communist World*. (pp. 33–48.) Plymouth: Lexington Books.
- Naldi, M., & Flamini, M. (2014). The CR4 Index and the Interval Estimation of the Herfindahl-Hirschman Index: An Empirical Comparison. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2448656>
- Noam, E. M. (2016). *Who Owns the World’s Media?* Oxford University Press. Retrieved from: <https://global.oup.com/academic/product/who-owns-the-worlds-media-9780199987238?cc=be&lang=en&>

- Ohlsson, J. (2015). The Nordic Media Market . Retrieved from <https://www.nordicom.gu.se/en/publikationer/nordic-media-market-2015>
- Ohlsson, J., & Sjøvaag, H. (2018). Protectionism versus Non-Interventionism: Two Approaches to Media Diversity in Commercial Terrestrial Television Regulation. *Journal of the European Institute for Communication and Culture*, 26(1), 70–88. <https://doi.org/10.1080/13183222.2018.1467177>
- Opermann, S. (2014). Generational Use of News Media in Estonia. Stockholm: Elanders. Retrieved from <https://www.diva-portal.org/smash/get/diva2:748704/FULLTEXT04.pdf>
- Papathanassopoulos, S. (2020). Deregulation. *The International Encyclopedia of Journalism Studies* (eds T.P. Vos, F. Hanusch, D. Dimitrakopoulou, M. Geertsema-Sligh and A. Sehl). doi:10.1002/9781118841570.iejs0114. Retrieved from: <https://onlinelibrary.wiley.com/doi/epdf/10.1002/9781118841570.iejs0114>
- Picard, R. G., & Zotto, C. D. (2015). The Dimension of Ownership and Control of Media. In P. Valcke, M. Sükösd, & R. G. Picard (Eds.), *Media Pluralism and Diversity* (pp. 54–66). Palgrave Macmillan UK. https://doi.org/10.1057/9781137304308_3
- Picard, R. G. (2020). *Media and Communications Policy Making*. Media and Communications Policy Making (1st ed.). Springer International Publishing. <https://doi.org/10.1007/978-3-030-35173-1>
- Puppis, M. (2009). Media Regulation in Small States. *International Communication Gazette*, 71(1–2), 7–17. <https://doi.org/10.1177/1748048508097927>
- Rompuy, B. van. (2012). Economic efficiency : the sole concern of modern antitrust policy? : non-efficiency considerations under Article 101 TFEU. (A. Sutton, Ed.). Alphen aan den Rijn: Kluwer Law International. Retrieved from <https://lrus.wolterskluwer.com/store/product/economic-efficiency-the-sole-concern-of-modern-antitrust-policy-non-efficiency-considerations-under-article-101-tfeu/>
- Scott, M. (2020). Vestager’s next big fight will be with Europe. Europe’s top tech enforcer under fire over bloc’s digital future. Retrieved from <https://www.politico.eu/article/european-commission-margrethe-vestager-next-big-fight-will-be-with-europe-regulation-competition-big-tech/>
- Syvertsen, T., Enli, G., Mjøs, O. J., & Moe, H. (2014). Public Service Broadcasting. In *The Media Welfare State: Nordic Media in the Digital Era* (pp. 1–23). University of Michigan Press. <https://doi.org/10.2307/j.ctv65swsg.4>
- Van Dreunen, J. (2016). Media Ownership and Concentration in the Netherlands. In E. M. Noam (Ed.), *Who Owns the World’s Media? Media Concentration and Ownership around the World*. New York: Oxford University Press. Retrieved from <https://global.oup.com/academic/product/who-owns-the-worlds-media-9780199987238?cc=be&lang=en&>
- Vestager, M. (2020, March). *Keeping the EU competitive in a green and digital world* . College of Europe, Bruges: European Commission. Retrieved from https://ec.europa.eu/commission/commissioners/2019-2024/vestager/announcements/keeping-eu-competitive-green-and-digital-world_en
- Wang, J. (2013). Pearson Correlation Coefficient. In *Encyclopedia of Systems Biology* (pp. 1671–1671). New York: Springer . https://doi.org/10.1007/978-1-4419-9863-7_372

Task C references (Chapter 4)

- Adshead, S., Forsyth, G., Wood, S., & Wilkenson, L. (2019). *Online Advertising in the UK*. UK Department of Media Culture and Sport. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777996/Plum_DCMS_Online_Advertising_in_the_UK.pdf
- Alexa. (2020). *The Top 500 sites on the web*. <https://www.alexa.com/topsites>
- Anand, P. (2020, January 8). How Big Is Amazon’s Twitch? Revenues Reveal Ad Struggles. *The Information*. <https://www.theinformation.com/articles/how-big-is-amazons-twitch-revenues-reveal-ad-struggles>
- Anderson, S. P., & Jullien, B. (2015). The Advertising-Financed Business Model in Two-Sided Media Markets. In *Handbook of Media Economics* (Vol. 1A). Elsevier.

- Article 19 (12 March 2020) Spain: Briefing on the Penal Code and threats to freedom of expression. Article 19, London <https://www.article19.org/resources/spain-briefing-on-the-penal-code-and-threats-to-freedom-of-expression/>
- Australian Competition and Consumer Commission. (2019). *Digital Platforms Inquiry: Final report*. ACCC. <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>
- Avia, L. (19 June 2019) REPORT ON BEHALF OF THE COMMISSION FOR CONSTITUTIONAL LAWS, LEGISLATION AND THE GENERAL ADMINISTRATION OF THE REPUBLIC ON THE PROPOSED LAW, AFTER THE ACCELERATED PROCEDURE HAS BEEN UNDERTAKEN, to fight against the hatred on the Internet (No. 1785) http://www.assemblee-nationale.fr/dyn/15/rapports/cion_lois/l15b2062_rapport-fond
- Backaler, J. (2018). *Digital influence: Unleash the power of influencer marketing to accelerate your global business* /. Palgrave Macmillan; UEA Library catalogue. <https://search.ebscohost.com/login.aspx?direct=true&db=cat07845a&AN=uea.1049802542&site=eds-live&scope=site>
- Belavusau, U., Boutin, B. Grozdanova, R., van Noorloos, M., Paulussen, C., (2 November 2019) A comparative research study on radical and extremist (hate) speakers in European Member States, International Centre for Counter-Terrorism Publications, The Hague. https://icct.nl/wp-content/uploads/2019/11/NCTV_Report.pdf
- Bishop, S. (2020). Algorithmic Experts: Selling Algorithmic Lore on YouTube. *Social Media + Society*, 6(1), 2056305119897323. <https://doi.org/10.1177/2056305119897323>
- Broughton Micova, S., & Jacques, S. (2019). *The Playing field for audiovisual advertising: What does it look like and who is playing*. Centre on Regulation in Europe (CERRE).
- Broughton Micova, S., & Jacques, S. (2020). *Platform power in the video advertising ecosystem*.
- Brown, A. (2020). *Models of Governance of Online Hate Speech*. Council of Europe. <https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d>
- Cannon, B., & Chung, H. (2014). A framework for designing co-regulation models well-adapted to technology-facilitated sharing economies. *Santa Clara Computer & High Tech. LJ*, 31, 23.
- Clement, J. (2020a, February 12). Number of Vimeo subscribers worldwide from 1st quarter 2015 to 4th quarter 2019. *Statista*. <https://www.statista.com/statistics/705598/vimeo-subscribers-worldwide/>
- Clement, J. (2020b, April 24). Most popular social networks worldwide as of April 2020, ranked by number of active users. *Statista*. <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>
- Competition & Markets Authority (CMA). (2019). *Online platforms and digital advertising market study: Observations on the CMA's interim report*. https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim_report.pdf
- Competition Council of the Republic of Lithuania (29 April 2019) Konkurencijos taryba will Transfer its Functions Related to Misleading and Comparative Advertising. <https://kt.gov.lt/en/news/konkurencijos-taryba-will-transfer-its-functions-relating-to-misleading-and-comparative-advertising>
- Conseil supérieur de l'audiovisuel (CSA), (July 2020) *Combating the dissemination of false information on online platforms: an evaluation of the application and effectiveness of the measures implemented by operators in 2109* <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Lutte-contre-les-infox-le-CSA-publie-son-premier-bilan>
- Crawford, B. (31 December 2019) Chan Culture and Violent Extremism Past and Present. Global Network on Extremism & Technology Insights <https://gnet-research.org/2019/12/31/chan-culture-and-violent-extremism-past-present-and-future/>
- Craufurd Smith, R. (2019) Fake news, French Law and democratic legitimacy: lessons for the United Kingdom?, *Journal of Media Law*, 11:1, 52-81
- Dailymotion. (2020). *About Dailymotion*. <https://www.dailymotion.com/gb/about>
- Doyle, G. (2018). Television and the development of the data economy: Data analysis, power and the public interest. *International Journal of Digital Television*, 9(1), 53–68.
- European Commission. (2016). *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE*

- COMMITTEE OF THE REGIONS *Online Platforms and the Digital Single Market Opportunities and Challenges for Europe*. European Commission. <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1466514160026&uri=CELEX:52016DC0288>
- 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, Directive 2000/31/EC (2000). <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031>
- DIRECTIVE (EU) 2018/1808 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities, 2018/1808 (2018). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN>
- EASA (30 September, 2015) EASA response to the EU Commission Consultation on Directive 2010/13/EU on audiovisual media services (AVMSD) - A media framework for the 21st century. https://www.easa-alliance.org/sites/default/files/EASA%20position%20on%20the%20AVMSD%20consultation_30SEP2015.pdf
- Facebook. (2020). *Facebook Reports Fourth Quarter and Full Year 2019 Results*. Facebook. https://s21.q4cdn.com/399680738/files/doc_news/Facebook-Reports-Fourth-Quarter-and-Full-Year-2019-Results-2020.pdf
- Finck, M. (2018). Digital co-regulation: designing a supranational legal framework for the platform economy. *European law review*
- Fontaine, G., Grece, C., & Jimenez Pumarez, M. (2018). *Online video sharing: Offerings, audiences, economic aspects*. European Audiovisual Observatory.
- Gandolfi, E. (2016). To watch or to play, it is in the game: The game culture on Twitch. Tv among performers, plays and audiences. *Journal of Gaming & Virtual Worlds*, 8(1), 63–82.
- Gebhart, G. (2019). *Who Has Your Back? Censorship Edition 2019*. Electronic Frontiers Foundation. <https://www.eff.org/wp/who-has-your-back-2019>
- Geradin, D., & Katsifis, D. (2019). Google's (Forgotten) Monopoly – Ad Technology Services on the Open Web. *SSRN ELibrary*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3391913
- Global Internet Forum to Counter Terrorism (July 2020) Transparency Report <https://www.gifct.org/transparency/>
- Gorwa, R. (2019). What is platform governance? *Information, Communication & Society*, 22(6), 854–871.
- Helberger, N., Pierson, J., & Poell, T. (2018). Governing online platforms: From contested to cooperative responsibility. *The Information Society*, 34(1), 1–14.
- Human Rights Watch (10 September 2020). "Video Unavailable" Social Media Platforms Remove Evidence of War Crimes https://www.hrw.org/sites/default/files/media_2020/09/crisis_conflict0920_web_0.pdf
- Hutchinson, A. (2020, April 28). Instagram Adds Live Donations Feature for Fundraising via Instagram Live. *Social Media Today*. <https://www.socialmediatoday.com/news/instagram-adds-live-donations-feature-for-fundraising-via-instagram-live/576951/>
- IAB. (2016). *Digital Video In-Stream Ad Format Guidelines*. IAB. https://www.iab.com/wp-content/uploads/2016/01/DVAFG_2015-01-08.pdf
- Internet Watch Foundation (2019) IWF 2019 Annual Report | Zero Tolerance <https://www.iwf.org.uk/report/iwf-2019-annual-report-zero-tolerance>
- Iqbal, M. (2020a, March 24). Facebook Revenue and Usage Statistics. *Business of Apps*. <https://www.businessofapps.com/data/youtube-statistics/>
- Iqbal, M. (2020b, March 24). YouTube Revenue and Usage Statistics. *Business of Apps*. <https://www.businessofapps.com/data/youtube-statistics/>
- Jacobides, M. G., Cennamo, C., & Gawer, A. (2018). Towards a theory of ecosystems. *Strategic Management Journal*, 39(8), 2255–2276.
- Koehler, Daniel. (2019) The Halle, Germany, Synagogue Attack and the Evolution of the Far-Right Terror Threat, *The CTC Sentinel*. West Point, USA 2(12), 14–19.

