



# **SURVEY AND DATA GATHERING TO SUPPORT THE IMPACT ASSESSMENT OF A POSSIBLE NEW LEGISLATIVE PROPOSAL CONCERNING DIRECTIVE 2010/13/EU (AVMSD) AND IN PARTICULAR THE PROVISIONS ON THE PROTECTION OF MINORS**

## **FINAL REPORT**

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## List of abbreviations

AV	Audio-visual
AVMSD	Audio-Visual Media Services Directive
BBFC	British Board for Classification
CSA	Conseil Supérieur de l'audiovisuel
CvdM	Commissariaat voor de Media
EC	European Commission
EU	European Union
FTE(s)	Full-time employee(s)
IARC	International Age Rating Coalition
ISP(s)	Internet Service Provider(s)
MS(s)	Member State(s)
NICAM	Netherlands Institute for Classification of Audio-visual Media
PEGI	Pan-European Game Information
TVwF	Television without Frontiers Directive
UGC	User Generated Content

## Table of Contents

<b>Executive Summary .....</b>	<b>5</b>
<b>Introduction .....</b>	<b>13</b>
<b>1. Development of a European policy framework for the protection of minors in audiovisual landscape .....</b>	<b>14</b>
1.1 The protection of minors in the current regulation of audiovisual media services	16
1.2 New challenges for the protection of minors in an expanding audiovisual service landscape and online space .....	17
1.3 Looking forward: initiatives following the AVMS Directive and remaining challenges .....	19
1.4 The objectives and scope of this study .....	20
<b>2. Approach and methodology .....</b>	<b>23</b>
2.1 Methodology .....	23
<b>3. Scenarios.....</b>	<b>25</b>
3.1 Maintain the current material and geographical scope of application of the AVMSD (status quo).....	25
3.2 Extension of material scope through self- and co-regulation.....	26
3.3 Extension of the geographical scope .....	31
<b>4. Findings of the study .....</b>	<b>34</b>
4.1 Option 1: Status quo.....	34
4.2 Option 2.1: Increasing the level of requirements for on demand services, extending the existing obligation with respect to seriously harmful content to potentially harmful content on demand.....	52
4.3 Option 2.2: Decreasing the level of requirements for TV broadcasting services and increasing the level of requirements for on-demand services, while maintaining differentiation of seriously or likely to impair .....	60
4.4 Option 3: Increasing the information available on harmful content and promote the harmonisation of classification systems by different measures .....	68
<b>5. List of contacted and interviewed entities .....</b>	<b>87</b>
<b>6. References .....</b>	<b>92</b>

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## Executive Summary

### Legal background – the AVMS Directive

The technological advancements and the developments of the audiovisual media market have constituted pivotal catalysts for the development of a regulatory regime for the audiovisual media sector in the EU. The overarching goal of the regulation of the sector was to support the creation of a single market for audiovisual media services, strengthen the competitiveness of the European audiovisual industry, empower media consumers and contribute to freedom of expression and information, while at the same time protecting children from harmful media content. The goal of protecting children was initially codified in the Television without Frontiers Directive (TVwF)<sup>1</sup> (1989) and, thereafter, in the Audiovisual Media Service Directive (hereinafter, the "AVMSD") (2010).

### Rationale and remit of the study

The present study is part of the process launched by the European Commission to review and, if deemed necessary, amend the AVMSD. The dynamic development of the audiovisual media sector and of technology ought to be mirrored by the regulatory framework in order to achieve the desired objectives, including that of providing proper protection of minors across EU Member States. The study initiated by the European Commission aims at evaluating whether the current regulatory framework is still sufficient to ensure the protection of minors.

The overall purpose of this study is to provide a thorough evidence base to the European Commission to support the Regulatory Fitness and Performance evaluation (REFIT) and the Impact Assessment accompanying possible legislative amendments to the current regulatory framework stipulated in the AVMSD. The study investigates the possible economic and social impacts of a number of different policy options for amending the AVMSD:

- **Option 1:** Maintaining the status quo – which entails maintaining the current provisions as stipulated in Article 27 and Article 12 of the AVMSD;
- **Option 2.1:** Increasing the level of requirements for on demand services, extending the existing obligation with respect to *seriously* harmful content to *potentially* harmful content on demand;
- **Option 2.2:** Decreasing the level of requirements for TV broadcasting services and increasing the level of requirements for on-demand services, while maintaining differentiation of seriously or likely to impair;
- **Option 3:** Increasing the information available on harmful content and promote the harmonisation of classification systems by different measures by:
  - **3A:** Guaranteeing information obligations on content (age rating and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States

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<sup>1</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities - "Television Without Frontiers" Directive (TVWF Directive).

- **3B:** Implementing a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/ descriptors, across Member States and service providers.

The assessment of the economic and social impacts of different policy options was conducted in the context of three different scenarios concerning the material and geographical scope of the AVMSD, namely: (a) ***maintaining the current material and geographical scope***; (b) ***extending the material scope through self-and/or co-regulation*** to online audiovisual media content, in particular user-generated content platforms; (c) ***extending the geographical scope*** to AV providers from outside the EU that are providing services on EU markets.

### Methodological approach and scenarios

The report draws on findings collected through a variety of methodological tools:

- **Desk research** – which supported the identification of potential economic and social impacts of the different options under the different scenarios and the formulation of hypotheses;
- **Interviews** – which involved key stakeholders in six Member States (i.e. Germany, Denmark, France, Hungary, Italy, and the Netherlands);
- **Public consultation analysis** – A series of public consultations was initiated and conducted by the European Commission between 2013 and 2015. The results have been thoroughly analysed and fed into the evidence base which supported the assessment of the social and economic impacts of each policy option under the various scenarios.

A systematic data collection process was performed and the data collected from different sources and through different methods has been analysed and triangulated.

### Findings in the study

The following section provides an overview of the main findings of the study in connection to the three policy options that have been assessed. The findings are presented per policy options.

#### Option 1: Maintaining the status quo

The key findings of the study in connection to the impact of the implementation of the policy Option 1 under each of the three scenarios are as follows.

- The available evidence suggests that the administration and enforcement costs of policy Option 1 under the current ***status quo scenario*** vary from one Member State to another. Reported data on costs during interviews was generally limited and extensive desk research did not retrieve datasets necessary to make a cross-country assessment of costs. The reported costs as a result of the current provisions within a small sample of cases were estimated to range between 400,000 EUR (in France) and 1,000,000 EUR (in Germany) per year. In this context, it has also been assessed that the ***extension of the material scope***, is likely to lead to substantive additional administration and enforcement costs as a result of a larger number of providers that would be monitored by regulatory authorities. Cases where such monitoring is already performed were assessed and they provided an indication of the impact of the extension of the material scope on administration and enforcement costs. For

example, in the Netherlands, the NICAM Kijkwijzer system is estimated to imply internal costs of approximately EUR 750,000 per year. Concerning the **extension of the geographical scope**, based on available data for non-EU based providers, the analysis suggests that the total costs for monitoring non-EU based providers would be approximately EUR 124,320 per year (divided between linear service providers (70 channels) – EUR 72,520 per year, and non-linear service providers (50 channels) – EUR 51,800 per year).

- For the service providers, the compliance costs related to the provisions on protection of minors are relatively minor under the **current status quo scenario**, stemming mostly from stricter levels of protection at national level (for example content information, age ratings). An **extension of the material scope** is likely to affect on-line providers (in particular User Generated Content), as well as Internet Service Providers. The latter would be required to set in place mechanisms to categorise content (e.g. internet filters, on-device protection, safe modes/restricted access mechanisms), in cases where providers do not have such mechanisms already in place, which would lead to additional moderate costs.
- Maintaining the status quo would continue offering only moderate protection to minors and discrepancies would persist in the levels of protection between Member States depending on the strictness of the provisions at national level and the manner in which "likely to" and "seriously" impairing content is interpreted. The research identified that the main reason for concern concerning audiovisual content among stakeholders is represented by the level of risk exposure of children to harmful content in the online world and from content broadcast by providers from countries outside the EU. There is substantive evidence to suggest that an **extension of the material scope** and/or an **extension of the geographical scope** of the current provisions would yield a higher level of protection of children and mitigate partly the afore-mentioned concerns, but their feasibility was questioned.
- The status quo was assessed as being adequate in ensuring a balance between the need to safeguard the protection of children and the freedom of expression. The current provisions were assessed positively by stakeholders as they allow for cultural sensitivities to be reflected at national level. The **extension of the material scope through self- and co-regulation** was assessed as being a good alternative to government control having the potential to contribute to more flexibility and adaptability to change in the dynamic audiovisual media sphere. However, the **extension of the geographical scope** was correlated to a potential decline in the willingness of non-EU providers to serve EU markets, which would affect the diversity and availability of content. This would be likely to have a negative impact on the freedom of expression of both children and adults but result in higher protection of minors from harmful content.

### **Option 2.1: Increasing the level of requirements for on demand services, extending the existing obligation with respect to seriously harmful content to potentially harmful content on demand**

The overall findings in connection to the policy Option 2.1 under each of the three scenarios related to the scope of the AVMSD are as follows.

- The findings suggest that Option 2.1 would only affect administration and enforcement costs for regulatory authorities in the Member States which are currently implementing only the minimum requirements for on demand services<sup>2</sup>. However, none of the regulatory authorities consulted in the Member States where stricter regimes are already in place could provide estimates of the costs associated with a stricter regime. This is due to the fact that costs related to implementation of provisions related to protection of minors are not calculated separately from other costs. Some indications for the **status quo scenario** came from the UK where data from the co-regulator ATVOD suggest a “high end” monitoring cost amounting to EUR 1,293 per non-linear channel per year. The implementation of policy Option 2.1 in conjunction with either the **extension of the material scope** and/or **the extension of the geographical scope** would result in additional costs which are assumed to be similar to those under Option 1.
- Evidence suggests that compliance costs arising from the implementation of Option 2.1 would be imposed only on providers in Member States which do not have stricter provisions implemented already<sup>3</sup>. The main cost drivers would be constituted by the need for rating and classifying content and the cost for restricting access. The costs related to the rating and classification of content would vary from one AV provider to another but data provided from two Member States suggests that the costs would range between EUR 100,000 and over EUR 550,000 per provider per year. It was not possible to collect data regarding costs of access controls, as most providers interviewed could not provide costs for either implementation or running the systems. Overall, the costs were considered minor in terms of technical investment and running costs, with the main cost driver being the existence or not of reliable metadata (ratings, content information). The impact of both the **extension of the material scope** and the **extension of the geographical scope** would not differ from similar extensions with the current provisions unchanged, therefore additional compliance costs would be the same as under Option 1.
- The implementation of Option 2.1 was assessed to have only a moderate positive impact on the protection of minors, if implemented under the current **status quo scenario**, likely to occur in Member States where “likely to impair” content is currently allowed without restrictions (9 Member States and BE-NL)<sup>4</sup>. The extent to which the adoption of Option 2.1 with an **extension of the material scope** via co- and/or self-regulation would have an impact on the protection of minors was assessed to depend on, inter alia: 1) the degree of participation of platforms providers in self- and co-regulatory initiatives, 2) the efficiency of the protection put in place, 3) the degree of take-up by customers. The adoption of Option 2.1 with an **extension of the geographical scope** was assessed to

<sup>2</sup> e.g. in AT, BE (NL), CY, DK, EE, GR, IT, LV, SE, SK

<sup>3</sup> AT, BE (Flemish region), CY, DK, EE, GR, IT, LV, SE, SK

<sup>4</sup> i.e. AT, BE (NL), CY, DK, EE, GR, IT, LV, SE, SK

have an impact on the protection of minors only in cases where proper access restrictions are set in place.

- The enforcement of policy Option 2.1 while maintaining the ***status quo scenario*** was assessed to encourage increased standardisation and reduce market fragmentation in terms of technologies and mechanisms used for restricting access to services across Member States. Additionally, Option 2.1 in connection with an ***extension of the material scope*** is likely to give momentum to the development of new services which would depend on the flexibility of the regulatory environment. However, some stakeholders indicated that the attempt to regulate non-TV like services could also reduce the margin of manoeuvre in terms of innovation. The enforcement of policy Option 2.1 with an ***extension of the geographical scope*** could negatively impact the availability of new services, as well as the diversity of content in the EU.
- Findings also suggested that the implementation of policy Option 2.1 is likely to affect on-demand service providers' willingness to provide services in several EU countries, to a low to moderate level. Under a ***status quo scenario*** this policy could have a positive impact due to a lower burden on on-demand providers to comply with different requirements in different Member States. However, enforcement of additional requirements for on-demand providers could lead to additional compliance costs concerning the rating and classification of content, as well as costs related to restricting access to seriously harmful and "likely to impair" content. The evidence collected also suggests that potential negative effects on the willingness to provide services in EU markets would arise if Option 2.1 were implemented in conjunction with an ***extension of the material scope*** and/or an ***extension of the geographical scope***.
- Option 2.1 is expected to have a negative impact on the freedom of expression, especially in Member States where the restrictions on "likely to impair" content are minimal. The negative impact on the freedom of expression would be amplified by the ***extension of the material scope*** as "likely to impair" content would have to be restricted or put behind access controls. The ***extension of the geographical scope*** would impose additional restrictions on non-EU operators which would lead to a decreased willingness of non-EU providers to serve EU markets, which is likely to affect the diversity and availability of non-EU audiovisual content.

### **Option 2.2: Decreasing the level of requirements for TV broadcasting services and increasing the level of requirements for on-demand services, while maintaining differentiation of seriously or likely to impair**

The following section delineates the likely economic and social impacts that would be registered if Option 2.2 is implemented under the different scope scenarios. It is worth mentioning that the likely effects of implementing Option 2.2 would be largely similar to those of implementing Option 2.1.

- The research conducted suggests that the costs of administration and enforcement arising from the implementation of Option 2.2 would be negligible under the current ***status quo scenario***. Additional monitoring and enforcement costs would arise only from increasing the level of requirements for on-demand services, which would overlap with the effects of Option 2.1. The effects on the costs of implementing Option 2.2 with the ***extension of the material scope*** and/or the ***extension of the geographical scope*** would not differ from an extension of the scope with the current provisions unchanged.
- The likely compliance costs as a result of implementing Option 2.2 under either of the ***three scope scenarios*** would be similar to those reported for Option 2.1. Additionally, the implementation of policy Option 2.2 is likely to yield similar results as Option 2.1 in terms of the impact on the protection of minors, on the development of new services and on the willingness of providers to serve EU markets.
- The implementation of the policy Option 2.2 is also likely to have an impact on the freedom of expression, as extending the existing obligation with respect to *seriously* harmful content to *potentially* harmful content on demand can lead to a limitation of the freedom of expression of both adults and children, as “likely to impair” content would be likely to fall under stricter regulation. This impact would be amplified by the ***extension of the material scope*** and/or of the ***extension of the geographical scope*** which may result in reduced availability and access to content.

### **Option 3: Increasing the information available on harmful content and promote the harmonisation of classification systems by different measures**

Policy Option 3 would seek to increase the information available on harmful content and harmonise classification systems through (a) guaranteeing information obligations on content (age rating and content descriptors) which are based on clear standards and made applicable, and (b) implementing a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/descriptors, across Member States and service providers. The likely impacts are presented in the following per sub-policy option.

**Option 3A: Guaranteeing information obligations on content (age rating and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States**

- The evidence collected indicates that additional moderate administration and enforcement costs would result from the implementation of policy Option 3A under the three **scope scenarios**. Although stakeholders were unable to provide concrete estimates of costs, the findings suggest that the cost drivers would be constituted by the need to define new processes/mechanisms for monitoring and to set up complaint mechanisms. Additionally, another cost driver if Option 3A is implemented under the **extension of the material scope** and/or **extension of the geographical scope** would be the number of services that would fall in the remit of monitoring of regulatory authorities.
- For service providers, implementing Option 3A while maintaining the **status quo scenario** would lead to additional significant compliance costs for providers in Member States where national legislation does not currently require this / on service providers who are not currently providing such information on linear/ on-demand content. The evidence suggests that there are cases in EU Member States where on-demand providers already comply with the obligation to provide information on content. The results of the data collection indicate that in the case of one on-demand provider, costs range from EUR 1,100,000 (costs paid to rating board) to EUR 91,600 (self-rating) for launch of 5000 programmes/products. The **extension of the material scope through self- and co-regulation** would imply significant compliance costs – given the magnitude of material uploaded - which would be borne by service providers or online platforms. The data collection retrieved an example of a pilot tool which applies to User Generated Content – You Rate It. The cost estimates provided an indication of the costs that regulatory authorities would incur, but it has not been possible to determine the compliance costs that AV providers would incur.
- The evidence collected in the framework of the study indicates that the implementation of policy Option 3A would yield positive results in terms of the protection of minors, under any of the three scope scenarios. The option was assessed positively in particular in relation to the **extension of the material scope through self- and co-regulation** and in relation to the **extension of the geographical scope** and considered to have the potential to mitigate more effectively risks related to harmful content for children online and concerning content broadcast from outside the EU. Although some stakeholders questioned the feasibility of implementing such an option, others indicated that in some cases EU systems (e.g. Kijkwijzer system) are already implemented in non-EU states.
- Evidence suggests that the requirements to guarantee information obligations on content would impose additional burdens and costs under all **three scope scenarios**, and as such, may affect the willingness of AV providers to serve EU markets.
- It is likely that no effects would be experienced in terms of freedom of expression, if Option 3A would be implemented under the current **status quo scenario**. However, if option 3A is implemented with an **extension of the material scope through self- and co-regulation** and/or **an extension of the geographical scope**, the additional requirements may affect the availability of content, and as such, the freedom of expression.

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**Option 3B: Implementing a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/ descriptors, across Member States and service providers**

- The implementation of policy Option 3B under the current ***status quo scenario*** would lead to additional administrative and enforcement costs which are likely to arise only in cases where such systems do not currently exist. In cases where such systems are already in place, e.g. the case of Netherlands, the internal enforcement costs are estimated to be above EUR 750,000 and the supervision costs of the system are estimated to be over EUR 800,000 per year. Implementing policy Option 3B in conjunction with ***extending the material*** and/or ***extending the geographical scope*** would also lead to additional costs that would arise from the need for defining and implementing a system promoting the harmonisation of content classification/descriptors through self- and/or co-regulation. No examples of such systems are in place at the moment at EU or international level to provide an estimation of the compliance costs they imply. Self- and co-regulatory systems harmonising content descriptors/classifications do exist in the gaming industry (e.g. Pan-European Game Information), but the costs related to them do not provide a comparable measure of the actual impact of implementing a harmonised system in the audiovisual media sphere.
- Presently, the baseline offers no comparative example of a system that would require the harmonisation of content classification/descriptors in the audiovisual media sphere. Thus, the data collected provided no indication of the actual compliance costs of implementing such a system. In what regards the ***extension of the material scope through self and/or co-regulation***, the research led to the identification of instances where such systems are already in place – e.g. the ICT Coalition for children online, which provided an indication of the extension of the material scope enforced in connection with the implementation of policy Option 3B. The main cost drivers of establishing such a framework would be related to the one-off start-up legal fees (estimated at EUR 462,000), the need to establish a framework policy board of directors after start-up and the need to ensure oversight.
- The implementation of policy Option 3B under either of the three ***scope scenarios*** was assessed by the majority of stakeholders as having the potential to offer an increased level of protection to minors.
- The evidence collected suggests that the implementation of Option 3B is likely to have positive impact on the providers' willingness to provide services on EU markets if implemented under the current ***status quo scenario*** or with the ***extension of the material scope via self- and/or co-regulation***. The harmonisation in the systems may result in a reduction of costs for service providers, and as such, an increased in the willingness of AV providers to serve EU markets. However, it is likely that the implementation of Option 3B with the ***extension of the geographical scope*** could impose additional requirements on non-EU providers that would decrease their willingness to provide services to European markets.

## Introduction

This report provides the analysis of the likely economic and social impacts of potential changes to the provisions for protection of minors in the AVMSD. The overall objective is to provide evidence to be used by the EC in the Regulatory Fitness and Performance (REFIT) evaluation and Impact Assessment accompanying a possible legislative revision of the AVMSD.

The report draws on the findings from desk research, interviews across seven Member States (MS) and analysis of views submitted during the EC's public consultation. It should be highlighted that the results of the analysis remain preliminary in the draft final report.

Overall, it can be stated that it has been very challenging to gather factual evidence on likely impacts from proposed changes to the Directive. This is particularly the case in terms of estimation of direct costs stemming from the Directive, both for regulators and for service providers. The lack of factual evidence and solid data on costs has been addressed by developing assumptions and using proxies to estimate likely impacts. Where this has not been possible, examples are provided, but no extrapolation has been made to a larger scale.

***It should be noted that all information on compliance costs for specific service providers or other economic operators are treated as confidential as per agreement with the respondents in interviews.***

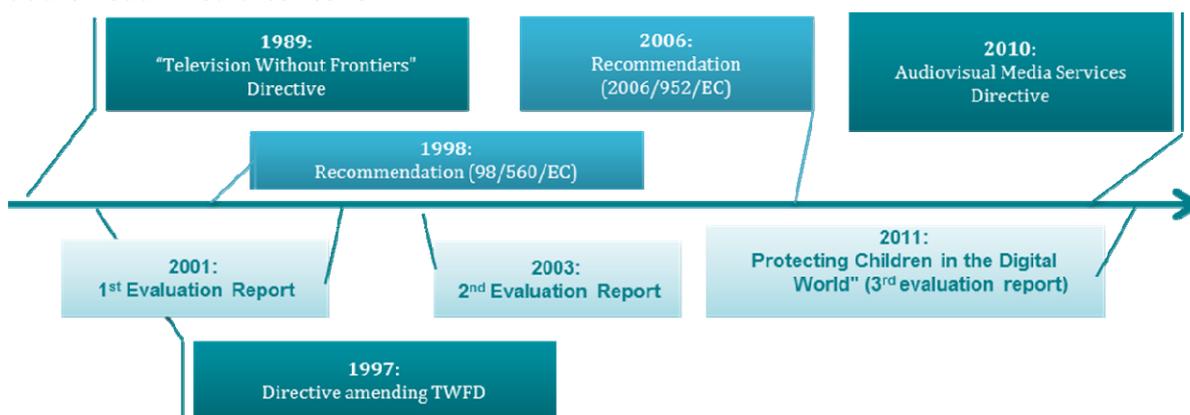
## 1. Development of a European policy framework for the protection of minors in audiovisual landscape

The European Union has consistently demonstrated a strong commitment towards protection of minors from harmful media content over the years. In its cornerstone regulation regarding audiovisual policy - "Television Without Frontiers" (TVWF) - Directive 89/552/EEC<sup>5</sup> – the Council laid down the general principles of audiovisual regulation, among which - the "protection of minors". The Directive, at the time provided that:

*"Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence. This provision shall extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts."*<sup>6</sup>

In the past decades, the initial regulatory guidelines were gradually refined in an amendment to the original TVWF Directive and with the help of Recommendations on the Protection of Minors and Human Dignity issued by the Council and the European Parliament. The common aim of the Recommendations was to make Member States and industry conscious of the new challenges for the protection of minors in electronic media, particularly those linked to the uptake and growing importance of online services.

**Table 1: Development of the context for protection of minors in EU against harmful audiovisual media content**



Source: Ramboll Management Consulting

<sup>5</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities - "Television Without Frontiers" Directive (TVWF Directive).

<sup>6</sup> Chapter V, Article 22, TVWF Directive 89/552/EEC

The first amendment concerning minors' protection in the audiovisual landscape was issued in the **Directive 97/36/EC**<sup>7</sup>, where the policy makers added a special note that in the case of broadcasting programmes that are likely to impair the physical, mental or moral development of minors in uncoded form "Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration"<sup>8</sup>.

