

Plenary Session 1 >

**Supervising On-demand Audiovisual Media Services:  
Best practices and Methodology**

Comparative background document  
Geneviève de Bueger, CSA (BE)<sup>1</sup>

(Final public version of 20 12 2013)<sup>2</sup>

## Introduction

Following EPRA's discussions on the scope and regulation of audiovisual media services firstly at the 33<sup>rd</sup> EPRA meeting held in Ohrid in May 2011<sup>3</sup> and secondly at the 35<sup>th</sup> EPRA meeting in Portorož in May 2012<sup>4</sup>, the first Plenary session in Vilnius aims to take the debate a step further, with a specific focus on best practices and methodology of supervising on-demand audiovisual media services.

This document is based on the answers to a questionnaire whose purpose was to understand how VOD and new media services are triggering a regulatory debate related to the concrete challenges around their identification, notification, but also concerning the monitoring and application of legal provisions – specifically Article 13 of the AVMSD and appropriate sanctions.

The questionnaire lays a particular emphasis on the relations between new media players and NRAs and the role that NRAs consider they have to play (or not) in terms of guiding new media or foster their emergence. In addition, answers to an open question related to main challenges regarding new audiovisual media services regulation give an insight into the most important issues that NRAs have to deal with in a converged audiovisual world.

The comparative document compiles answers from 29 regulatory authorities: The *National Commission on TV and Radio of Armenia (AM)*, *KommAustria (AT)*, *The Communication Regulatory Agency (BA)*, the *CSA of the French speaking Community of Belgium (BE)*, *The Flemish Regulatory Authority for the Media (BE)*, *The Council for Electronic Media (BG)*, *the Cyprus Radio-Television Authority (CY)*, *the Council for Radio and TV Broadcasting (CZ)*, *the Directors Conference of the Länder Media Authorities (DE)*, *the Radio and Television Board (DK)*, *the Audiovisual Council of Catalonia (ES)*, *the Audiovisual Council of Andalusia (ES)*, *the Finnish Communications Regulatory Authority (FI)*, *the French CSA (FR)*, *Ofcom (UK)*, *the National Council for Radio and Television (GR)*, *the Italian communications authority (IT)*, *the Radio and Television Commission of Lithuania (LT)*, *the Conseil National des Programmes (LU)*, *the National Electronic Media Council (LV)*, *the Council for Coordination on the audiovisual activity in Moldova (MD)*, *the Broadcasting Council of the Republic of Macedonia (MK)*, *the Commissariaat voor de Media (NL)*, *the Norwegian Media Authority (NO)*, *the National Broadcasting Council (PL)*, *the National Audiovisual Council (RO)*, *the Swedish Broadcasting*

---

<sup>1</sup> The author wishes to warmly thank her CSA colleague Marie Coomans for her very valuable input for points 1.4.1 to 1.4.5 and para. 2.3.

<sup>2</sup> **Disclaimer:** This document has been produced by EPRA, an informal network of 52 regulatory authorities in the field of broadcasting. It is not a fully comprehensive overview of the issues, nor does it purport to represent the views or the official position of EPRA or of any member within the EPRA network

<sup>3</sup> <http://www.epra.org/attachments/ohrid-plenary-1-exploring-regulatory-boundaries-background-document>

<sup>4</sup> <http://www.epra.org/attachments/portoroz-plenary-1-new-services-and-scope-what-s-in-what-s-out-revisited-paper--2>

Authority (SE), the Post and Electronic Communication Agency of the Republic of Slovenia (SI) and the Council for Broadcasting and Retransmission of the Slovak Republic (SK).

## **1. Recent changes since last EPRA surveys related to scope and notification requirement**

### **1.1. New developments (since May 2012) with regard to the AVMSD transposition process with relevance to issue of scope**

In **Poland**, the Act amending the Polish Broadcasting Act entered into force on 28 February 2013. The Act concerns content regulation of on-demand audiovisual media services and constitutes the last step of the transposition of the AVMS Directive into Polish national law. The amendment has determined how to define an on-demand service provider, along with further rules such as those on promotion of European works<sup>5</sup>.

In **Romania**, the Council adopted on 29 May 2012 Decision no. 320/2012 concerning the provision of on demand audiovisual media services.

In **Italy**, an amendment was made to the audiovisual media services code in July 2012, by legislative decree no. 120, in order to fully comply with the AVMSD regarding protection of minors.

In **Luxembourg**, as from December 2013, the new ALIA (Autorité Luxembourgeoise Indépendante de l'Audiovisuel) will be vested with supervision powers on on-demand services.

In the **UK**, while there have been no changes to the legislative framework since May 2012, Ofcom re-designated<sup>6</sup> ATVOD as the relevant authority to carry out some of the functions pursuant to the regulation of on demand programme services (ODPS). A number of amendments were made to the Designation including<sup>7</sup>, such as:

- Removing ATVOD's obligation to obtain Ofcom's approval prior to publishing or amending ATVOD's guidance on the statutory rules and/or on the scope of regulation;
- Removing ATVOD's obligation to consult specifically with Ofcom about the formulation of its complaints handling processes;
- Removing ATVOD's obligation to consult Ofcom before issuing Enforcement Notifications;
- Removing ATVOD's obligations to obtain Ofcom's approval for issuing guidance relating to the Access Services and European Works duties; and
- Clarification that ATVOD Designation may be reviewed by Ofcom at any time, depending on regulatory developments (including changes to the statutory framework).

In **Slovenia**, the statutory act on notification of non-linear services was adopted by the regulator APEK in May 2012.

In **Spain (Catalonia)**, “a general instruction” concerning the communication that broadcasters have to submit to the CAC before starting with their audiovisual activities (those which are not using spectrum) was published on 15<sup>th</sup> May 2012 in the Catalan Official Gazette and came into force on the 16<sup>th</sup> June 2012.