- Latzer, M., Just, N., & Saurwein, F. (2013). Self-and co-regulation. In M. E. Price, S. G. Verhulst, & L. Morgan (Eds.), *Routledge handbook of media law*. Routledge.
- Latzer, M., Saurwein, F., & Just, N. (2019). Governance-Choice Method: In Search of the Appropriate Level of State Intervention. *Palgrave Handbook of Methods for Media Policy Research*. Palgrave.
- Marsden, C.T. (2012) Internet co-regulation and constitutionalism: Towards European judicial review. *International Review of Law, Computers & Technology*, 26(2-3), 211-228.
- Milosavljević, M., & Broughton Micova, S. (2016). Banning, blocking and boosting: Twitter's solo-regulation of expression. *Medijske Studije*, 7(13), 43-57.
- Owler. (2020a, May 15). Dailymotion. Owler. <https://www.owler.com/company/dailymotion>
- Owler. (2020b, May 15). Flickr. Owler. <https://www.owler.com/company/flickr>
- Owler. (2020c, May 15). Liveleak. Owler. <https://www.owler.com/company/liveleak>
- Panchadar, A., & Aripaka, P. (2019, February 7). Vimeo revenue jumps 54 percent in 2018, paying subscribers near 1 million. *Reuters Technology News*. <https://www.reuters.com/article/us-vimeo-results/vimeo-revenue-jumps-54-percent-in-2018-paying-subscribers-near-1-million-idUSKCN1PW20J>
- Polański, P. P. (2018). Rethinking the notion of hosting in the aftermath of Delfi: Shifting from liability to responsibility? *Computer Law & Security Review*, 34(4), 870-880. <https://doi.org/10.1016/j.clsr.2018.05.034>
- Polyak, G., & Rozgonyi, K. (2015). Monitoring media regulators' independence-Evidence-based indicators, Hungarian experience. *International Journal of Digital Television*, 6(3), 257-273
- Reuters (19 December 2019) Germany shooting: data on online spread of live streamed attack kept secret, *The Guardian* <https://www.theguardian.com/media/2019/oct/19/germany-shooting-data-on-online-spread-of-livestreamed-attack-kept-secret>
- Reynders, D. (June 2020) Countering illegal hate speech online 5th evaluation of the Code of Conduct Factsheet, European Commission Directorate General for Justice and Consumers, Brussels. https://ec.europa.eu/info/sites/info/files/codeofconduct_2020_factsheet_12.pdf
- Rocheftort, A. (2020) Regulating Social Media Platforms: A Comparative Policy Analysis. *Communication Law and Policy*, 25(2), 225-260.
- Rubinstein, I. (2018). The Future of Self-Regulation is Co-Regulation. In E. Selinger, J. Polonetsky, & O. Tene (Eds.), *The Cambridge Handbook of Consumer Privacy*. Cambridge, UK: Cambridge University Press.
- Shao, G. (2009). Understanding the appeal of user-generated media: A uses and gratification perspective. *Internet Research*.
- SimilarWeb. (2020a, May 15). Dailymotion Traffic Overview. *SimilarWeb*. <https://www.similarweb.com/website/dailymotion.com#overview>
- SimilarWeb. (2020b, May 15). Liveleak Traffic Overview. *SimilarWeb*. <https://www.similarweb.com/website/liveleak.com#overview>
- SimilarWeb. (2020c, May 15). Twitch Traffic Overview. *SimilarWeb*. <https://www.similarweb.com/website/twitch.com#overview>
- SimilarWeb. (2020d, May 15). Veoh Traffic Overview. *SimilarWeb*. <https://www.similarweb.com/website/veoh.com#overview>
- Simonite, T. (2020, May 12). Facebook's AI for Hate Speech Improves. How Much Is Unclear. *Wired*. <https://www.wired.com/story/facebook-ai-hate-speech-improves-unclear/>
- Turow, J., & Couldry, N. (2018). Media as data extraction: Towards a new map of a transformed communications field. *Journal of Communication*, 68(2), 415-423.
- Tworek, H. & Leerssen, P. (15 April, 2019) *An Analysis of Germany's NetzDG Law*. Transatlantic High Level Working Group on Content Moderation Online and Freedom of Expression. https://www.ivir.nl/publicaties/download/NetzDG_Tworek_Leerssen_April_2019.pdf
- Vidgen, B., Margetts, H. & Harris, A. (27 November, 2019) *How much online abuse is there?: A systematic review of evidence for the UK*. Alan Turing Institute, London. <https://www.turing.ac.uk/news/how-much-online-abuse-there>
- Wagner, K., & Molla, R. (2018, October 9). Facebook will soon rely on Instagram for the majority of its ad revenue growth. *Vox Recode*. <https://www.vox.com/2018/10/9/17938356/facebook-instagram-future-revenue-growth-kevin-systrom>

- Wilson, H. (2020) Youtube is Unsafe for Children: Youtube's Safeguards and the Current Legal Framework are Inadequate to Protect Children from Disturbing Content. *Seattle Journal of Technology, Environmental & Innovation Law* Vol 10 no. 1
- Woodcock, J., & Johnson, M. R. (2019). The affective labor and performance of live streaming on Twitch. *Tv. Television & New Media*, 20(8), 813–823.
- Yilun Chen, L., & Wang, S. (2019, January 15). Bytedance Hits Lower-End of Sales Goal Amid Slowdown. *Bloomberg*. <https://www.bloomberg.com/news/articles/2019-01-15/bytedance-is-said-to-hit-lower-end-of-sales-goal-amid-slowdown>

Annex E – Task B Member State Overview

This annex provides an overview of media ownership and transparency rules in EU27 and the United Kingdom, collected through the activities of Task B of the study. The main types of media included in this analysis are television, radio and press, and their online counterparts. Additionally, the existence of cross-media ownership rules is another category mapped.

As there are no specific EU rules relating to media ownership and cross-ownership regulation, every Member State has the competence to set up their own regulations consistently with EU law. Those rules are strongly linked to the historical and cultural background of each Member State.

The analysis performed in relation to this overview is based on information collected continuously throughout the project duration by the team and a network of national experts across the EU Member States, and via online consultations and focus groups with key stakeholders of the industry, as well as mappings of recent and constantly evolving developments in the field.

The overview consists of the following elements:

- **Country**
- **Ownership restrictions**
The main restrictions that apply to TV broadcasting ownership. The focus is on restrictions that are specific to TV broadcasting, but this can include restrictions that apply to all media sectors.
- **Cross-media ownership restrictions**
The limitations to cross-media ownership
- **Restrictions on ownership by specific entity types**
The restrictions on specific categories of actor (for example, advertising agencies, political parties or institutions of the state) when they are not allowed to own or have shares in media providers. This does not include limitations on foreign ownership
- **Transparency requirements for audiovisual media**
Transparency requirements that apply to audiovisual media. The focus is on requirements that are specific to audiovisual media, but this can include requirements that apply to the whole economy. A distinction is made between requirements on transparency of media ownership and on financial reporting
- **Implementation of rules**
How media ownership rules and media transparency requirements are implemented. This covers who is responsible for ensuring compliance; what the procedures and benchmarks applicable are; what remedies are available in case of non-compliance; and whether there are media-specific transparency rules.
- **Legal basis**
- **Authorities**

Austria²⁵⁶

Ownership restrictions (*TV broadcasting*)

- Several licences for Digital Terrestrial Television can be held as long as not more than three coverage areas included in the licences overlap.
- There is an explicit mandate for the competition authority to take media pluralism considerations into account when assessing media mergers and acquisitions.

Cross-media ownership restrictions

- There are levels of coverage restrictions in terrestrial radio programmes, daily press, weekly press, cable networks (more than 30%). If the owner owns more than 30% in one of these markets, the media owner will be precluded from providing television channels or terrestrial television services.

Restrictions on ownership by specific entity types (*actors concerned*)

- No restriction

Transparency requirements for audiovisual media

(*Disclosure and reporting of media ownership*)

- Apart from the media ownership rules on registration of media mergers, there are no further specific rules about reporting. Under Austrian Generally Accepted Accounting Principles, media companies (and companies in general) are obliged to publish their ownership structures. The management report has to include details on corporate governance, the capital structure, shareholdings in the company of at least 10%, of shareholders' rights, etc. If shares in the media service provider are held by corporations, partnerships or cooperatives, these must communicate their ownership relationships and disclose their fiduciary relationships.

(*Financial reporting*)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(*Who is responsible for ensuring compliance?*)

- Violations of the antitrust laws are evaluated by the antitrust courts.

(*What procedures and benchmarks are applicable?*)

- The benchmarks are described above under *Cross-media ownership restrictions*.

(*What remedies are available in case of non-compliance?*)

- The court is able to prohibit the merger within the first six months after registration. If mergers which are problematic are not registered, the Cartel Court can impose fines on them.

(*Are there media-specific transparency rules? Yes*)

Legal basis

- [Federal Act on Audiovisual Media Services](#), also known as the Private Television Act 2001 (Consolidated 08.01.2015) (*transparency*)
- [Private Radio Broadcasting Act](#) 2001 (Consolidated 2015) 'PrR-G'
- [Telecommunications Act](#) 2003 'TKG'
- [Cartel Act 2005](#) (*transparency*)
- [Competition Act 'GWB'](#) (Consolidated 30.10.2017)

Authorities

²⁵⁶ Insights are based on the input submitted by Prof. Dr Josef Trappel and Dr Corinna Gerard-Wenzel, Paris Lodron Universität Salzburg

- Federal Competition Authority 'BWB'
- Competition Commission 'WBK' – Advisory body to the FCA
- Telecom Control Commission (Communications Authority) 'TKK'
- Austrian Regulatory Authority for Broadcasting and Telecommunications 'RTR'

Belgium²⁵⁷

Ownership restrictions (*TV broadcasting*)

- In Fédération Wallonie-Bruxelles, a person holding more than 24% of the capital of a TV broadcaster would be sanctioned if they also held more than 24% of the capital of another TV broadcaster. The same goes for a person controlling TV broadcasters whose accumulated audience share exceeds 20%.
- In Flanders, one legal person can only operate one regional TV station.