The following year, **Recommendation 98/560/EC**<sup>9</sup>, which focused exclusively on the protection of minors and human dignity, called for the adoption of guidelines for the development of national self-regulation regarding these two areas. It aims at providing guidelines for national legislation. It covers all electronic media:

- Television broadcasters are asked to try out new digital methods of parental control (such as personal codes, filtering software or control chips);
- On-line Internet service providers are asked to develop codes of good conduct so as to better apply and clarify current legislation. The Recommendation fits in with current national and European regulations.

In 2001 the Commission issued an evaluation report<sup>10</sup> on the application of the previous Recommendation (98/560/EC). This report showed that the 1998 Recommendation had been implemented successfully in the first two years after its adoption. Hotlines and awareness campaigns had been launched nearly in all Member States, and codes of conducts had been established. Industry had worked on the creation of reliable Internet filters.

A Second Evaluation Report<sup>11</sup> was published in 2003. This evaluation report showed that the Recommendation was being applied in different ways by the Member States, but that the developments were, in general, positive. It also showed that even though self- or co-regulation were less developed in the broadcasting sector, the relevant systems seemed to be working quite well. It reported, however, that the involvement of consumer associations and other interested parties in the establishment of codes of conduct and other self-regulatory initiatives should be addressed in more focused manner defining their roles in the process.

In **2006 the European Parliament and the Council adopted** another **Recommendation (2006/952/EC)**<sup>12</sup> calling for Member States to consider, inter alia, the following measures targeting protection of minors:

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<sup>7</sup> Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

<sup>8</sup> Ibid. Article 22, part 3

<sup>9</sup> Council Recommendation of 24 September 1998 (98/560/EC) on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity

<sup>10</sup> Evaluation report from the Commission to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity /\* COM/2001/0106 final \*/

<sup>11</sup> Second Evaluation Report from the Commission to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity /\* COM/2003/0776 final \*/

<sup>12</sup> Recommendation of the European Parliament and of the Council of 20 December 2006 (2006/952/EC) on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry

- promoting measures to combat all illegal activities harmful to minors on the Internet;
- drawing up codes of conduct in cooperation with professionals and regulatory authorities at national and Community level;
- actions to enable minors' responsible use of audiovisual and on-line information services, in particular through media literacy.

Moreover, it encouraged the audiovisual and online information services industry to step up its efforts by developing positive measures which, among others, aimed to increase the protection of minors. These included such measures as creating filters which would prevent hard-core pornography from passing through the Internet and increasing the use of content labelling systems for material distributed over the Internet.

Finally, the TVWF Directive was replaced and the recommendations were complemented and reinforced by the adoption of the provisions related to the protection of minors as part of the Audiovisual Media Services Directive in 2010.

## **1.1 The protection of minors in the current regulation of audiovisual media services**

The **Audiovisual Media Services Directive**, adopted in 2010, sets out a framework of rules to address the challenge of protecting minors concerning both linear and non-linear services. This framework sets up the following two different regimes on the protection of minors in television broadcasting:

### ***Protection of minors in television broadcasting (Article 27)***

*"1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.*

*2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.*

*3. In addition, when such programmes are broadcast in un-encoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration" (Chapter VII, Article 27, AVMS Directive 10/13/EU)*

The protection of minors in the on-demand world is, however, reflected as follows in the text of the AVMSD:

### ***Protection of minors in on-demand services (Article 12)***

*"Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or*

see such on-demand audio visual media services.” (Chapter IV, Article 12, AVMS Directive 10/13/EU).

As previously mentioned, this regulatory system consists of two separate regimes, one for broadcast content and one for on-demand audiovisual content. Often the same on-demand media service can be accessed through different platforms and techniques at the same time: an over-the-top application like the digital portal of a Smart TV, a managed network like IPTV, a digital package of a cable operator or a website accessible on the open internet.

Moreover, according to the legislation, content which might seriously impair minors cannot be included in any (linear) broadcast programme (Article 27(1)), and can only be made available on demand in such a way that ensures that minors will not normally hear or see such on-demand services (Article 12).

Content which is likely to impair minors must be fenced off by selecting the time of the broadcast or any other technical measure (e.g. encryption), so that minors in the area of transmission will not normally hear or see such a broadcast (Article 27(2) and 27(3)).

For on-demand services there are no restrictions for content which is likely to impair minors. However, what exactly should be understood to be ‘seriously impairing’ for minors and ‘likely to impair’ the development of minors is left undefined and is up to the Member States to determine, taking into account the cultural differences involved.

## **1.2 New challenges for the protection of minors in an expanding audiovisual service landscape and online space**

Observations made by policy makers as well as scholars working in the research field of audiovisual media agree on the fact that the European audiovisual sector operates against the contours of an extremely rapidly moving media landscape<sup>13</sup>.

It is clear that the habits of passive TV watching are increasingly being substituted by the individual use of new services. Millions of Europeans watch video on demand through websites like YouTube and Netflix or catch up with their favourite TV series on the computer or smartphone. In the meantime they can put their own user-generated content online or find out more about what they are watching or interact with either their friends or with the TV programme itself.

Furthermore, in 2014 there were more than 40.4 million “Connected TVs” in Europe that fully integrate TV and the Internet. It is expected that these Connected TVs will be in the majority of EU households by 2016<sup>14</sup>.

In relation to the above, Neelie Kroes, former Vice President of the European Commission for the Digital Agenda, also expressed her concerns: “*Growing numbers of*

<sup>13</sup> De Cock Buning, Madeleine, “Towards a Future-Proof Framework for the Protection of Minors in European Audiovisual Media” *Utrecht Law Review* 10.5 (2014): 9-30.

<sup>14</sup> Green Paper: Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values, Brussels, 24.4.2013, COM(2013) 231 final

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*children are on social networking sites but many are not taking all necessary steps to protect themselves online”.*<sup>15</sup>

According to the EUKidsOnline survey<sup>16</sup>, 9-10 year olds in Europe who use the Internet report that, on average, they started to go online from age 7. 33% of those who go online use a mobile phone or a handheld device. 77 % of 13-16 year olds and 38 % of 9-12 year olds in Europe who use the Internet say they have a profile on a social networking site.

In 2009 the Commission's initiated *Safer Social Networking Principles*<sup>17</sup> a self-regulatory agreement signed by the major social networking services providers active in Europe, which have committed to implement measures to ensure the safety of minors on their services. A commitment was reached to set guiding principles for safer social networking, which have been signed by 21 companies. It was an addition to an already existing *Framework for the Safer Mobile Use by Younger Teenagers and Children*<sup>18</sup> which set out a series of measures the signatories commit to implement on their services throughout Europe, including: access control for adult content; awareness raising campaigns for parents and children, the classification of commercial content according to national standards of decency and appropriateness and the fight against illegal content on mobiles. The most recent (second) assessment of the *Safer Social Networking (SNS) Principles*<sup>19</sup> which was aimed at determining how well the Principles had been put into operation on their corresponding websites, found varying levels of satisfaction among implementation of different principles and highlight areas for improvements for bettering children protection online.

Furthermore, in the Communication on '**A European Strategy for a Better Internet for Children**' launched in May 2012<sup>20</sup>, the Commission argues that more quality content should be developed for children and that children should also be protected when they go on the internet. In response to the communication, 31 leading companies across the value chain have signed up to a Coalition to develop, through a self-regulatory process, appropriate measures for five key actions:

- simple and robust reporting tools for users;
- age-appropriate privacy settings;
- wider use of content classification;
- wider availability and use of parental control;
- effective removal of child abuse material.

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<sup>15</sup> Digital Agenda: children using social networks at a younger age; many unaware of basic privacy risks, says survey, IP/11/479, Brussels, 18 April 2011

<sup>16</sup> EU Kids Online: Final Report, (IP/11/479),

<sup>17</sup> Social Networking: Commission brokers agreement among major web companies, IP/09/232 Brussels, 10 February 2009

<sup>18</sup> Mobile operators agree on how to safeguard children using mobile phones, IP/07/139, Brussels, 6 February 2007

<sup>19</sup> Donoso, V. (2011), Assessment of the implementation of the Safer Social Networking Principles for the EU on 14 websites: Summary Report. European Commission, Safer Internet Programme, Luxembourg

<sup>20</sup> Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, European Strategy for a Better Internet for Children, Brussels, 2.5.2012, COM(2012) 196 final

The Commission also declared that "some of these actions relate to the AVMSD and could be supported by amending the legislation"<sup>21</sup>.

Finally protection on minors in the online space was repeatedly mentioned as an important part of the Digital Agenda for Europe<sup>22</sup>, which altogether seeks for EU-wide strategy in this field and encourages taking into account of the global and constantly changing nature of the digital environment and responding flexibly to new challenges.

### 1.3 Looking forward: initiatives following the AVMS Directive and remaining challenges

Following the AVMS Directive, in 2011 the **3rd Evaluation Report**<sup>23</sup> was commissioned by the European Commission. The evaluation report document called "**Protecting Children in the Digital World**" stated that since the last evaluation report on the 1998 Recommendation and the 2006 Recommendation, changes in consumers' and particularly minors' use of media have been dramatic and are constantly accelerating.

The report concluded that Media was increasingly being used by minors via mobile devices, including (online) video games, and there are more and more on-demand media services on the Internet. In addition, as a new phenomenon since the last Recommendation (2006/952/EC), social networking sites have gained huge importance, both for individual users and in societal terms. These new developments offered many opportunities for minors, but brought some challenges regarding their protection, considering that parents often have difficulties in carrying out their responsibilities in relation to new technology products and services that are usually less known to them than to their children.

A number of challenges were stated in the **Green Paper** "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values"<sup>24</sup>:

- continuum of content across the differently regulated linear and non-linear transmission channels weakens the impact of the current regulatory regime on children's access to content;
- effective age verification, also for adolescents' access to content, remains a challenge;
- differences in the regulatory approach to different types of content on screen might make it difficult for users to determine which authorities to complain to.

<sup>21</sup> GREEN PAPER Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values /\* COM/2013/0231 final \*/

<sup>22</sup> Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions A Digital Agenda For Europe, /\* COM/2010/0245 f/2 \*/

<sup>23</sup> Report from The Commission to the European Parliament, the Council, The European Economic And Social Committee and the Committee of the Regions on the application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity and of the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry-Protecting Children in the Digital World- /\* COM/2011/0556 final \*/

<sup>24</sup> Green Paper Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values /\* COM/2013/0231 final \*/

The Commission further launched a public consultation, inviting stakeholders to share their opinion on the Green Paper (2013). The discussion resulted in a rather uniform feedback<sup>25</sup> regarding stakeholders' general concern over sufficiency of current regulation and appropriateness of status quo. However many divergent views were presented in terms of possible solutions towards approaching the protection of minors in an age of increasingly fading lines between different types of audiovisual media services and new emerging channels to access and share audiovisual content.

The opinions, shared by the stakeholders, among others, included suggestions to:

- both, *extend* and *retain* the scope of AVMSD with regards to distinction between linear and all non-linear services;
- both, *increase* harmonisation among approaches among Member States and *maintain* the freedom for national, culture and customs based regulation;
- both, *extend* the scope of AVMSD to non audiovisual media services (video games, user-generated content) and *remain cautious* about political consequences of such decision;
- *increase* focus on self-regulatory measures, however, with *diverging views* on how to practically implement such change.

The current regulatory framework and the most recent policy initiatives at the EU level clearly calls for better protection of minors against harmful audiovisual media content. However, the ways to achieve a more secure and safe environment for children in the face of changing media landscape and increasingly growing scope of activities online remains unclear. The diverging opinions of the stakeholders further prove that the question of minor's protection first needs to be clearly formulated in the light of already identified challenges in current audiovisual media. A number of academic studies and subject focused reports have identified and discussed how possible policy options might impact a range of different stakeholders, but most of them so far focused only on country specific regulations and provisions without paying much attention on possible EU-wide policy implementation and its effects on wide range of stakeholders and target groups.

#### **1.4 The objectives and scope of this study**

In the context of the policy and technological developments discussed previously, coupled with the changes in viewing and consumption patterns of media content, the EU Commission decided to assess whether the current regulatory framework surrounding the protection of minors from harmful media content was still "fit for purpose". This assessment forms part of the Regulatory Fitness and Performance (REFIT) Programme.

This particular assignment aimed to contribute to the former by gathering facts and figures to be used by the Commission in the Impact Assessment accompanying a possible legislative revision of the Audiovisual Media Services Directive, in particular in relation to its provisions on protection of minors. It involved an assessment of the impact (economic, social and environmental) in a representative sample of Member States of a number of policy options (n.b. and scenarios) on different groups of

<sup>25</sup> Summaries of the replies to the public consultation launched by the Green Paper "Preparing for a Fully

stakeholders. Specifically, the study involved an assessment of, among other things: (i) the regulatory burden or relief (additional or reduced compliance costs) for each of the scenarios, and, if possible, its impact on the (i) development of new services; (ii) the protection of minors; (iii) the costs for the regulatory authorities; (iv) providers' willingness to establish in an EU Member State; (v) service providers' willingness to serve audiences in several Member States. At the request of the Commission, particular focus was placed on attempting to quantify the administrative, enforcement/monitoring and compliance costs of the current rules and options under consideration.

The options which were assessed as part of this study, as well as the scenarios against which each option was evaluated, are presented in the table below. These options differ slightly from the options presented in the terms of reference for the assignment, due to further discussions and developments.

**Table 2: Options and scenarios<sup>26</sup>**

Options	Cross-cutting scenarios to be assessed for each option
Option 1: Status quo	
Option 2.1 Increasing the level of requirements for on demand services, extending the existing obligation with respect to seriously harmful content to potentially harmful content on demand	<u>Scenario 1: Maintain status quo</u>
Option 2.2: Decreasing the level of requirements for TV broadcasting services and increasing the level of requirements for on-demand services, while maintaining differentiation of seriously or likely to impair.	<u>Scenario 2: Extend the material scope by self/co-regulation</u> to also include online audiovisual media services currently not covered by AVMSD, as well as new emerging services, by principle based rules implemented through self/co-regulatory measures.
Option 3: Increase the information available on harmful content and harmonise classification systems by: A) Guaranteeing information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States. B) Implementing a self and/or co-regulatory regime to promote further harmonisation in the	<u>Scenario 3: Extend the geographical scope</u> of the AVMSD to cover services established outside the EU that are targeting EU Audiences

Converged Audiovisual World: Growth, Creation and Values"

<sup>26</sup> As per agreement with the European Commission, the initial policy options have been changed in the initial phases of the project. The previous policy options included: Option 1: Status quo, Option 2.1: Levelling up of regulation, partially aligning the rules on protection of minors for on-demand services with the rules for linear audiovisual services; Option 2.2: Levelling up/down of regulation, simplifying and harmonising the rules for on-demand and linear audiovisual services to „harmful content” applicable to both; Option 3: Complement the current provisions by increasing/ improving self/co-regulatory measures, for example principle based rules for service providers; Option 4: Provisions on information requirements, for example rating system/content information regarding harmful content (as in videogames).

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systems of content classification/descriptors including across Member States and media channels.	
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As one in a number of parallel assessments which focus on different provisions of the AVMS Directive, the results of the present assignment are to provide the necessary input and evidence to the EC in the Regulatory Fitness and Performance (REFIT) evaluation and Impact Assessment accompanying a possible legislative revision of the AVMSD.

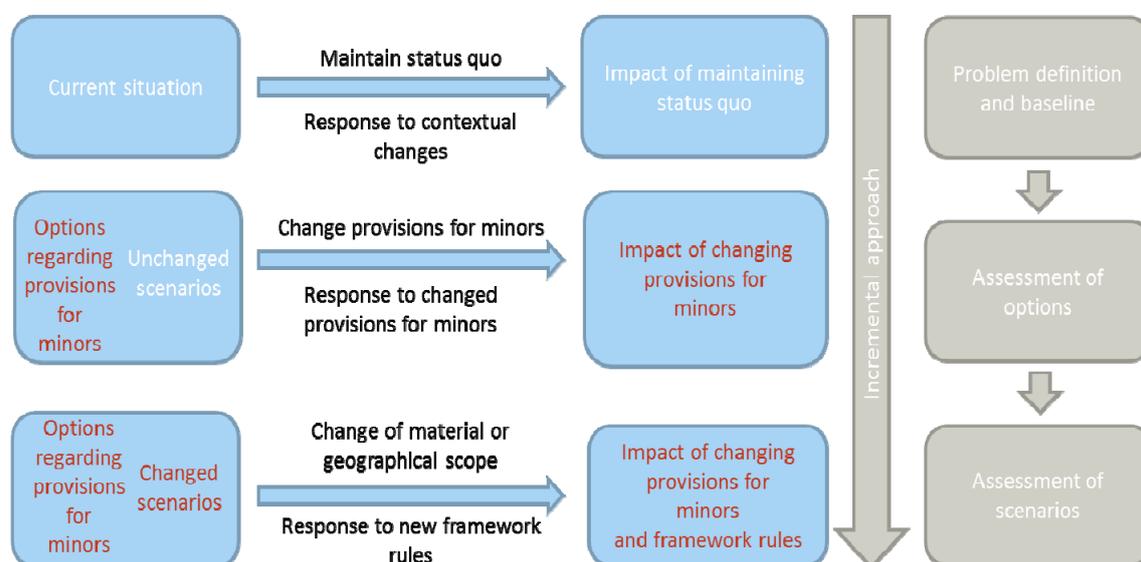
The subsequent chapter presents an overview of the methodology employed to carry out the work.

## 2. Approach and methodology

As previously mentioned, the objective of this study is to gather evidence to be used by the Commission in the Impact Assessment accompanying a possible legislative revision of the AVMSD, in particular in relation to its provisions on protection of minors.

The assessment of the potential impact of a range of more flexible or tighter rules was first performed *ceteris paribus*, i.e. everything else being equal. Dynamic scenarios taking into account a change in framework rules (material and geographical scope) were examined thereafter. This approach employed is presented in the following figure.

**Figure 1: Overview of the framework for assessing options and scenarios**



### 2.1 Methodology

The report draws on the findings from desk research, interviews across seven Member States (MS) and an analysis of views and opinions submitted during the EC's public consultation.

In order to gain a better understanding of the topic for investigation, as a first step, a **systematic review of secondary data and literature** has been conducted using a Rapid Evidence Assessment (REA) technique combined with NVivo software. In addition to this, **exploratory interviews** focussed on the key EU level stakeholder with a particular attention to the organisations working in the area of the protection of minors in the audiovisual landscape as well as organisations that represent the main groups of stakeholders in the audiovisual media service industry. The respondents targeted through the exploratory interviews have been selected on the basis of the stakeholder mapping described in the following section. A list of references that were utilised for the purpose of performing the systematic review of secondary data and literature is included in the Section 6.

**Interviews with key stakeholders** in seven **case studies** (Germany, Denmark, France, Hungary, Italy, Netherlands, and United Kingdom) have been performed in the context of the study which provided detailed data in connection with the different policy options and the scenarios that were investigated.

Finally, the study also drew on the data provided by stakeholders in the context of the open **public consultation** conducted by the European Commission.

### 3. Scenarios

This section presents and further defines the three scenarios against which each policy option was assessed.

#### 3.1 Maintain the current material and geographical scope of application of the AVMSD (status quo)

The status quo scenario is the result of a “no action” by the EU, namely a situation in which no additional public intervention is carried out and the current material and geographical scopes of application of the AVMSD are left unchanged. The table below presents the current stakeholders of the AVMSD.

**Table 3: AVMSD stakeholders – status quo scenario**

Category type	Foreseen nature of impact
Statutory regulators	The statutory regulators—also referred to as National Regulatory Authorities (NRAs)—monitor and enforce compliance with the AVMSD and national rules. To maintain the status quo would not bear new regulatory and/or administrative costs. Similarly, the required level of cooperation with equivalent bodies in other member States would remain fairly the same.
Self- and co-regulators	Self- and co-regulators cooperate with statutory bodies in order to regulate the audiovisual media services sector. In most cases, they monitor and enforce self- and co-regulation codes and practices that are incorporated into national legislation.
Linear audiovisual media service providers	Generally, linear media service providers are the most heavily regulated group of stakeholders in terms of provisions set in the current Directive. Consequently, “no change” scenario would maintain the existing regulatory difference between linear providers, non-linear providers and other non-linear providers that are currently outside the scope of the Directive. The principle of “editorial responsibility” would continue to be relevant in order to determine the scope of the Directive, defined as follows: “ <i>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</i> ” (Ch. I, Art. 1, Directive 2010/13/EU)
Non-linear audio-visual media services providers	Despite being less strictly regulated than traditional television service providers for protection of minors, in the 2010 Directive the VOD services were acknowledged as having a strong “potential to partially replace television broadcasting”. The changes that could potentially take place in relation to on-demand audiovisual media regulation may create some impacts for the growing sector of non-linear service providers that are currently covered by the Directive.
Audiovisual content providers outside the current scope	Other content providers include Video sharing platforms (YouTube, Dailymotion, Vimeo etc.), social networks allowing video upload by users (Facebook, etc.), promotional websites with video content. These services are currently outside the scope of the Directive.
Minors	As the object of protection of the provisions, the interests of the minors and the impact of each policy option on them is central to the analysis. The risk of exposure to harmful content and the relative change in such exposure in each option is to be assessed in this study.

## 3.2 Extension of material scope through self- and co-regulation

This scenario is defined as the extension of **the material scope of the AVMSD to online services which are currently not covered by the AVMSD, as well as to emerging new services**. For example, the scope of the AVMSD could be extended to audiovisual services over which the providers have no editorial responsibility or offering audiovisual content which is not "TV-like". In the inception phase, the scenario was made more specific, by stipulating that any extension of the scope would be ideally implemented by means of **self and co-regulation**.

### 3.2.1 Definition of material scope

Apart from the linear and non-linear audiovisual media services that are already covered by the Directive, the services that would also be covered by an extended Directive, would be services that 1) are not subject to editorial responsibility of a media service provider and 2) are not "TV-like". Drawing on the aforementioned definition of editorial responsibility, the lack of it is defined as the absence of effective control both over the selection of the programmes and over their organisation in a catalogue. The lack of "TV-like" content consists of the absence of content that competes for the same audience of linear TV broadcasters<sup>27</sup>. More specifically, Essential Research Ltd—in a report commissioned by Ofcom in 2012<sup>28</sup>—pinpointed ten specific factors that viewers consider essential for a content to be "TV-like":

**Table 4: Definition of "TV-like" content – Ofcom 2012**

	Criterion	Explanation
1	Purpose of the service	An online content is considered "TV-like" if it has a purpose to entertain/inform, as opposed to a purpose to sell a product/personality.
2	Look and feel of the service	An online content is considered "TV-like" if the website is designed like a TV channel, for instance not showing bars and tabs that are usually displayed in websites.
3	Frequency with which content is refreshed	An online AV service provider is consider to offer "TV-like" content if it refreshes and updates its offer frequently, like a TV channel that shows different programmes every day.
4	Who controls what is watched	An online AV service provider is consider to offer "TV-like" content if the viewer has no or little control over what to watch.
5	Effort expended to find the service	An online content is considered "TV-like" if it is easily accessible, with no or little need of technical input.
6	The viewing experience	An online content is considered "TV-like" if it can be viewed "on a big screen on the sofa", namely in a comfortable environment, as opposed to "on a smartphone on the bus", an uncomfortable environment.

<sup>27</sup> See recital 24 AVMSD.