In candidate country “**The former Yugoslav Republic of Macedonia**”, a public debate on the Draft

---

<sup>5</sup> See also <http://merlin.obs.coe.int/iris/2013/5/article36.en.html>

<sup>6</sup> ATVOD were first designated as the co-regulator of ODPS in March 2010, subject to a formal review of this designation after two years.

<sup>7</sup> The full Review can be found here: <http://stakeholders.ofcom.org.uk/binaries/consultations/on-demand/statement/statement.pdf>

Law on Audio and Audiovisual Media Services and the Draft Law on Media took place in August 2013. Both texts have now passed the first reading in the Parliament.

In **France**, Art. 24 of the law of 15 November 2013 on the independence of the public audiovisual sector introduced a system of notification for on-demand audiovisual media services<sup>8</sup>.

### **1.2. Changes in non-EU Members States legislation in order to align the national legal framework with the AVMS Directive since May 2012 or to address the regulation of new media services**

In October 2012, in **Norway**, the Government submitted a proposal to implement the AVMS Directive into Norwegian law by amending the Broadcasting Act (Kringkastingsloven). The amendment was enacted by Parliament in December 2012 with effect as from January 2013. The scope of the Broadcasting Act has been extended to include audiovisual on-demand services, but is limited to on-demand services that are competing with traditional television broadcasts<sup>9</sup>.

Armenia reports projects which have however not yet entered into force.

### **1.3. New guidance related to scope to ease the practical interpretation of the AVMSD**

It appears that, since May 2012, no NRA has developed new guidance related to scope. Only a few regulators (e.g. in the UK, Belgium (CSA) and the Netherlands), have developed detailed guidance documents. Nevertheless, the answers clearly show that most NRAs attempt to explain issues of scope to service providers, for instance by creating a specific F.A.Q section on their respective websites.

In **Norway**, the NMA has updated its website with information regarding the extension of the legislation to audiovisual on-demand services and regulation that they have to apply.

Several countries (Poland, Sweden, Italy, French and Flemish speaking Community of Belgium, the Netherlands, Spain-Catalonia) provide information and answers to frequently asked questions on their websites.

In the **Czech Republic**, the RRTV is working on recommendations concerning the clarification of the meaning of “economic activity” and “in competition with television broadcasting”.

In **Denmark**, the Danish Media Association (association of internet providers) and the Danish Agency for Culture (who is providing the secretariat for the regulatory authority) made a description of on-demand services providers’ obligations, which has been communicated on their websites and to their members.

In **France**, whereas the CSA has not developed any guidance document on scope as such, a notification form provides explanations to help identify the services that are required to comply with legal provisions on the promotion of European works<sup>10</sup>.

---

<sup>8</sup> See also: [http://www.epra.org/news\\_items/reform-of-the-independence-of-the-public-audiovisual-sector-reinforced-powers-for-the-french-csa](http://www.epra.org/news_items/reform-of-the-independence-of-the-public-audiovisual-sector-reinforced-powers-for-the-french-csa)

<sup>9</sup> See also <http://merlin.obs.coe.int/iris/2013/4/article25.en.html>

<sup>10</sup> <http://www.csa.fr/Services-interactifs/Services-de-medias-audiovisuels-a-la-demande-SMAD>

In **Slovenia**, the APEK has published some basic guidance and explanations concerning obligations of VOD providers and the procedure according to which they have to notify.

In the **United Kingdom**, in light of its past experience since 2010<sup>11</sup>, ATVOD is currently consulting on a draft new guidance developed in consultation with the ATVOD Industry Forum and Ofcom. A statement on the consultation will be published in January 2014.