Cross-media ownership restrictions

- No restriction

Restrictions on ownership by specific entity types (*actors concerned*)

- Private linear television broadcasters must be independent of political parties.

Transparency requirements for audiovisual media

(*Disclosure and reporting of media ownership*)

- In Fédération Wallonie-Bruxelles, there are specific requirements on some basic information that audiovisual broadcasting companies must make available to the public about their companies. Some specific transparency requirements apply for media players to obtain a licence from the authorities (e.g. requirements to identify the persons or legal entities with holdings in the company's capital, the amount of any such holding, holdings in other media players and service providers, etc.)

(*Financial reporting*)

- In Fédération Wallonie-Bruxelles, the media regulator, the CSA, needs to publish annual reports/online databases on the level of media concentration and ownership structures of media companies.
- In Flanders, the media regulator VRM needs to publish annual reports/online databases on the level of media concentration and ownership structures of media companies.

Implementation of (transparency of) media ownership rules

(*Who is responsible for ensuring compliance?*)

- In Fédération Wallonie-Bruxelles, the Fédération Wallonie-Bruxelles audiovisual regulator ('CSA') and the College of Authorization and Control ('SMA')
- In Flanders, the Flemish Regulator for the Media ('VRM')

(*What procedures and benchmarks are applicable?*)

For Fédération Wallonie-Bruxelles

- The benchmarks are described above under *Ownership restrictions*.
- The SMA acts in consultation with the Belgian Competition Authority.

For Flanders

- If a market is not actually competitive, the VRM can impose one or more of the following obligations:
 - For transparency with regard to interconnection or access.
 - Regarding non-discrimination with regard to interconnection or access.
 - To keep separate accounts with regard to certain interconnection or access- related activities.

²⁵⁷ Insights are based on the input submitted by Stephanie Tintel, PhD researcher and Teaching Assistant, IMEC-SMIT, VUB

- To negotiate in good faith with companies requesting access to the electronic communications network.
- To respond to reasonable requests for access to and use of certain network components and associated facilities.
- Regarding cost recovery and price control.

(What remedies are available in case of non-compliance?)

- In Fédération Wallonie-Bruxelles, the SMA may impose sanctions if the pluralism of the offer is not respected. Sanctions range from warning to suspension to fines, to withdrawal of the authorisation.
- In Flanders, the VRM can impose an obligation on vertically integrated companies to carry out activities related to the provision of the relevant wholesale access products to be placed in an independent business unit via so-called functional separation.

(Are there media-specific transparency rules? Yes)

Legal basis

- [Competition Act](#) 2013 part of the Federal Code of Economic Law

For Fédération Wallonie-Bruxelles

- Act of 14 July 1997 on the Belgian radio and television community 'FrAMSA' (Consolidated in 2017)
- [Decree for Audiovisual Media Services](#), 2009 (Consolidated 21.08.2018)

For Flanders

- [Media Decree concerning Radio Broadcasting and Television](#) 'FIRTA', 2009, (Consolidated in 2014)
- [Implementation Decision of 21 March 2014](#)
- [Implementation Decision of the Flemish Government concerning the participation of private non-linear television broadcasters in the production of Flemish audiovisual works](#)

For the German-speaking Community

- Act of 27 June 1986 on the Belgian radio and television centre of the German-speaking Community 'BRF-Act'
- [Decree concerning radio broadcasting and television](#), 2005

Authorities

- Belgian Competition Authority 'BCA'
- Belgian Institute for Postal Services and Telecommunications 'BIPT'

For Fédération Wallonie-Bruxelles

- Regulator for Audiovisual 'CSA'
- College of Authorisation and Control 'SMA'

For Flanders

- Flemish Regulator for Media 'VRM'

For the German-speaking Community

- Media Council 'Medienrat'

Bulgaria²⁵⁸

Ownership restrictions (TV broadcasting)

- A national radio or TV licence may not be given to someone who under Competition Law already has an excessive ownership position in a local or regional station.

Cross-media ownership restrictions

- No restriction

Restrictions on ownership by specific entity types (*actors concerned*)

- Persons or companies that have been declared bankrupt in the last five years, or been refused insurance for their business, or cannot prove the ownership of the property they claim are not eligible for broadcast licences.

Transparency requirements for audiovisual media

(*Disclosure and reporting of media ownership*)

- The Council for Electronic Media (CEM) maintains one register of radio and television ownership that is public, but does not require detailed information of funding sources or beneficial owners.
- The law requires media to report to the Ministry of Culture.

(*Financial reporting*)

- Annual reports have to be submitted by 30 June of the actual owner and any beneficial owner as well as all sources of funding, including loans and property.
- As providers of the works covered by the Law on Compulsory Deposit, AVMS providers are probably also under an obligation under that law, but there is no evidence that this has been tested.

Implementation of (transparency of) media ownership rules

(*Who is responsible for ensuring compliance?*)

- Commission for Protection of Competition 'CPC'
- Council for Electronic Media 'CEM'

(*What procedures and benchmarks are applicable?*)

- The CEM is in charge of the licensing process for TV and radio broadcasters.
- The CPC controls mergers. The merging parties need to provide information on relevant markets, market shares and turnover.

(*What remedies are available in case of non-compliance?*)

- N/A

(*Are there media-specific transparency rules? Yes*)

Legal basis

- Mandatory Deposit of Press and Other Works Act (*transparency*)
- [Law on radio and television](#) (Supplemented, SG No. 93/2005, amended in 2018) (*transparency*)
- [Law on the Protection of Competition](#) 2008 'LPC' (*transparency*)
- [Commercial Register Act](#) (*transparency*)
- [Economic and Financial Relations Act](#), also known as the Offshore Law 2014 (*transparency*)
- [Mandatory Deposit of Printed and Other Products and Law on the Declaration of Distributors and other Media Providers](#) (Delyan Peevsky media law) 2018 (*transparency*)
- New Merger Guidelines of 2020 (*transparency*)

²⁵⁸ Insights are based on the input submitted by Dr. Sally Broughton Micova, University of East Anglia

Authorities

- Commission for Protection of Competition 'CPC'
- Council for Electronic Media 'CEM'
- Ministry of Culture

Croatia²⁵⁹

Ownership restrictions (TV broadcasting)

- A TV broadcaster with a concession at national level may not have shares exceeding 25% of the capital of another TV broadcaster with a concession at national level (and conversely).

Cross-media ownership restrictions

- A TV or radio broadcaster with a concession at national level may not have shares exceeding 25% of the capital of another TV or radio broadcaster with a concession at national level (and conversely).
- A TV or radio broadcaster with a concession at national level may not have shares exceeding 10% of the capital of another TV or radio broadcaster, who publishes daily newspapers with a print-run of over 3,000 copies (and conversely).
- A TV or radio broadcaster with a concession at national level may not have shares exceeding 10% of the capital of a legal person who performs the activity of a newspaper agency (and conversely).

Restrictions on ownership by specific entity types (*actors concerned*)

- If a legal or natural person, or group of connected persons, whose activity is in advertising and who owns more than 10% of the capital, may not be nor have ownership in stocks or shares in the capital of a television and/or radio broadcaster.

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- TV and radio broadcasters must report any changes in ownership structure to the Council for Electronic Media.
- Data on ownership structure and the publisher's stocks and shares need to be made public through a registration form sent every year to the Croatian Chamber of Commerce.
- The Council for Electronic Media has the right to order the shareholding structure of a media company to be changed in the event of forbidden ownership concentration (otherwise the media licence can be withdrawn).
- Changes in print ownership must be reported once a year to the Chamber of Commerce, which holds a register of print media. The publisher needs to inform the public through the media about the ownership structure, business results, average circulation, that is, average radio or television ratings.

(Financial reporting)

- The publisher is obliged to publish yearly data on total income and average print run sold, that is, average listening/viewing ratings.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Agency for Market Competition Protection
- Council for Electronic Media
- Chamber of Commerce, which holds a register of print media.

(What procedures and benchmarks are applicable?)

- In the case of print media, the relevant body is the Agency for Market Competition Protection, but changes in ownership must be reported once a year to the Chamber of Commerce, which holds a register of print media.
- The Council for Electronic Media and the Agency for Market Competition Protection must be notified of every change in the ownership structure in the electronic media and can act even in cases which are not specified in the particular media laws, and in accordance with the general competition principles and thresholds (usually much higher than media revenues).

²⁵⁹ Insights are based on the input submitted by Prof. Dr. Zrinjka Peruško, Head of the Centre for Media and Communication Research, University of Zagreb

(What remedies are available in case of non-compliance?)

- In case of non-compliance the Chamber will write a letter of warning, and in the case of continued non-compliance will exact a fine of 1 million kuna will be exacted.
- If the Agency finds that a sale produces improper concentration, the broadcaster will be given a period of grace in which to bring the structure within legal limits. In the event non-compliance, the Council for Electronic Media can revoke the concession.

(Are there media-specific transparency rules? Yes)

Legal basis

- [Media Law](#), 2004, amended in 2014
- [Competition Act](#) 2009 (*transparency*)
- [Electronic Media Act](#), 2009, (amended in 2013) (*transparency*)
- [By-law on Register of Ultimate Beneficial Ownership](#) 2019, pursuant to the EU's AML Directive

Authorities

- Croatian Competition Agency 'CCA'
- Council for Electronic Media 'VEM'
- Agency for Market Competition Protection 'AZTN'
- Croatian Chamber of Commerce 'HGK'

Cyprus²⁶⁰

Ownership restrictions (TV broadcasting)

- A person may not hold more than 25% of the capital of a TV broadcaster.
- A TV broadcaster may not hold more than 5% of the capital in another TV broadcaster.
- No one legal person may obtain more than one licence for TV broadcasting

Cross-media ownership restrictions

- A broadcaster may not hold more than 5% of the capital in another radio or TV organisation, or in a daily or magazine publisher

Restrictions on ownership by specific entity types (*actors concerned*)

- A media service provider licence may not be granted to (a) a natural person who has been convicted of an offence involving dishonesty or moral turpitude, or who suffers from a mental disorder; (b) a company in which a shareholder controlling more than 5% of its share capital is any of the persons referred to in (a).

Transparency requirements for audiovisual media

(*Disclosure and reporting of media ownership*)

- The proposed structure of ownership and control after the completion of the concentration needs to be disclosed in the merger notification procedure.
- To acquire licences, companies need to fully disclose the state of and changes in ownership.

(*Financial reporting*)

- Providers are required to submit their financial reporting (annual balance sheet and the operating results) to the Cyprus Radio Television Authority, the House of Representatives, and to ensure that the reporting is published in two daily newspapers.

Implementation of (transparency of) media ownership rules

(*Who is responsible for ensuring compliance?*)

- The Cyprus Radio Television Authority (CRTA) is responsible for ensuring compliance of media service providers with regulation on, among others, ownership standards.