<sup>28</sup> Ofcom, On-demand services: understanding consumer choices, 2012, pp. 33-38, available at: [http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research_Report.pdf)

7	Length of the content on the service	Online content that is shorter than 15-20 minutes is not considered to be "TV-like". <sup>29</sup>
8	Volume of content on the service	An online AV service provider offering a high volume of varied content is considered to be more similar to a TV channel.
9	Perceived quality of the content on the service	An online content is considered "TV-like" if it has a quality that is comparable to the quality of professionally produced TV contents.
10	Where the content on the service originated	An online content featuring a familiar personality or brand feels more similar to TV programme and can be considered "TV-like".

However, recent trends suggest that online content is becoming increasingly "TV-like". For instance, YouTube users currently offer a number of channels, some of which are also registered as non-linear services in the MAVISE data base<sup>30</sup>. YouTube has also recently launched the app YouTube Kids (so far only available in the UK and Ireland), which is directly targeting children with "family friendly" videos, emphasising local channels, including famous children's brands like Morph, Teletubbies, Wallace & Gromit and The Magic Roundabout<sup>31</sup>. This means that the viewing experience is highly similar to the thematic children's channels offered by other linear and non-linear service providers. In addition to this, viewers' preferences, including those of children, are shifting from linear contents to online contents regardless of the "TV-likeness" of the latter. A recent study by Childwise showed that young people in the UK (7-16 years old) were spending more time on-line than watching television. The report found that YouTube has taken "centre stage in children's lives" with half accessing it every day and almost all using it at least occasionally. The majority of children who used YouTube visit the site to access music videos (58%), while around half watch "funny content" and a third say they watch gaming content, vlogs, TV programmes or "how to" videos<sup>32</sup>.

It is likely that an extension of the material scope of the AVMSD would increasingly lead to platforms being covered, rather than multiple (and sometimes anonymous) producers of content. This is due to the fact that platforms play an increasingly important role in determining how and what content will be accessed and viewed. Our assumptions on what platforms are likely to be affected by an expanded material scope of the AVMSD are as follows:

- Platforms of smart TVs and other device (e.g. smartphones or gaming consoles) related platforms could fall within the grey area. They are not likely

<sup>29</sup> It should be noted that the AVMSD does not refer to length as a criteria for assessing tv-likeness. This was also confirmed recently by the CJEU the New Media Online Case (C-347/14 New Media Online GmbH v Bundeskommunikationssenat)

<sup>30</sup> For example branded channels, a specific service to advertisers and brands to interact more directly with Audience/customers

<sup>31</sup> <http://www.theguardian.com/technology/2015/nov/18/youtube-kids-app-launches-in-uk-and-ireland>

<sup>32</sup> Childwise, Monitor report 2016

to be affected, if they only provide access to third party audiovisual content (gateway function), e.g. on-demand content.

- Over-the-top (OTT) content aggregators<sup>33</sup> may or may not be covered depending on the audiovisual content provided. When providing access to third party audio-visual content, such as Netflix and iTunes, these services are covered.
- Platforms such as YouTube and Dailymotion which provide UGC are generally not covered currently, apart from so called “channels” offered on the platforms which may be considered to having editorial responsibility. If the material scope is extended, the platforms and the services provided are likely to fall within the scope of AVMSD.
- Social networks such as Facebook, Twitter etc. would not be captured by the extended material scope of AVMSD since they do not primarily seek to provide audiovisual services.
- Search engines such as Yahoo and Google would not be included in an extension of the scope.

An extended material scope should, however, take into account new and emerging services, wherefore changes in the platforms’ offer (e.g. an increased focus on providing audiovisual services) could bring them into the regulatory regime.

According to the MAVISE data base, there are currently 11 providers of networks and platforms registered and active within the EU, distributed among 7 Member States. If platforms established outside of the EU (e.g. not within the geographical scope of AVMSD) are included, the total number of platforms providing services targeting specifically the EU market rises to 22, see the table below.

**Table 5: Platforms targeting the EU market (non EU based marked grey)<sup>34</sup>**

Name	Host company	Country of establishment
Au féminin Vidéos	AUFEMININ COM	France
Cinerebelde		Germany
Clipfish	CLIPFISH GMBH	Germany
Dailymotion	DAILYMOTION	France
Free TV Perso	FREE	France
Google+	GOOGLE Inc.	United States (specific European services)
Justin.tv	Justin.TV Inc.	United States (specific European services)

<sup>33</sup> OTT refers to content that arrives from a third party – such as Hulu, Netflix, Sling TV, or WhereverTV, and is delivered to an end-user device, leaving the ISP only the role of transporting IP packets.

<sup>34</sup> MAVISE data base, December 2015

mail.ru	LIMITED LIABILITY COMPANY MAIL.RU	Russian Federation
MyShooting.lu	POST TELECOM SA	Luxembourg
Myspace		United States
MyVideo	MYVIDEO BROADBAND SRL	Romania
Pinterest		US
Rutube	LIMITED LIABILITY COMPANY TNT-REGION	Russian Federation
Snacktv.de	SNACKTV MEDIA GMBH	Germany
Tubewatcher		France
tu.tv	HISPAVISTA SL	Spain
Videa	ORIGO MÉDIA ÉS KOMMUNIKÁCIÓS SZOLGÁLTATÓ ZÁRTKÖRŰEN MŰKÖDŐ RÉSZVÉNYTÁRSASÁG	Hungary
Videos Sapo TV	PORTUGAL TELECOM SGPS, S.A.	Portugal
Vimeo	Vimeo LLC	United States (specific European services)
Vine		United States (specific European services)
Youtube	YouTube LLC	United States (specific European services)

In the above overview providers of pornographic content on-line are not included, and they are not registered in the MAVISE database. In the context of protection of minors, providers of pornographic content would also be affected by an extension of the material scope, as most Member States assess pornographic content as “likely to impair” or “seriously harmful” (for hard-core pornography). In the event that the material scope is extended regarding the provisions for protection of minors, the providers would need to implement age verification mechanisms to restrict access for minors. It has not been possible to establish the number of providers which would be affected, but some of the largest platforms with pornographic content are owned by EU based companies<sup>35</sup>.

<sup>35</sup> For example MindGeek, a global IT company active in content delivery, streaming media, and online advertising. The company is a privately held conglomerate which is headquartered in Luxembourg City with offices in Dublin, Hamburg, London, Los Angeles, Miami, Montreal, and Nicosia. Its operations are primarily related to Internet pornography, but also include other online properties such as the comedy video website videobash.com and celebrity gossip site celebs.com

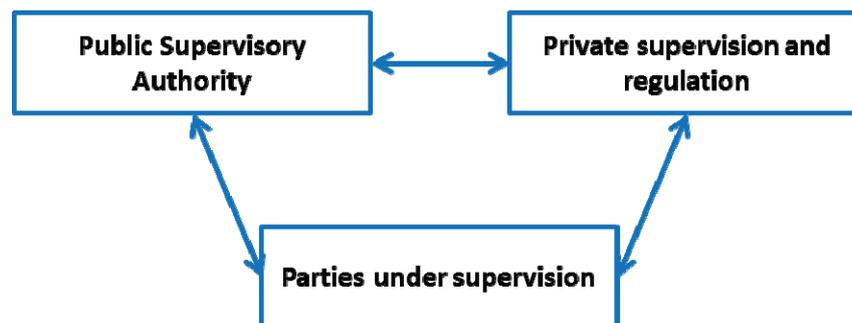
If the material scope is extended without including platforms established outside the EU, either in total or specifically for protection of minors on other on-line and emerging audio-visual services, some of the biggest players (currently) would not be regulated, e.g. YouTube. In our estimations and assessment of the scenario we have therefore worked with the assumption that the extension of the scope would also apply to platforms established outside of EU. However, how this can be done in practice is not being assessed or discussed, apart from a general definition of self- and co-regulation as outlined in the following section.

### 3.2.2 Definition of self- and co-regulation

Self-regulation is a voluntary initiative that enables economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves<sup>36</sup>.

Co-regulation is a shared private-public regulatory and enforcement regime<sup>37</sup>. It can be considered as a form of enforced self-regulation<sup>38</sup>. As shown by the figure below, the public supervisory authority recognizes the power of a private body that contributes to the monitoring and enforcement activities.

**Figure 2: Mechanisms for co-regulation**



Source: Cock Buning, 2014

An example of a co-regulatory regime can be found in the Netherlands, where the statutory regulator, Commissariaat voor de Media (CvdM), cooperates with a co-regulatory body, the Netherlands Institute for Classification of Audio-visual Media (NICAM), to ensure the protection of minors from harmful content. More specifically, NICAM has developed a rating system, called "Kijkwijzer", which linear service providers have to apply in order to be allowed to broadcast rated content.

The following table presents an overview of the stakeholders that would be affected by an extension of the material scope through self- and co-regulation.

<sup>36</sup> Interinstitutional agreement on better law-making (2003/C 321/01), OJ C 321, 31.12.2003, pp. 1-5, Preamble 22

<sup>37</sup> Cock Buning, *Towards a Future-Proof Framework for the Protection of Minors in European Audiovisual Media*, 2014, p. 10

<sup>38</sup> Grabosky & Braithwaite, *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies*, 1986

**Table 6: Stakeholders extension of material scope**

Category type	Foreseen nature of impact
Statutory regulators	Regarding a potential extension of the material scope of the AVMSD, the national regulatory bodies will likely be impacted in several ways. First, any change will have to be adequately transposed to the national legislation by the powers given to the authority, which might consequently affect monitoring mechanisms.
Self- and co-regulators	If UGC platforms fell within the material scope of the Directive, a systematic monitoring of all audiovisual media by national statutory regulators would most probably not be feasible due to the huge volume of content. For this reason, self- and co-regulators are likely to become important actors to address the increased workload while maintaining effectiveness and efficiency in the audiovisual domain.
Linear audiovisual and non-linear media service providers	The AVMSD fully applies to linear AV service providers. Its extension would therefore not generate an increase in compliance costs for linear providers. However, it would have consequences in terms of ensuring fair competition by applying the same restrictions to non-linear, linear and on-line audio-visual content and thus a level playing field for the operators.
Internet Service Providers (ISPs)	Internet service providers could possibly be indirectly impacted by an extension of the material scope of the Directive, depending on how Member States chose to implement the Directive (for example if it is implemented through software and other mechanisms in order to automatically block inappropriate content). ISPs services are currently regulated by the E-Commerce Directive 2000/31/EC, stating that ISPs that are mere providers of connectivity shall not be liable for the information transmitted by those who have access to the Internet through them.
Audiovisual content providers outside the current AVMSD scope	UGC platforms (YouTube, Dailymotion etc.) are likely to be impacted by an extension of the material scope of the Directive. Since they do not currently fall within the AVMSD scope, compliance costs would occur for the platforms. They may also be affected by a possible loss of users and viewers, if the regulatory regime were to be considered too strict or cumbersome by users and viewers.
Independent audiovisual content producers	The number of users of internet platforms (e.g. YouTube, Dailymotion, Vimeo, etc.) and the number of independent audiovisual content producers are rapidly growing. In light of the options that seek to expand the scope of the Directive to online content, the content providers (up-loaders) will likely be impacted as well. The videos uploaded would fall within the scope of a revised Directive, and thus if the content is harmful to minors it will have to be taken into account by either the user or the platform.
Minors	As the object of protection of the provisions, the interests of the minors and the impact of each policy option under different scenarios is central to the analysis. The risk exposure to harmful content and the relative change in such exposure in each option is being assessed.

### 3.3 Extension of the geographical scope

According to the terms of reference, this scenario is defined as the extension of the geographical scope of the AVMSD "to cover services established outside the EU but targeting EU audiences. A threshold based on the market share/turnover in the EU could be considered". Presently, only audiovisual media providers based in one of the Member States fall within the scope of the Directive. An extension of the geographical scope would therefore mean that foreign providers, established outside the EU but broadcasting inside the EU, would be regulated by the Directive. Since the country of

origin principle applies between MS, it is likely that it would apply to foreign providers broadcasting in the EU too.

In order to assess the economic consequences of extending the geographical scope of the AVMSD to the linear service providers who are operating, registered and established outside the EU but targeting the EU market the study begin by assessing the current number of foreign service providers in the European Market.

### 3.3.1 Linear services established outside the EU

Table 7 shows the total number of linear services established outside the EU but available within the EU.

As can be seen from the table, most of the non-EU channels are located in either Switzerland (25) and in the United States (20). Most of the channels from Switzerland are adult channels and a majority of the channels from the US are broadcasting religious content.

**Table 7: Number of non-EU linear channels available in the EU – in total**

Country of establishment	Number of channels available in the EU
Argentina	1
Brazil	3
Canada	4
China	3
Liechtenstein	1
Mexico	2
Norway	1
Russian Federation	4
Switzerland	25
Turkey	4
United Arab Emirates	1
United States (specific European services)	20
Vietnam	1
Grand Total	70

Source: MAVISE and EAO 2015.

Note: The list only includes channels which are operating, registered and established outside the EU

Although a comprehensive dataset of audience shares is not available, available data indicates that it is unlikely that the non-EU channels have a significant share of the audience in the EU MSs they are targeting.

### 3.3.2 Non-linear services established outside the EU

It has not been possible to establish the number of non-linear services established outside of the EU and targeting EU audiences. In the data available from the MAVISE data base, there is significant double counting as non-linear providers established

outside EU will normally be available in several MS. In a report by the EAO<sup>39</sup>, it was estimated that approximately 50 pay-VoD services originating from the USA were available in Europe in October 2015. These included multiple versions of Google Play and Microsoft Store, two services whose country of establishment is unclear. The rest were niche transactional or subscription services. Hence, US players established in Europe probably have a significantly higher market share than US players operating from the USA, and it can be assumed that the relative importance (in terms of market share) on non-EU based non-linear services is rather small. In subsequent estimation the study is therefore using the figure from the EAO report as basis for calculations.

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<sup>39</sup> Refit Exercise: Contribution of Data and Information by the European Audiovisual Observatory Note A2: On Demand Audiovisual Media Services, November 2015 - Draft

## 4. Findings of the study

### 4.1 Option 1: Status quo

The Audiovisual Media Services Directive (AVMSD) sets out a framework of rules to address the challenge of protecting minors concerning both linear and non-linear services. This framework sets up the following two different regimes on the protection of minors in television broadcasting:

#### **Protection of minors in television broadcasting (Article 27)**

"1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

3. In addition, when such programmes are broadcast in un-encoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration" (Chapter VII, Atr. 27, AVMS Directive 10/13/EU)

The protection of minors in the on-demand world is reflected as follows in the text of the AVMSD:

#### **Protection of minors in on-demand services (Article 12)**

"Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audio visual media services." (Chapter IV, Atr. 12, AVMS Directive 10/13/EU)

Thus, the regulatory system consists of two separate regimes, one for broadcast content and one for on-demand audiovisual content.

In the following sections it is estimated what the likely impacts of leaving these provisions unchanged would be.

#### 4.1.1 Impact on administration and enforcement costs

Administration and enforcement costs relate to costs imposed by the Directive on authorities and other relevant bodies in monitoring and enforcing the provisions on the protection of minors. To this end, it can be seen as a baseline, e.g. it provides a picture of costs stemming from the current provisions. The assessment of costs is presented based on the 3 scenarios stipulated for the study.

Overall it should be noted that it has been very difficult to obtain cost estimations from national authorities. This is due to the fact that the protection of minors is not seen as separate from other monitoring activities, and also due to the fact that the current provisions are largely adhered to by service providers and, thus, do not require much monitoring or enforcement activities<sup>40</sup>.

#### Scenario 1: Maintain status quo

The current AVMS Directive lays down minimum rules for protection of minors on linear and on-demand services. In many Member States, national legislation goes further in terms of stricter protection on on-demand services, or compulsory ratings and/or content information. In these cases, the assessment does not attempt to distinguish between costs stemming from the AVMSD or costs related to (stricter) national legislation<sup>41</sup>, where available. The costs below are described on a yearly basis, for the countries included in the sample. The costs include monitoring of both linear and non-linear services and vary from one Member State to another.

**Table 8: Administrative costs for monitoring compliance<sup>42</sup>**

Country	Name	Type of regime	Cost related to protection of minors 2014	Transposition
Denmark	Danish Agency for Culture	(Secretariat of) Statutory Regulator	Not available	Minimal rules
France	CSA	Statutory Regulator	400,000 EUR	Stricter rules
Germany	FSF	Co-regulatory	1,000,000 EUR	Stricter rules
Italy	AGCM	Statutory Regulator	800,000 EUR	Minimal rules
Netherlands	CvDM <sup>43</sup>	Co-regulatory	Not available	Stricter rules
United Kingdom	Ofcom	Statutory Regulator	Not available	Stricter rules

Source: Interviews

#### Scenario 2: Extend material scope through self- and co-regulation

If an extension of the material scope to other on-line content was implemented, this would have an impact on the regulatory cost of authorities. In a self- and co-regulatory regime, the main costs would be borne by the regulated entities (e.g. the service providers currently not regulated), but oversight would fall under the responsibility of the regulatory authorities, together with the self-regulatory body. The scope and scale of overseeing on-demand content versus other on-line content is likely to be quite different given the diversity of offers available on the internet.

<sup>40</sup> Based on interviews with regulatory authorities in selected Member States (DE, DK, FR, HU, IT, NL, UK).

<sup>41</sup> It could be argued that only the costs directly related to AVMSD requirements on protection of minors should be included, but this has been impossible to obtain.

<sup>42</sup> In the field work Hungary was included, but the team was unable to access the statutory regulator for an interview.

<sup>43</sup> CvDM is overseeing the co-regulatory authority NICAM, which is responsible for monitoring compliance with Dutch legislation among commercial providers. Hence, the regulatory costs borne by CvDM are minor in relation to monitoring and enforcement.

There are no relevant examples of regulatory costs for overseeing audio-visual content currently not covered by the AVMSD. If it is assumed that costs would be similar to the regulatory costs incurred by overseeing on-demand content, the example with ATVOD<sup>44</sup> could be used as a basis for calculation.

**Table 9 Regulatory cost of option 2.1 with extended material scope**

Extension of Material Scope, all Member States	Regulatory cost based on ATVOD 2014/2015 (for on-demand content)	Total yearly cost
28 MS	632,793	17,718,204

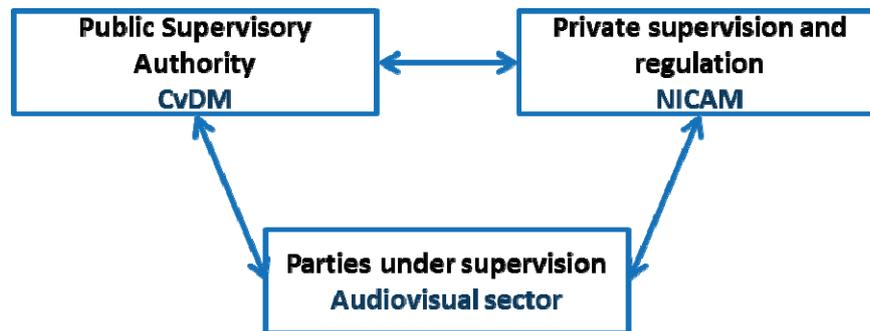
However, there are many uncertainties linked to this assumption. First of all, the scope and scale of overseeing on-demand content versus other on-line content is likely to be quite different given the diversity of offers available on the internet. Secondly, the cost of putting in place a co-regulatory scheme is not included in this estimation, e.g. the cost of transposing and implementing a co-regulatory requirement.

Presently, there are several self- and co-regulatory initiatives/systems set in place at national and pan-European/global level that aim at ensuring a safe audiovisual environment for minors. The costs related to such initiatives are indicative of the costs that would arise if the extension of the material scope of AVMSD through self- and co-regulation would be implemented. The most relevant example of a co-regulatory system is that of the Netherlands Institute for the Classification of Audiovisual Media (NICAM) in the Netherlands. Additionally, several self-regulatory initiatives have been established at pan-European/global level in connection to the gaming industry. These initiatives and an indication of the costs that are related to them are presented in the below, merely as examples of **approaches that may be taken in an extension** of the scope of AVMSD, rather than applicable or enforceable schemes.

### ***Example of co-regulatory and self-regulatory systems***

In the Netherlands, the Dutch classification system for linear audiovisual media, 'Kijkwijzer', is an example of a **co-regulatory system** for the protection of minors from harmful content. The co-regulatory system is being administered and enforced tri-fold by the CvdM (public supervisory authority), NICAM (private supervision and regulation), and by the audiovisual sector (i.e. the parties under supervision) (see Figure 3).

<sup>44</sup> ATVOD was until the 1<sup>st</sup> of January 2016 a co-regulatory body in the UK which regulated the editorial content of UK video on demand services that fall within the statutory definition of On Demand Programme Services ("ODPS") set out in the 2003 Communication Act

**Figure 3: The 'Kijkwijzer' co-regulatory design**

Source: CvDM, 2014

The system provides information about the possible harmful effects of audiovisual content for minors and parental guidance using symbols and pictograms to classify audiovisual materials for television. The Kijkwijzer system is also used for wholesale DVDs, the physical distribution of video and at cinema entrances.

A report by Cock Buning (2014) further describes the system: "since the goal of a classification system is to inform parents about the possible harmful effects of television programmes and to help them to supervise children's use of the media, the system aims to be transparent and flexible according to their needs and in order to be used on a large scale. Kijkwijzer is, therefore, actually based on substantial parental surveys, as well as scientific research. Parents indicated in these surveys that age ratings are considered as an important asset of such a system. The age ratings are *All Ages, 6, 9, 12, and 16*."

During the years of its existence Kijkwijzer, as implemented by the audiovisual industry and facilitated and enforced by NICAM, has been stringently meta-supervised by the independent government supervisory authority. With some exceptions both the quality and the quantity of rating and classification have proved to be up to standard according to CvDM as the public authority. Kijkwijzer is widely accepted and implemented by the audiovisual industry and parents are well acquainted with and frequently used Kijkwijzer. Kijkwijzer's co-regulatory arrangement is even considered a best practice for the broadcasting industry concerning the protection of minors."

The report by Cock Buning (2014) also points to the factors explaining Kijkwijzer's success, including: transparency, validity, reliability, consistency and flexibility. Moreover, the fact that NICAM is embedded in the co-regulatory arrangement, that it can, and regularly does, impose penalties on offenders and the fact that it is under critical meta supervision and validation by an independent government regulatory authority was reported to further strongly contribute to the effectiveness of this system for the protection for minors against harmful content. Representatives from NICAM also pointed out in an interview an important aspect related to the management of the Kijkwijzer, i.e. the fact that it is embedded in the Dutch media law which is a fundament for its recognition and effective implementation by stakeholders.

The Dutch Kijkwikzer system is co-financed and the internal **costs** are split between the government (50% of the costs) and the media sector (50%). The costs incurred

by the media sector are divided in equal terms between private channels, public broadcasters, film sector and DVD distributors. The structure is currently reconsidered, as new services are becoming important, such as broadcaster's VoD channels and independent VoD providers, such as Netflix or HBO. The internal costs amount yearly to **EUR 750,000**. This sum includes: a full-time help desk for coders, training for coders, responding to complaints from the public, further development of the system, cooperation with independent academics, especially in the committee of independent experts who are advising on the classification, communication with the public. The human resources invested in ensuring the implementation of the Kijkwikzer amount to approximately 6 full-time employees.

The CvdM is also involved in the supervision of the Kijkwikzer system. The data collected indicates that the CvdM has a budget of EUR 6 mio. per year, part of which is dedicated to unit called "programmatoezicht" (Programme Supervision), hereafter: PT, which has responsibility for monitoring the rules on protection of minors. PT has a budget of EUR 1.2 mio. per year part of which EUR 800.000 is spent on monitoring. Most of the monitoring costs are related to AVCC rules and a smaller amount is related to the provisions regarding the protection of minors. However, the data collection process has not retrieved a clear indication of the concrete costs related to supervising the Kijkwikzer system.