Country	Guidance documents /FAQ section /notification forms for on-demand audiovisual media services
AT	Informationen für audiovisuelle Mediendienste auf Abruf (Version 03/2013) (DE) <a href="https://www.rtr.at/de/m/InfoMDA/Merkblatt_Abrufdienste_03-2013.pdf">https://www.rtr.at/de/m/InfoMDA/Merkblatt_Abrufdienste_03-2013.pdf</a>
BE (CSA)	Recommandation relative au périmètre de la régulation des services de médias audiovisuels (FR) of 29.03.2012 <a href="http://csa.be/documents/1713">http://csa.be/documents/1713</a>
BE (VRM)	Veelgestelde vragen over erkenningen en vergunningen (NL) <a href="http://www.vlaamseregulatormedia.be/nl/veelgestelde-vragen/erkenningen-en-vergunningen.aspx">http://www.vlaamseregulatormedia.be/nl/veelgestelde-vragen/erkenningen-en-vergunningen.aspx</a>
BG	<a href="http://www.cem.bg/download.php?id=1007">http://www.cem.bg/download.php?id=1007</a> (BG) - registration form
CZ	OZNÁMENÍ - Povinnost poskytovatelů audiovizuálních mediálních služeb na vyžádání umožnit příjemcům služby snadný, přímý a trvalý přístup k základním údajům podle ustanovení § 6 odst. 1 zákona č. 132/2010 Sb. (CZ) <a href="http://www.rrtv.cz/files/pdf/OZN%C3%81MEN%C3%8D%20II.pdf">http://www.rrtv.cz/files/pdf/OZN%C3%81MEN%C3%8D%20II.pdf</a>
DK	"On demand audiovisuel medietjeneste" (DK) <a href="http://www.kulturstyrelsen.dk/medier/tv/internet-mv/on-demand/generelle-regler/">http://www.kulturstyrelsen.dk/medier/tv/internet-mv/on-demand/generelle-regler/</a> <a href="http://www.kulturstyrelsen.dk/medier/tv/internet-mv/on-demand/">http://www.kulturstyrelsen.dk/medier/tv/internet-mv/on-demand/</a>
FR	Formulaire de déclaration pour l'application du décret sur la promotion des œuvres européennes (FR) <a href="http://www.csa.fr/content/download/37263/444477/file/Questionnaire%20-%20D%C3%A9cret%20Smad%20-%20Exercice%202012%20-%20word.docx">http://www.csa.fr/content/download/37263/444477/file/Questionnaire%20-%20D%C3%A9cret%20Smad%20-%20Exercice%202012%20-%20word.docx</a>
GB	Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services (ODPS), Edition 2.0, Published 3 May 2012 <a href="http://www.atvod.co.uk/uploads/files/ATVOD_Rules_and_Guidance_Ed_2.0_May_2012.pdf">http://www.atvod.co.uk/uploads/files/ATVOD_Rules_and_Guidance_Ed_2.0_May_2012.pdf</a> Guidance on who need to notify (to be updated shortly) <a href="http://www.atvod.co.uk/uploads/files/Guidance_on_who_needs_to_notify_Ed_3.3_May_2013.pdf">http://www.atvod.co.uk/uploads/files/Guidance_on_who_needs_to_notify_Ed_3.3_May_2013.pdf</a>
IT	Regolamento in materia di fornitura di servizi di media audiovisivi a richiesta ai sensi dell'articolo 22-bis del Testo unico dei servizi di media audiovisivi e radiofonici (IT) – for Web-radio and web-TV <a href="http://www.agcom.it/default.aspx?DocID=5417">http://www.agcom.it/default.aspx?DocID=5417</a> F.A.Q. (EN) <a href="http://www.agcom.it/default.aspx?message=contenuto&amp;DCId=495">http://www.agcom.it/default.aspx?message=contenuto&amp;DCId=495</a>
NL	Regeling van het Commissariaat voor de Media van 22 september 2011 houdende beleidsregels omtrent de classificatie van commerciële mediadiensten op aanvraag zoals bedoeld in artikel 1.1, eerste lid, van de Mediawet 2008 (Beleidsregels classificatie commerciële mediadiensten op aanvraag 2011)

<sup>11</sup> ATVOD first published scope guidance in April 2010. A revised version was published in October 2010 to take into account some of the questions that had arisen during the early months of regulation. The existing Guidance (to be updated shortly) can be found at: [http://www.atvod.co.uk/uploads/files/Guidance\\_on\\_who\\_needs\\_to\\_notify\\_Ed\\_3.3\\_May\\_2013.pdf](http://www.atvod.co.uk/uploads/files/Guidance_on_who_needs_to_notify_Ed_3.3_May_2013.pdf)

Country	Guidance documents /FAQ section /notification forms for on-demand audiovisual media services
	<a href="http://www.cvdm.nl/wp-content/uploads/2013/08/Beleidsregels-classificatie-commerci%C3%ABle-mediadiensten-op-aanvraag-2011.pdf">http://www.cvdm.nl/wp-content/uploads/2013/08/Beleidsregels-classificatie-commerci%C3%ABle-mediadiensten-op-aanvraag-2011.pdf</a> Publication of the documents providing additional information and clarification took already place before May 2012, but ever since the information in these documents has been updated. <a href="http://www.cvdm.nl/praktisch/commerciele-mediadienst-op-aanvraag-aanmelden/">http://www.cvdm.nl/praktisch/commerciele-mediadienst-op-aanvraag-aanmelden/</a> Brochure: <a href="http://www.cvdm.nl/wp-content/uploads/2013/08/Brochure-Commerci%C3%ABle-mediadiensten-op-aanvraag.pdf">http://www.cvdm.nl/wp-content/uploads/2013/08/Brochure-Commerci%C3%ABle-mediadiensten-op-aanvraag.pdf</a> FAQ: <a href="http://www.cvdm.nl/veelgestelde-vragen/?vv=beschouwt-het-commissariaat-lineaire-uitzendingen-live-streams-die-alleen-via-internet-worden-aangeboden-als-commerciele-mediadienst-op-aanvraag">http://www.cvdm.nl/veelgestelde-vragen/?vv=beschouwt-het-commissariaat-lineaire-uitzendingen-live-streams-die-alleen-via-internet-worden-aangeboden-als-commerciele-mediadienst-op-aanvraag</a>
NO	<b>Information regarding the extension in the Norwegian Broadcasting Act to include audiovisual on-demand services and the regulations they have to apply (NO)</b> <a href="http://www.medietilsynet.no/no/Kringkasting/Audiovisuell-bestillingstjeneste/">http://www.medietilsynet.no/no/Kringkasting/Audiovisuell-bestillingstjeneste/</a>
PL	<b>Links of National Broadcasting Council website with information and answers to questions : Audiowizualne usługi medialne na żądanie –PL)</b> <a href="http://www.krrit.gov.pl/dla-nadawcow-i-operatorow/audiowizualne-uslugi-medialne-na-zadanie/">http://www.krrit.gov.pl/dla-nadawcow-i-operatorow/audiowizualne-uslugi-medialne-na-zadanie/</a> <a href="http://www.krrit.gov.pl/dla-mediow-i-analitykow/dyrektywa-medialna/">http://www.krrit.gov.pl/dla-mediow-i-analitykow/dyrektywa-medialna/</a> <a href="http://www.krrit.gov.pl/dla-mediow-i-analitykow/dyrektywa-medialna/pytania-i-odpowiedzi/">http://www.krrit.gov.pl/dla-mediow-i-analitykow/dyrektywa-medialna/pytania-i-odpowiedzi/</a>
SE	<b>Att ansvara for en beställ-tv-tjänst (being in charge of an on demand TV service - SE)</b> <a href="http://radioocht.se/Documents/Publikationer/Att%20ansvara%20f%C3%B6r%20en%20best%C3%A4ll%20tv%20tj%C3%A4nst.pdf?epslanguage=sv">http://radioocht.se/Documents/Publikationer/Att%20ansvara%20f%C3%B6r%20en%20best%C3%A4ll%20tv%20tj%C3%A4nst.pdf?epslanguage=sv</a> Registrering av beställ-tv ( <a href="#">Registration form</a> ) <a href="http://www.radioocht.se/Documents/Blanketter/Blanketter%202013/Registrering%20av%20bestall-tv.pdf">http://www.radioocht.se/Documents/Blanketter/Blanketter%202013/Registrering%20av%20bestall-tv.pdf</a>
SI	<b>Avdiovizualne medijske storitve na zahtevo (SI)</b> <a href="http://www.apek.si/avdiovizualne-medijske-storitve-na-zahtevo">http://www.apek.si/avdiovizualne-medijske-storitve-na-zahtevo</a>
SK	<b>Rozsah posobnosti zakona č. 308/2000 Z. z. v súvislosti so zmenami zakona účinnými od 15. decembra 2009 (SK):</b> <a href="http://tinyurl.com/3egura2">http://tinyurl.com/3egura2</a>