(*What procedures and benchmarks are applicable?*)

- The process CRTA follows to approve or reject any change or amendment either in the Articles of Association of a company which was granted a licence, or in the founding document, or in the company statute of such a company. This process is the same as that followed for the initial granting of a licence.
- Applications and requests to change the shareholding structure (equity structure) of legal entities are examined in order for the CRTA to verify the actual ownership status of media service providers and to ensure compliance with the respective regulation and prevention of monopoly or oligopolies.
- Within this context, the CRTA takes the following measures (1) the legal part of the application is examined, which involves, among others, the assessment of the shareholding structure (equity structure) of the applicant, the completion of a detailed application form, the submission of the company certificate issued by the Register of Companies, and a detailed statement by all shareholders on the percentage of their shares and a declaration of any relationship with other shareholders, and the submission of numerous other documents; (2) personal interviews with prospective shareholders. After the interview the prospective shareholder reads his/her recorded answers and verifies, by signing, that both the information and the answers recorded by the Officers of the CRTA correspond to his/her answers; (3) In cases where the amount of sale and purchase exceeds the amount of EUR 100 000, the CRTA may request the submission of a bank statement or equivalent that shows the economic solvency of the prospective purchaser.

²⁶⁰ Insights are based on the input submitted by Dr Antigoni Themistokleous, Officer, Cyprus Radio Television Authority

(What remedies are available in case of non-compliance?)

- A natural or legal person violating any of these provisions may be deemed be guilty of a criminal offence and, in the event of conviction, is subject to imprisonment for up to three years or to a fine of up to EUR 85 400 Euro or both.

(Are there media-specific transparency rules? Yes)

Legal basis

- [Radio and Television Organizations Laws](#), 1998 (Amended 2012) (*transparency*)
- [Law on Control of Concentrations in Undertakings](#) 2014 (The Concentration law)
- [Protection of Competition Laws](#) 2014 (The Competition law)

Authorities

- Commission for the Protection of Competition 'CPC'
- Cyprus Radio Television Authority 'CRTA'

Czechia²⁶¹

Ownership restrictions (TV broadcasting)

- One person can hold only one licence for nationwide analogue broadcasting.
- No one person may be a holder of more than two licences for nationwide digital TV/radio broadcasting which authorise the distribution of full-format programmes. No nationwide digital TV broadcaster may possess any ownership interest in the business of any other nationwide TV broadcaster. No nationwide digital TV broadcaster may consolidate with any nationwide digital TV broadcaster in any other manner. These rules do not apply to TV/radio broadcasting distributed via cable systems, satellite and special transmissions systems (IP broadcasting).
- If any one person is a holder of more than one licence to operate as a TV broadcaster other than nationwide TV broadcasts, then the total coverage of the country by such a person's broadcasting shall not in aggregate exceed 70% of the total population of the country. The same rule applies to terrestrial TV broadcasting.
- Any one person may only hold an ownership interest in the business of more than one TV broadcasting operator other than nationwide television broadcasting insofar as the total coverage of the population of the country by the broadcasting of all operators of television broadcasting other than nationwide television broadcasting in whose businesses such a person has an interest remains under or at 70% of the total population of the country.

Cross-media ownership restrictions

- No restriction

Restrictions on ownership by specific entity types (*actors concerned*)

- Neither members of the government (nor any public officials) are allowed to own radio and TV stations, or print media.

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- Broadcasting companies are obliged to report their ownership structures regularly to public authorities. No duty to reveal the 'end owner' of the company.
- When granting a licence, the Council looks at the transparency of ownership relations in the applicant's company. If the broadcaster wants to change the amount of their ownership interest and shareholders, among others, they need to get consent from the Council in advance.
- If the TV/radio licence applicant is a legal person, they are required to present data on the amount of registered capital, shares of voting rights, and capital contributions of shareholders or members, if they are mandatory, including the specification of the type and financial valuation of in-kind contribution.

(Financial reporting)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Council for Radio and Television Broadcasting.

(What procedures and benchmarks are applicable?)

- A licence may not be granted to an applicant whose licence was withdrawn or whose registration was cancelled during the past five years due to a violation of the law, or to an applicant whose sentence for a wilful offence is final.
- In the licence renewal application, the licensed broadcaster may at the same time request permission to change the legal form of the company. The Council will accept the request if it concerns a change

²⁶¹ Insights are based on the input submitted by Filip Rozanek, Journalist and Analyst focused on Media

to a joint stock company with registered shares. Furthermore, the Council may not extend the validity of a licence if the licensed broadcaster has been repeatedly subject to an administrative penalty for a serious breach of its obligations.

- The licensed broadcaster may ask the Council in advance for written consent to the following changes in the licence application: in the amount of the share capital, the method of distribution of voting rights, the contribution of individual shareholders or members and their shareholdings, articles of association or memorandum of association, and list of shareholders. The Council is obliged to decide on the change within 60 days from the day on which it received the application from the licensed broadcaster. The Council will withhold consent only if the change would lead to the non-granting of the licence following a public hearing.
- A licensed radio/TV broadcaster, which is a legal person, or a member of such a legal person, may transfer to third parties a share in the licensed radio broadcaster company with prior consent of the Council. The consent may only be withheld if this would limit plurality of information. Persons who were members in the legal person as of the date of issuance of the decision on granting the licence are required to remain holders of at least 66% of the stock or 66% of voting rights for a period of five years from the date on which the licence was granted.
- A person who is a licensed broadcaster may request that the licence or registration granted to it be transferred to a legal person; the Council will only accept the request if it is a legal entity in which the person has 100% ownership interest.
- A licensed radio broadcaster may, with the prior approval of the Council, retransmit the programme of another licensed radio broadcaster, including the identification of the received programme, providing that this does not change the basic programme specification. The licensed broadcaster may not retransmit the programme or portions of the programme from the public broadcaster.
- The broadcaster must report to the Council if the owners of the radio or TV stations have merged.

(What remedies are available in case of non-compliance?)

- Breaching these obligations is considered an offence. The Council for Radio and Television Broadcasting may impose a fine from CZK 20 000 (about EUR 740) up to CZK 5 000 000 (about EUR 185 000).

(Are there media-specific transparency rules? Yes)

Legal basis

- [Press Act](#) 2000 (*transparency*)
- [Act on the Protection of Economic Competition](#) 2001 (consolidated in 2005) (*transparency*)
- [Act on Radio and TV Broadcasting 2001](#) (consolidated 2017) (*transparency*)
- [Decree No. 127/2005 on electronic communications](#), 2005
- [Act on Conflict of Interests](#) 2006 (amended 2017) (*transparency*)
- [Act 132/2010 on On-demand Audiovisual Media Services](#), 2010
- [Act No. 496/2012 on Audiovisual Works and Support for Cinematography and on Amendment to Certain Acts \(Audio/Video Act\)](#), 2012, (in effect 01.01.2016)

Authorities

- Office for the Protection of Competition
- Council for Radio and Television Broadcasting 'RRTV'

Denmark²⁶²

Ownership restrictions (TV broadcasting)

- No restriction

Cross-media ownership restrictions

- No restriction

Restrictions on ownership by specific entity types (*actors concerned*)

- No restriction

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- The activities of the national public service broadcaster (DR) and the regional public broadcasters are regulated through public service contracts, and they must submit an annual report on the fulfilment of the contract to the Radio and Television Board, which checks that the contract is fulfilled.

(Financial reporting)

- All public service TV broadcasters must submit annual financial reports to the National Audit Office. After they are audited, they are sent to the Minister of Culture for approval and the Parliament for information. When presenting the accounts, they must comply partly with accounting separation between their public service activities and other activities.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- The Radio and Television Board is responsible for ensuring compliance.

(What procedures and benchmarks are applicable?)

- The activities of the national public service broadcaster (DR) and the regional public broadcasters are regulated through public service contracts, and they must submit an annual report on the fulfilment of the contract to the Radio and Television Board, which checks that the contract is fulfilled.

(What remedies are available in case of non-compliance?)

- There are no sanctions beyond reprimands.

(Are there media-specific transparency rules? No)

Legal basis

- [Media Liability Act](#) 1998 (Consolidated 11.08.2014)
- [Competition Act](#) 2013 (Consolidated 08.07.2015)
- [AML Act](#) 2017
- [Radio and Television Broadcasting Act](#) 2020

Authorities

- Danish Competition and Consumer Authority 'DCCA'
- Press Council
- Radio and Television Board
- Ministry of Culture
- Danish Business Authority

²⁶² Insights are based on the input submitted by Em. Prof. Dr. Frands Mortensen, University of Aarhus, Institute for Communication and Culture

Estonia²⁶³

Ownership restrictions (TV broadcasting)

- No restriction

Cross-media ownership restrictions

- No restriction

Restrictions on ownership by specific entity types (*actors concerned*)

- No restriction

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- No reporting obligation.

(Financial reporting)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- In case of licences for broadcasting companies, the Consumer Protection and Technical Regulatory Authority.
- In case of other media and all sectors/markets, the Competition Authority.

(What procedures and benchmarks are applicable?)

- If there is a risk of market concentration via mergers or acquisitions, the Competition Authority can organise an inquiry.

(What remedies are available in case of non-compliance?)

- The Competition Authority can forbid the merger/acquisition.
- If there is already a monopoly/dominant company (company that controls more than 40% of market turnover), the company can be fined in the case of abusing its position.

(Are there media-specific transparency rules? No)

Legal basis

- [Law on Competition](#)
- [Estonian Public Broadcasting Act](#) 2007 (*transparency*)
- [General Part of the Economic Activities Code](#) Act (*transparency*)
- [Media Services Act](#), 2010 (Amended 2011) (*transparency*)

Authorities

- Consumer Protection and Technical Regulatory Authority
- Competition Authority

²⁶³ Insights are based on the input submitted by Prof. Dr. Indrek Ibrus, Head at MEDIT, Tallinn University

Finland²⁶⁴

Ownership restrictions (TV broadcasting)

- No restriction

Cross-media ownership restrictions

- No restriction

Restrictions on ownership by specific entity types (*actors concerned*)

- No restriction

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- No obligation

(Financial reporting)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- The main authorities are the Finnish Transport and Communications Agency and the Finnish Competition and Consumer Authority.

(What procedures and benchmarks are applicable?)

- The main procedure is standard competition analysis or when the ownership of licences has changed.

(What remedies are available in case of non-compliance?)

- In case of non-compliance, the Finnish Government can revoke licences.

(Are there media-specific transparency rules? No)

Legal basis

- [Competition Law](#) 2011
- [Company Law](#) 2011
- [Broadcasting Act](#) 2013
- [Information Society Code](#), 2014, Art. 209
- [Money Laundering Act](#)

Authorities

- Finnish Competition and Consumer Authority 'FCCA'
- Finnish Transport and Communications Agency 'Traficom'

²⁶⁴ Insights are based on the input submitted by Dr. Riku Neuvonen, University of Helsinki and Tampere University

France²⁶⁵

Ownership restrictions (TV broadcasting)

- The current system limits the possibility for internal and external growth of traditional audiovisual groups via restrictions on the composition of the share capital of television services and restrictions relating to the accumulation of television service authorisations.
- For national TV broadcasting, the capital holding of a person or the right to vote of the media company is limited to 49%. This does not apply if the average audience of the channels remains below 2.5%.

