

## **SURVEY ON COSTS AND BENEFITS OF THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE (AVMSD 2009)**

### **GUIDANCE NOTES TO NATIONAL STAKEHOLDERS**

The survey asks for your opinion on any benefits and any downsides of certain rules under the AVMSD 2009. The survey also asks you to estimate the incremental costs and benefits of the rules under the AVMSD 2009, and provide supporting quantitative evidence where possible, in terms of **annual revenues/direct and indirect costs of compliance based on the best available data (in Euro), as appropriate.**

The survey has four sections, covering rules on:

- A. Commercial communications** – Questions on p 2-6, Rules on p 12-15
- B. European works** – Questions on p 7-9, Rules on p 16-17
- C. Protection of minors** – Questions on p 10, Rules on p 18
- D. The country of origin principle** – Questions on p 11, Rules on p 19-22

**The reference period for the quantitative questions is 2010 to 2014, inclusive.**

In all cases we welcome any additional relevant context, explanations and/or data you may wish to provide.

[Please note responses may be published]

## SECTION B: EUROPEAN WORKS

### Background

The AVMSD includes rules on the promotion of the production of and access to European works. Such promotion could be carried out, e.g., through financial contributions to the production and rights acquisition of European works or by ensuring a share and/or prominence of European works in the catalogue of programmes.

- Broadcasters are required, where practicable, to reserve a majority proportion of their broadcast transmission time for European works.
- Broadcasters are also required to reserve a minimum proportion (at least 10%) of their transmission time for European works created by independent producers.
- Member States are required to report to the Commission every four years on the implementation of these provisions in relation to on-demand services, and every two years in relation to linear services.

**See Annex B for a copy of the rules.**

### **B1. What do you consider to be (a) the **BENEFITS** and (b) the **DOWNSIDES** of the rules on European works?**

The rules on European Works are meant to be of benefit for the members of the Swedish Film & TV Producers' Association, as our members are producers of works originating in Sweden (European works as defined in article 1 of the AVMSD). However, the Swedish Film & TV Producers' Association is of the opinion that the rules have many weaknesses:

#### **1. The geographical scope of the Directive does not cover providers of audiovisual media services established outside the EU**

At present, the VoD market is dominated by US content providers. However, because they are established outside the EU, even if they target mainly European citizens in the EU, they are exempted from the AVMS obligations. This means i) there is a competitive disadvantage for European services which are subject to the Directive, ii) consumers of the US content providers' services are not protected by the legal dispositions of the AVMS Directive, and iii) the US players escape the obligations to finance and promote European independent works, which is the cornerstone allowing production companies to distribute a wide and diverse offer of film/TV content. As linear broadcasters are gradually losing market shares, and thus contribute less to the promotion of independent productions than they used to, investment from VoD platforms will become more and more important. When US VoD services are excluded from the scope of the AVMSD, it clearly hampers the objectives of 167 TFEU in relation to cultural diversity.

#### **2. The current rules on European Works need to be strengthened**

The fact 1) that article 17 currently only requires 10 % of the broadcasters' transmission time to be

reserved for European works created by producers who are independent from broadcasters and 2) that it is currently not an absolute requirement that the producer needs to own all the secondary rights to the works for such producer to be considered independent, makes the current rules on European works ineffective. The rules needs to be strengthened, as follows, to make a difference:

(i) Article 17 of the AVMSD should be amended to read that 25% (instead of 10% as currently applies) of the broadcasters' transmission time should be reserved for European works created by producers who are independent of broadcasters, and

(ii) (of equal importance as (i) ) According to recital 71 of the directive: *"When defining 'producers who are independent of broadcasters' as referred to in Article 17, Member States should take appropriate account notably of criteria such as /.../ the ownership of secondary rights."* Ownership of secondary rights is absolutely crucial for independent producers. Therefore, when defining "producers who are independent from broadcasters" it should be an absolute requirement that the producer is the owner of all secondary rights to the works.

Making these two changes would bring the rules in line with the regulation that is already in place for the UK public service broadcasters.

## European works 50% rule

**B2. On a scale of 1-5 where 1 means 'low cost' and 5 means 'high cost', what were the costs to your business of the requirement that the majority of transmission time be reserved for European works, where practicable?**

CIRCLE RELEVANT NUMBER

Low Cost

High Cost

1

2

3

4

5

DK/NA

**B3. On a scale of 1-5 where 1 means 'low level of benefits' and 5 means 'high level of benefits', what were the benefits to your business of the requirement that the majority of transmission time be reserved for European works, where practicable?**

CIRCLE RELEVANT NUMBER

Low Benefit

High Benefit

1

2

3

4

5

DK/NA

**B4. Please provide any supporting evidence in the form of estimated costs and benefits to your business of the provision requiring that the majority of transmission time be reserved for European works, where practicable.**

N/A.

### European works 10% rule

**B5. On a scale of 1-5 where 1 means 'low cost' and 5 means 'high cost', what were the costs to your business of the requirement that 10% of transmission time be reserved for independent productions?**

CIRCLE RELEVANT NUMBER

Low Cost

High Cost

1

2

3

4

5

DK/NA

**B6. On a scale of 1-5 where 1 means 'low level of benefits' and 5 means 'high level of benefits', what were the benefits to your business of the requirement that 10% of transmission time be reserved for independent productions?**

CIRCLE RELEVANT NUMBER

Low Benefit

High Benefit

1

2

3

4

5

DK/NA

**B7. Please provide any supporting evidence in the form of estimated costs and benefits to your business of the provision requiring that 10 % of transmission time be reserved for independent productions.**

N/A.

HOWEVER, THE RULE NEEDS TO BE STRENGTHENED IN ORDER TO BE EFFECTIVE, PLEASE SEE ABOVE.

## ANNEX B

### Rules on the promotion of European works

#### **Applicable to linear audiovisual media services:**

##### **Article 16**

1. Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.
2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.

However, in respect of Greece and Portugal, the year 1988 shall be replaced by the year 1990.

3. Member States shall provide the Commission every 2 years, starting from 3 October 1991, with a report on the application of this Article and Article 17.

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 17 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 17 in accordance with the provisions of the Treaty on the Functioning of the European Union. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming,

the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.

#### **Article 17**

Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria. It must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within 5 years of their production.

#### **Article 18**

This Chapter shall not apply to television broadcasts that are intended for local audiences and do not form part of a national network.

#### **Applicable to non-linear audiovisual media services:**

#### **Article 13**

1. Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.
2. Member States shall report to the Commission no later than 19 December 2011 and every 4 years thereafter on the implementation of paragraph 1.
3. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and to the Council on the application of paragraph 1, taking into account the market and technological developments and the objective of cultural diversity.

#### **Definition of European works:**

#### **Article 1**

1. 'European works' means the following:
  - (i) works originating in Member States;
  - (ii) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3;
  - (iii) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements.
2. The application of the provisions of points (n)(ii) and (iii) of paragraph 1 shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned.
3. The works referred to in points (n)(i) and (ii) of paragraph 1 are works mainly made with authors and workers residing in one or more of the States referred to in those provisions provided that they comply with one of the following three conditions:

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- (i) they are made by one or more producers established in one or more of those States;
  - (ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States;
  - (iii) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.
4. Works that are not European works within the meaning of point (n) of paragraph 1 but that are produced within the framework of bilateral co-production agreements concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.