Table 1: Updated overview of the main guidance documents produced by RAs

#### 1.4. AVMS criteria still raising difficulties in the qualification of new services since May 2012

The comparative background document for the Plenary session of Ohrid on “New media and regulation”<sup>12</sup> in 2012 underlined that “editorial responsibility” and “principal purpose” were considered as particularly complex and that the majority of the first cases which were reported in the previous survey revolved around these two concepts.

Today, the concept of “principal purpose” is still mentioned by four authorities (Netherlands, Austria, Slovakia and United Kingdom) as a criterion raising interpretation issues. And when it comes to provide concrete examples that NRAs had to deal with since May 2012, the question of video sections on newspaper websites – related to the criterion of “principal purpose” – is the most frequent one (Slovakia and United Kingdom again, but also Norway, Flemish speaking Community of Belgium and Sweden).

##### 1.4.1. Principal purpose (NL, AT, SK, UK, NO, BE-VRM, SE, SI)

The notion is still considered as a key question which raises many interpretation issues. Such issues occur when a website displays mixed contents, when a subsite offers specific content or with some

<sup>12</sup> <http://www.epra.org/attachments/ohrid-plenary-1-exploring-regulatory-boundaries-background-document>

imbedded links. Those situations happen mostly in the context of newspaper websites. Several NRAs have had to deal with such questions in the last year. The Swedish SBA has qualified a few newspaper websites as AVMS because they displayed video sections that could be considered as separate from the rest of the websites' content and were not an insignificant part of content<sup>13</sup>. The Belgian VRM has followed the same path with a newspaper's website section offering video content, on the grounds that this section was separate from other (text) content of the website, and was neither insignificant nor ancillary to other content. The Slovak CBR has reconsidered its assessment about a website that it had not originally considered as an AVMS<sup>14</sup>. At the time of the first assessment in 2010, the video section of a newspaper website was quite distinct from the rest of the site (with its own IP address) but the videos used to be accompanied by written text. However, when the website launched a connected TV application and started to offer stand alone videos not accompanied by written text in 2012, the CBR decided to qualify it as an AVMS. In its response, Ofcom referred to its 'Sun Video' decision, already mentioned in last year's comparative document, in which it provides a set of relevant characteristics to be considered when assessing the nature of a newspaper's website.

#### 1.4.2. Editorial responsibility (AT, SK, LU, UK, SI)

This criterion remains problematic in some cases mentioned by several NRAs. KommAustria raises the question of loop-channels from handy providers, Youtube contents and imbedded videos. The CNP from Luxembourg wonders whether the presence of an administrator of a UGC website is required. The Slovenian APEK is currently examining whether a portal offering UGC content could endorse the editorial responsibility in certain cases. Ofcom (UK) clarified the issue of the editorially responsible party when different parties playing a role in the selection and organisation of contents: the editorially responsible party will be the one who has 'general control'. To assess this, the contractual obligations between parties must be taken into account, unless they seek to allocate editorial responsibility where it plainly does not lie in reality.

#### 1.4.3. TV-like character (NO, AT, UK<sup>15</sup>)

KommAustria encounters difficulties with info channels offering slideshows and with weather cameras because the Audiovisual Media Act qualifies them as TV in cable networks. The Norwegian NMA considers that this criterion raises questions in the qualification of newspaper's websites. Ofcom mentions two cases in which it had to assess the TV-likeness of some video content<sup>16</sup>. In one case, it considered the content as not TV-like. Out of the criteria retained by the NRA were the videos' length, the fact that they seemed more like a part of a programme than a programme on its own and the fact that the public would probably not consider them as a competing option to traditional TV. In the other case, Ofcom considered the content as TV-like because they were conceived as traditional TV programmes (opening sequence, professional quality, use of a logo and end credits,...), were closely comparable to programmes on linear television and because some of them were even 'watch again' opportunities for programmes available through linear television

---

<sup>13</sup> [http://www.epra.org/news\\_items/video-sections-of-newspaper-websites-avms-swedish-ra-decisions](http://www.epra.org/news_items/video-sections-of-newspaper-websites-avms-swedish-ra-decisions)

<sup>14</sup> <http://merlin.obs.coe.int/iris/2012/9/article38.en.html>

<sup>15</sup> On this particular issue, see the lead article of IRIS plus 2013-4 by Francisco Javier Cabrera Blázquez: *On-demand Services: Made in the Likeness of TV?* <http://www.obs.coe.int/documents/205595/865106/IRIS+plus+2013en4+LA.pdf>