Cross-media ownership restrictions

- The current system limits the possibility for internal and external growth of traditional audiovisual groups via restrictions relating to multimedia concentration.
- One owner may not be involved in more than two of the following situations at the national level: (i) holding a licence for a television service reaching more than 4 million viewers; (ii) holding a licence for radio services reaching more than 30 million viewers; (iii) publishing or controlling daily newspapers with a national market share of 20%; (iv) holding an authorisation to operate a cable network for an area which has more than 6 million inhabitants.

Restrictions on ownership by specific entity types (*actors concerned*)

- No restriction

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- Media outlets need to indicate the composition of their capital and provide information on its management once a year.
- The allocation of frequencies for audiovisual services is dependent on the information on the owner of the service requesting it.
- Any publisher of a broadcasting service or director of publication must keep certain information permanently available to the public, including ownership.

(Financial reporting)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- The Competition Authority is controls media ownership concentration. It consults the Superior Audiovisual Council (CSA) when audiovisual media or radio are concerned.

(What procedures and benchmarks are applicable?)

- See above points *ownership restrictions* and *cross-media ownership restrictions*.

(What remedies are available in case of non-compliance?)

- The CSA has the power to withdraw a Digital Terrestrial Television authorisation, without prior notice, "in the event of substantial modification of the data in view of which the authorisation had been issued, in particular changes which have occurred in the composition of the capital or in the management bodies and in the methods of financing".

(Are there media-specific transparency rules? Yes)

²⁶⁵ Insights are based on the input submitted by Dr. Heritiana Ranaivoson, Senior Researcher and Project Leader at IMEC-SMIT, VUB

Legal basis

- [General Law 86-1067 on the Freedom of Communication](#), 1986 (Consolidated 08.01.2019) (*transparency*)
- [Law 86-897 on the legal regime of the press](#) (Amended 24.05.2019) (*transparency*)
- [On-demand Audiovisual Services Decree No. 2010-1379](#), 2010
- [Decree No. 2010-747 on the contribution to the production of cinematographic and audiovisual works of terrestrial television services](#), 2010 (Consolidated 08.01.2019)
- [Law 2016-1524 on strengthening the freedom, independence and pluralism of the media](#) 2016 (*transparency*)
- [Law 2016-1691 on anti-corruption](#), known as the Sapin II Law
- [Decree No. 2017-1364](#), 2017
- [Decree no. 2019-339](#) regarding the simplification of the notification file of a merger control to the Autorité de la concurrence, 2019

Authorities

- Competition Authority 'CA'
- Superior Audiovisual Council 'CSA'
- Electronic Communications, Postal and Print media distribution Regulatory Authority 'ARCEP'
- Autorité des Marchés Financiers 'AMF'

Germany²⁶⁶

Ownership restrictions (TV broadcasting)

- An undertaking may own an unlimited number of television services, as long as it does not acquire a dominant power of opinion. Dominant power of opinion is assumed to be held in the presence of “an annual average audience share of 30 % of all viewers”, or a 25% audience share if the undertaking holds a dominant position in a media-relevant related market. In addition to these rules (25% / 30% threshold), the two nationwide general channels with the largest audience reach are obliged to incorporate independent third-party regional window services.

Cross-media ownership restrictions

- Most States (Länder) media laws contain regulations to prevent cross-media ownership in both local or regional press monopolists, and local or regional broadcasters.
- Sometimes companies that have a dominant market position in daily (regional) newspapers are not allowed to licence additional radio or TV programmes in the same State, or only on condition that they implement measures that ensure diverse reporting. Others limit the licensing of regional radio or TV stations for companies that already have a nationwide TV licence and reach a certain threshold (e.g. 15% audience share).

Restrictions on ownership by specific entity types (*actors concerned*)

- At both national and State level, there are explicit rules that hinder political parties and voter associations from offering radio or broadcasting services. Moreover, in the State media laws, there are several provisions that prohibit political parties from taking influential stakes in media companies.

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- All radio and TV broadcasters have to state the ownership when applying for a licence, and notify every consecutive change in ownership structure. In addition, the Commercial Code obliges companies in general to make public their ownership structure.
- In the print sector, owners are obliged to disclose information about ownership and shareholders, depending on the respective State press or media law.

(Financial reporting)

- Broadcasters are obliged to prepare and publish annual accounts including notes to the annual accounts as well as a management report no later than at the end of the ninth month following the end of the financial year (if they are companies limited by shares). This requirement does not apply to non-linear AVMS services.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- The duty to monitor the influence of companies on the formation of public opinion lies with the Commission on Concentration in the Media (KEK).
- The authority responsible for assessing the personal capacities of any licensee lies with the competent State Media Authorities.
- The enforcement of merger control in competition law is incumbent upon the Federal Cartel Authority (BKartA). The Federal Ministry for Economic Affairs and Energy is responsible for foreign investment limitations on ownership.

(What procedures and benchmarks are applicable?)

²⁶⁶ Insights are based on the input submitted by Dr. Stephan Dreyer, Senior Researcher Media Law & Media Governance, Leibniz Institute for Media Research | Hans-Bredow-Institut

- Persons applying for a radio or TV licence have to hand over all relevant information and the State Media Authorities have additional rights of inspection.
- The KEK can object to new and amended programme licences if concentration thresholds are reached. TV stations are obliged to give prior notification of any planned changes to their shareholding structure.

(What remedies are available in case of non-compliance?)

- If the threshold is reached due to mergers and acquisitions, the KEK can propose measures to counteract any dominant influence of opinion.
- The BKartA has the power to prevent a specific merger or acquisition. However, the Federal Minister for Economic Affairs and Energy is able to authorise the deal if "the restraint of competition is outweighed by advantages to the economy as a whole resulting from the concentration, or if the concentration is justified by an overriding public interest".
- The Federal Ministry for Economic Affairs and Energy can prohibit foreign investments.

(Are there media-specific transparency rules? Yes)

Legal basis

- [Interstate Treaty on Broadcasting and Telemedia](#), 1991 (amended 2018, in force 01.05.2019)
- State Media Laws of the Länder
- [Telemedia Act](#) 2007 (amended 2019)
- [Act against Restraints of Competition](#) 'GWB' 2013 (amended 2018) (*transparency*)

Authorities

- State Media Authorities of the Länder
- Commission on Concentration in the Media 'KEK'
- Federal Cartel Office 'BKartA'
- Federal Minister for Economic Affairs and Energy

Greece²⁶⁷

Ownership restrictions (TV broadcasting)

- The ownership of an information TV outlet is allowed up to 100%. Participation in another information TV outlet is allowed, provided that it does not lead to 'control'.
- The owner of an information TV outlet can own at most 1 non-information TV outlet, while an owner that does not have participation in an information TV outlet can own up to 2 non-information TV outlets.
- Concentration in the audiovisual sector for information content is prohibited when it leads to a dominant position. When a natural or legal person is engaged in one or more media outlets of the same type, a dominant position exists when the person acquires a market share exceeding 35% in the relevant market (TV, radio or press).

Cross-media ownership restrictions

- A licensed pay TV/pay-radio provider and its shareholders are allowed to possess a licence to operate *only one* free-to-air radio and only one free-to-air television station.
- A shareholding of a licensed pay-TV/pay-radio provider and its shareholders in another (thus a second) undertaking possessing a licence to operate a free-to-air radio or television station is allowed provided that it does not lead to 'control'.
- Concentration in media for information content is prohibited when it leads to a dominant position. Various thresholds are defined, which depend on the number of media in which a person is engaged.

Restrictions on ownership by specific entity types (*actors concerned*)

- A Member of Parliament may not be an owner or partner or shareholder or governor or administrator or member of the board of directors or general manager or a deputy thereof of an enterprise which owns or manages a radio or TV channel or publishes a newspaper of countrywide circulation in Greece.
- Shareholders who own/hold shares or voting rights that exceed 1% of the total share capital or of the voting rights in the general assembly, the members of the management board and the legal representatives of the undertakings that participate in the procedure for the grant of a free-to-air digital terrestrial TV licence may not participate in any way in broadcasting market research undertakings, advertising undertakings and teleshopping undertakings.
- The partners or shareholders and the legal representatives of undertakings that participate in the procedure for the grant of a free-to-air digital terrestrial radio licence, as well as members of the management board in the case of candidates which are companies limited by shares, shall not participate in any way in broadcasting market research undertakings and advertising companies.
- The capacity of owner, partner, key shareholder, member of the management body, or executive officer of a candidate for the grant of a free-to-air digital terrestrial TV licence is incompatible with respective capacities in an undertaking that enters into public procurement contracts.

Transparency requirements for audiovisual media

(*Disclosure and reporting of media ownership*)

- TV and radio are required to report ownership structures to the Greek National Council for Radio and Television (ESR).
- Any transfer of ownership above 1% of the capital has to be notified to the ESR.
- The ESR makes public all radio and TV licences on its website providing, inter alia, basic information on ownership structures.
- The ESR maintains a Registry of Media Undertakings which provides detailed information (including ownership) on media undertakings.

(*Financial reporting*)

²⁶⁷ Insights are based on the input submitted by Dr. Evangelia Psychogiopoulou, Senior Research Fellow, Hellenic Foundation for European and Foreign Policy (ELIAMEP)

- Media outlets need to indicate any changes in the composition of their capital and management once a year.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- The ESR is responsible for ensuring compliance with the media ownership restrictions.
- The Hellenic Competition Commission (HCC) is responsible for monitoring compliance with rules on concentration of control in the news media market.

(What procedures and benchmarks are applicable?)

- The ESR examines compliance with media ownership rules for free-to-air Digital Terrestrial Television (DTT) and radio, as well as pay TV/pay-radio. It also considers their means of financing.

(What remedies are available in case of non-compliance?)

- Non-compliance entails exclusion from licensing procedures.
- In the case of licensed free-to-air DTT and pay TV/pay-radio service providers, the sanctions that can be imposed range from fines to licence cancellation.

(Are there media-specific transparency rules? Yes)

Legal basis

- Law 2328/1995 on the legal status of private television and local radio, regulation of issues of the broadcasting market and other provisions
- Presidential Decree 310/1996 on control of transparency in the wider media sector
- Law 2644/1998 on the provision of pay-radio and pay-TV services and other provisions
- Law 2863/2000 on the National Council for Radio and Television and other authorities
- Law 3310/2005 on transparency of public contracts
- Law 3592/2007 on concentration, licensing of media undertakings and other provisions
- Law 3959/2011 on protection of free competition
- Law [4339/2015](#) on the licensing of content providers of free-to-air DTT and other provisions
- Law 4512/2018 on arrangements for the implementation of the Structural Reforms of the Economic Adjustment Program and other provisions (including provisions on the licensing of content providers of free-to-air DTT)

Authorities

- National Council for Radio and Television 'ESR'
- Hellenic Competition Commission 'HCC'
- General Secretariat of Information and Communication

Hungary²⁶⁸

Ownership restrictions (TV broadcasting)

- Providers of linear audiovisual media services (with the exception of public service, community and thematic media service providers) with an average annual audience share of at least 35% may not launch new media services.
- These providers moreover may not acquire shares in business entities providing media services and must take measures to increase the diversity of the media market by modifying the media service's programme structure.
- Furthermore, owners having a controlling share of more than 25% of such undertaking assets or voting rights may not launch new media services, and may not acquire shares in undertakings providing media services.

