

# Position Paper

## Cable Europe position on the European Commission proposal on the review of the AVMS Directive

Cable Europe welcomes the proposal published by the European Commission on 25 May to amend the Audiovisual Media Services Directive. The proposal, which forms a part of the Digital Single Market Strategy, reflects the changing nature of audiovisual services, of market players, technology and consumer behaviour. However, it is Cable Europe's position that the promotion of European content should be better achieved through tax incentives supporting the European production and distribution of VOD services rather than through quotas.

On the specifics of the proposal, Cable Europe's members share the following views.

### Country of Origin principle

The country of origin principle has been key for providing the legal certainty needed to foster business innovation and investment. Cable Europe welcomes the fact that the main elements of this principle will continue to apply. However, it needs to be ensured that Article 13 (2) - requiring providers of on-demand audiovisual media services to contribute financially to the production of European works in Member States where they are not established - will not dilute the country of origin principle.

### Self and Co-Regulation

We support the focus on self- and co-regulation, at national and EU levels, as a means to supplement the minimum harmonisation approach of the AVMS directive. In particular, Cable Europe's members welcome the encouragement by the Commission of the development of EU codes of conduct aimed at informing and protecting viewers, including minors. Our members have invested in child protection measures on their platforms for licensed TV channels and on-demand services and they are pleased with the announcement made by Commissioner Oettinger of brokering a new alliance which will build on the work of the CEO coalition to make the Internet a better place for kids.

### De-Regulation

We support the broadly deregulatory approach taken for a large part of the current rules (in particular commercial communications) which will ensure that old and new players are subject to a similar regulatory environment.



Cable Europe



## **Findability of content of general interest (recital 38)**

We welcome the fact that the proposed rules do not contain a specific provision on findability of content. However, we notice that recital 38 of the proposed directive would leave to the Member States the ability to impose obligations to ensure discoverability and accessibility of content of general interest, under certain conditions. In our view, users are best placed to choose themselves the content they want to watch and there is no need for regulating content findability. In addition to programmes lists, cable operators are increasingly making available search and recommendation tools that are non-discriminatory and include linear and non-linear content. Any findability/must-be-found type of obligations would not only limit users' choice but also discriminate against content that is not granted preferred visibility. Market developments and shifts in the value chain in favour of powerful broadcasters should be taken into account when adopting new national provisions on findability. The goal of a revised AVMSD should not be to safeguard market shares of specific content providers but to secure the existence of divergent and competing opinions in the media. Therefore, recital 38 needs to ensure that new national rules on findability should only be endorsed if and when market forces do not deliver this goal. Such developments should be demonstrated first by the media regulator.

## **Must-Offer**

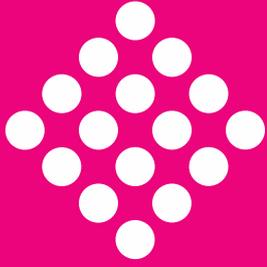
In order to offer customers a broad choice of content, operators need to be able to license relevant content from broadcasters and producers. In fact, media diversity and the existence of public-value content highly depends on the content providers' willingness to offer their content to distributors. Due to the above mentioned shifts in market power along the value chain, this process becomes more and more cumbersome. Hence, the EU legislator should consider establishing an obligation for content providers to treat operators in a non-discriminatory manner as regards the licensing of public value content. Such a must-offer rule would be of particular importance where findability obligations are adopted at national level.

## **Accessibility (Article 7)**

Article 7 of the directive should not be deleted from the current text. We believe that Member States should continue to encourage media service providers to make their services gradually more easily available to people with visual or hearing disabilities. In addition, we believe this provision could be supplemented with self-regulatory initiatives aimed at reinforcing solutions for people with disabilities. Our members have been following a self-regulatory approach in the field of



Cable Europe



29 July 2016

protection of minors and this has proven to be an effective means to increase the level of protection.

### **Protection of Minors (Article 12)**

Cable Europe considers protection of minors as an important issue. We welcome the new wording of article 12 and the fact that Member States shall take appropriate measures - to ensure that minors will not normally hear or see certain programmes – based on the potential harm of the programmes in question.

### **Quotas for On-Demand Services (Article 13)**

It is Cable Europe's position that the promotion of European content is better achieved through tax incentives to support the European production and distribution of VOD services rather than through quotas, which we think are unnecessary. At least, article 13 should offer VOD service providers a choice between direct investments, quotas or financing dedicated film funds, where they exist, in order to promote European works.

Our members do not oppose the new (“at least 20%”) proposed quota, although this ratio should not be increased during the decision-making process. We draw also the attention to the fact that the definition of “European works” is complex which makes it difficult to determine the origin of a work. Often this information is not provided to cable operators with other metadata, and it is not possible (without unreasonable effort) to find out whether works are (or not) European without further assistance from rights holders. Therefore, the Commission should ensure that any reporting obligation for VOD operators will be combined with an obligation for content providers to label the content accordingly to the criteria that constitute a European work.

In some cases, the cable operators' set-top-boxes allow viewers access to different catalogues (the catalogue of the cable operator and the catalogue of third parties with whom the cable operator has entered into an agreement). Each video catalogue embedded in the video-platform should comply with the requirement on quotas, if any. The cable operator should not be held liable for fulfilling the quota obligation in relation to the integrated library.



Cable Europe



## Prominence of European works for On-Demand Services (Article 13)

In relation to prominence of European works in VOD catalogues, Cable Europe has the following observations:

- Prominence of European works is likely to discriminate against other types of content that might be preferred by the viewer, thus interfering with viewers' experience and expectations.
- Prominence should in any case be market-led i.e. focus on the solutions that are developed by the market.

## Video-Sharing Platforms (Article 28a)

It is important to highlight that, in full compliance with Directive 2000/31/EC on Electronic Commerce, Member States should not be allowed to impose - on video-sharing platforms- a general obligation to monitor the information which they transmit or store, nor a general obligation to actively seek facts or circumstances indicating illegal activity. In particular, although we are very sensitive to protecting minors and viewers in general from harmful and violent content and from hatred speech, we share the Commission's view that video-sharing platforms should only be required to comply with a limited set of obligations, such as establishing the mechanisms to allow users to report problematic content and mechanisms to handle that reporting. This is a more pragmatic and efficient solution.

\* \* \*

## About Cable Europe

Cable Europe is the trade association that connects leading broadband cable TV operators and their national trade associations throughout the European Union. The regulatory and public policy activities of Cable Europe aim to promote and defend the industry's policies and business interests at European and international level. The European cable industry provides high speed broadband internet, TV services, and telephony into the home of 64.5 million customers the European Union.

*This paper represents the views of the full members of Cable Europe, and not necessarily those of our associate members, partners or affiliates.*



Cable Europe