<sup>16</sup> Appeal by Everton Football Club against a Notice of Determination by ATVOD that the provider of a service has contravened section 368D(3)(za) (requirement to pay a fee) of the Communications Act 2003 whilst operating an ODPS: <http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Everton-TV.pdf>

Appeal by the Business Channel.tv against a notice of determination by ATVOD that the provider of the service "the Business Channel" (www.thebusinesschannel.tv) has contravened sections 368BA and 368D(3)(za) of the Communications Act 2003: [http://www.atvod.co.uk/uploads/files/Business\\_Channel\\_Appeal\\_Decision.pdf](http://www.atvod.co.uk/uploads/files/Business_Channel_Appeal_Decision.pdf)

services. Ofcom has also undertaken qualitative research<sup>17</sup> to better understand (i) which on-demand AVMS tended to be considered as competing alternatives to watch linear scheduled TV (channels), (ii) when consumers want to watch TV programmes, and (iii) why.

#### 1.4.4. A Service according to Art. 56-57 TFEU (BE-CSA, CZ)

While the Czech RRTV considers that it can be hard to define what is actually an “economic activity”, the Belgian CSA concurs that this can be a problem when no commercial communication is displayed. The economical nature of the media then depends on its ability to compete with other AVMS. And what about really small-scale services? Though they are aimed at the “general public”, should they be considered as AVMS when only a few people use them as an alternative to larger-scale media?

#### 1.4.5. Aimed at the general public (IT)

The Italian AGCOM mentions having received queries about audiovisual services offered in hotels and train transportation. However, those questions have been settled without any formal decision.

### **1.5. Notification requirement for new media services**

Since May 2012, a notification requirement for web television (linear) and web radio services has been introduced in **Norway**. The NMA started to require notification for these services since January 2013. In Romania, Bulgaria, Italy and Luxembourg, a notification requirement for VOD services has been introduced (apparently already before May 2012) and also for catch up services in Romania, Italy and Luxembourg.

Count	Answer	Country
15	1. VOD services	BA, BE-CSA, BG, ES-CAC, FI, FR, HU, HR, IT, LU, LV, NL, RO, SE, SI
10	2. Catch-up TV	BE-CSA, ES-CAC, FI, FR, HU, IT, LU, NL, RO, SI
6	3. Other services	BE-CSA, BG, ES-CAC, FR, NL, NO

Table 2: Notification for which kind of services

## **2. Concrete challenges concerning identification and notification of services/service providers**

The table below which compiles the number of on-demand services notified in May 2011, May 2012 and October 2013 gives an indication of the continuous evolution in the notification process. The table shows also, for countries which do not have a notification system, references to recent estimates of the number of new media services that fall under their jurisdiction.

The table shows also estimates of services which are not required to register, although a notification system exists. It is the case in Italy, where a certain number of providers identified by the MAVISE database might be exempted from notification obligations because their revenues are below the limit of 100 000 EUR.

Country	Status May 2011	Status May 2012	Status October 2013
AT	35	Approx. 80	121
<a href="http://www.rtr.at/de/m/Abrufdienste">http://www.rtr.at/de/m/Abrufdienste</a>			

<sup>17</sup> The full report, entitled “On Demand Services: understanding consumer choices” can be found here: [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)

<b>BA</b>	N/A	3	4
<a href="http://www.rak.ba/eng/index.php?uid=1276851773">http://www.rak.ba/eng/index.php?uid=1276851773</a>			
<b>BE - VRM</b>	14	About 25	52
<b>BE - CSA</b>	4	10	23
<a href="http://www.csa.be/documents/1652">http://www.csa.be/documents/1652</a>			
<b>BG</b>	11	9 VOD Services, PPV	15
<b>CY</b>	2	?	0 (no notification required). 2 VOD services present.
<b>CZ</b>	79	104	121
<a href="http://www.rtv.cz/cz/static/prehledy/seznamy-provozovatelu/list_other_ondemand.htm">http://www.rtv.cz/cz/static/prehledy/seznamy-provozovatelu/list_other_ondemand.htm</a>			
<b>DE</b>			0 (no notification requirement) – no estimate
<b>DK</b>	32 services available (no notification required)		
<b>ES (CAC)</b>	N/A	N/A (not yet in force)	6
<b>FI</b>			8 (with coregulator “the Finnish Centre for Media Education and Audiovisual Media for protection of minors”. Higher number of VOD services under the legislation estimated.
<b>FR</b>	106	99	Not available
<b>UK</b>	119	Approx 200	206 services notified with ATVOD
<a href="http://www.atvod.co.uk/regulated-services/directory-of-notified-services">http://www.atvod.co.uk/regulated-services/directory-of-notified-services</a>			
<b>GR</b>			-
<b>HU</b>	-	About 70	
<b>HR</b>		6 on-demand (video) services 78 providers of electronic publications	
<a href="http://www.e-mediji.hr/ostalo/emediji1.php">http://www.e-mediji.hr/ostalo/emediji1.php</a>			
<b>IE*</b>	?	?	
<b>IT</b>	N/A	3 VOD, 4 web TV, 88 web simulcast of linear services (status 20/04/2012)	4 notified VOD services and 146 VOD services available in Italy (according to Mavise database)
<b>LT</b>	4	5	3 VOD services
<b>LV</b>	-	1	3 notified services (higher number under their jurisdiction estimated)
<b>LU</b>	1	2: Netflix and iTunes (Source: CNP <sup>18</sup> )	4: iTunes, Netflix, Entreprise Postes et télécommunications, Tango S.A.+ 2 or 3 more estimated.
<a href="http://cnpl.lu/fr/chaines-sous-surveillance-%e2%80%93-tele/">http://cnpl.lu/fr/chaines-sous-surveillance-%e2%80%93-tele/</a>			
<b>NL</b>	23 services, from 17 parties	Around 45	Around 20 on demand media services
<a href="http://www.cvdm.nl/wp-content/uploads/2013/04/register-Commerciele-Omroepen-per-27-11-13.xls">www.cvdm.nl/wp-content/uploads/2013/04/register-Commerciele-Omroepen-per-27-11-13.xls</a>			
<b>NO</b>			No notification. Estimated 22 on demand services and on demand services of newspapers.
<b>MD</b>			-
<b>MK</b>			NA
<b>PL</b>			696 notified web TV services and estimated 24 VOD services not notified
<b>RO</b>	?	1	7
<b>SE</b>	8	31	41
<b>SI</b>	N/A	N/A (secondary act to be adopted)	3
<b>SK</b>	32	39	45
<a href="http://www.rada-rtv.sk/sk/spravy/index.php?aktualitaId=1040">http://www.rada-rtv.sk/sk/spravy/index.php?aktualitaId=1040</a>			