Cross-media ownership restrictions

- There are provisions limiting cross-media ownership relating to the number of services provided and depending on whether these are national, regional or local radio.

Restrictions on ownership by specific entity types (*actors concerned*)

- Any undertaking in which the Mayor of Budapest, the Deputy Mayor of Budapest, the Mayor, or Deputy Mayor, the chairperson or deputy chairperson of the county-level general assembly, or any of their close relatives hold a direct or indirect qualifying holding or are entitled to influence the decisions thereof under a separate agreement or otherwise may not be entitled to provide linear media services if the reception area of the respective media service covers at least twenty percent of the territory of the relevant local government.

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- All media companies need to register with the Court of Registry. Obligations for public disclosure of media ownership usually include the name of the owner and shareholders.
- Linear media service providers must notify the Office of the Media Authority about the size of the notifier's direct or indirect ownership stake – or that of any other person maintaining a qualifying holding in the notifier's business enterprise – in any business enterprise providing media services, or applying for media service rights, in the territory of Hungary;
- Linear media service providers tendering for analogue linear media services rights using limited state-owned resources must submit a statement during the tendering process on the size of the tenderer's direct or indirect ownership stake – or that of any other person maintaining a qualifying holding in the tenderer – in any business entity providing media services in the territory of Hungary, or applying for media service rights in Hungary.

(Financial reporting)

- In the tendering procedure for analogue linear radio media services the tender shall contain a bank certificate to verify that the tenderer has sufficient funds set aside to cover the costs of the proposed media services. Linear radio media services are outside the scope of the AVMSD.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- The Media Council performs the official tasks related to the control of market concentrations.
- The Hungarian Competition Authority (GVH) is involved if the decision of the tender procedure of the Media Council is challenged in court.

(What procedures and benchmarks are applicable?)

²⁶⁸ Insights are based on the input submitted by Dr. Krisztina Rozgonyi, University of Vienna

- The Media Council performs the official tasks related to the control of market concentrations, including tender procedures for analogue linear media services. It takes media diversity into account. Its decisions may be challenged in court.
- The GVH is required to obtain the opinion of the Media Council in cases of concentration involving media companies.

(What remedies are available in case of non-compliance?)

- The Media Council can block mergers.

(Are there media-specific transparency rules? Yes)

Legal basis

- Act CLXXXV of 2010 on Media Services and Mass Communication, also known as the [Hungarian Media Act](#), 2010 (Consolidated 1 July 2015) (*transparency*)
- The Competition Act

Authorities

- Media Council
- Media Authority
- Hungarian Competition Authority 'GVH'

Ireland²⁶⁹

Ownership restrictions (TV broadcasting)

- The Broadcasting Authority of Ireland (BAI) is required to maintain an open, pluralistic and diverse media market. There are legislative criteria to be considered but no specific numerical ownership thresholds for TV.

Cross-media ownership restrictions

- There are legislative criteria to be considered but no specific numerical ownership thresholds.

Restrictions on ownership by specific entity types (*actors concerned*)

- Election candidates and elected representatives are excluded from membership of the Boards of Public Service Broadcasters.

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- Media merger decisions and all other media ownership decisions are reported publicly by the relevant bodies, whether the Department of Communications, the Broadcasting Authority of Ireland (BAI) or the Competition Commission, and are reported in the national and regional media.
- Information on ownership structures on BAI-licensed radio and TV media outlets can be consulted by the public. The BAI has commissioned Dublin City University (DCU) to publish ownership information on Media Businesses in the State annually.
- There are requirements on media owners and those proposing change of ownership or media mergers to notify the BAI or Department of Communications – whichever is applicable under the relevant legislation.

(Financial reporting)

- Financial reporting obligations, as distinct from normal Company Law requirements, apply only for the Public Service Broadcasters.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- The Broadcasting Authority of Ireland (BAI) overall, and particularly its Compliance Committee, is responsible for ensuring compliance.
- The Competition and Consumer Protection Commission has a role in relation to notifications and certain determinations of proposed media mergers, although it is the Minister for Communications who, on the basis of specified criteria, ultimately makes a determination as to whether the result of the media merger is likely to be contrary to the public interest in protecting plurality of the media in the State.

(What procedures and benchmarks are applicable?)

- The notification of a proposed merger must be made by the parties to the Minister for Communications and an initial examination is carried out by the Minister. Timelines are set out for each stage of the process.
- When requested by the Minister to do so, the BAI must carry out a full media merger examination. It must publish a copy of the request on its website and invite submissions. Its report must contain a recommendation as to whether the merger should be put into effect or not.

(What remedies are available in case of non-compliance?)

- Fines (in serious cases up to EUR 250 000) are provided for failure to notify or provide information in the case of media mergers, and fines and periods of imprisonment are provided for contravention

²⁶⁹ Insights are based on the input submitted by Marie McGonagle, National University of Ireland Galway

of a determination (in serious cases fines up to up to EUR 10 000 and imprisonment of up to two years).

(Are there media-specific transparency rules? Yes)

Legal basis

- [Broadcasting Act 2009 \(to be amended by the Online Safety and Media Regulation Bill 2019\)](#) *(transparency)*
- S.I. No. 247/2012 - [European Communities \(Audiovisual Media Services\) \(Amendment\) Regulations 2012](#)
- [Competition and Consumer Protection Act](#) 2014 *(transparency)*

Authorities

- Minister for Communications
- Broadcasting Authority of Ireland 'BAI'
- Competition and Consumer Protection Commission

Italy²⁷⁰

Ownership restrictions (TV broadcasting)

- A content provider, subsidiary or allied company may not hold authorisations allowing them to broadcast more than 20% of television programmes nationwide by means of terrestrial technologies (digital terrestrial television).
- Furthermore, companies registered as communications operators may not, directly or indirectly, earn revenue greater than 20% of the total revenue of the integrated communications system (SIC).

Cross-media ownership restrictions

- Electronic communications operators (including through subsidiaries and affiliated companies under 'considerable influence') that hold more than 40% (by revenue) of the electronic communications sector, which is not part of the SIC, may not have more than 10% (by revenue) of the SIC.
- Nationwide TV broadcasters (including subsidiaries and affiliated companies under 'considerable influence') on any platform holding more than 8% (by revenue) of the SIC may not acquire stakes in daily newspapers, excluding pure online newspapers.

Restrictions on ownership by specific entity types (*actors concerned*)

- No advertising sales agency may exercise exclusivity over a number of daily newspapers whose print run exceeds 30% of the national print run; if an advertising sales agency is controlled by a publisher, it may not exercise exclusivity over a number of daily newspapers whose print run exceeds 20% of the national print run.

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- The Regulatory Authority for audiovisual media services, postal services and electronic communications (AGCOM) collects information on the ownership structure of media companies and keeps the Register of Communications Operators (ROC).

(Financial reporting)

- Media sector operators provide AGCOM with an annual declaration on the personnel and economic data on their activities through the Informativa Economica di Sistema (IES).

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- AGCOM, the Regulatory Authority for audiovisual media services, postal services and electronic communications.

(What procedures and benchmarks are applicable?)

- For procedures concerning restrictions (i) on ownership or (ii) market share for national tv channels or (iii) on cross-media ownership, AGCOM can request information and conduct inspections. The Director of the Media Services Department then transmits the draft provision to the Board (also subject to public consultation) together with the detailed report on the investigation. At the end of the consultation phase, the Board adopts the final provision.
- Daily newspaper publishers must communicate the number of copies they have printed every year using a form available on the AGCOM website.

(What remedies are available in case of non-compliance?)

²⁷⁰ Insights are based on the input submitted by Prof. Dr. Francesco Marrazzo, Adjunct Professor, University of Naples "Federico II"

- In case of non-compliance with the provisions adopted by AGCOM, AGCOM itself can launch another procedure aimed at sanctioning the non-compliant company. This sanction can go up to 5% of the infringing company's revenue.

(Are there media-specific transparency rules? Yes)

Legal basis

- Italian Constitution 1948 (*transparency*)
- Press Law (Law n.416 of 5 August 1981 amended by Law n.67 of 25 February 1987)
- [Consolidated Law on Audiovisual and Radio Media services](#) (Decree-Law No. 177), 2005
- Law 249/97 (*transparency*)
- [Resolution No. 66/09/CONS of 13 February 2009](#), Annex A
- [Decree-Law No. 44](#) of 15 March 2010
- [Law no. 220 of 14 November 2016](#)
- [Decree-Law no. 204](#) of 7 December 2017, 2017
- AGCOM rules 666/06/CONS (*transparency*)
- Italian Competition Law

Authorities

- Regulatory Authority for audiovisual media services, postal services and electronic communications 'AGCOM'
- Competition Authority 'AGCM'

Latvia²⁷¹

Ownership restrictions (TV broadcasting)

- The market share of electronic media may not exceed 35%. This restriction only applies in cases of a merger of companies when the merger application is examined by the Competition Council.

Cross-media ownership restrictions

- No restrictions

Restrictions on ownership by specific entity types (*actors concerned*)

- No restrictions

Transparency requirements for audiovisual media

(*Disclosure and reporting of media ownership*)

- The National Electronic Mass Media Council (NEMMC) publishes the register with copies of the broadcasting licences of the electronic media (radio and TV channels) and cable TV operators on its webpage. The titles and names of owners, including the percentage of shares held by owners is publicly available. Electronic media must disclose ownership information when they apply for broadcasting licences.

(*Financial reporting*)

- Regulation requires AVMS providers to report on their financial situation annually to the State Revenue service. Financial reporting is submitted to the NEMMC in the process of granting broadcasting rights.

Implementation of (transparency of) media ownership rules

(*Who is responsible for ensuring compliance?*)

- National Electronic Mass Media Council (NEMMC)
- Competition Council (only for merger cases)

(*What procedures and benchmarks are applicable?*)

- See above: *ownership restrictions*.
- The Competition Council is responsible for ensuring compliance by prohibiting mergers that violate the restrictions.

(*What remedies are available in case of non-compliance?*)

- Administrative fines

(*Are there media-specific transparency rules? No*)

Legal basis

- [Law on the Press and Other Mass Media](#), 1990
- Commercial Law (2000) (*transparency*)
- [Competition Law, 2004](#)
- [Electronic Mass Media Law](#), 2010 (Consolidated 12.07.2018) (also deals with *transparency* when applying for a broadcasting licence)
- [Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing](#) (*transparency*)

Authorities

²⁷¹ Insights are based on the input submitted by Prof. Dr. Anda Rožukalne, Head of the Department, Faculty of Communication, Rīga Stradiņš University

- National Electronic Mass Media Council 'NEMMC'
- Competition Council

Lithuania²⁷²

Ownership restrictions (TV broadcasting)

- No restrictions

Cross-media ownership restrictions

- No restrictions

Restrictions on ownership by specific entity types (*actors concerned*)

- Political parties, state and municipal institutions and agencies, and banks and legal persons established and/or managed by them, may not be producers of public information but may publish non-periodical informational publications about their activities.
- The Radio and Television Commission of Lithuania may not grant a broadcasting licence or a licence of re-broadcast content if the person has been sentenced for a crime against the independence of Lithuania, maintains/maintained national-security threatening relationships with foreign states not members of the EU and NATO, was involved/is involved in organised crime groups or terrorist organisations. The same rules apply to anyone who carries out unlicensed programme broadcasting activity without the use of frequencies, such as on the internet and providers of on-demand AVMS.