**Table 10: Costs related to the Kijkwikzer co-regulatory system**

Type of costs	Organisation	Costs/year
Supervisory costs	CvdM	Below EUR 800,000
Enforcement costs (Internal costs)	NICAM	EUR 750,000

Source: Towards a Future-Proof Framework for the Protection of Minors in European Audiovisual Media, Cock Buning 2014; Interview with NICAM, Interview with CvdM

Although it was difficult to estimate the administration costs related to the extension of the material scope, a significant number of stakeholders considered the option as being feasible<sup>45</sup>. For example, an interview with a representative from NICAM revealed that a system similar to that of You Rate It<sup>46</sup> (see also section 4.2.2) could be set in place. The system would imply content rating by uploaders or by a combination between uploaders and those that view the content. However, given the large volume of video sharing that takes place on online platforms, NICAM mentioned that the monitoring could be feasible only if done on the basis of complaints to improve ratings or by making an agreement with providers to take samples. Activities to be done under such a system would be relatively similar to those undertaken by NICAM under the Kijkwijzer system and, as such, the costs could be similar. The costs for self-rating systems were assessed by NICAM as relatively low and resting mostly on technical integration on platforms.

<sup>45</sup> Stakeholder consultation and Interviews conducted in the case studies

<sup>46</sup> <http://www.yourateit.eu/>

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## **IARC and PEGI**

In the gaming industry, the International Age Rating Coalition (IARC) at global level and the Pan European Game Information (PEGI) in Europe provide an age classification process, including age ratings and content descriptors, which are widely used by the gaming industry. They represent examples of self-regulatory systems in this area, whereby participating regulatory authorities monitor compliance on the basis of ad hoc monitoring and complaints. Although the gaming area is different to the audiovisual one both in terms of the market and technology employed, the IARC and PEGI systems provide an example of how a harmonised system at EU/global level, taking into account national differences – as would be needed in the context of audiovisual content – has been developed in the gaming industry.

### **International Age Rating Coalition (IARC)**

Administered by many of the world's game rating authorities, the **International Age Rating Coalition (IARC)** provides a globally streamlined age classification process for digital games and mobile apps, helping to ensure the consistent cross-platform accessibility of established, trusted age ratings by today's digital consumers. Established in 2013, IARC simplifies the process by which developers obtain age ratings by having them answer a single set of questions about their product's content and interactive elements. Their responses automatically generate different age ratings from each participating territory along with a generic rating for the rest of the world. IARC rating assignments also include content descriptors and interactive elements identifying apps that collect and share location or personal information, enable user interaction or share user-generated content, and/or offer in-app digital purchases. The IARC system currently includes the participation of rating authorities, which collectively represent regions serving approximately 1.5 billion people with more expected to participate in the future.

Various stakeholders participate in different manners. For example, NICAM, the Dutch co-regulatory body is involved in the development of new systems for rating apps, which is aimed at classifying all Google android apps. This is a global project involving PEGI and its American, Brazilian, Australian, South African and German equivalents. The system is increasingly used by others such as Nintendo, Microsoft, and Sony Playstation etc. NICAM and the other organisations share the work of receiving the ratings done by the providers on a sample basis.

Central to the IARC rating process is a questionnaire that was created based on the factors that each rating authority considers when assigning ratings. These factors are then weighed by each rating authority so that once game developers complete the questionnaire; it instantly produces appropriate age ratings for each region. The result is a solution that enables developers to simultaneously obtain ratings from various territories throughout the world while preserving their nuanced local standards. Each participating rating authority monitors to ensure accurate ratings and the system enables the prompt correction of ratings when necessary.

The IARC is built on existing harmonisation efforts in the area at national/multi-national level, namely the Pan European Game Information (PEGI) in Europe (see below), Unterhaltungssoftware Selbstkontrolle (USK) in Germany, the Entertainment

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Software Rating Board (ESRB) in North America, Classificação Indicativa (ClassInd) in Brazil and the Australian Classification Board in Australia.

### **Pan-European Initiative (PEGI age rating system)**

A Pan-European Initiative has been established to help parents make informed decisions when buying computer games – the **PEGI age rating system**. It was launched in spring 2003 and replaced a number of national age rating systems with a single system now used throughout most of Europe, in 30 countries (Austria Denmark, Hungary, Latvia, Norway, Slovenia, Belgium, Estonia, Iceland, Lithuania, Poland, Spain, Bulgaria, Finland, Ireland, Luxembourg, Portugal, Sweden, Cyprus, France, Israel, Malta, Romania, Switzerland, Czech Republic, Greece, Italy, the Netherlands, Slovak Republic and the United Kingdom). It includes both age ratings and descriptors (see <http://www.pegi.info/en/index/id/33/> for more information).

The system is supported by the major console manufacturers, including Sony, Microsoft and Nintendo, as well as by publishers and developers of interactive games throughout Europe. The age rating system was developed by the Interactive Software Federation of Europe (ISFE).

The PEGI system is jointly administered by the Netherlands Institute for the Classification of Audiovisual Media (NICAM) which is based in Netherlands and to the Video Standards Council (VSC) in the United Kingdom. The PEGI administrator review the provisional age ratings and responsibility is split between NICAM (reviewing games rated 3 and 7), and VSC reviewing the 12, 16, 18 ratings.

An interview with representatives of PEGI/ISFE, USK and USK (all participants in IARC) pointed to the fact one of the **main costs** involved in setting up the system was the investment made in lobbying Member States to convince them to join and in developing agreements with them, amounting to “millions”.

### Scenario 3: Extend geographical scope

To extend the geographical scope while keeping the current provisions un-changed would affect the costs for the regulatory bodies, in that they would need to monitor third country providers. The most likely scenario would be that third country providers targeting EU countries need to register in an EU Member State, and it would thus mean an increase for regulatory authorities in the number of providers to monitor or oversee. It has not been possible to reliably distil the cost of monitoring one channel/on-demand provider in the data gathered in the field work. By ways of simple division, using the countries where costs estimates were provided on protection of minors and the MAVISE database information on established linear and non-linear providers, the costs range from 373 in FR, to 1,300 in DE and 1,436 in IT, per established service provider. As a basis for further calculations, the mean is being used, 1,036 Euros.

On the basis of information from the MAVISE data base on third country providers targeting EU audiences, the following estimations can be made.

**Table 11: Costs for monitoring non-EU based providers**

Non-EU based providers	Number	Cost per channel	Total cost
Linear service providers	70	1,036	72,520
Non-linear service providers	50	1,036	51,800
Total			124,320

#### 4.1.2 Impact on compliance costs

For the service providers, there are certain, albeit quite minor costs associated with compliance with provisions on protection of minors in AVMSD. Where costs stem from stricter levels of protection at national level, or measures which are not mandatory (for example content information, age ratings), this has not been included when looking at status quo scenario.

##### Scenario 1: Maintain status quo

In the efforts to establish a baseline for the service providers currently covered by the AVMSD, it became apparent that the actual costs for complying with the provisions were considered a "business as usual" cost. Service providers were generally not able to provide a cost estimate for compliance – they consider child protection to be a core part of their business, and thus do not have specific costs or tasks related to ensuring compliance. This is valid both for linear and on-demand providers. The costs mostly related to (stricter) national legislation, which are not considered costs deriving from the current provisions on protection of minors in AVMSD.

##### Scenario 2: Extend material scope through self and co-regulation

Under the current provisions, an extension of the material scope would mainly affect and have an impact on service providers which are not covered by the current AVMSD, e.g. other on-line content, in particular User Generated Content (UGC). An extension of the scope could also affect Internet Service Providers (ISPs). ISPs are regulated by the e-commerce Directive, and thus have a limited liability in terms of the content that they carry<sup>47</sup>. The same apply to UGC platforms (hosting platforms such as YouTube), but some services provided by or through these platforms may already be covered, such as the YouTube "channels".

It has been suggested that any extension of the material scope would be implemented by means of self and co-regulation. This would entail setting up co-regulatory mechanisms and organisations, generally funded by the stakeholders being regulated or monitored. As no relevant similar mechanisms exist, examples that are provided come from self- and co-regulatory regimes already in place for audio-visual services.

If the material scope of the AVMSD were to be extended through self and co-regulation, it is assumed that the current provisions would apply to other on-line

<sup>47</sup> Directive 2000/31/EC on electronic commerce; Article 12 on "mere conduit"

audiovisual content, and in particular to UGC platforms. In a self and co-regulatory scheme the stakeholders involved would need to define the ways in which rules should be implemented and monitored. It is assumed that the main stakeholders in this dialogue would be platform providers who would need to cooperate with regulatory authorities to put in place mechanisms to protect minors from normally seeing or hearing seriously impairing content, as well as content “likely to impair”.

The means used currently to protect minors can be broadly categorised into the following types:

- Internet filters, e.g. software used to limit access to harmful content;
- On-device protection e.g. installed on the hardware used to access on-line content;
- Safe modes/restricted modes, e.g. mechanisms built into UGC and social network platforms, including age gating.

#### Internet filters and mechanisms put in place by ISPs

Although ISPs are subject to limited liability, most provide different tools and mechanisms for protection of minors as part of the business.

Attempts to retrieve costs on the different types of protection mechanisms have not been very successful. In the following, an example is provided on the basis of the data collected, for one ISP provider for the protection mechanisms put in place for their internet offering.

**Table 12: ISP costs for protection of minors on the internet**

Type of protection mechanism	Cost, Euro
Child Protection App (Android) in 23 markets	160,000 yearly costs 430,000 initial costs
F-Secure Security Software (Parental Control) on DSL networks – licensing fees	116,250 monthly
Development costs of family features on mobile and WiFi-networks	290,000 to date
Membership in self- and co-regulation	40,000 yearly
Membership fees to associations for the protection of minors (search engines, white lists, blacklists)	150.000 yearly
Staff costs	120,000 yearly

In the UK, the major ISPs have agreed to implement internet filters, as a default to new customers (the internet filter requires an “opt-out” not to be installed). A study conducted by Ofcom<sup>48</sup> mapped the internet filtering measures put in place by four fixed line ISPs (i.e. BT, Sky, TalkTalk and Virgin Media). Although it was not in the scope of the report to make an assessment of the effectiveness with which children were protected from harmful content as a result of the filtering systems, network

<sup>48</sup> Ofcom (2014), Report on Internet Safety measures

filtering are generally correlated to an increased protection of children. However, as acknowledged even by the study conducted by Ofcom, filters can be circumvented by experienced users and their effectiveness depends on the strength of the filters.

The degree of protection ensured by such filters is also dependent on the level of take-up of network protection by customers. Figures reported in the study indicate that the degree of take-up of filtering options by new customers varies (see Table 14) and is affected by various factors.

**Table 13: Percentage of new customers who took up the offer of filtering**

	BT	Sky	TalkTalk	Virgin Media
% of new customers who took up the offer of filtering	5 %	8 %	36 %	4 %

Source: Ofcom (2014), Report on Internet Safety measures

Efforts to retrieve costs for the initiative have not been successful, as providers were not able to share the information.

#### On-device protection

The on-device protection relates to features installed on the hardware used to access the internet or other media (Xbox, Playstation). It is not foreseen as being likely that an extension of the scope to other on-line content would be implemented through technical controls on devices, and this scenario has not been further explored.

#### Safe modes/restricted modes/age gating

Most of the major platforms for UGC have some form of mechanism in place for protection of minors. It is usually a setting which has to be enabled, and which filters content to ensure that minors are not exposed to harmful content. Generally there is also the possibility to report "flag" harmful and/or illegal content which is then reviewed and removed if deemed appropriate (flagging is not specifically related to minors protection), as the example below from YouTube illustrates.

Opting-in to Restricted Mode means that videos with mature content or videos that were age restricted (by uploader) will not show up in video search, related videos, playlists, shows or films. YouTube uses community flagging and pornographic image detection to help identify and hide inappropriate content. Restricted mode is also designed to hide objectionable comments. Restricted Mode on YouTube does not remove content from the site, but rather helps hide this content from users who opt-in to the feature.

Age gating relates to a mechanism where content deemed harmful for minors (by the uploader) is "hidden" unless the viewer is logged in on an account (videos will show or not according to the reported age of the person holding the account).

It has not been possible to retrieve the costs for these filtering mechanisms, in terms of installing and running them.

To conclude, it has not been feasible to estimate the compliance costs for service providers of extending the current provisions on protection of minors to other on-line content. Therefore the above examples are presented **mainly as benchmarks or ways in which an extension of the scope could be implemented**. Attempts to obtain costs estimates were not successful, as no UGC platform providers were willing to discuss the options. Most ISPs already have different systems and tools for protection of minors in place, and it is assumed that while an extension of the scope may affect their compliance costs, it could also lead to some reduction on the longer perspective due to legal clarity and harmonization across Europe.

#### Scenario 3: Extend geographical scope

An extension of the geographical scope would not have an impact in terms of costs for providers already based in the EU. For service providers based in third countries, it would entail additional costs as they would have to register in an EU Member State and ensure compliance with the Directive. It is assumed that the compliance costs for service providers established in third countries would be higher than for the providers established in EU countries as they need to comply with "new" rules.

### **4.1.3 Impact on the level of protection of minors**

The assessment of the level of protection of minors is based on desk research, consultations with stakeholders, including experts and associations, working in the field. Furthermore responses in the open public consultation have been taken into account<sup>49</sup>.

#### Scenario 1: Maintain status quo

The concerns regarding the current provisions relate to the different regimes for linear and on-demand services, as many believe that the services should be subject to the same rules, i.e. that there should be no differentiation between linear and non-linear content. In particular it is seen as troublesome that a programme which has been subject to restrictions in a linear environment ("likely to impair") can be made available at any time without restrictions in a non-linear environment. There is still a difference in the level of active choice involved to see a programme in a non-linear environment, but as viewing habits and technology develop, on-demand services are increasingly used by viewers, minors included.

Another concern is represented by the different views among Member States about which content is "likely to" or "seriously" impairing the development of minors, and on what constitutes an adequate access control mechanism. This can lead to asymmetries in the application of the minimum standards set in the Directive between different Member States. The following illustrates the variegated approaches to restricting access to harmful content for minors in all EU Member States.

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<sup>49</sup><https://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st>

**Table 14: Types of control mechanisms for access to harmful content**

		Technical filtering	On-screen icons	Acoustic warning	Access codes			Technical filtering	On-screen icons	Acoustic warning	Access codes
AT	Linear	+	+			IE	Linear				+
	Non-linear	+					Non-linear			+	+
BE-DE	Linear	+		+		IT	Linear	+		+	
	Non-linear				+		Non-linear				
BE-FR	Linear		+	+	+	LV	Linear	+	+	+	
	Non-linear		+		+		Non-linear	+	+	+	+
BG	Linear	+	+	+		LT	Linear		+	+	
	Non-linear	+					Non-linear	+			+
CY	Linear	+		+		LU	Linear		+		
	Non-linear	+			+		Non-linear				
CZ	Linear	+	+	+		MT	Linear		+	+	
	Non-linear	+			+		Non-linear				+
DE	Linear	+	+	+		NL	Linear		+		
	Non-linear	+			+		Non-linear				
DK	Linear	+	+	+		PL	Linear		+		
	Non-linear				+		Non-linear	+	+		
EE	Linear			+		PT	Linear		+		
	Non-linear	+					Non-linear				+
FI	Linear		+	+		RO	Linear	+	+		+
	Non-linear						Non-linear	+			+
FR	Linear				+	SK	Linear		+		
	Non-linear		+	+	+		Non-linear				
UK	Linear	+			+	SI	Linear	+			
	Non-linear	+		+			Non-linear				+
EL	Linear		+	+		ES	Linear	+	+	+	
	Non-linear	+			+		Non-linear	+			+
HU	Linear		+	+		SE	Linear		+	+	
	Non-linear	+					Non-linear				+

Source: Based on European Audiovisual Observatory (2015), IRIS Comparative tables on the protection of minors in audiovisual media services

The real cultural and societal differences between Member States legitimately inform their individual approaches to content regulation. However, such cultural factors may also influence MS' approaches to the harmonised minimum standards in the AVMS Directive, which are intended to be common to all Member States, specifically in determining which content should be banned on broadcast television – and hence may have led to a more or less restricted scope of application of the “seriously impairing” threshold.

However, the major source of concern for the protection of minors is the free and unregulated access to all kinds of audio-visual content on the internet. The accessibility of the content that may be harmful to children is also substantiated by the innovative technological developments which include new devices, platforms and functionalities and the rapidly increasing interconnectivity of devices and platforms, which potentiate the likelihood of children reaching inappropriate content.

A recent report published by the ICT Coalition indicated that children today are going online at an ever younger age, with even toddlers and children less than one year using the internet.<sup>50</sup> Additionally, the usage of online services on portable devices is rapidly increasing among younger age children. A study conducted by the German Youth Institute who interviewed 4,800 families in 2014, identified that 2% of children in the age group below one year, 9% of children in the age group 2 years, 24% of children in the age group 6 years, respectively 80-85% in the age groups 9 to 10 years, and 92-100% of the children in the age group 11-15 years old used the Internet.<sup>51</sup> These findings are supported by studies published by Ofcom in the UK in 2014 and 2015, which indicate an increase from one year to another in the number of children using the Internet.<sup>52</sup> The ICT Coalition report, as well as the studies conducted by Ofcom, also found that connected devices and tablets had a growing popularity amongst young children, and new services such as all-age platforms and applications. Another increasingly popular trend is that of live video-streaming, which imposes multiple risks for children. The developing patterns of consumption of children appear to be mirrored by the developments in online services, with social media platforms addressing smaller children, aged 0 to 6 years having been launched.

The Net Children Go Mobile project<sup>53</sup> co-funded by the EC's Safer Internet Programme (now Better Internet for Kids) investigated through quantitative methods in a number of countries the current risks imposed on children by the new ways of internet access and use, in particular mobile internet and mobile media and found an increasing use of smartphone and tablets to access audiovisual content online. According to the

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<sup>50</sup> ICT Coalition, Let's Play it Safe. Children and Youths in the Digital World, Assessment of the Emerging Trends and Evolutions in the ICT Services, White Paper for the ICT Coalition for Online Children

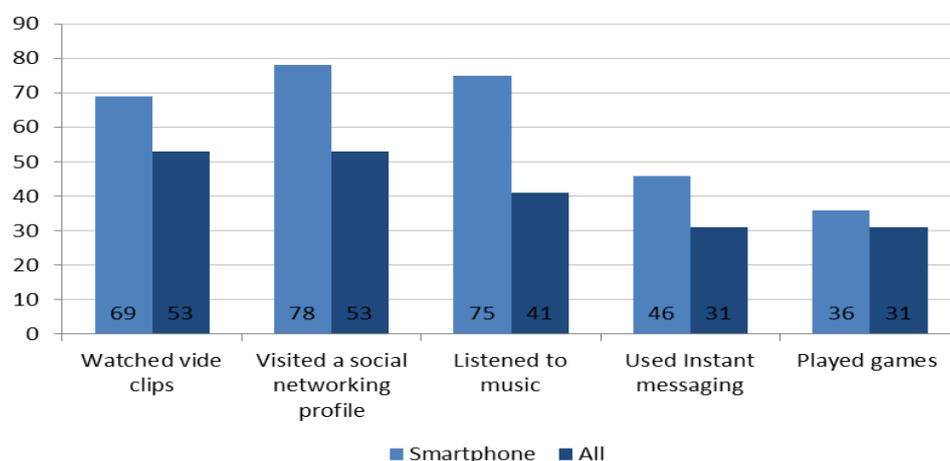
<sup>51</sup> Grobbin, Alexander / Feil, Christine (2015): Digital Media: A parental perspective on the need for guidance, actions and regulations, Deutsches Jugendinstitut

<sup>52</sup> Ofcom (2014): Children and Parents: Media Use and Attitudes Report, Ofcom (2015b): Children and Parents: Media Use and Attitudes Report

<sup>53</sup> The study involved a survey conducted in 7 EU countries (Denmark, Italy, Romania, the UK, Belgium, Germany, Ireland, Portugal and Spain) and involved a stratified sample of around 500 children aged 9-16, who are internet users, per country. The study included also qualitative research in nine European countries.

research conducted, the most important activities done by children are watching video-clips, visiting social media platforms or listening to music.<sup>54</sup>

**Figure 4: Daily online activities (age groups 9-16 years old)**

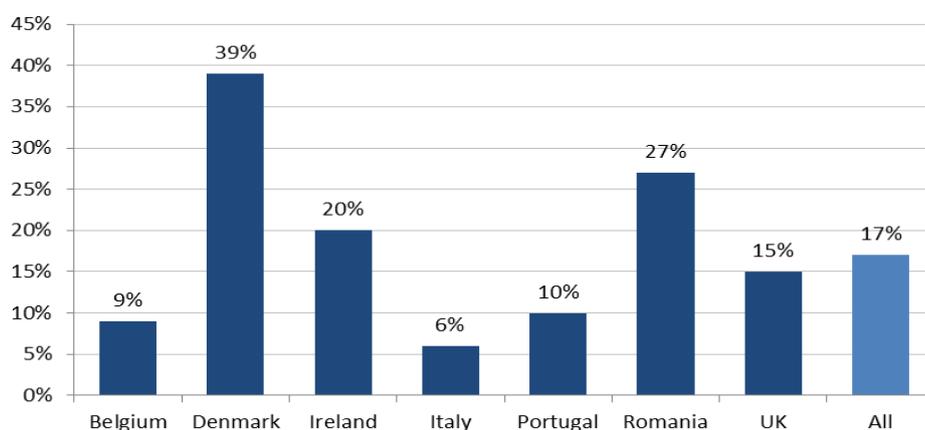


Source: Mascheroni and Cuman (2014), Net Children Go Mobile

Base: Children 11-16 years old who use the internet and participated in the Net Children Go Mobile study

Online use of content does not necessarily lead to harmful consequences. Harmful consequences arise when the risk of exposure is correlated to "being bothered" on the Internet. However, the risk of harmful consequences can arise with the threat of being exposed to harmful content such as pornography, cyberbullying, commercial fraud and other types of threats. The current regulatory environment offers little mechanisms of protection of children from such risks. The Net Children Go Mobile report identified that online experience do "bother" children but the degree to which this occurs varies from one Member State to another, which may be related the presence or absence of additional layers of protection existent in different national contexts (see Figure 5).