Table 3: Number of on-demand services/new media services notified so far (with the NRA, co-regulator, ministry or other)

<sup>18</sup> ODAVMS on pay TV packages have a concession, e.g. “Air TV” on the package “Télé vun der Post” or “Libido TV” on the “Canal+” package.



The proportion of spontaneous notifications and notifications, which were made after formal and/or informal requests, varies from a country to another. Six countries indicate that most of the notifications were spontaneous and two countries mention that the NRAs had to ask the service providers to notify.

In **the Netherlands** and **Slovakia**, the majority of services made spontaneous notifications, with only a few services deciding to notify after receiving a formal request to do so. In **Spain** (Catalonia), the six services made spontaneous notifications. In **France**, 106 services notified spontaneously in 2012. In the **Flemish speaking Community of Belgium** also, most notifications are spontaneous. In the **Czech Republic**, out of 121 on demand services, 98 notified spontaneously and only 23 after a formal request.

In **Austria**, nearly all services notified only after informal requests. In the **French speaking Community of Belgium** also, with the exception of services provided by traditional broadcasters or main distributors, the CSA had to require them all to register.

**2.1. New monitoring procedures to track or to monitor new media services**

Several NRAs (CSA-BE and VRM-BE, CvdM-NL SBA-SE, RRTV-CZ, NEPLP-LV, ATVOD-UK) report that they actively look for services whose providers might have omitted to register.

Five NRAs use **online research to track new media services that fall under their jurisdiction**: the CSA and the VRM in Belgium, the CAC in Spain, the CvdM in the Netherlands and the KRRIT in Poland. The CvdM conducts online research with websites, such as www.alexa.com that provides up-to-date, comprehensive information about websites, including their nature, traffic and audience.

In Sweden, the SBA hired a **consultant company** to find the contact details of on-demand service providers. In Germany, the **software Camtasia** is partly used in the field of the protection of minors. In Luxembourg, there are plans to intensify the collaboration with the Ministry of “Classes Moyennes” which would have to inform the authority if a new company’s business is linked to the media sector. In Denmark, the authority is currently exploring the most effective ways to identify relevant services, in collaboration with the Danish Ministry of Culture.

**2.2. Typology of new media services providers**

New media providers under the jurisdiction of NRAs come from various sectors; they do not only originate from the “traditional” audiovisual sector (i.e. broadcasters, telecommunication operators).

Origin of the new services providers	Countries
Institutional world	French speaking Community of Belgium
Associative sector	French speaking Community of Belgium, Bulgaria, Spain (CAC)
Artistic world, academic	French speaking Community of Belgium
Adult (pornographic) entertainment websites	UK(*), France

<b>Municipalities</b>	French speaking Community of Belgium, Slovakia
<b>Press</b>	Netherlands, Poland, Norway, Finland, Flemish speaking Community of Belgium, Austria, Denmark
<b>New business services</b>	Slovakia, Luxembourg, Spain-CAC : "local commercial sector", France (new VOD services)
<b>Telecommunication operators</b>	Greece, Poland, Bosnia and Herzegovina, Finland, Armenia, Flemish speaking Community of Belgium, Romania, French speaking Community of Belgium, Bulgaria, Czech Republic, Slovakia, Italy, Latvia, Cyprus, Luxembourg, Denmark, Slovenia
<b>Distributors</b>	Netherlands, Poland, Norway, Finland Flemish speaking Community of Belgium, Romania, French speaking Community of Belgium, Denmark, France
<b>Cinema</b>	Netherlands, Poland, French speaking Community of Belgium, Denmark, Spain-CAC : "cartoon producers"
<b>Natural persons</b>	French speaking Community of Belgium, Czech Republic, Slovakia
<b>Broadcasters</b>	Norway, Finland, French speaking Community of Belgium, Lithuania, Austria, Bulgaria, Czech Republic, Slovakia, Italy, Luxembourg, France, Slovenia
<b>Internet service providers</b>	France

Table 4: Typology of new services providers

(\*)Ofcom underlines that there is a wide range of services but over the last few months, they have largely been confronted with adult entertainment websites.

### 2.3. Information about the service and the service provider required in order to notify with the RA

Amongst the 29 NRAs who answered the survey, five declare there is no notification required in their country (DK, GR, MD, NO, ES-CAA). In Norway, whereas there is no notification requirement, service providers must publish certain data on their website.

Four other NRA left this question unanswered (FI, MK, DE and CY).

All the other NRAs who answered the survey have a notification system (BE-CSA, FR, NL, PL (only for service operated in ICT systems), BA, BE-VRM, AM, RO, SE, LT, AT, BG, CZ, SK, IT, LU, LV, GB, SI).