Transparency requirements for audiovisual media

(*Disclosure and reporting of media ownership*)

- Ownership data of producers and/or disseminators of public information who are legal persons must be provided to the Information System of Producers and Disseminators of Public Information. Data provided, except the personal number of a natural person, must be made public.

(*Financial reporting*)

- Media organisations must provide annual financial reports and information on income from state and municipal institutions and companies, political advertising, etc.

Implementation of (transparency of) media ownership rules

(*Who is responsible for ensuring compliance?*)

- Ministry of Culture and Centre of Registers

(*What procedures and benchmarks are applicable?*)

- See above: Transparency requirements for audiovisual media .

(*What remedies are available in case of non-compliance?*)

- Producers or disseminators of public information (media organisations) who fail to submit correct data incur liability.

(*Are there media-specific transparency rules? No*)

Legal basis

- [Law on Competition](#) (Consolidated 2.7.2019)
- [Law on Funding of, and Control over Funding of, Political Parties and Political Campaigns](#) (Consolidated 1.1.2020) (*transparency*)
- [Law on the Provision of Information to the Public](#) (Consolidated 17.01.2020) (*transparency*)

Authorities

- Radio and Television Commission of Lithuania 'RTCL'

²⁷² Insights are based on the input submitted by Dr. Deimantas Jastramskis, Associate professor, Vilnius University

- Ministry of Culture

Luxembourg²⁷³

Ownership restrictions (TV broadcasting)

- No restrictions

Cross-media ownership restrictions

- No restrictions

Restrictions on ownership by specific entity types (*actors concerned*)

- No restrictions

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- No requirement.

(Financial reporting)

- No reporting obligation.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Competition Council.

(What procedures and benchmarks are applicable?)

- General laws on competition apply.

(What remedies are available in case of non-compliance?)

- None

(Are there media-specific transparency rules? No)

Legal basis

- [Law of 27 July 1991 on electronic media](#) (consolidated 17 December 2010 and in 2 February 2015)
- [Grand-Ducal regulation](#), 2015

Authorities

- Independent Audiovisual Authority 'ALIA'
- Competition Council

²⁷³ Insights are based on the input submitted by Prof. Dr. Tim Raats, Head of Media Economics and Policy Unit, IMEC-SMIT, VUB

Malta²⁷⁴

Ownership restrictions (TV broadcasting)

- No restrictions

Cross-media ownership restrictions

- A provider of a nationwide radio or television service, including the provider of public broadcasting services, may not own, control or be editorially responsible for a community radio service.

Restrictions on ownership by specific entity types (*actors concerned*)

- No restrictions

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- Audiovisual media service providers shall make accessible ownership information to the public.

(Financial reporting)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Broadcasting Authority

(What procedures and benchmarks are applicable?)

- The Broadcasting Authority grants licences.

(What remedies are available in case of non-compliance?)

- In the event of a breach, a licence can be suspended or revoked together with the imposition of fines.

(Are there media-specific transparency rules? No)

Legal basis

- [Broadcasting Act \(1991\) Chapter 350](#) (consolidated in 2015 and amended by Act XVI of 2018) Art. 16N (also deals with *transparency*)
- [Maltese Companies Act](#) 1996
- [Electronic Communications Networks and Services](#) 2011, Cap 399
- [Subsidiary legislation 350.34 – Notification of On-demand Audiovisual Media Services Order](#), 2012

Authorities

- Broadcasting Authority
- Competition and Consumer Affairs Authority
- Minister responsible for Culture

²⁷⁴ Insights are based on the input submitted by Dr. Karsten Xuereb, L-Università ta' Malta

Netherlands²⁷⁵

Ownership restrictions (*TV broadcasting*)

- No restrictions

Cross-media ownership restrictions

- No restrictions

Restrictions on ownership by specific entity types (*actors concerned*)

- No restrictions

Transparency requirements for audiovisual media

(*Disclosure and reporting of media ownership*)

- Media-specific disclosure rules relating to ownership only exist in the context of the procedure for obtaining a “permission” (licence) to provide commercial, linear (radio and television) broadcasting services in the Netherlands. No similar disclosure rules exist for other media services.
- The information regarding ownership is only disclosed to the Media Authority. The Authority’s licensing decisions are publicly available.

(*Financial reporting*)

- Private limited companies, public limited companies, cooperatives and mutual insurance companies are legally required to file financial statements with the Chamber of Commerce.

Implementation of (transparency of) media ownership rules

(*Who is responsible for ensuring compliance?*)

- Media Authority (CvdM)

(*What procedures and benchmarks are applicable?*)

- There is a system of ministerial override, but this can only be used to override a decision of the Dutch competition authority blocking a concentration.
- The information regarding ownership is only disclosed to the CvdM in the process of granting licences.

(*What remedies are available in case of non-compliance?*)

- N/A

(*Are there media-specific transparency rules? Nos*)

Legal basis

- The Dutch Telecommunications Act 1988
- [Competition Act](#) 1997
- [Commercial Register Act](#) (Handelsregisterwet) (*transparency*)
- [Media Act of 2008](#) as amended by Act no 552 - Art. 3.29c (also deals with *transparency* when applying for a broadcasting licence)

Authorities

- Media Authority ‘CvdM’
- Authority for Consumers & Markets ‘ACM’
- Minister of Economic Affairs
- Council of Ministers

²⁷⁵ Insights are based on the input submitted by Dr. Ben Van Rompuy, Assistant Professor, Leiden University

Poland²⁷⁶

Ownership restrictions (TV broadcasting)

- There is a prohibition on abuse of a 'dominant position', which is understood as a position that allows an entrepreneur to achieve a market share exceeding 40%. The National Broadcasting Council (KRRiT) evaluates whether the applicant might achieve such a position and grants a licence or not.

Cross-media ownership restrictions

- No restrictions

Restrictions on ownership by specific entity types (*actors concerned*)

- No restrictions

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- Broadcasters are required to provide information on the identification of the entity to the KRRiT. Some broadcasters disclose such information to the public, but only partial information.

(Financial reporting)

- A media service provider deliver its financial statements to the KRRiT on a yearly basis. The filing is automatically published in the Court and Economic Monitor.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- National Broadcasting Council (KRRiT).

(What procedures and benchmarks are applicable?)

- The KRRiT awards and revokes licences for transmission and retransmission of radio and television programme services.
- The KRRiT keeps a register of transmitted and retransmitted television programme services.

(What remedies are available in case of non-compliance?)

- None listed

(Are there media-specific transparency rules? No)

Legal basis

- [Broadcasting Act](#) of December 29, 1992 (Consolidated in 2016) (also deals with *transparency*)
- [Act on National Register 1997](#)
- [Code of Commercial Partnerships and Companies](#) 2000 (*transparency*)
- [Act on Competition and Consumer Protection](#) 2007
- [National Media Council Act 2016](#)

Authorities

- National Broadcasting Council 'KRRiT'
- Office of Competition and Consumer Protection 'UOKiK'
- Office of Electronic Communications 'UKE'
- Ministry of Culture

²⁷⁶ Insights are based on the input submitted by Prof. Dr. Alicja Jaskiernia, University of Warsaw

Portugal²⁷⁷

Ownership restrictions (TV broadcasting)

- The television and audiovisual services on-demand law establishes a limit of 50% of the total licences of free-to-air television.

Cross-media ownership restrictions

- No restrictions

Restrictions on ownership by specific entity types (*actors concerned*)

- In general, television or radio activity may not be carried out or financed, directly or indirectly, by political parties or associations, unions, commercial or professional organisations, or public professional associations.
- In general, besides the Public Service Broadcaster, television or radio activity may not be carried out by the State, the Autonomous Regions, by local authorities or their associations, directly or through state or regional, municipal, inter-municipal, metropolitan or regional public companies.

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- Media companies are required to publish their ownership structures. Every holder of more than 5% of the total shares must report these to the Regulatory Entity for Social Communication (ERC), as well as any other stake they have in other media companies.
- All changes in media ownership must also be reported.
- The ERC runs a platform on which this information is visible.

(Financial reporting)

- Media companies must report financial flows to the ERC.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Regulatory Entity for Social Communication (ERC)

(What procedures and benchmarks are applicable?)

- The relevant entity for media mergers is the National Authority for Competition. However, the ERC must provide a statement, which is binding when pluralism or freedom of expression is at risk.
- Other operations in electronic media (transfer of ownership without a merger operation or with a merger of small size) must be authorised by the ERC.
- Any operation of a broadcaster buyout or association with another programming service must be approved by the ERC.

(What remedies are available in case of non-compliance?)

- Should any collective or individual person fail to fulfil transparency obligations (see above: *Transparency requirements for audiovisual media*), they lose their voting rights.

(Are there media-specific transparency rules? Yes)

Legal basis

- [Press Law n.2/99](#) (n.18/2003 and n.19/2012)
- [Electronic Communications Law n.5/2004](#) (last amended by Law n.138/2016 on June 2016)
- [Law no. 27/2007, on On-Demand Television and Audiovisual Services](#), 2007 (Consolidated in 2015)

²⁷⁷ Insights are based on the input submitted by Elsa Costa e Silva, Universidade do Minho

- [Radio Law n.54/2010](#)
- General Law on Consumer Protection
- [Media Ownership Transparency Law](#) (*transparency*)

Authorities

- Regulatory Entity for Social Communication 'ERC'
- Authority for Competition
- National Authority for Postal Communications and Electronic Communications 'ANACOM'

Romania²⁷⁸

Ownership restrictions (TV broadcasting)

- A company may own a maximum of 30% of the market of broadcasting companies nationwide, measured in audience share.
- A percentage higher than 30% represents a dominant position in shaping public opinion and in certain cases, if the percentage persists after the Council's summons or if erroneous information is provided, the licence may be withdrawn. The Public Service Broadcaster is exempt from this rule.

Cross-media ownership restrictions

- The law limits the number of media companies in which one owner may hold a majority of shares to one, with the additional possibility of holding a percentage of a maximum of 20% of the voting rights in another company in the field of audiovisual communication.

Restrictions on ownership by specific entity types (*actors concerned*)

- Audiovisual licences may be granted to local public authorities provided that there is no other audiovisual licence for a local programme service, and that it provides exclusive information services regarding the respective community.
- Members of the National Audiovisual Council (CNA) may not directly or indirectly hold shares or social shares in companies with activities in fields where they would be in conflict of interest with the capacity of a member in the Council.
- Members of the CNA may not be members of the board of directors of providers and distributors of audiovisual programme services, and they may not exert positions or hold shares or social shares in a company holding an audiovisual licence.

