

In Europe, the regulatory cornerstone for regulating audiovisual services is the Audiovisual Media Services Directive (AVMSD)⁴⁶. The AVMSD is currently under review as to better cater for the convergence trends in the audiovisual market domain. In May 2016, a proposal for the update of the AVMSD was presented by the EU Commission⁴⁷. In April 2017, the EU Council agreed a general approach for amending the Commission's proposal, as to progress the revision of the Directive towards adoption. The EU Council's agreement included the following key aspects:

1. The scope of the Directive to include 'social media' services, including services based on user generated content;
2. The 'country of origin principle' to be maintained and facilitated⁴⁸;
3. Advertising ("Commercial Communication") rules more relaxed by applying the 20% hourly advertising limit only for the time window of 07:00 to 23:00;
4. Relaxing the rules for product placement and sponsoring, under the encouragement of self- and co-regulations;
5. On-demand service providers, including providers of OTT services such Netflix and Amazon, to provide at least 30% local content ("European Works") and give 'prominence' in their content catalogue to this local content⁴⁹.

With the above listed amendments, the AVMSD revision aims to close the regulatory gap between non-linear and linear services. Although the revision includes social media and video sharing platforms in its scope now, a distinct regime remains for VOD and linear TV. The new article 13 (Chapter IV) for VOD services includes now a minimum 30% local content requirement (as opposed to no % in the current AVMSD). However, for linear TV services it remains to be 50% (Article 16 remained unchanged). Moreover, TV services have an additional requirement for a 10% share for "European independent works" (Article 17 also remained unchanged). Also, although advertising, program sponsoring and product placement rules are more relaxed for the audiovisual services in scope of the new AVMSD (Chapter III), separate additional provisions remain in place for linear TV services for advertising and teleshopping (Chapter VII).

Considering the trend of media meshing between linear TV and on-demand services (see Section 3.3) and the penetration of connected TVs (see Section 2.3), this distinction between linear and non-linear may become untenable. Also, if NRAs consider non-linear and linear services to operate in the same *relevant market* any imbalance in the regulatory burden between these service categories may inflict market distortions⁵⁰.

⁴⁶ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010. It is noted that this Directive distinguishes between (a) general provisions for all services in scope (Chapter III), (b) provisions for on-demand services only (Chapter IV) and (c) provisions for television broadcasting (Chapters V to IX).

⁴⁷ COM (2016) 287 final, Proposal for a Directive of the European Parliament and the Council, amending Directive 2010/13/EU, 25 May 2016.

⁴⁸ The country of origin principle means that a service provider needs to respect only the rules of for example host country A, but can deploy its service in all EU countries. However, a receiving country B with stricter rules than those set by the Directive cannot restrict the service from the service provider in country A by applying these stricter rules, except in specific circumstances as defined in the Directive.

⁴⁹ In the Commission's proposal, see footnote 47, 20% of European Works was proposed which was raised to 30% by the EU Council.

⁵⁰ NRAs generally define *relevant markets* in resolving (ex-post) regulatory disputes, for example between OTT and Cable TV network operators, or for identifying market parties with *significant market power* (SMP), resulting (ex-ante) in specific licence conditions for parties with SMP.