Depending on the countries, the data that must be provided to the NRA at the time of notification vary a lot. The most commonly asked are, in order of frequency:

#### 2.3.1. Identification data (BE-CSA, NL, PL, BE-VRM, RO, SE, LT, AT, BG, CZ, SK, IT, LU, LV, GB, ES-CAC, SI)

The exact number and type of data that must be given vary from country to country but their general aim is to inform the NRA about the identity of the provider and how to contact it (name, legal form of the company, address, phone number, website, etc.). These data seem to be asked in almost all the countries where notification is required. Specific identification data may also be required by NRAs, as in Belgium where logos and recognition symbols of the service provider must be communicated to VRM. The Romanian NAC and Slovak CBR require foreign providers to provide contact data *in* the country.

2.3.2. Data about the nature and description of the service (BE-CSA, NL, PL, BA, BE-VRM, RO, SE, LT, AT, BG, IT, LU, LV, GB, ES-CAC, SI)

Data asked under this generic title also vary from country to country but the general aim is to inform the NRA about what the type of service the provider is going to provide (e.g. linear, on demand, type of programmes, target audience, etc.).

2.3.3. Distribution data (BE-CSA, NL, PL, BA, SE, AT, CZ, SK, IT, LV, GB, ES-CAC)

Such data aim to inform the NRA on the way(s) the service is going to be provided to the public (Internet, cable, etc.).

2.3.4. Date of launch (NL, RO, BG, CZ, LU, GB, ES-CAC, SI)

2.3.5. Income data (BE-CSA, NL, IT, GB)

2.3.6. Data about property structure (BE-CSA, BE-VRM, LT, AT, ES-CAC, SI)

2.3.7. Jurisdiction data (BE-VRM, SK, GB, SI)

In these countries, providers are required to answer questions whose goal is to determine the country of jurisdiction (location of company's headquarters, where programming decisions are taken, where workers are employed).

The Polish KRRiT requires VOD providers to indicate the National Broadcasting Council as the competent regulatory authority.

2.3.8. Area of coverage (LT, AT, BG, SP-CAC)

2.3.9. Data about members of statutory bodies (BE-VRM, SK)

2.3.10. Data about activities in the media sector (BE-CSA, AT)

2.3.11. Other data

- Information about the providers who will significantly take part in the implementation of the service and data about the contribution to production (Belgian CSA)
- Data to assess editorial responsibility (Dutch CvdM)
- Data about the language of the service (Belgian VRM)
- Bank data (Lithuanian RTCL)
- Data about conditional access (Italian AGCOM)
- Editorial responsibility and respect of the legislation (ES-CAC).

Most NRAs have not mentioned any measures to ease the notification process. The Belgian CSA mentioned that it tries to be available to answer the queries of all new providers. In the UK, measures have recently been taken to ease the notification process. The Polish KRRiT does not intend to simplify a process that is already very simple. The Slovenian APEK introduced a simple way for non linear services to notify via a short form to be completed and returned to them. Finally, the CNP from Luxembourg indicates that specific data must be given by all providers when applying for a business licence and that service providers are not required to provide the same information when notifying.

## **2.4. Relationship between NRAs and new media players**

The majority of NRAs qualify their relationship with new media players - when they come into contact with them (e.g. asking them to notify) as “very good” – meaning that they observe willingness from new media players to cooperate – and “good”. Only three NRAs qualify their relationship with these new players as “neutral”, one as “bad” and none as “very bad”.

Four NRAs consider that it depends on the origin of service providers.

**In the French speaking Community of Belgium**, when asked to notify, some new service providers react very positively and quickly while others – especially if their revenues exceed a certain amount, knowing that a contribution to the production of audiovisual works is imposed – try to find reasons not to register (asking for delays, disputing their qualification as on demand media service, not answering requests,...).

In **the Netherlands**, on the one hand, newspapers publishers particularly demonstrate a rather reluctant attitude and defend the position that their video sites do not qualify as stand-alone on-demand media services. They fear to be faced with extra administrative burdens and possible fines in future. The NRA held several meetings to convince them that this will not be the case in practice. On the other hand, film rental (especially download to rent) services consider themselves as on-demand media service providers and do not challenge decisions of the CvdM in that respect.

**In the UK**, the introduction of a progressive fee structure, a more stable understanding of the legislation relevant to VOD and better guidance from ATVOD on scope following decisions and appeals and dialogue with industry co-regulators (via the ‘Industry Forum’ and individual working groups), has led to a good relationship. However, there remain some sectors of industry, particularly adult service providers and those running very small start-ups (some of which were new to the idea of regulation), with whom initial relations can be difficult. With the adult industry, this is partly the result of ATVOD’s interpretation of the legislation, which affects their services (i.e. prohibiting hardcore content being accessible to under-eighteens). Relations are usually markedly improved by one-on-one meetings and conversations, although there remain individuals who are simply opposed to any form of regulation.

## **2.5. Explaining positive side effects of notifying**

To convince new media service providers to notify, several NRAs try to put forward the positive effects of notifying.

In three NRAs (the French speaking Community of Belgium, the Netherlands, and UK), advantages put forward are:

- Quality label for the public / being supervised by the NRA and being subject to the legislation could increase the consumer’s trust / consumer confidence
- Being able to take part to activities organized by the NRA
- Receiving information from the audiovisual sector through the NRA / facilitate mutual communication
- Being recognised as a player/stakeholder of the audiovisual sector by the NRA can grant extra credibility to the media service provider / good reputation

For most NRAs (Bosnia and Herzegovina, Romania, Austria, Bulgaria, Slovakia, Luxembourg, Latvia, Slovenia) notifying is simply a “legal obligation” and they consider that they simply need to convince providers to notify, by explaining them that it is their legal duty to do so.