**Figure 5: Online experiences that have bothered children (%), by country**



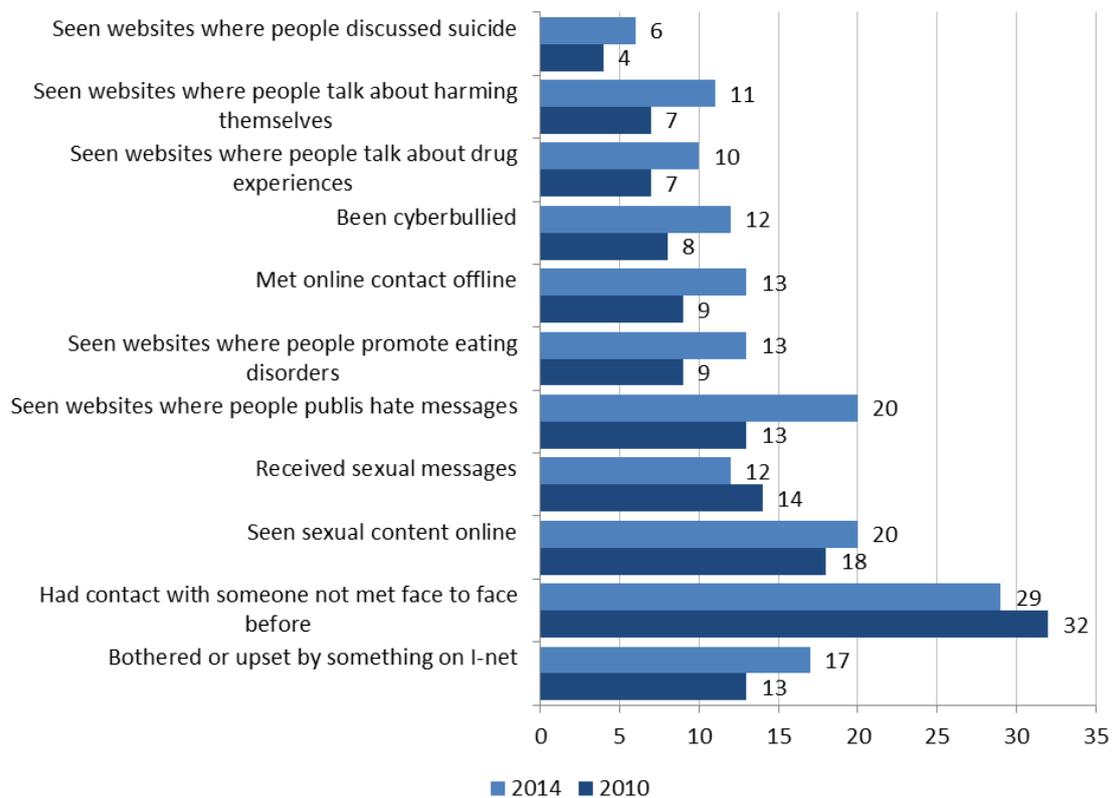
Source: Mascheroni and Cuman (2014), Net Children Go Mobile

<sup>54</sup> Giovanna Mascheroni and Andrea Cuman (2014), Net Children Go Mobile, Final Report with country factsheets

Base: Children 11-16 years old who use the internet and participated in the Net Children Go Mobile study

Additionally, the research uncovered that the online experiences that have "bothered" children are mostly related to being bothered or upset by something on the internet; having contact with someone the children did not see face-to-face, seeing sexual content online, receiving sexual images. Interestingly, figures from 2010 compared with figures from 2014 show an increasing trend in online risks and harm for children aged 11+ (see Figure 6).

**Figure 6: Online risks and harm, comparing 2010 and 2014, for children 11+**



Source: Mascheroni and Cuman (2014), Net Children Go Mobile

Base: Children 11-16 years old who use the internet and participated in the Net Children Go Mobile study

Children accessing online content can accidentally find content which, in the linear and non-linear world, would be defined "seriously impairing", such as pornography and gratuitous violence. Different parental control options exist, but the uptake is uneven and studies have shown that parents do not easily understand how to use parental controls<sup>55</sup>.

According to another study by Ofcom (UK)<sup>56</sup>, approximately one in five parents either used filters provided by the ISPs, on-device control software or pin/password protection of websites (not previously approved). In the same study it was concluded

<sup>55</sup> Ofcom: Report on internet safety measure, January 2014

that in total just over half of the parents surveyed used some kind of parental control or protection for their children's online activities.

A recent study from the UK suggests that 77% of British adults consider that hard-core pornographic content is easily reachable by children online. Data collected indicates that in one month:

- 200,000 UK children aged 6 - 15 visited an adult website from a PC or laptop. This represents 1 in 16 children in that age group who went online that month.
- 473,000 UK children aged 6 - 17 visited an adult website from a PC or laptop. This represents 1 in 10 children in that age group who went online that month.
- One in 20 (i.e. 5 per cent) of all UK visitors to adult websites from a PC or laptop were aged 6 - 17.
- One in five (20%) of all UK males aged 12 - 17 who went online visited an adult website from a PC or laptop.
- One website alone - Pornhub.com - was visited by 112,000 UK males aged 12 -17 using a PC or laptop in December 2013.
- Only one of the 1,266 adult websites identified as having been visited from the UK in December 2013 was a service regulated in the UK.<sup>57</sup>

Platforms for User Generated Content and social networks have also implemented measures for protecting children, generally different kind of safe modes or restricted access modes which are enabled through the platform settings. It is not possible to establish how often these are used by parents.

Technological progress and new devices to access different forms of audio-visual content, in conjunction with a decline in linear consumption and increase in online consumption among children, a status quo scenario will most likely lead to weaker protection of minors in audio-visual content.

#### Scenario 2: Extend material scope through self and co-regulation

An extension of the material scope through self and co-regulation would, if implemented properly, lead to a significantly improved protection of minors. If other audio-visual content, currently not covered by the Directive, were subject to the same provisions as non-linear services, access controls would need to be implemented for seriously harmful content such as (hard core) pornography and extremely violent content, and measures put in place to ensure that children would not "normally" hear or see content likely to impair. While there are many challenges in implementing such a regime, it would certainly lead to a better protection of children in the online world.

#### Scenario 3: Extend geographical scope

Specialised services such as Disney Channel and Nickelodeon are offered in EU Member States; they are registered in the UK and Ireland and are covered by the current AVMSD. As for other service providers, not directed towards children, they could in principle broadcast any type of material at any time of the day, leading to children being exposed to harmful content. At the moment there is no data on this, although the public consultations bring up examples of channels established outside

<sup>56</sup> Ofcom: Children and Parents: Media Use and Attitudes Report, October 2014

<sup>57</sup> The figures are based on the actual online activity of a panel of approximately 45,000 UK internet users

EU but targeting EU countries with content which would be classified as seriously harmful (mostly hard-core pornography)<sup>58</sup>. Hence, an extension of the geographical scope of the current AVMSD would probably strengthen the level of protection of minors, although the scale of the problem cannot be assessed. In the event that the EU regime for protection of minors becomes stricter, it can potentially lead to delocalisation by service providers wishing to circumvent EU rules. In this scenario, an extension of the geographical scope would clearly contribute to a stronger protection of minors.

#### **4.1.4 Impact on providers' willingness to provide services in other EU countries**

The following section presents the impact of maintaining the status quo under the three different scenarios on the providers' willingness to provide services in other EU countries.

##### Scenario 1: Maintain status quo

Currently, most on-demand providers within the EU have implemented protection systems to ensure that harmful content does not reach children. The main concern for providers' willingness to provide services across countries relates to the stability of the regulatory system and that the requirements remain similar across countries (as it is the case currently with the country of origin principle). Variations may occur, for example, in the case of Netflix, which voluntarily complies with local rating schemes when providing services in Member States other than the one where it is established (i.e. the Netherlands). However, in some cases, legal uncertainty arises in connection to the rules to which Netflix is obliged to abide to<sup>59</sup>. Additionally, it was reported that complying with the local rating schemes in some countries is rather slow and that the rating is not available at the same time as the programme is planned to become available through Netflix, which hampers the provision of services in some Member States.

##### Scenario 2: Extend material scope

According to interviewees, maintaining the status quo while extending the material scope might affect the provision user-generated platforms and the provision of such services. Online services could become new gatekeepers exercising editorial control over content. This would mean that it would be harder for online services to enter business, as they would also be required to control content hosted or shared on platforms.

##### Scenario 3: Extend geographical scope

The data collected indicates that maintaining the current provisions while extending the geographical scope of the directive could lead to negative effects on the availability of content in the EU. Representatives of the industry suggested that extending the geographical scope of the AVMSD may also negatively affect media pluralism and reduce the variety of content.

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<sup>58</sup> See for example response from ATVOD; <https://ec.europa.eu/digital-agenda/en/news/contributions-received-other-categories-avmsd-public-consultation>

<sup>59</sup> For example, Netflix was involved in a case law in Germany, where the claim that arose was that the content did not respect national specificities. In contrast, Netflix supported the position that it had implemented the classifications systems as stipulated in the national Dutch law, the Member State where it had its office established.

#### 4.1.5 Other impacts

The following section presents other reported impacts in connection to maintaining the status quo under the three different material and geographical scope scenarios.

The European Convention on Human Rights (Article 10) guarantees freedom of expression, which is also included in the Charter of Fundamental Rights of the EU (Article 11). The United Nations Convention on the Rights of the Child also states that children have the right to freedom of expression “which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in written or in print, in the form of art, or through any other media of the child’s choice” (Article 13).

In addition to this, minors also have the right to privacy, as affirmed in Article 16 of the UN Convention and in Article 8 of the ECHR. The Data Protection Directive and the Directive on Privacy and Electronic communications embed additional rules on privacy and the protection of personal data which apply to online content and are relevant for both children and adults. Some stakeholders warn against the fact that too much regulation on audiovisual content may lead to the restrictions of the right to freedoms of expression, whereas others consider that too little may impair the right to privacy that children should be granted.

However, striking a balance between the different types of content is difficult as equally important fundamental rights are put in balance, i.e. protection of minors, freedom of expression, and right to privacy.

A balanced approach is advocated by most stakeholders when it comes to the protection of minors from harmful audiovisual media content, and many pleaded for self- or co-regulation as a point on a spectrum between no regulation and State regulation.

##### Scenario 1: Maintain status quo

Generally, the protection of minors has traditionally been considered a legitimate aim for restricting freedom of expression, under the legitimate aim of protecting the rights of others. Despite being equally important, the three fundamental rights, protection of minors, protection of freedom of expression, protection of privacy rights are viewed differently between Member States. Thus, different levels of protection of minors exist at EU Member State level, with some Member States imposing stricter rules, which may be viewed by others as a deprivation of the freedom of expression, whereas others have more liberal approaches towards the protection of minors and the interpretation of “harmful content”, which in other Member States may be considered negative for the protection of minors or even for safeguarding the right to privacy of minors. The current status quo in connection to the protection of minors was considered by the majority of stakeholders as being adequate given that it allowed for cultural specificities to be reflected.

##### Scenario 2: Extend material scope through self and co-regulation

Evidence collected through interviews in the Member States suggests that the extension of the material scope of the AVMSD through self- and co-regulation can offer more flexibility, prompt adaptability to change, legal certainty and efficient enforcement, potentially creating stronger support for regulation. In domains where fundamental rights, such as freedom of expression are involved, it was considered by

the majority of stakeholders that co- or self-regulation could serve as a good substitute for government control.

A few stakeholders indicated that there is a clear disproportionate level of regulation between linear/non-linear content and on-line content which is no longer warranted. In this sense, some stakeholders suggested a technology-agnostic approach to regulation in the audiovisual media services. It was stated by a few stakeholders during the interviews, as well as the stakeholder consultation, that on-demand content is accessed as the result of a conscious, voluntary choice to view a certain category of content as presented in a catalogue, which may justify a different approach in terms of regulation. Thus, self- regulation, or co-regulation, may be more appropriate. However, some stakeholders indicated that the protection of minors in the online environment should not provide a justification for filtering or blocking Internet content, as this could impair freedom of expression.

#### Scenario 3: Extend geographical scope

The extension of the geographical scope was correlated by the majority of stakeholders with a potential risk that non-EU providers' willingness to serve the EU markets may decline, which would affect the diversity and availability of the content. This could have an impact on the freedom of expression of both children and adults but may result in higher protection of minors from harmful content. However, little data was provided by stakeholders to substantiate the extent to which freedom of expression could be affected by the extension of the geographical scope.

## **4.2 Option 2.1: Increasing the level of requirements for on demand services, extending the existing obligation with respect to seriously harmful content to potentially harmful content on demand**

Given the cultural specificities and differences between Member States, the current AVMSD does not provide a clear definition of harmful content that might be "seriously" or "likely" to impair. These concepts were to be further defined at national level. The tables below present the overview of Member States where the legal basis provides definitions of the concepts.

**Table 15: Definition of "might seriously impair" in national legislation**

Definition provided in the national legal basis	Definition not provided in the national legal basis
EE, HU*, IT, SI, UK*	AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, IE, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK

\*In secondary legal basis (recommendations or codes), Source: European Audiovisual Observatory Report

**Table 16: Definition of "likely to impair" in national legislation**

Definition provided in the national legal basis	Definition not provided in the national legal basis
BE, ES, HR, IT, RO, SI*	AT, BG, CY, CZ, DE, DK, EE, FI, FR, HU, IE, LT, LU, LB, MT, NL, PL, PT, SE, SK, UK

\*All of them have in common the reference to violent or sexual content and the use or abuse of alcohol and drugs, Source: European Audiovisual Observatory Report

Also the application of the AVMSD differs between Member States, with many Member States opting for a stricter regime than imposed by the Directive. This concerns in particular access to content which might seriously impair or is likely to impair on non-linear services. The table below provides an overview of the current implementation in the Member States, based on the Refit study carried out by the European Audiovisual Observatory.

**Table 17: Application of “might seriously impair” and “likely to impair” in linear and non-linear per Member State**

	Linear services	Non-linear services
Content which “might seriously impair” minors	AVMSD: Banned	AVMSD: Allowed with protection
	Member States: Banned	Member states: Allowed with protection in AT, BE (NL), CY, CZ, DE, DK, EE, ES, FI, GB, GR, HU, HR, IE, IT, LU, LV, MT, NL (private), PL, PT, RO (private), SE, SI, SK  Banned in BE(FR), BG, FR, LT, NL (public), RO (public)
Content which is “likely to impair” minors	AVMSD: Allowed with protection	AVMSD: Allowed without protection
	Member states: Allowed with protection	Allowed without protection in AT, BE (NL), CY, DK, EE, GR, IT, LV, SE, SK  Allowed with protection in BE (FR), BG, CZ, DE, ES, FI, FR, GB, HU, HR, IE, LT, LU, MT, NL, PL, PT, RO, SI

Source: European Audiovisual Observatory Report

The following sections will address the likely impacts that the revision of the current rules in the sense of increasing the level of requirements for on demand services, extending the existing obligation with respect to seriously harmful content to potentially harmful content on demand.

Hence, for linear services the situation would remain unchanged, while non-linear services would be required to implement protection for showing content which is “likely to impair”. As the overview above shows this is in effect already implemented in the majority of Member States (20 MS).

The following sections present evidence substantiating the likely impacts that the enforcement of Policy Option 2.1 in conjunction with the scenarios would have.

#### 4.2.1 Impact on administration and enforcement costs

##### Scenario 1: Maintain status quo

If the provisions for the protection of minors were increased by extending the current rules on “seriously impairing” content in on-demand services to also include content that is “likely to impair”, the statutory regulators and related self/co-regulatory would have an increased monitoring role to undertake. However, on-demand services are

already more strictly regulated in a majority of Member States, notably by restricting access to content that is “likely to impair” on non-linear services. Hence, the changes would only affect regulatory authorities in Member States which are currently implementing the minimum requirements, e.g. in AT, BE (NL), CY, DK, EE, GR, IT, LV, SE, SK.

In the Member States where stricter regimes are in place (requiring restricted access to content “likely to impair”), none of the regulatory authorities consulted could provide estimates of the costs associated with a stricter regime. In the UK, the co-regulator ATVOD estimated the regulatory costs for 2014/2015 to be Euro 632,793 (£487,086) which include its duties of encouragement in relation to the accessibility of on demand services and provision of European works, as well as enforcement of other requirements relating to editorial content, such as sponsorship and product placement. Hence, the costs do not relate only to the provisions on protection of minors, and should be seen as a maximum cost. It can therefore safely be assumed that the regulatory cost in the UK should be in the “high end”.

In the UK the number of non-linear services is among the highest in Europe, with 497 registered on-demand providers in the MAVISE database (December 2015). The monitoring cost then amounts to Euro 1293 per non-linear channel in UK. By applying this cost to countries which currently allow content likely to impair without restrictions, the following overall costs are derived.

**Table 18: Regulatory cost of option 2.1 in a status quo scenario**

Country of establishment	Number of non-linear service providers <sup>60</sup>	Cost of monitoring; Euro
AT	63	81,459
BE - FL	56	72,408
CY	26	33,618
DK	45	58,185
EE	13	16,809
GR	35	45,255
IT	72	93,096
LV	20	25,860
SE	141	182,313
SK	36	46,548
<b>Total</b>	<b>507</b>	<b>655,551</b>

#### Scenario 2: Extend material scope through self and co-regulation

If the option was to be implemented with an extension of the material scope to other on-line content this would have an impact on the regulatory cost of authorities. In a self and co-regulatory regime, the main costs would be borne by the regulated entities

<sup>60</sup>Registered in MAVISE data base, December 2015

(e.g. the service providers currently not regulated), but oversight would fall under the responsibility of regulatory authorities.

#### Scenario 3: Extend geographical scope

To implement the proposed changes in Option 2.1 and extend the geographical scope would impose additional costs on the regulatory authorities, but it assumed to be the same as in Option 1, Status quo.

#### **4.2.2 Impact on compliance costs**

The compliance cost relate to the costs which would have to be borne by the services providers in case option 2.1 is implemented, e.g. if access controls have to be implemented on content likely to impair on on-demand services.

#### Scenario 1: Maintain status quo

As with regulatory costs, additional compliance costs would only be imposed on providers in Member States which do not have stricter provisions implemented already, e.g. AT, BE (Flemish region) , CY, DK, EE, GR, IT, LV, SE, SK. The compliance costs for service providers can be divided into two parts:

1. The cost of rating or classifying content
2. The cost for restricting access

Frequently on-demand programmes have already been aired on linear services, and will thus have been rated or controlled and impose no additional compliance cost. A few large service providers in were able to provide an estimate of the costs of viewing and verifying content on an annual basis, this is presented in table below. It should be noted that these costs relate to all content and not only the non-linear service offer.

**Table 19: Cost of viewing and verifying content**

Provider	Type of activity	Yearly cost, Euro
[CONFIDENTIAL INFORMATION]	Viewing of content, including labelling of programmes (protection of minors)	140,000
[CONFIDENTIAL INFORMATION]	Verification of compliance for minors	689,229
[CONFIDENTIAL INFORMATION]	Classification of content	550,000

Another example can be provided from Netflix, which is registered in NL but chooses to comply with national rules on protection of minors when launching in a new (EU) country. Netflix estimates their cost for self-rating to 37 Euro per viewable, and for external viewing it amounts to 220 Euro per 60 minutes viewable. Another figure per viewable was provided by a provider from another Member State, with approximately 365 Euro per programme hour which is the standard cost to comply/edit/process content on an ad hoc basis.

It was not possible to collect data regarding costs of access controls, as most providers had systems in place and could not provide costs for either implementation or running the systems. Overall, the costs were considered minor in terms of technical investment and running costs, with the main cost driver being existence or not of reliable metadata (ratings, content information).

To conclude, the option of increasing the level of protection in non-linear services by imposing access controls also for content likely to impair minors, would only impose limited additional compliance costs on providers. The additional burden would only arise in the countries where minimum rules have been implemented, and be mainly related to the actual review process where third party metadata is missing or is inappropriate to the national context.

Scenario 2: Extend material scope through self and co-regulation

To implement the proposed changes in Option 2.1 and extend the material scope would not differ from an extension of the scope with the current provisions unchanged, and the compliance cost put on providers currently not covered would be the same as under option 1, scenario extension of material scope.

Scenario 3: Extend geographical scope

To implement the proposed changes in Option 2.1 and extend the geographical scope would not differ from an extension of the scope with the current provisions unchanged. This is because the changes necessary, for example technical solutions to control access to certain content would be the same in both scenarios and the suggested change relate to the how strict access control should be rather than the mechanism as such.

#### **4.2.3 Impact on the level of protection of minors**

Evidence collected in the framework of the study indicates discrepant views concerning the impact that the enforcement of policy Option 2.1 would have on the level of protection of minors, depending on the scenarios applied.

Scenario 1: Maintain status quo

The implementation of a policy option that would require all on-demand services to provide access restrictions for both “seriously impairing” and “likely to impair” content was assessed by different stakeholders as having only a moderate impact on the level of protection of minors, given that most on-demand services already have in place systems to restrict access to harmful content. In Member States where “likely to impair” content is currently allowed without restrictions (9 Member States and BE-NL)<sup>61</sup>, enforcing a rule that requires on-demand providers to impose access restrictions may lead to a decreased accessibility to “likely to impair” content for minors and, consequently, to a decreased exposure of minors to such content.

Scenario 2: Extend material scope through self and co-regulation

Increasing the level of protection for on-demand services while extending the material scope through self- or co-regulation, could potentially lead to platforms imposing access restrictions, depending on how Member States and platforms chose to implement the regulations.

As evidence collected suggests, this is of importance in a converging media environment where vulnerable viewers, such as minors, can be exposed to seriously or

<sup>61</sup> i.e. AT, BE (NL), CY, DK, EE, GR, IT, LV, SE, SK

potentially harmful content offered by services outside the remit of the AVMSD. However, given that the extension of the scope is envisaged to be done via co- and self- regulation, i.e. implemented via mechanisms set up by the actors in the industry, the impact on the level of protection will depend on a set of factors, including inter alia: 1) the degree of participation of platforms providers in self- and co-regulatory initiatives, 2) the efficiency of the protection put in place by the platforms providers, 3) the degree of take-up by customers of such protection services.

#### Scenario 3: Extend geographical scope

Enforcing policy Option 2.1 while extending the geographical scope could reduce the amount of exposure to “seriously harmful”, as well as “potentially harmful” content of minors if proper access restrictions are set in place. However, the feasibility of this option was questioned by representatives of various stakeholder groups.

#### **4.2.4 Impact on the development of new services**

Enforcing a policy option that would require on-demand providers to implement access restrictions could have an impact on the development of new services at two tiers: 1) at technological level, 2) at content level.

#### Scenario 1: Maintain status quo

Currently there are different types of technologies and mechanisms that are used to restrict access across linear and (where applicable) non-linear services, as can be seen from Table 14 above. In this context, enforcing policy Option 2.1 while maintaining the status quo could encourage increased standardisation and reduce the fragmentation of the market in terms of technologies and mechanisms used for restricting access to services across Member States. This might, in turn, reduce the costs of services operating across Member States as there would be a decreased need to adapt to new standards and technologies and similar access control mechanisms and rating systems would be implemented across Member States.

#### Scenario 2: Extend material scope through self and co-regulation

At technological level, the development of new services may be given momentum by the enforcement of policy Option 2.1 in conjunction with the extension of the material scope, as new technological tools would have to be developed to ensure proper access restrictions to harmful content. However, this may vary across Member States. In some cases, user-generated content platforms have already taken part in self-regulatory schemes such as the ICT coalition<sup>62</sup>. Additionally, modern devices have put in place controls that were not technologically possible for traditional services and which prevent access to unsuitable content in a more flexible way<sup>63</sup>.

According to findings from the stakeholder consultation, the innovation in new emerging services is dependent on the flexibility provided by the regulatory environment. Thus, a bottom-up approach to regulation with self- and co-regulation encourages innovative advancements in terms of technology and content.

<sup>62</sup> <http://www.ictcoalition.eu/>

<sup>63</sup> Stakeholder interview

On the other hand, stakeholders mentioned that attempts to regulate non-TV like services would reduce the margin of manoeuvre in terms of innovation, in particular in connection to small scale creators of new content services and with regard to new formats and business models.

#### Scenario 3: Extend geographical scope

The interviews and the stakeholder consultation indicate that the enforcement of policy Option 2.1 in connection to the extension of the geographical scope could affect the ability to bring innovations (both in terms of technology, as well as content) to the EU Member States as companies may be subject to multiple, potentially conflicting, requirements. An extension of the geographical scope of the AVMSD can negatively impact the availability of new services, as well as content in the EU. An extension would result in a conflict of laws, as a service would be governed by two or more sets of rules from different jurisdictions. This may lead innovative services to become more hesitant to roll-out in the EU<sup>64</sup>.