Transparency requirements for audiovisual media

(*Disclosure and reporting of media ownership*)

- The National Audiovisual Council (CAN) has to be informed of individuals or economic actors acquiring 10% or more of the companies' shares, and/or with voting rights in companies granted broadcasting/audiovisual licences.
- Joint-stock companies holding audiovisual licences may only hold registered shares.
- Providers of audiovisual media services must ensure access of the public to, among other information, the name of any legal representative, associate or shareholder having a share of the social capital or of the voting rights of a company holding audiovisual licence that is more than 20%, as well as the names of the managers and of the editors.

(*Financial reporting*)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(*Who is responsible for ensuring compliance?*)

- National Audiovisual Council (CNA)
- Romanian Competition Council

(*What procedures and benchmarks are applicable?*)

- See above: *Ownership restrictions* and *Cross-media ownership restrictions*
- The CNA initiates the procedure for the evaluation of the dominant position in shaping public opinion. If a person is evaluated as holding a dominant position in shaping public opinion, they are summoned by the CNA to respect the 30% threshold. A new evaluation is then made.

²⁷⁸ Insights are based on the input submitted by Catalina Iordache, PhD researcher and Teaching Assistant, IMEC-SMIT, VUB

- The Romanian Competition Council enforces merger control rules. Concentrations in the media sector may be subject to a notification obligation to the CNA.

(What remedies are available in case of non-compliance?)

- Withdrawal of licence if the threshold is not respected after the new evaluation of a dominant position in shaping public opinion.
- Blocking of transfer of licences in cases of mergers and acquisitions.

(Are there media-specific transparency rules? Yes)

Legal basis

- [Competition Law](#) 1996
- [Audiovisual Law 504/2002](#), 2002 (Consolidated 17.11.2017) (also deals with *transparency*)
- [Government Ordinance](#) 39/2005 on Cinematography
- [Decision 320 of 29 May 2012 on the supply of on-demand audiovisual media services](#)
- [Decision 286 of 14 April 2014 with regard to the publication of the codes of professional conduct adopted by the audiovisual media services providers](#)

Authorities

- National Audiovisual Council 'CNA'
- Competition Council
- National Authority for Management and Regulation in Communications 'ANCOM'

Slovakia²⁷⁹

Ownership restrictions (TV broadcasting)

- One person may be granted at most one licence to broadcast a TV or a radio programme service, with the exception of monothematic TV programme services.
- Broadcasters may develop a programme network as long as it is received by less than 50% of the total population.

Cross-media ownership restrictions

- All forms of cross-ownership or personal connection between the broadcaster of a radio programming service and the broadcaster of a television programming service, or with a periodical press publisher at the national level, are prohibited. This provision excludes Public Service Broadcasters.
- One person may have a cross-ownership connection with several licensed broadcasters of radio programme services at the local or regional level, or with several licensed broadcasters of television programme services at the local or regional level only if less than 50% of the population can receive the broadcasts of all the broadcasters with whom this person has cross-ownership connections.
- A person may not be a broadcaster and provide a terrestrial multiplex.

Restrictions on ownership by specific entity types (*actors concerned*)

- No restrictions

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- At the request of the Council for Broadcasting and Retransmission (CBR), a broadcaster must submit all information necessary to establish that the restrictions are respected (see above: *ownership restrictions* and *cross-media ownership restrictions*)
- Media companies must inform the Ministry of Culture about the ownership structure for every stakeholder who has reached at least a 20% stake.

(Financial reporting)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Council for Broadcasting and Retransmission 'CBR'

(What procedures and benchmarks are applicable?)

- No specific procedures or benchmarks

(What remedies are available in case of non-compliance?)

- The licence is not granted or revoked.

(Are there media-specific transparency rules? Yes)

Legal basis

- [Act 308/2000 on Broadcasting and Retransmission and on the amendment of Act No. 195/2000 on Telecommunications](#), 2000 (Consolidated in 2016, 2018)
- Act 220/2007 Coll (*transparency*)

²⁷⁹ Insights are based on the input submitted by Juraj Polák, Senior lawyer ve spoločnosti Markiza - Slovakia (CME)

Authorities

- Council for Broadcasting and Retransmission 'CBR'
- Ministry of Culture

Slovenia²⁸⁰

Ownership restrictions (TV broadcasting)

- If a person wishes to acquire an ownership or management stake or a share in the voting rights of a TV broadcaster of 20% or more, the competent ministry can refuse if this leads to a situation where the person or its associates gain control of over 30% of the national coverage by all television programme services.

Cross-media ownership restrictions

- Owners of radio stations may not own television stations, and vice versa.
- The owner of a radio or a television channel may not control more than 20% of the shares or voting rights at a daily newspaper and vice versa.

Restrictions on ownership by specific entity types (*actors concerned*)

- Advertising agencies may not own or control more than 20% of the shares or voting rights of a radio or TV channel.
- Telecom companies may not own radio or television stations.

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- Media companies have a duty to disclose information on their ownership structures to the Ministry of Culture, which is published in the media.

(Financial reporting)

- No financial reporting obligations.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Ministry of Culture
- Competition Protection Agency

(What procedures and benchmarks are applicable?)

- The Ministry of Culture is responsible for reviewing concentration cases between large daily newspapers, radio and/or television. This is followed by a review by the Competition Protection Agency.
- In the case of magazines and websites, the decision is made by the Competition Protection Agency.

(What remedies are available in case of non-compliance?)

- N/A

(Are there media-specific transparency rules? Yes)

Legal basis

- [Media Law](#) 2001 (Amended 2016) (also deals with *transparency*)
- [Act on Audiovisual Media Services](#), 2011

Authorities

- Agency for Communication Networks and Services of the Republic of Slovenia 'AKOS'
- Slovenian Competition Protection Agency

²⁸⁰ Insights are based on the input submitted by Dr. Marko Milosavljevic, Associate Professor, Chair of Journalism, University of Ljubljana

- Ministry of Culture

Spain²⁸¹

Ownership restrictions (TV broadcasting)

- There must be at least three national broadcasting licence holders.
- If an individual owns 5% of the share capital or voting rights of a broadcasting licence holder, the individual may not have significant holdings in any other company within the same area of coverage. There is, however, an important exception for national broadcasting licence holders, which may simultaneously hold shares in several national television stations as the result of a merger, provided that they have no more than 27% of the total audience during the 12 consecutive months prior to the acquisition.

Cross-media ownership restrictions

- No restrictions

Restrictions on ownership by specific entity types (*actors concerned*)

- No restrictions

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- The Ministry of Economic Affairs and Digital Transformation keeps the National Register of Audiovisual Communication Service Providers, which is available on the Ministry's website. Companies have to file their data on ownership structure and other information on this Register

(Financial reporting)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Ministry of Economic Affairs and Digital Transformation

(What procedures and benchmarks are applicable?)

- Control of licence ownership.

(What remedies are available in case of non-compliance?)

- Fine (between EUR 500 001 and EUR 1 million for audiovisual media services and EUR 100 001 and EUR 200 00€ for radio) to cancellation of licences.

(Are there media-specific transparency rules? Yes)

Legal basis

- [Broadcasting Act](#), also known as Act No. 7/2010 of 31 March on Audiovisual Communication
- [National Competition and Market Commission Act \(2013\)](#)
- [Royal Decree 847/2015 of September 28, 2015](#), regulating the National Registry of Audiovisual Communication Service Providers (*transparency*)
- [Competition Act](#) (2007)
- [General Telecommunications Law](#) (2014)

Authorities

²⁸¹ Insights are based on the input submitted by Dr. Carles Llorens, Associate Professor, Universitat Autònoma de Barcelona

- National Commission of Markets and Competition 'CNMC'
- Ministry of Economic Affairs and Digital Transformation

Sweden

Ownership restrictions (TV broadcasting)

- No restrictions

Cross-media ownership restrictions

- No restrictions

Restrictions on ownership by specific entity types (*actors concerned*)

- No restrictions

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- All Swedish media companies must make annual reports publicly available, which also include information on ownership, and must be available on their websites.

(Financial reporting)

- No financial reporting obligation.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Swedish Competition Authority (SCA)

(What procedures and benchmarks are applicable?)

- The SCA may oblige a company to provide information or to comply with the provisions of the Transparency Act.

(What remedies are available in case of non-compliance?)

- A fine maybe imposed.

(Are there media-specific transparency rules? No)

Legal basis

- [Transparency Act SFS 2005:590](#), also known as the Swedish Law of Financial Relations (*transparency*)
- [Competition Act SFS 2008:579](#)
- [Radio and Television Act](#), 2010 (Consolidated in 2018)

Authorities

- Press and Broadcasting Authority 'MPRT'
- Ministry of Culture
- Swedish Competition Authority 'SCA'

United Kingdom²⁸²

Ownership restrictions (TV broadcasting)

- The BBC, Channel 4 Corporation and S4C are prohibited from holding Channel 3 and Channel 5 licences.

Cross-media ownership restrictions

- A newspaper operator with 20% or more of the market share for print newspapers is prohibited from holding a Channel 3 licence (ITV & STV) or a stake in a Channel 3 licensee that is greater than 20%.
- The holder of a Channel 3 licence is also prohibited from holding an interest of 20% or more in a national newspaper operator with a market share of 20% or more.
- This also applies to the Channel 3 joint new provider (ITN).

Restrictions on ownership by specific entity types (*actors concerned*)

- Advertising agencies and political bodies are prohibited from holding any broadcast licences.
- Local authorities are in general disqualified from holding broadcast licences.
- Bodies which receive more than 50% of their funding from UK public funds are disqualified from holding most radio licences but are permitted to hold all types of TV licence.
- Religious bodies are prohibited outright from holding licences for Channel 3, Channel 5, sound broadcasting and multiplexes. For other licence types, Ofcom is given discretion to determine if it is appropriate for that body to hold a licence.

Transparency requirements for audiovisual media

(Disclosure and reporting of media ownership)

- TV and radio licensees must inform Ofcom of their ownership structure and of any change thereof.

(Financial reporting)

- Every year, licence holders must report to Ofcom about their “qualifying revenue”.

Implementation of (transparency of) media ownership rules

(Who is responsible for ensuring compliance?)

- Communications Regulator (Ofcom)

(What procedures and benchmarks are applicable?)

- Ofcom applies a ‘fit and proper’ person criterion, which considers if any director or shareholder or licence holder has received a criminal conviction or civil penalty.
- The Secretary of State can intervene in media mergers that raise public interest considerations. The Secretary of State can ask Ofcom and, if necessary, the Competition Commission to investigate any merger that could have a damaging effect on plurality or diversity or standards. It prevents unacceptable levels of cross-media dominance and ensures a minimum level of plurality.

(What remedies are available in case of non-compliance?)

- Ofcom can issue financial penalties for non-compliance with financial reporting.
- Ofcom can remove licences for non-compliance with licensee requirements.

(Are there media-specific transparency rules? Yes)

Legal basis

- [Enterprise Act 2002](#)
- [Communications Act 2003](#) (revised in 2018)
- [Companies Act 2006](#) (*transparency*)

²⁸² Insights are based on the input submitted by Dr. Sally Broughton Micova, University of East Anglia

- [Small Business, Enterprise and Employment Act 2015](#) (*transparency*)
- Ofcom guidelines (also deals with *transparency* when allocating broadcasting licences)

Authorities

- Communications Regulator 'Ofcom'
- Competition and Markets Authority 'CMA'
- Secretary of State