### **4.2.5 Impact on providers willingness to provide services in several EU countries**

Findings collected suggest that the implementation of policy Option 2.1 may also affect the on-demand service providers' willingness to provide services in several EU countries. However, the impact is assessed as being low to moderate.

#### Scenario 1: Maintain status quo

Enforcing policy Option 2.1 would potentially lead to levelled requirements across all Member States concerning on-demand content which could have a positive impact on the willingness of providers to provide services in other Member States. Standardised mechanisms for protection of minors against harmful content on linear and non-linear would diminish the burden set on on-demand providers to comply with different requirements in different Member States and may increase their willingness to serve new markets.

On the other hand, as described in section 4.2.1, the enforcement of additional requirements for on-demand providers could lead to additional compliance costs concerning the rating and classification of content, as well as costs related to restricting access to seriously harmful and "likely to impair" content. This could act as a deterrent for the willingness of on-demand providers to establish in a Member State and to provide services in Member States.

Evidence collected indicates that stricter rules for on-demand providers may also have an impact on the willingness of providers to relocate their on-demand hard-core pornographic material (i.e. "seriously impairing content") outside of the EU Member States. Thus, this serves as a basis to suggest that tightening the rules on non-linear providers might push more AV providers to leave the EU Member States jurisdiction and, subsequently remove measures which had been in place to protect minors whilst subject to EU regulation. In countries where tighter rules apply to non-linear AV providers, examples exist of providers that moved their operation/ownership outside of the Member State. One such example is the "Playboytv" which moved its

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<sup>64</sup> Stakeholder interview

operation/ownership from the UK to Canada after it was found to be providing on-demand services which according to UK regulation would have been obliged to introduce age-verification access control systems. However, this practice is rare according to evidence collected, and there is a low likelihood that major EU providers could operate from outside the EU without having an EU presence, or that the economic benefits of such a circumvention strategy would outweigh practical difficulties presented.

#### Scenario 2: Extend material scope

According to interviewees, Policy option 2.1 in the context of the extension of the material scope might affect the provision user-generated platforms and the provision of such services. Online services could become new gatekeepers exercising editorial control over content. This would mean that it would be harder for online services to enter business, as they would also be required to control content hosted or shared on platforms.

#### Scenario 3: Extend geographical scope

According to evidence collected in the framework of the study, the enforcement of policy Option 2.1 in conjunction with extending the geographical scope of the AVMSD to cover services established in countries outside the EU, would have negative effects on the availability of content in the EU, including content potentially not available in the EU, niche content and choice of different services for users which might be reduced. Representatives of the industry suggested that extending the geographical scope of the AVMSD while enforcing policy Option 2.1 may also negatively affect media pluralism as potentially socially valuable content such as news, provided from other countries would be less available in the EU. Additionally, this may lead to providers choosing not to serve the EU market anymore.

### **4.2.6 Other impacts**

The following section presents other types of impacts that the implementation of policy Option 2.1 in connection to the different scenarios would have, in particular impacts on other fundamental rights, such as the freedom of expression and the right to privacy.

#### Scenario 1: Maintain status quo

Member States interpret in many different manners what “seriously impairing” and “likely to impair” content is, which reflects the cultural specificities and differences between Member States. Thus, while some Member States might consider certain types of content as being “potentially harmful” and would restrict access to it, other Member States would consider that restricting access to such services, even to children, would be a violation of their right to freedom of expression. In this sense, increasing the level of requirements for on demand services, while extending the existing obligation with respect to seriously harmful content to potentially harmful content on demand while maintaining the status quo can lead to an increased level of protection of minors but may at the same time affect the freedom of expression of both adults and children, as “likely to impair” content would be likely to fall under stricter regulation. For example, evidence suggests that Member State’s perceptions of nudity in audiovisual content vary widely. Southern Member States where there is a strong catholic foundation consider nudity as being harmful content for minors and

impose what other Member States would see as excessive access restrictions. Thus, imposing a higher level of restrictions of “likely to impair” content is likely to affect the cultural specificities of Member States and is likely not to be accepted at national level.

#### Scenario 2: Extend material scope

Implementing policy Option 2.1 while extending the material scope of the AVMSD may affect even further the freedom of expression of both children and adults, as “likely to impair” content would have to be restricted or put behind access controls. This could lead to a reduced access to content that in some Member States is not considered as having a harmful effect on children.

#### Scenario 3: Extend geographical scope

The impact of implementing the policy Option 2.1 and extending the geographical scope is likely to be similar to what was explained in section 4.1.5 on the extension of geographical scope in conjunction with maintaining the status quo. It is likely that imposing additional restrictions on non-EU operators would lead to a decreased willingness of EU providers to serve EU markets. This is likely to affect the diversity and availability of non-EU audiovisual content and may have consequences on the freedom of expression and on the right of audiences to information.

### **4.3 Option 2.2: Decreasing the level of requirements for TV broadcasting services and increasing the level of requirements for on-demand services, while maintaining differentiation of seriously or likely to impair**

Policy Option 2.2 foresees decreasing the level of requirements for TV broadcasting services and increasing the level of requirements for on-demand services, while maintaining differentiation of “seriously or likely to impair. This option would entail that AV content which is considered “seriously harmful” or “likely to impair” minors would be allowed with access controls on both linear and on-demand AV content, which would imply that “seriously” and “likely” to impair content would be treated in the same manner, unless the regimes implemented would differ (e.g. pin-code verification versus watershed).

Generally, evidence collected through interviews and through the stakeholder consultation supports the fact that increasing the level of requirements for non-linear AV providers would be perceived as a positive development that will reinforce the protection of minors.

The following sections will address the likely impacts that the revision of the current rules in the sense of decreasing the level of requirements for TV broadcasting services and increasing the level of requirements for on-demand services, while maintaining the differentiation of “seriously” or “likely to impair”, will have. Each of the potential impacts is discussed in relation to the three foreseen scenarios.

### 4.3.1 Impact on administration and enforcement costs

The assessment of the administration and enforcement costs that the implementation of such a policy change would have was difficult. In general, the data collected through the study indicates that the impact on the costs of administration and enforcement would be negligible or low for regulatory authorities across Member States.

#### Scenario 1: Maintain status quo

The data collected and interviews with national regulators indicate that the impact of enforcing a policy change that would imply decreasing the level of requirements for TV broadcasters and increasing the level of requirements for on-demand services, while maintaining differentiation of seriously or likely to impair was estimated to be low.

Little concrete evidence was provided to measure the impact that maintaining the status quo while implementing Policy Option 2.2 would have on monitoring costs. Nonetheless, referring to the current baseline in terms of costs of monitoring and enforcement of the rules on minors for countries that have implemented a system where the rules for non-linear providers are stricter can give a broad estimate of what the actual costs for ensuring compliance would be if Policy Option 2.2 while maintaining the status quo would be implemented. For example, in the case of France, the rules on minors for linear and non-linear AV providers are stricter as AV content that “might seriously impair” minors is banned on both, whereas content that is “likely to impair” is allowed only with protection. Additionally, the French law imposes rating and watershed rules on harmful content on both linear and non-linear AV content (see table below for a further delineation of the rules).

**Table 20: Overview ratings and watershed**

France	Rating	Watershed
Linear	No rating	Broadcast at any time
	-10: not suitable for minors under 10	Broadcast at any time, but not inside youth programmes
	-12: not suitable for minors under 12	Broadcast after 22.00, with exceptions for cinema and pay-per-view channels
	-16: not suitable for minors under 16	Broadcast after 22.30, with exceptions for cinema and pay-per-view channels
	-18: not suitable for minors under 18	Broadcast between 00.00 and 5.00 and only on subscription channels which provide a parental code
Non-linear	No rating	Broadcast at any time
	-16: not suitable for minors under 16	Broadcast at any time, but only between 22.30 and 5.00 only via a paying offer
	-18: not suitable for minors under 18	Broadcast at any time, but only via a paying offer and only in a special section of the catalogue

Source: Interviews

According to the national statutory regulator from France (Conseil Supérieur de l’Audiovisuel) whom is in charge of monitoring the afore-delineated rules, the costs of monitoring and ensuring compliance with the above-delineated rules amount to

approximately EUR 323,750 per year. A further breakdown of costs is presented in the table below.

**Table 21: Costs of enforcement and administration of rules, France, status quo**

Country	Regulator	Activity	Yearly cost, Euro Linear and non-linear
France	CSA	Monitoring (all)	EUR 323,750
		Case investigation (all)	EUR 44,064
		Overall Total	EUR 397,814

Source: Interviews

However, this baseline scenario does not offer a thorough insight in the actual costs that regulatory authorities would incur, should Option 2.2 in connection with maintaining the status quo be implemented. This is mainly due to the fact that the afore-delineated costs offer a picture of what an “increase” in requirements for non-linear AV providers would imply, but do not take into consideration a “decrease” in requirements for TV broadcasting.

However, some interviewees suggested that a decrease in the level of requirements for TV broadcasting would have no impact on the monitoring costs. In this context, if the policy option 2.2 is broken down in three dimensions, it can be assumed that:

- There would be no cost for monitoring from “decreasing” the level of requirements for TV broadcasting;
- The cost for monitoring from “increasing” the level of requirements for non-linear providers would depend on the actual level of requirements imposed. An indicative amount is provided by the current baseline in countries where the level of requirements is stricter for non-linear AV providers. This would overlap with the impact of Policy Option 2.1.
- There would be no costs for monitoring from maintaining the differentiation between “seriously impairing” and “likely to impair”.

The evidence collected concerning the costs for enforcement of the new regulatory regime as stipulated in Option 2.2 suggests that an initial increase in the costs may occur, as a result of: (a) an increase in the number of complaints due to the decreased level of requirements for TV broadcasting (only at the beginning) after which a potential decrease/stabilisation of the costs, (b) an increase in the number of complaints due to an increased level of requirements for non-linear providers.

The baseline for countries implementing stricter rules on non-linear AV providers can offer a rough estimate of the impact that policy option 2.2 would have if implemented. An overview of costs of enforcement of rules for complaints related to linear and non-linear content is presented below.

**Table 22: Costs of enforcement of rules for linear and non-linear content**

MS	Organisation	Type of rules covered	No of complaints and cases investigated	Cost of case investigation , Euro
FR	CSA – Statutory regulator	Linear and non-linear	Complaints: 8,106 Cases: Not available	EUR 44,064
DE	FSF - Voluntary Self-Regulation Body for Television	Linear	Complaints: Not available Cases: 2,000 (2014)	EUR 1,000,000
DE	FSM - Voluntary Self-Monitoring of Multimedia Service Providers	Non- linear	Complaints: 2,612 (2014) Cases: 1,067 (2014)	EUR 126,000

Source: Interviews

#### Scenario 2: Extend material scope through self and co-regulation

To implement the proposed changes in Option 2.2 and extend the material scope would not differ from an extension of the scope with the current provisions unchanged.

#### Scenario 3: Extend geographical scope

To implement the proposed changes in Option 2.2 and extend the geographical scope would impose additional costs on the regulatory authorities, but it assumed to be the same as in Option 1, Status quo. There would be no difference in the monitoring effort required between the current regime and the changes suggested in option 2.2.

### **4.3.2 Impact on compliance costs**

The compliance costs related to the implementation of Policy Option 2.2 are presented in the following sections, e.g. if the same level of requirements is imposed on both linear and non-linear providers. The impact on costs of compliance is discussed in relation to each of the possible three scenarios. It is noteworthy that the impact on compliance of Policy Option 2.2 is likely not to differ from the impact that Policy Option 2.1 would have, but more examples are provided here.

#### Scenario 1: Maintain status quo

As under Option 2.1, the implementation of Option 2.2 in connection to maintaining the status quo would have an impact only on Member States with a lower level of restrictions than the AVMSD, namely: AT, BE (Flemish region), CY, DK, EE, GR, IT, LV, SE, SK. As afore-delineated (see section on Policy Option 2.1), the costs of compliance can be divided into: (a) cost of rating or classifying the content, (b) cost for access control.

Currently, for the service providers, there are certain, albeit quite minor costs associated with compliance with provisions on protection of minors in AVMSD. Where costs stem from stricter levels of protection, or measures which are not mandatory (for example content information, age ratings), this has not been included when looking at status quo scenario. In many Member States the law foresees the same treatment on linear and non-linear contents already. In such cases, the impact on the

AV providers would be minimal, as the implementation of similar rules is already performed. The box below presents such an example.

#### **Provider from Germany**

The German law imposes a rating system and watershed rules on AV content with the aim of ensuring the protection of children.

For ensuring compliance with all the rules on all types of AV content, the costs of one provider amount to approximately € 900,000 for one year (data for 2014). All online websites of the provider are labelled with the age.de.html level which provides information on the type of content. The provider uses a technical solution on their website allowing users to view contents for under 16 years' old only with a PIN (HbbTV). This solution has been accredited by the FSM and the costs for it amount to approximately € 8,000). All apps are assessed by IARC and hence are also labelled with age categories.

As described by the example above, in such cases the additional cost of complying with a new regime as the one stipulated by Option 2.2 would be minimal.

Thus, evidence collected suggests that in Member States where AV content which is "likely to impair" can be shown only with access control systems for non-linear content (BE- French region, BG, CZ, DE, ES, FI, FR, GB, HU, HR, IE, LT, LU, MT, NL, PL, PT, RO, SI), such a regulatory system would have a no impact in terms of costs. On the other hand, in Member States where "likely to impair" AV content can be shown without protection (e.g. AT, BE – Flemish part, CY, DK, EE, GR, IT, LV, SE, SK), non-linear AV providers are likely to incur a cost from rating content and setting up access control systems.

#### Scenario 2: Extend material scope through self and co-regulation

To implement the proposed changes in Option 2.2 and extend the material scope would not differ from an extension of the scope with the current provisions unchanged, and the compliance cost put on providers currently not covered would not change as the mechanisms to put in place would be the same as for option 2.1.

#### Scenario 3: Extend geographical scope

To implement the proposed changes in Option 2.2 and extend the geographical scope would not differ from an extension of the scope with the current provisions unchanged. This is because the changes necessary, for example technical solutions to control access to certain content would be the same in both scenarios and the suggested change relate to the how strict access control should be rather than the mechanism as such.

### **4.3.3 Impact on the level of protection of minors**

Evidence collected through the interviews and stakeholder consultation analysis suggests that the level of protection of minors will be minimally affected by a policy change that would imply decreasing the level of requirements for TV broadcasting services and increasing the level of requirements for non-linear services, given that TV broadcasting services would not broadcast "seriously harmful content" even if the level of requirements would be decreased. On the other hand, increasing the level of requirements for non-linear AV providers could potentially increase the level of

protection of minors as presented under policy Option 2.1. However, this is influenced by the with the manner in which tighter requirements will be applied, i.e. whether the restrictions appropriate to the potential of the content to cause harm to minors would be imposed through “scheduling/the watershed” for content that causes less concern or “subject to technical tools” for strongest material. This approach would result in the most harmful content (e.g. hard-core pornography) being consistently subject to effective access controls across the EU.<sup>65</sup>

#### Scenario 1: Maintain status quo

As presented also under policy Option 2.1, the enforcement of this policy option is likely to have low to moderate impacts on the level of protection of children given that, currently, most on-demand and online services already offer some level of protection through the implementation of technical filtering, age gating and access control codes. Currently, according to representatives of national regulators, on-demand services operated by major broadcasters or TV platform operators, in spite of having relative freedom, they do not fully utilise the freedom. For instance, service providers have not included in their on-demand services material, such as hard-core pornography, which is prohibited in the UK but permitted on UK VOD provided that robust access controls are in place. Additionally, as presented under policy Option 2.1 leading on-demand providers voluntarily include access restrictions for seriously harmful content. This suggests that leading on demand providers are meeting needs in pursuit of their commercial interests (there is clearly commercial value for mainstream providers in maintaining a ‘safe’ viewing experience) without the need for regulatory intervention. This is not necessarily true for all types of on-demand service / content, and specific issues relating to protection of children are considered in the next section.

#### Scenario 2: Extend material scope

The enforcement of policy Option 2.2 at the same time as the extension of the material scope would lead to systems that offer similar levels of protection across linear, non-linear content and services currently not covered. This would imply strong access controls for content that “might seriously impair” and moderate controls for content that is “likely to impair. A more uniform approach to the control of access to harmful content across all means could create a level playing field for AV providers and have a positive effect on the protection of minors.<sup>66</sup> However, such an approach can only be achieved through the involvement of the industry and encouragement of co-regulatory systems will be relevant in this content.

#### Scenario 3: Extend geographical scope

Enforcing policy Option 2.2 while extending the geographical scope could reduce the amount of exposure to “seriously harmful”, as well as “potentially harmful” content of minors if proper access restrictions are set in place. However, the feasibility of this option was questioned by representatives of various stakeholder groups.

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<sup>65</sup> Interview with stakeholder

<sup>66</sup> Interview with stakeholder

#### 4.3.4 Impact on development of new services

The impact of implementing policy Option 2.2 would be similar as that of the enforcement of policy Option 2.1, as presented in the previous sections.

##### Scenario 1: Maintain status quo

The enforcement of this policy Option would give linear broadcasters a better flexibility in scheduling, which would allow the broadcasters to develop and make available innovative content to consumers. Additionally, similar as under Option 2.1, the policy Option 2.2 could lead to a standardisation of access control practices across Member States across linear and non-linear content.

However, the data collected was insufficient to measure the extent of the impact of the policy option on the development of new services and to accurately establish the direction of the impact (whether positive or negative).

##### Scenario 2: Extend material scope

As with option 2.1., according to findings from the stakeholder consultation, the innovation in new emerging services is dependent on the flexibility provided by the regulatory environment. Thus, a bottom-up approach to regulation with self- and co-regulation encourages innovative advancements in terms of technology and content.

On the other hand, stakeholders mentioned that attempts to regulate non-TV like services would reduce the margin of manoeuvre in terms of innovation, in particular in connection to small scale creators of new content services and with regard to new formats and business models.

##### Scenario 3: Extend geographical scope

Similar to the impacts indicated under policy Option 2.1, the impact of the enforcement of policy Option 2.2 in connection to the extension of the geographical scope could lead to possibly conflicting jurisdictions applying to the same services which could impair innovative practices in the audiovisual media environment.

#### 4.3.5 Impact on providers willingness to provide services in several EU countries

The following section presents the likely impact that the implementation of policy Option 2.2 under the different scenarios would have on the willingness to provide services in several EU countries.

##### Scenario 1: Maintain status quo

Implementing a policy option that would lead to a harmonised level of requirements for both linear and non-linear service providers, while at the same time maintaining the differentiation between seriously harmful content and likely to impair content, if implemented consistently across Member States, may lead to a more uniform approach towards the mechanisms of protection of minors against harmful content across Member States. Similar to policy Option 2.1, this could increase the willingness of service providers to provide services in several EU countries, as there would be a more uniform set of requirements that they would need to comply with for providing linear and non-linear content.

#### Scenario 2: Extend material scope

According to interviews Policy option 2.2 in the context of the extension of the material scope might affect the provision user-generated platforms and the provision of such services. Online services could become new gatekeepers exercising editorial control over content. This would mean that it would be harder for online services to enter business, as they would also be required to control content hosted or shared on platforms.

#### Scenario 3: Extend geographical scope

The providers' willingness to provide services in other EU Member States could be affected in the case in which policy Option 2.2 in connection with the extension of the geographical scope would be implemented. An extension of the scope and imposing extra-territorial requirements upon service providers established outside the EU could lead to the situation in which non-EU service providers would be submitted to various (potentially conflicting) jurisdictions. This would add further requirements to comply with when providing content and is likely to act as a deterrent for providers from outside the EU, decreasing their willingness to provide on EU markets.

### **4.3.6 Other impacts**

The following section presents other types of impacts reported by stakeholders in connection to the implementation of policy Option 2.2 under the three different scenarios.

#### Scenario 1: Maintain status quo

Decreasing the level of requirements for TV broadcasting services while increasing the level of requirements for on-demand services, and maintaining differentiation between "seriously impairing" and "likely to impair" was assessed as having only a minor impact on the freedom of expression and other fundamental rights of the audiences.

#### Scenario 2: Extend material scope

Implementing policy Option 2.2 while extending the material scope of the AVMSD may affect the freedom of expression of both children and adults, as "likely to impair" content would have to be restricted or put behind access controls. This could lead to a reduced access to content that in some Member States is not considered as having a harmful effect on children (see section 4.1.5).

#### Scenario 3: Extend geographical scope

The impact of implementing the policy Option 2.2 and extending the geographical scope is likely to be similar to what was explained in section 4.2.6 on the extension of geographical scope with the extension of the geographical scope. Stricter restrictions may indirectly affect the freedom of expression and right to information, as non-EU providers' willingness to provide on the EU markets might decline.

#### 4.4 Option 3: Increasing the information available on harmful content and promote the harmonisation of classification systems by different measures

Option 3 would seek to increase the information available on harmful content and harmonise classification systems through the following means:

**A) Guaranteeing information obligations on content (age rating and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States:** The sub-option implies defining and ensuring information obligations at Member State-level on the basis of clear standards, but would allow for cultural differences when it comes to ratings.

**B) Implementing a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/descriptors, across Member States and service providers:** This sub-option would imply putting the onus on Member States and the relevant stakeholders (i.e. regulators, broadcasters, those responsible for editorial content) to implement a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/descriptors. Such a regime would seek harmonisation at EU level, across Member States and different actors responsible for editorial content.

The subsequent sections include estimates of what the likely impacts of revising the provisions of the AVMSD to increase the information available on harmful content and harmonise classification systems would be. The potential impacts are assessed as a “cluster”, taking into account the different means described above.

##### 4.4.1 Impact on administration and enforcement costs

Administration and enforcement costs relate to costs imposed by the Directive on the authorities and other relevant bodies when monitoring and enforcing the provisions on the protection of minors. The assessment of costs, should the information available on harmful content be increased and classification systems harmonised, is presented below on the basis of the 3 scenarios that form part of the study.

###### Scenario 1: Maintain status quo

Should the information available on harmful content be increased and classification systems harmonised on the basis of the means detailed above, but the status quo maintained, additional administrative and enforcement costs would be incurred, but to varying degrees depending on the Member State concerned.

**Guaranteeing information obligations on content** (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States, was seen as a means which under the status quo would not involve a significant increase in administration and enforcement costs if the rules were clearly defined. Additional costs would/could result from the need to define new processes or establish a complaint mechanism to ensure adequate ratings where such processes/mechanisms do not already exist at Member State level.

Currently, there are different labelling schemes used in different countries to provide information to audiences on the type of content that is being broadcast. The labelling is done through attributing different descriptors (either *age* or *content* descriptors) to the audiovisual content<sup>67</sup>. Presently, most Member States use age ratings and age descriptors, whereas content descriptors are only being used in the Netherlands and Finland. Most Member States that require age ratings normally impose watershed rules and at the same time require on-screen icons or acoustic warnings by law. The table below offers an overview of all Member States that use age ratings and content descriptors.

**Figure 7: Overview of Member States that use age rating and content descriptors**

	Member State
Age ratings	AT, BE (Fr), BG, CY, DE, ES, FI, FR, GB, GR, HU, HR, LT, LU, LV, MT, NL, PL, RO, SI, SK
Content descriptors	NL, FI

Source: European Audiovisual Observatory (2015), Analysis of the implementation of the provisions contained in the AVMSD concerning the protection of minors

#### **Example of use of age ratings (Age descriptors): United Kingdom**

In the UK, the BBFC uses a multi-tiered scale of age descriptors to classify content according to its suitability for minors. The rating of content is done by the BBFC in conformity with the BBFC's Classification Guidelines which detail the acceptable types of content for each age category. The BBFC Guidelines were established to protect children and vulnerable adults from potentially harmful content and to empower consumers, in particular parents, to make more informed decisions for their children. The BBFC works with a number of on demand services to provide age ratings for video content available for download and streamed online. Some of the platforms provide additional parental control mechanisms which allow parents to restrict access of their children to content that is rated inappropriate for their age. The age ratings/descriptors used by the BBFC are presented in the figure below.

**Figure 8: Overview of content descriptors in the UK**



Source: BBFC: <http://www.bbfc.co.uk/>

<sup>67</sup> Interdisciplinary Centre for Law and ICT (2013), The use of labels to empower minors, parents, educators in the social media environment. An explanatory report

### Example of use of content descriptors: Netherlands

In the Netherlands, the Dutch Media Act (Mediawet 2008) stipulates in Article 4.1 that neither public nor commercial broadcasters can show content that might seriously harm the physical, mental or moral development of children. As such, the Kijkwijzer rating scheme was developed, which is a single content classification scheme for television programmes, films, videos, games and mobile content. The scheme utilizes both content and age descriptors to classify the content. An overview of the content descriptors which are used as pictograms in the Netherlands is shown in the figure below.

**Figure 9: Overview of content and age descriptors in the Netherlands**



The content is assessed in terms of violence, fear, sex, discrimination, drug and/or alcohol abuse and coarse language. An age recommendation is associated with each of the types of subjects. When the assessment is made, the subject with the highest age score determines the final age rating. The system not only gives an age recommendation, but also assigns a pictogram that shows the reason for that recommendation (violence, fear, sex, discrimination, drug and/or alcohol abuse and coarse language).

### Example of content descriptors: Finland

Finland utilises a rating system that combines legally binding age ratings (5 categories) and content descriptors. The obligations for age and content rating are stipulated in the Act on Audiovisual Programmes<sup>68</sup>.

The age descriptors utilised by Finland include: S for content that is suitable for all, 7 for content suitable for 7 years and older, 12 for content that is suitable for 12 years and older, 16 for content that is suitable for 16 years and older, 18 for content that is suitable only for adults. In addition to this, all major AV providers need to inform the audiences through content descriptors of content that "contains violence", "contains sex scenes", "may cause anxiety", "contains drug use".

Source: European Audiovisual Observatory, Analysis of the implementation of the provisions contained in the AVMSD concerning the protection of minors

If a policy option that would require the provision of additional information through age rating and content descriptors would be implemented, additional costs would/could result from the need to define new processes and/or to establish a complaint mechanism to ensure adequate ratings where such processes/mechanisms do not already exist at Member State level.

<sup>68</sup> <https://www.finlex.fi/fi/laki/kaannokset/2011/en20110710.pdf>.

The box below provides an example of ATVOD, a co-regulatory body in the UK which until the end of 2015 regulated the editorial content of the UK video on demand services.

**Example of co-regulatory body: ATVOD in the UK**

ATVOD would support a change to the AVMSD which required that service providers made available to users of the service sufficient information about each programme to enable the user to make an informed choice about whether to view the content. In making this recommendation ATVOD notes that while it would have a range of valuable benefits, it would be unlikely to address the issue of children accessing potentially harmful material. ATVOD also notes that the UK on-demand services currently ensure that viewers can make an informed choice in a variety of ways including by providing information about a programme's genre and/or an overview of the narrative or specific subject matter. A number of on demand service providers also use shared labelling schemes. For example, UK PSBs signal to users that on-demand television programmes were considered suitable only for post-watershed transmission when originally broadcast by including a G for guidance symbol which is accompanied by text indicating the nature of the material (e.g. sexual scenes, strong language or violence) which made it suitable only for post watershed transmission. A number of services - including BT TV, Amazon Instant Video and Curzon Home Cinema - use film/DVD ratings (U, PG, 12, 15, and 18) provided by the BBFC13 for feature films they provide on demand.

It is important that this is based on clear standards. ATVOD would argue that this should not be a single system within a country – there are different providers, different relationships with customers, there is different content. They would want to see some flexibility in this, rather than having “one-size-fits-all” approach.

ATVOD suggested that, at the time of the interview, they had not carried out any investigations in relation to a lack of provision of information on VOD and that if such an investigation did take place, “it would come from investigating something else”. This co-regulatory body further stated that: “it is very rare to come across content on-demand that does not have appropriate labelling. Most providers have an interest in informing consumers – this is common across a range of services and it is not an enormous regulatory/compliance cost”.

Source: Interview with ATVOD

Maintaining the status quo while **implementing a self and/or co-regulatory regime** to promote further harmonisation in the systems of content classification/descriptors, including across Member States and media channels, would lead to additional administrative and regulatory costs, most notably where such a regime does not currently exist at national level.

In the case of the Netherlands, a co-regulatory system has already been set in place through the Kijkwikzer system. It was assessed by the Dutch self-regulatory body, Commissariaat voor de Media that “the approach reduces work on monitoring” and that “it might actually be the only way to keep up with the enormous amount of media services that require our full attention”. See section 4.1.1 for a description of the co-

regulatory system in the Netherlands. According to interviewees, the costs related to developing and enforcing a co-regulatory system would be similar to those of implementing the Kijkwijzer system in the Netherlands. As presented in section 4.1.1, the Dutch co-regulatory system Kijkwijzer is co-financed and the internal costs are split between the government (50%) and the media sector (50%). The **internal costs** were estimated by NICAM to EUR 750,000. In addition to this, it was mentioned that broadcasters incur additional costs related to rating their content (**external costs**). As presented in section 4.1.1, the Kijkwijzer system is enforced by NICAM but supervision is performed by CvdM. The data collected has not yielded concrete costs related to the supervision activities of the Kijkwijzer system, but estimates show that approximately EUR 800,000 per year are utilised for monitoring the AVCC rules and monitoring the provisions related to the protection of minors. The interviewees suggested that the share of costs for the monitoring of provisions related to the protection of minors is less significant than the costs related to the monitoring of AVCC rules.

The stakeholder consultation analysis revealed that, according to national administrations, self-regulation is an effective way of reducing the regulatory burden. In a similar manner, European-level representative platforms and associations, as well as national associations considered that self-regulatory initiatives offer more efficient and less complicated means of addressing issues concerning children protection.

#### Scenario 2: Extend the material scope through self and co-regulation

Should the information available on harmful content be increased and classification systems harmonised on the basis of the means detailed above and the material scope extended, additional administrative and enforcement costs would be incurred as audio-visual content on-line may not be covered currently by the AVMSD.

**Guaranteeing information obligations on content** (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member State while extending the material scope would incur additional administrative and enforcement costs for regulatory authorities where a co-regulatory regime is set up to actively monitor/respond to complaints and for self-regulators should a decision be taken at national level to allow the industry to regulate itself. Self-regulation in relation to advertising online is a relatively widespread phenomenon in the EU, with self-regulatory bodies being responsible for implementing an ad hoc/complaint-based monitoring system in given Member States. Costs, as above, would/could result from the need to define new processes or establish a complaint mechanism to ensure adequate ratings where such processes/mechanisms do not already exist at Member State level/for private sector actors including ISPs and online platforms.

**Implementing a self and/or co-regulatory regime** to promote further harmonisation in the systems of content classification/descriptors, including across Member States and media channels, while extending the material scope would lead to additional administrative and enforcement costs as such a regime does not currently exist for the protection of minors in relation to linear/non-linear and online audio-visual content at EU level. As presented under section 4.1 under the option of maintaining the status quo, while at the same time extending the material scope of

the AVMSD, several self- and co- regulatory initiatives have been in the gaming industry to provide age classifications, including age ratings and content descriptors and inform consumers. As mentioned before, the gaming industry is different from the audiovisual one in terms of market and technology but the IARC and PEGI systems provide good examples of harmonised systems at EU/global level, which take into account national differences, which would be developed.

#### Scenario 3: Extend geographical scope

Should the information available on harmful content be increased and classification systems harmonised on the basis of the means detailed above and the geographical scope extended, additional administrative and enforcement costs would be incurred by EU regulators namely due to the need for them to monitor the content of additional providers.

Extending the geographical scope of the AVMSD, while **guaranteeing information obligations on content** (age ratings and content descriptors), would incur additional enforcement costs for EU regulators who would need to monitor content from a larger number of providers. The French regulator stated: "This would multiply the number of services that the CSA would need to monitor and control. If a filter is applied to the targeting, it is suggested that e.g. an additional 250 [on-demand services] which are visible from the US (on the basis of European Observatory data) would need to be monitored." Unfortunately, the CSA was not able to assess the exact cost implications for them of this option, stating that "they would make do with the resources currently at their disposal, assess whether this allows for effective monitoring and then consider whether it is necessary to employ anyone."

**Implementing a self and/or co-regulatory regime** to promote further harmonisation in the systems of content classification/descriptors, while extending the geographical scope, additional administrative and enforcement would not be different from in other options.

#### **4.4.2 Impact on compliance costs**

##### Scenario 1: Maintain status quo

Should the information available on harmful content be increased and classification systems harmonised on the basis of the means detailed above and the status quo maintained, compliance costs for linear and video-on-demand providers would increase, as further detailed below.

**Maintaining the status quo and guaranteeing information obligations on content** (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States would place additional compliance costs on Member States where national legislation does not currently require this / on service providers who are not currently providing such information on linear/on-demand content (in a number of Member States information obligations are already being provided on linear/on-demand content due to stricter national legislation – see baseline presented in Table 3, pp. 20-21 of the 2015 European Audiovisual Observatory report "Analysis of the implementation of the provisions contained in the AVMSD concerning the protection of minors" – and a

number of larger providers were reported to include age ratings, for example, on a voluntary basis as “best practice” in response to “what is expected”).

The costs associated with including information obligations on on-demand content was estimated by a commercial provider (that did not currently do so) as significant: “This will have an administrative effect, as [service provider name] will need to create a team to evaluate all the relevant programmes. This may cost around 1 FTE/year, which equals approximately EUR 67,000 per year. It will be very expensive if [service provider name] is required to rate all the current content on its VOD service. It will be easier to rate only future content.” A further commercial service provider commented: “The introduction of information obligations would certainly lead to initial extra costs. These would however primarily be carried by service providers, less so by [telecommunications company name]. It needs to be agreed in which languages the information should be prepared. One goal should be the preparation of information and systems that allow for the application of automatic translation tools. Different categorisations in different Member States would only be a second best solution for the internal market. The more detailed the mandatory information is, the easier it is to set up targeted technical systems for the protection of minors.”

On the other hand, another service provider that voluntarily includes content descriptors on on-demand material stated: “We could provide signposting information to users and PIN restrictions without further costs being incurred. This assumes that we have the necessary information (via metadata) from third party suppliers.” In addition, the introduction of clearer content descriptors could simplify and make more objective the systems currently in place in Member States where content descriptors are applied to linear and non-linear content, thereby decreasing compliance costs. In one Member State where age ratings are applied to linear and non-linear content, a service provider commented that: “[...] the marking system remains subjective and complex. The compliance unit conducts a global analysis based on a loose evaluation grid: sex, violence etc. This is not really easy. Clearer descriptors would mean easier to apply, hence lower compliance costs”. It was further suggested that were the new requirements set by the revised AVMSD lower than those currently in place in given Member States with strict rules, compliance costs could decrease. However, this will depend on whether providers/national legislators decide to reduce their requirements in line with the revised provisions or not.

Moreover, providers pointed to the difference in costs between having to use a content rating board to rate content and self-rating – see example of costs incurred by Netflix in relation to this. The current set-up in Member States concerning age ratings differs in this respect, with some providers rating content themselves and others using rating authorities to do so. The set-up will, therefore, necessarily have an impact on the extent of the compliance costs incurred.

According to its annual report of 2014, Netflix is “the world’s leading Internet television network with over 57 million streaming members in nearly 50 countries enjoying more than two billion hours of TV shows and movies per month, including original series, documentaries and feature films.” In Europe, Netflix provides its services in 16 countries. Forecasted numbers of Netflix paying subscribers in Netherlands by the end of 2015 amount to 1.6 m. This makes the Netherlands the

country with the second most subscriptions in Europe after the UK with 4.9 m.

Netflix' European branch is based in the Netherlands, therefore the services fall under Dutch law with regards of the provisions to protect minors. Voluntarily, the provider adheres to other national provisions across the EU.

### The protection of minors

It provides access to an ever growing number of series and movies. A part of the content is specifically targeting minors. Netflix is aware of the importance of minor protection as many families with young children use the services and want to be ensured that their children will not access content that is not destined for young audiences. Parents want to be able to leave their children to watch Netflix without any concern. Therefore, Netflix implements different measures to protect minors. Netflix is also interested in showing that it is safer for children to watch Netflix instead of being exposed to endless and uncontrolled content online.

### Content ratings

In the Netherlands, Netflix has adhered to NICAM. The content of all programmes that are available in the Dutch catalogue are being rated according to the Kijkwijzer rating system. For that purpose, Netflix has a specifically trained team in California. Netflix also submits content to local boards in other countries for age ratings and whenever they receive a rating they mark content accordingly for that country. Legally, they could just use the Kijkwijzer rating, but they try across the EU to have local ratings. The issue with local ratings is that in some countries organisations are rather slow. So a rating is not always available at the time a programme is to be planned to become available through Netflix. In addition, Netflix rates all content internally. These ratings are used for so called "age gating".

### Costs

Netflix prefers self-rating over having content rated by boards. It is the cheapest and quickest option for them (see table below). As Netflix works a lot with new and self-produced content, it is very difficult to hand everything in to different national boards. Using self-rating would allow launching content around the world at the same time. It stated: "It can get expensive when they have to wait for all national rating boards to provide their opinion first."

### Rating costs: Rating board versus self-rating incurred

	Licence fee	Overheads	Total
<b>Cost paid to rating board*</b>	Yearly licence fee EUR 3,660	Per viewable: EUR 23  Per 5,000 viewables: EUR 115,000	Per viewable: EUR 110 per 30 min EUR 220 per 60 min Per 5,000 viewables EUR 1,100,000
<b>Self-rating</b>		Per viewable: EUR 37 Per 5,000 viewables: EUR 91,600 (calculation based on fewer viewables as not all need to be assessed for self-rating)	

\*This does not include engineering overheads for troubleshooting content handover problems or creating a tool to submit content to the rating board.

\*\* This does not include engineering overhead for integrating self-rating processes into Netflix' toolsuite (which is still being developed) or additional engineering costs to set up new boards, icon integration etc.

#### *Views on implementing an EU-wide system*

Netflix stated that it could easily change the rating system that it is using and adapt it to new EU standards; this was seen as a good solution. The representative interviewed further said: "Netflix is considering further developing its own rating system and providing more content descriptors. However, as a private actor, clearance is needed to ensure that national standards are met. It stated that it would be better to have one questionnaire for rating that can be used across the EU. While there might be some cultural differences, most of these are based on a legacy. When looking at the ratings for videogames that are done based on a European standard it becomes clear that Member States do not differ so much. It would not be harmful for the consumer if EU wide ratings were the same."

Maintaining the status quo, but **implementing a self and/or co-regulatory regime** to promote further harmonisation in the systems of content classification/descriptors including across Member States and media channels, while maintaining the status quo would result in extra compliance costs for providers. No concrete indications of what such costs could involve were provided by interviewees.

#### Scenario 2: Extend material scope

Should the information available on harmful content be increased and classification systems harmonised on the basis of the means detailed above and the material scope extended, the compliance costs for providers of audio-visual content online, i.e. online platforms, would increase as the options considered in detail below are only being implemented in this area to a limited extent, though a number of technical options are available to regulate access to (e.g. age verification systems) and protect children from harmful content online.

**Guaranteeing information obligations on content** (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member State, while extending the material scope of the Directive could imply significant compliance costs, depending on the form this takes. Such costs would be borne by service providers or online platforms.

The interviews with a variety of stakeholders suggest that the compliance costs would be prohibitively expensive were platforms like YouTube expected to review all content (including User Generate Content (UGC)). In fact, approximately 49,000 videos are uploaded on YouTube daily<sup>69</sup>. The sheer magnitude of material uploaded points to the impossibility of such online platforms to review all uploaded content prior to publication. Instead, guaranteeing such information obligations on, for example, UGC

<sup>69</sup> Calculated on the basis of 300 hours of video being uploaded every minute on YouTube (Source: <http://www.statisticbrain.com/youtube-statistics/>); 720 minutes in one day; and an average video length of 4.4 minutes (Source: comScore January 2014 data - <http://www.comscore.com/Insights/Press-Releases/2014/2/comScore-Releases-January-2014-US-Online-Video-Rankings>)

through a system of self-rating by users which takes into account national differences/sensitivities was perceived as a much more viable solution in terms of compliance costs – see the box below on You Rate It and the costs that would be incurred should such a tool be applied to UGC.

The You Rate It project is aimed at creating a single European database for the classification of UGC content. The "You Rate It" system involves cooperation between the British Board of Film Classification (BBFC), which is an independent, non-governmental body which classifies cinema films and videos, the Netherlands Institute for Classifying Audio-visual Media and Italian commercial broadcaster Mediaset which owns "16mm.it", the Mediaset portal dedicated to the collection of UGC content.

### Objectives

The objectives both for the users and the general public, web and mobile - were as follows:

- To sensitise, educate and make responsible both viewers and senders;
- To make European users more aware of the degree of sensitivity concerning content, according to rules adopted by different countries; and,
- To evaluate user proclivity in reference to content classification

### Design

The project involved the following phases:

- 1) Agreement between Mediaset, NICAM and BBFC for a one-year experiment.
- 2) Definition of classification rules - including tool development and start-up - by posting the classification system on the 16mm.it website.
- 3) Data collection and elaboration in order to verify each different phase of implementation.

It is a single tool applicable anywhere in the EU, but for the consumer experience it reflects the national characteristics. It reflects that age ratings are different from country to country, e.g. in the UK and Italy there is a traffic light system, in the Netherlands they use numbers, in order to reflect cultural sensitivities.

### Costs

Costs were incurred by all three parties to the experiment, but only partial costs were provided.

The BBFC developed the tool at an estimated cost of around EUR 18,000 (£14,000), including coding work to create the tool, the testing of the tool and the refinement of it. The tool itself was judged "inexpensive".

For Mediaset, the pilot cost EUR [Confidential information] in total and Phase 3 (i.e. technical developments to make it compulsory) would have cost an additional [Confidential information] EUR but Mediaset decided against Phase 3.

NICAM did not provide any details of costs, stating that the implementation time needed in a given Member State varied too widely to be able to provide an indication of costs. Factors that influence the time spent on the implementation are, among others, the cultural differences between the country to be implemented and the

existing You Rate It members. If big differences exist, often more time will have to be devoted to aligning the criteria (UK/ Netherlands/ Italy), followed by determining which ages to award to the existing criteria. However, if no cultural differences in rating audio-visual media exist, the implementation time can turn out to be very short (Iceland/ Ireland). The country signing up to You Rate It then reviews the existing criteria, makes no changes to them and awards the ratings that apply to them at different levels. Another important factor that influences the implementation time is whether a Member State already uses a questionnaire-based system for the classification of media. If not, this step has to be taken first which is not always as straightforward as it may sound, sometimes involving converting existing legislation to objective wordings that a consumer would be able to answer.

### **Outcome**

The experiment aimed at testing consent, participation proclivity and sense of user responsibility for the classification of UGC content. The following data emerged:

- On the basis of 100 users frequenting the 16mm.it, website, 3% expressed a classification.
- On the basis of 100 active users (i.e. verified and registered users), 60% classified a video.

It was concluded that: "Considering the experimental nature of the exercise, the data were considered positive and suggested that the project could be replicated elsewhere".

**Implementing a self and/or co-regulatory** regime to promote further harmonisation in the systems of content classification/descriptors, while extending the material scope, would involve compliance costs for providers. Currently a self-regulatory type of initiative exists in the form of the ICT coalition (see box below). This initiative could possibly be further developed. Currently it functions as a principle-based system which at the time of this study (1) did not seek to promote further harmonisation in the systems of content classification/descriptors and (2) did not involve all relevant stakeholders. In addition, a "trust framework" could be developed – see box below.

Two examples are provided below on possible means available to promote further harmonisation in the systems of content classification/descriptors and applying these to audio-visual content in the online world.

### **The ICT Coalition for Children Online**

The ICT Coalition for Children Online aims to help younger internet users across Europe to make the most of the online world and deal with any potential challenges and risks. Its members, including telecoms/ISPs like Telenor, Orange, Vodafone, and online platforms like Google, Facebook, Twitter etc. adhere to six principles, of which principles 1 and 2 are particularly relevant within the context of minors, namely:

- **Principle 1 – Parental Controls:** While it is recognised that parental controls have limitations and cannot replace parents' engagement in their children's online use, Signatories should, as relevant for their products or services, assist parents to limit their children's exposure to potentially inappropriate content and contact. Measures that are available or appropriate to each service/product will vary but

may include:

- Manufacturers seeking to optimise hardware design to provide products which simply and clearly help parents to set appropriate levels of control on devices.
  - Network providers seeking to provide necessary tools and settings across their services to enable parents to set appropriate levels of control.
  - Service and content providers making available the necessary tools and settings across their services to enable parents to set appropriate levels of control.
- Principle 2 – Dealing with abuse / misuse: Where online content or conduct may be illegal, harmful, offensive or inappropriate, Signatories should do the following for the services they offer:
    - Provide a clear and simple process whereby users can report content or behaviour which breaches the service's terms and conditions.
    - Implement appropriate procedures for reviewing user reports about images, videos, text and other content or behaviour.
    - Provide clear information to users on all available report and review procedures.
    - Place and review regularly links to these reporting options in appropriate areas of the service (e.g. where users view user-generated content or interact with other users) and provide guidance on what to report.
    - Place links to relevant child welfare organisations or specialist providers of advice (e.g. about anorexia or bullying) and other confidential helplines/support services in appropriate areas.
    - Ensure that moderators who review user reports are properly trained to determine or escalate content or behaviour presented to them.

In the event of revisions to the AVMSD along the lines proposed, such a self-regulatory framework could potentially be extended to include principles on content descriptions/classifications.

### **Trust frameworks**

There are a number of examples of self-regulatory systems developing on the basis of "trust frameworks". Interviews conducted as part of this study suggest that these could be a means to develop trusted, common standards for promoting the protection of children online, e.g. for promoting further harmonisation in content classification systems or developing age verification systems for online content.

#### **Applicability**

The benefit of a trust framework is that it is a multi-party contract agreed by the initial contracting parties on the basis of multi-stakeholder negotiations. Such contracts are the sum of 3 parts, i.e. business requirements, legal requirements and technical requirements. Individual contracts do not need to be negotiated and any new joiners to the framework need to adhere to the terms set out within it; they are non-negotiable. The main reason why these frameworks are being organised is related to scale and the fact that they can be seen as extensible on the internet. An example of such a framework is the credit card system whereby banks, merchants and consumers/card holders based in many jurisdictions all participate in such a framework, ensuring that each party knows the "rules of the road". Compliance is assured through the importance of abiding by the rules a private operator has set out to by "contracting in" for fear of tarnishing its brand. Contracting parties will ensure

that members of the framework are respecting the terms or will notify of the contrary when this is the case, as having contracting parties in the "club" not abiding can also affect their own brand.

### Costs

The main costs linked to the establishment of such a framework (in its light form, i.e. self-regulatory) include:

- The one-off start up legal fees (estimated at EUR 462,000 (USD 0.5m));
- The ongoing need after start-up for a framework policy board of directors that is responsible for the interpretation of the "rules of the road" (no indications of costs provided); and
- The ongoing need for a system of oversight and redress (no indications of costs provided).

In addition to these costs, organisations build and maintain trust platforms which serve as a data repository for participants, allowing for adoption at internet scale. The cost of the registry is shared by the multiple frameworks or communities of interest who are renting (not buying) a registry. The cost of building and maintaining such a platform was said to be small relative to the other costs referred to above.

To provide an indication of costs, EUR 1.5m (USD 1.6m) were set aside for the building of a trust framework in the US called the National Strategy for Trusted Identities in Cyberspace (NSTIC<sup>70</sup>). However, this framework could be adapted to the European context to, for example, provide a trust platform for age verification online (e.g. in relation to adult content), thereby significantly reducing costs. The interviewee estimated that adapting the framework would cost between EUR 26,400 and EUR 39,600 (GBP 20,000 and GBP 30,000), and then it could be applied globally as the frameworks in the US and Europe would be compatible.

Sources: ICT Coalition website - <http://www.ictcoalition.eu/> ; Interviews

### Scenario 3: Extend geographical scope

Should the information available on harmful content be increased and classification systems harmonised on the basis of the means detailed above and the geographical scope extended, compliance costs for service providers registered outside the EU, but beaming content into the EU would increase.

**Guaranteeing information obligations on content** (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States, while extending the geographical scope would imply compliance costs for the service providers/countries concerned, most notably for countries registered outside the EU that do not have legislative requirements on content and for providers that are not including such content on a voluntary basis, as in the case of scenario 1 above in relation to this sub-option.

**Implementing a self and/or co-regulatory** regime to promote further harmonisation in the systems of content classification/descriptors including across

<sup>70</sup> <http://www.nist.gov/nstic/>

Member States and media channels, while extending the geographical scope would involve compliance costs for providers registered outside the EU for the same reasons as those set out in relation to scenario 2 above in relation to this sub-option.

#### 4.4.3 Impact on the level of protection of minors

The following sections present an overview of the impacts that the enforcement of the three policy options 3A and 3B under the different scenarios are likely to have on the level of protection of minors.

##### Scenario 1: Maintain status quo

**Guaranteeing information obligations on content** (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States may lead to a more uniform level of protection across linear and non-linear services. Some non-linear providers, such as Netflix, have already taken steps towards implementing rating systems that reflect national specificities. The enforcement of such a policy option would allow for cultural specificities to be reflected at national level and, as such, the current level of protection of minors would be affected only to a moderate extent.

**Implementing a self and/or co-regulatory** regime to promote further harmonisation in the systems of content classification/descriptors including across Member States and media channels is likely to lead to moderate impacts in terms of the level of protection of minors. As afore-delineated (see section 0), the impact of such a policy option would depend on the level of acceptance of the industry of harmonisation systems and the manner of implementation in practice.

##### Scenario 2: Extend material scope

**Guaranteeing information obligations on content** (age ratings and content descriptors), while extending the material scope of the AVMSD would also lead to an increased level of protection in the online environment, alongside linear and non-linear services, and according to the data collected would be the preferred option by most stakeholders. Providing guidance on content and guaranteeing information is likely to benefit both parents and children, which can then make informed choices on the type of audiovisual media they consume.

**Implementing a self and/or co-regulatory** regime to promote further harmonisation in the systems of content classification/descriptors, while extending the material scope via self- or co-regulation, is likely to have an impact on the level of protection of children. How strong an impact will depend highly on: 1) the standards implemented for the harmonised systems of content classification/descriptors, 2) the level of implementation of the new standards via co- or self-regulatory approaches. The data collected is insufficient to indicate concretely the extent to which the level of protection of minors will be affected; however, projects such as MIRACLE (Machine-readable and Interoperable Age Classification Labels in Europe<sup>71</sup>) are promising approaches. On a European-wide level, the question

<sup>71</sup> MIRACLE is a project that involves developing a common data scheme which can be used for all classification schemes and electronic labels. The project builds on the outcome of the CEO Coalition's Task Force on Interoperability and Machine- Readability, MIRACLE includes five Member States and systems and

of the powers any self-regulatory body would however have to be discussed as it is very unlikely that the national statutory regulators would accept such a European system, and a national approach would be more feasible.

#### Scenario 3: Extend geographical scope

Little evidence has been found to substantiate the level of impact of implementing policy Options 3A and 3B while extending the geographical scope.

Evidence collected suggests that **guaranteeing information obligations on content** (age ratings and content descriptors), while extending the geographical scope of the AVMSD could lead to an increased level of protection of children. Currently, certain steps in this direction have already been implemented in certain cases. For example, the NICAM Kijkwijzer system, which is used in the Netherlands, is also implemented in other Member States (e.g. Slovenia). Additionally, elements of the Kijkwijzer system have already started being implemented in states outside the EU, e.g. Turkey and Iceland<sup>72</sup>. However, while data collected supports the finding that the implementation of such a policy option with the extension of the geographical scope could be a feasible option, measuring the impact that it would have on the level of protection of children was not possible. Given that data collected suggests that, in some cases, content from outside the EU has a potential to harm children (see section 4.1.3), it may be inferred that guaranteeing information obligations on content for services from outside the EU has the potential to indirectly increase the level of protection of children by informing the consumers to make a proper decision.

The data collected concerning the enforcement of **a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/descriptors**, while extending the geographical scope was also assessed as showing potential in terms of ensuring a higher level of protection of minors. However, its feasibility was questioned by stakeholders belonging to most stakeholder groups.

#### **4.4.4 Impact on development of new services**

The following sections present the likely impact that policy Option 3A and 3B would have under the different scenarios on the development of new services.

#### Scenario 1: Maintain status quo

The data collected suggests that **guaranteeing information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States**, is favoured by a significant proportion of stakeholders and is, to some extent, even implemented currently in practice in some Member States. A significant proportion of Member States already use age descriptors and two Member States use content descriptors (see section 4.4.1). The data collected did not provide an indication that implementing policy Option 3A would have an impact on the development of new services.

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include classification bodies, safer internet nodes, self-regulatory bodies and filter software providers.  
Source: <http://www.miracle-label.eu/>

<sup>72</sup> ERGA, Report on the Protection of Minors in a Converged Environment, Draft 23.10.2015

The data collected concerning the **implementation of a self- and/or co-regulatory regime to promote further harmonisation in the systems of content classification/descriptors including across Member States and media channels**, indicates that such a measure is likely to lead to an impact on the content of new services, which would have to comply with the system of content classification/descriptors in order to be made available to EU audiences.

Scenario 2: Extend material scope

**Guaranteeing information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States**, implemented while extending the material scope of the AVMSD to user generated content was generally assessed positively by stakeholders but some degree of flexibility was deemed necessary. The implementation of this option can imply that user-generated content providers would have to adapt their platforms to make sure that the content provided is classified and described according to the new system, which could lead to new technological developments.

**Implementing a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/descriptors including across Member States and media channels**, while extending the material scope is likely to have an impact on the development of new services both in terms of content and from a technological point of view.

Scenario 3: Extend geographical scope

**Guaranteeing information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States**, while extending the material scope, was assessed positively by a substantive amount of stakeholders both in the interviews and in the stakeholder consultation. However, the evidence collected was insufficient to assess the impact that the policy option in conjunction with the extension of the geographical scope would have on the development of new services. It may be assumed that the extension of the geographical scope could lead to new technological developments that would arise from the necessity to provide more information through age ratings and content descriptors by non-EU providers.

**Implementing a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/descriptors including across Member States and media channels**, with the extension of the geographical scope is likely to lead to providers from outside the EU being required to implement and comply with a self- and/or co-regulatory regime that would promote the harmonisation of content classification/descriptors. This policy option was assessed as not being feasible by most stakeholders interviewed. The data collected during the study is insufficient to assess the impact on the development of new services. However, it is likely that, if implemented, services from outside the EU would be responsible for editorial content and would need to comply with the content classification/descriptors which may lead to new technological developments.

#### 4.4.5 Impact on providers' willingness to provide services in several EU countries

The following sections present the likely impact that policy Option 3A and 3B would have under the different scenarios on the willingness to provide services in several EU countries or service providers.

##### Scenario 1: Maintain status quo

The requirement to **guarantee information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States**, might impose additional burdens and costs on providers as they would have to comply with requirements related to (potentially new) age ratings and content descriptors. This could lead to a decreased willingness to provide services on other Member States audiovisual markets.

On the contrary, **implementing a self- and/or co-regulatory regime to promote further harmonisation in the systems of content classification/ descriptors including across Member States and media channels**, could lead to reduced costs and burden on service providers (as there would be more harmonisation and less need to adapt to specific MS requirements or rating systems). This could in turn increase their willingness to provide services to other EU countries.

##### Scenario 2: Extend material scope

**Guaranteeing information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States**, implemented while extending the material scope of the AVMSD would affect primarily UGC platforms whom would be obliged to provide additional information on content and enable mechanisms to provide content descriptors and age ratings. This would impose an additional burden on providers and potentially additional costs, which might negatively affect their willingness to serve other EU markets, in particular if different systems have to be followed in place in different countries.

**Implementing a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/descriptors including across Member States and media channels**, while extending the material scope is likely to affect user-generated platforms which will be required to be part of self- and/or co-regulatory regimes and enable mechanisms to provide content classifications/descriptors on UGC content. Further harmonisation across Member States of such systems would probably increase the platforms willingness to provide services in several EU countries.

##### Scenario 3: Extend geographical scope

Data collected through the interviews suggests that **guaranteeing information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States**, while extending the geographical would impose additional burdens of compliance on providers from outside the EU, whom will be required to inform the EU audiences on the content according to clear standards imposed by the EU. The feasibility of the option was assessed as being low by most stakeholders both

during the interviews and the stakeholder consultation whom also assessed that the implementation of the policy option would lead to a decreased willingness of providers to provide on the EU audiovisual markets.

Similar to policy option 3A, **implementing a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/descriptors including across Member States and media channels**, with the extension of the geographical scope will impose additional requirements on non-EU providers in terms of ensuring that their content is classified according to the EU regime. It was assessed by most stakeholders participating in the country interviews that this policy option would lead to a decreased willingness of providers to provide content on the EU market as a consequence of additional burden of compliance.

#### 4.4.6 Other impacts

The following section presents additional information on impacts reported by stakeholders in connection to the policy options under the different scenarios.

##### Scenario 1: Maintain status quo

**Guaranteeing information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States** would imply that Member States would be obliged to ensure that audiences are informed on the basis of clear standards. This was assessed as not having any direct impact on the freedom of expression or other fundamental rights and was considered a favourable option by a substantive number of stakeholders, as it would allow for cultural differences when it comes to ratings (protection of freedom of expression) while safeguarding child protection.

The evidence collected suggests that the **implementation of a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/ descriptors including across Member States and media channels** would have no direct impact on the freedom of expression or other fundamental rights. Potential impacts could be registered as a result of the harmonisation of the systems of content classification and descriptors as this would lead to a more standardised level of protection which could be assessed as affecting the freedom of expression by some Member States.

##### Scenario 2: Extend material scope through self- and co-regulation

Very little additional information on impacts was provided by stakeholders concerning the extension of the material scope in connection to the policy options.

The data collected through interviews and from the stakeholder consultation indicates that the implementation of an option that would require **guaranteeing information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States**, in connection to the extension of the material scope, may affect the freedom of expression in the online world, in particular the freedom of expression of users through content uploaded via user generated content platforms.

The fact that cultural specificities between Member States would be reflected in the ratings would leave margin for manoeuvre for Member States to balance the protection of minors with ensuring the protection of other fundamental rights.

The **implementation of a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/ descriptors including across Member States and media channels**, which would be extended to online audiovisual services, was assessed by stakeholders positively and considered to yield positive results for the protection of minors.

Scenario 3: Extend geographical scope

**Guaranteeing information obligations on content (age ratings and content descriptors) which are based on clear standards and made applicable, even if the final rating may vary among Member States and implementation of a self and/or co-regulatory regime to promote further harmonisation in the systems of content classification/ descriptors including across Member States and media channels** while extending the geographical scope was considered by stakeholders to lead to additional requirements, and it was assessed that it may affect the willingness to provide on EU markets and the availability of content. This, in turn, may have consequences on the freedom of expression.

## 5. List of contacted and interviewed entities

Country	Stakeholder organisation	Interview type	Status
Tech experts	Crisp Thinking	Expert	Interview conducted
Tech experts	Crisp Thinking	Expert	Redirected to Adam Hildreth
Tech experts	Trustelevate	Expert	Interview conducted
Tech experts	Digitalis Reputation	Expert	No response
Tech experts	Intel security	Expert	No response
Tech experts	Net Nanny	Expert	No response
Tech experts	Open Identity Exchange	Expert	Interview conducted
General	IARC - International Age Rating Coalition / ESRC - the Entertainment Software Rating Board (ESRB)	Co-regulator gaming	Interview conducted - group interview with PEGI, UKS
General	PEGI / ISFE - Interactive Software Federation of Europe	Co-regulator gaming	Interview conducted - group interview with PEGI, UKS. Follow-up meeting scheduled for 25.01.16.
General	USK (DE) - Unterhaltungssoftware Selbstkontrolle	Co-regulator gaming	Interview conducted - group interview with PEGI, UKS
DE	KJM or respective Media State Authority	Statutory Regulator	Interview conducted
DE	FSF	Co-regulator	Interview conducted
DE	FSM e.V.	Co-regulator	Interview conducted
DE	RTL Media Group	Private broadcaster	Interview conducted
DE	ProSiebenSat1	Private broadcaster	Invitation email sent. (via FSM)
DE	ARD / ZDF	Public broadcaster	Difficult to convince for an interview, still pending. They've already stated their opinion in the consultation and will not provide information on costs.
DE	Foodwatch?	Organisations / Associations minors	Will have an interview, but rather on the AVCC rules
DE	Sky Deutschland		Invitation email sent
DE	VPRT - Verband Privater Rundfunk und Telemedien e.V.	Private broadcaster	In contact via email

DE	Discovery Channel	Private broadcaster	Invitation email sent
DE	United Internet	Internet Service Provider	Invitation email sent
DE	Deutsche Telekom AG	Internet Service Provider	Interview conducted
DE	Kabel Deutschland	Internet Service Provider	Invitation email sent (via FSM)
DE	ECO - Verband der deutschen Internetwirtschaft	Association of the Internet Industry	Will not be able to provide data. Have forwarded written statements on similar subjects.
DE	Vodafone Kabel Deutschland GmbH	Internet Service Provider	Interview conducted
UK	Ofcom	Statutory regulator	Interview conducted
UK	Talk Talk	TV, VoD, Internet, mobile service provider	invitation email sent
UK	BT	TV, VoD, Internet, mobile service provider	Interview conducted
UK	Virgin Media	TV, VoD, Internet, mobile service provider	invitation email sent
UK	Vodafone	TV, VoD, Internet, mobile service provider	Interview conducted
UK	BBFC	Self-regulator	Interview conducted
UK	channel 4	AV provider	Follow up email in connection to AVCC interview
UK	ITV	AV provider	Follow up email in connection to AVCC interview
UK	Internet Matters	Self-regulator	Invitation email sent
UK	ATVOD	Co-regulator	Interview conducted
FR	CSA	Regulator	Interview conducted
FR	CSA	Regulator	Interview conducted
FR	CSA	Regulator	Interview conducted
FR	TF1	AV provider	Interview conducted
FR	Canal +	AV provider	Interview conducted
FR	France Televisions	AV provider	Interview conducted
FR	Bouygues Telecom	ISP	Invitation letter sent
FR	SFR	ISP	Follow-up email sent

FR	Orange Group	ISP	Interview conducted
FR	Orange Group - FR	ISP	Interview conducted
FR	Free / Iliad	ISP	in contact via email
FR	TDF	ISP	Invitation email sent
FR	Group SOS Youth	Organisations / Associations minors	Invitation email sent
FR	La Voix de l'Enfant	Organisations / Associations minors	Interview conducted
FR	La Voix de l'Enfant	Organisations / Associations minors	Interview conducted
FR	CNAPE	Organisations / Associations minors	Interview rejected
IT	Comitato Media e Minori	Self-regulator	Interview conducted
IT	Mediaset	Private broadcaster	Interview conducted - group interview
IT	Mediaset	Private broadcaster	Interview conducted - group interview
IT	Mediaset	Private broadcaster	Interview conducted - group interview
IT	Fox International Channels	Private broadcaster	Interview conducted
IT	RAI	Public broadcaster	Interview conducted
IT	Wind	ISP	Follow-up sent
IT	Wind	ISP	Follow-up sent
IT	Wind	ISP	Redirected to Riccardo Logozzo
IT	Fastweb	ISP	Redirected to Lisa Di Felicantonio
IT	Fastweb	ISP	In contact via email
IT	Vodafone Italy	ISP	No response
IT	Telecom Italia	ISP	No response
IT	Telecom Italia	ISP	No response
IT	Tiscali	ISP	No response
IT	AGCOM	Statutory regulator	Interview conducted - group interview
IT	AGCOM	Statutory regulator	Interview conducted - group interview

IT	Polizia Postale	Police	Follow-up sent
IT	Polizia Postale	Police	Follow-up sent
NL	NICAM	Self-regulator	Interview conducted
NL	Commissariaat voor de Media	Regulatory body	Interview conducted
NL	RTL NL	Commercial broadcaster + VoD service	Interview conducted
NL	NPO	Public broadcaster	Interview conducted
NL	SBS	Commercial broadcaster + VoD service	Invitation email sent
NL	Netflix	VoD service	Interview conducted
NL	Mediawijzer	Consumer organisation	Invitation email sent
NL	Ouders van waarde	Consumer organisation	Interview conducted
NL	XS4ALL	ISP/Telecom provider	Interview declined
NL	KPN	ISP/Telecom provider	Interview conducted
NL	TELE2	ISP/Telecom provider	Interview declined
NL	T-mobile NL	ISP/Telecom provider	Interview conducted
NL	Online NL	ISP/Telecom provider	Press department to get back to me
NL	Telfort (subsidiary of KPN)	ISP/Telecom provider	Suggests to go directly to KPN
NL	Ziggo	ISP/Telecom provider	Invitation email sent
DK	TV2	AV provider	Interview conducted
DK	SLS	Interest organisation	Interview conducted
DK	Kulturstyrelsen	Regulator	Interview conducted
DK	DR	AV provider	No response
DK	Medierådet	Regulator (film and dvds) and knowledge centre	Interview conducted
DK	TDC	ISP/Telecom provider	Interview conducted
DK	Telenor	ISP/Telecom provider	Interview rejected
DK	Børnerådet	Interest organisation	Interview conducted
DK	Copenhagen University	Professor	Interview conducted

DK	Telia	ISP/Telecom provider	Written reponse to a few questions
DK	Teleindustrien	Tele industry organisation	No response
DK	Teleindustrien	Tele industry organisation	No response
HU	Council of Hungarian Internet Providers	ISP industry organisation	Interview conducted
HU	TV2	AV provider	Interview conducted
HU	International Children's Safety Service	Consumer organisation	Interview conducted
HU	Advertising Self-Regulatory Board	Advertising industry association	Interview conducted
HU	UPC Magyarország Telekommunikációs Kft	TV/ISP/telecom provider	Interview conducted
HU	AMC NETWORKS INTERNATIONAL	AV provider	Interview conducted
HU	Origo Média és Kommunikációs Szolgáltató Zrt. Magyar Telekom NYrt.	Telecom provider	Interview conducted - group interview
HU	Origo Média és Kommunikációs Szolgáltató Zrt. Magyar Telekom NYrt.	Telecom provider	Interview conducted - group interview
HU	Association of Hungarian Content Providers (Magyarországi Tartalomszolgáltatók Egyesülete, MTE)	Association of the Internet Industry	Interview conducted - group interview

## 6. References

- Childwise (2016), Monitor report, Available at: <http://www.childwise.co.uk/reports.html>
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Strategy for a Better Internet for Children, Brussels, COM(2012) 196
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a Digital Agenda for Europe, COM/2010/0245 f/2
- ComScore, 2014 Data  
Available at: <http://www.comscore.com/Insights/Press-Releases/2014/2/comScore-Releases-January-2014-US-Online-Video-Rankings>
- Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities - "Television Without Frontiers" Directive (TVWF Directive)
- Council Recommendation of 24 September 1998 (98/560/EC) on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity
- De Cock Buning, Madeleine (2014), Towards a Future-Proof Framework for the Protection of Minors in European Audiovisual Media, *Utrecht Law Review* 10.5, pp. 9-30
- 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'), OJ L 178
- Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 202
- Donoso, Val. (2011), Assessment of the implementation of the Safer Social Networking Principles for the EU on 14 websites, Summary Report, European Commission, Safer Internet Programme, Luxembourg
- EU Kids Online, Final Report, (IP/11/479), Available at: <http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20Online%20reports.aspx>
- European Commission (2013), Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values, Brussels", COM(2013) 231 final
- European Commission, Public Consultation, Available at: <https://ec.europa.eu/digital-agenda/en/news/contributions-received-other-categories-avmsd-public-consultation>

- European Audiovisual Observatory (2015), The protection of minors in a converged media environment, IRIS plus 2015-1, Available at: <http://www.obs.coe.int/documents/205595/8261963/The+protection+of+minors+in+a+converged+media+environment.pdf/7b590454-a03f-40e8-b460-e2b5e6b0bc28>
- European Audiovisual Observatory (2015), Analysis of the implementation of the provisions contained in the AVMSD concerning the protection of minors
- European Audiovisual Observatory (2015), Comparative tables on the protection of minors in audiovisual media services, Available at: <http://www.obs.coe.int/documents/205595/8234567/Comparative+tables+on+the+protection+of+minors+in+audiovisual+media+services.pdf/8e16a00e-5723-4549-a54b-5e842224cb8c>
- European Regulators Group on Audiovisual media services (ERGA) (2015), Report on the protection of minors in a converged environment
- Evaluation Report from the Commission to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity, COM/2001/0106 final
- Giovanna Mascheroni and Andrea Cuman (2014), Net Children Go Mobile, Final Report with country factsheets
- Grabosky and Braithwaite (1986), Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies
- Green Paper Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values, COM/2013/0231 final
- Grobbin, Alexander / Feil, Christine (2015): Digital Media: A parental perspective on the need for guidance, actions and regulations, Deutsches Jugendinstitut
- Open Identity Exchange, Available at: <http://openidentityexchange.org/>
- ICT Coalition for Children Online, Available at: <http://www.ictcoalition.eu/>
- ICT Coalition (2016), Let's Play it Safe. Children and Youths in the Digital World, Assessment of the Emerging Trends and Evolutions in the ICT Services, White Paper for the ICT Coalition for Online Children
- Interdisciplinary Centre for Law and ICT (2013), The use of labels to empower minors, parents, educators in the social media environment. An explanatory report
- MAVISE Database (2015), Available at: <http://mavise.obs.coe.int/>
- Ofcom (2014), Children and Parents, Media Use and Attitudes Report, Available at: [http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/children-parents-nov-15/childrens\\_parents\\_nov2015.pdf](http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/children-parents-nov-15/childrens_parents_nov2015.pdf)
- Ofcom (2014), Report on Internet Safety measures, Available at: <http://stakeholders.ofcom.org.uk/binaries/internet/internet-safety-measures.pdf>
- Ofcom (2012), On-demand services: understanding consumer choices, Available at: [http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research_Report.pdf)

- Recommendation of the European Parliament and of the Council of 20 December 2006 (2006/952/EC) on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry
- Report from the Commission to the European Parliament, the Council, The European Economic And Social Committee and the Committee of the Regions on the application of the Council recommendation of 24 September 1998 concerning the protection of minors and human dignity and of the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry Protecting Children in the Digital World, COM/2011/0556 final
- Second Evaluation Report from the Commission to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity, COM/2003/0776 final

## European Commission

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