Nevertheless, **Italy** considers that explaining positive effects of notifying is indeed a good idea and worth to be considered for positive actions. **In the UK**, within the ATVOD Industry Forum, held at regular intervals for all notified service providers, such advantages may also be discussed and disseminated.

In the **Czech Republic**, the experience is radically different since the NRA observes that certain AVMS providers try to register even though their services do not comply with all the criteria in order to become more prestigious.

## 2.6. Role of the NRA: How to ease burdens?

Some small new media services may fulfil the criteria of the AVMS definition and are regulated accordingly. Often organized in small structures, without real management<sup>19</sup>, such providers can feel lost when facing certain administrative and legal burdens. It is interesting to observe how NRAs define their role, whether they consider that it includes guidance duties, if they see as their mission to foster the emergence of new services (and thereby plurality) or not.

In most cases, NRAs consider that their role is limited to inform new media service providers if needed and does not include guiding them to foster the emergence of new services:

In **The Netherlands, Belgium (VRM), Latvia, Norway, Romania, Denmark, Slovenia and Bosnia Herzegovina**, the NRAs consider their role as primarily dealing with providing guidance on media regulation issues rather than stimulating the launch of new media services;

In **Poland**, the KRRIT points out that none of the problems reported by providers remains without an answer and explains that there is no difference of treatment between a large company, a small entrepreneur or a natural person;

In **Austria**, the KommAustria has a neutral role that consists in the acceptance of the notification, even if the service provider is helped in the course of this procedure.

In the **UK**, ATVOD sees its role primarily as information resource. They offer advice and guidance on the interpretation of the relevant legislation and the associated duties of particular service providers

In **Spain** (Catalonia), the CAC offers advice and the possibility to submit via their website in a contact form, as a prior communication, questions or doubts about the notification.

More radically, in the **Czech Republic**, the NRA considers that its only role is to monitor services. **Slovakia** reports that the current economic situation prevents the NRA to play such a role. In **Italy**, so far only big companies have notified and the exemption rules (threshold of €100 000 yearly revenues) has the aim of limiting the scope of Agcom regulation to bigger players. No such guidance role for smaller companies is therefore envisaged.

In the **French speaking Community of Belgium**, informal contacts with small scale providers reveal that they often need to be guided through legislation and obligations that they have to comply with, independently of their registration (for example copyright provisions).

---

<sup>19</sup> e.g. channels made by individuals on Youtube, such as [www.youtube.com/kativilaga/](http://www.youtube.com/kativilaga/) or audiovisual media services of municipalities.

## **2.7. Cooperation with platforms/UGC websites/connected device providers**

It seems that so far most NRAs have not developed any cooperation with platforms/UGC websites/connected device providers for the sake of identifying professional channels or of opening a regulatory dialogue.

However, ten NRAs have started discussions and had first contacts with these players though with mixed results.

In **Slovenia**, the APEK has invited these players to establish cooperation even before the transposition of the AVMSD. They came in numbers but were sceptical regarding the extension of the TV regulation to web services. In **Italy**, most connected TV operators were contacted within an investigation procedure on convergent services, but AGCOM considers difficult to establish a relationship with them. In **the Netherlands**, the CvdM reports some general discussions with YouTube and digital cable operators. In **Norway**, the NMA plans to invite and debate with providers about the regulation. At this time, the authority has had preliminary discussions on concrete cases and difficulties. In the **French speaking Community of Belgium**, occasional contacts with such players through informal discussions, conferences and publications allowed the identification of some services. In **Poland**, the National Broadcasting Council has initiated a series of working meetings with suppliers of new audiovisual services where all most important topics relating to regulation of these services are discussed. The Authority also proposed cooperation on the creation of self-regulation mechanisms. In **France**, these players have shared their experience in one of the working groups on Connected TV organised by the CSA.

In **the UK**, ATVOD has informal arrangements with various platforms, from which it has tracked the emergence of some new media services. The collaboration has been deemed fruitful in a limited number of cases, but it depends on the organization in question and its structure / personnel. Particularly in the case of the larger platform providers, that comprehensive and up-to-date information on their hosted VOD channels/services is not always easily available.

Finally, **Austria** seems to be already a step forward as they report that all known platforms have sent the list of the distributed AVMS.

## **3. Issues pertaining to the monitoring and application of legal provisions to on-demand audiovisual services**

### **3.1. Monitoring on-demand audiovisual media services under NRAs jurisdiction**

This question was analysed in 2011 in the EPRA background document related to “efficient functioning of regulators: approaches to monitoring”.

Most NRAs conduct ad hoc checks in addition to examining complaints. It is the case in Belgium (French and Flemish speaking Community), Poland, Bosnia and Herzegovina, Norway, Finland, Romania, Sweden, Austria, Germany, Italy, Luxembourg, Spain-CAC and France.

In Lithuania, Slovakia, Latvia, Denmark and Slovenia, monitoring is based solely on complaints.

The NRAs in Netherlands, the Flemish speaking Community of Belgium and Poland use ad hoc checks, examining complaints and samples.

The NRAs in the Czech Republic and Bulgaria report conducting continuous monitoring. In Bulgaria, CEM uses continuous monitoring but also ad hoc checks in addition to examining complaints.

As of today, only five countries seem to have introduced a system of co-regulation: the UK, Hungary, Finland, Ireland and Germany (for the protection of minors).

In the **UK**, in relation to scope issues, ATVOD has now moved from proactive continuous monitoring to a monitoring system based largely on complaints. Other services are investigated on an ad hoc basis, for example when a high profile VOD service is due to be launched. ATVOD continues to be proactive in sending information about the regulations governing VOD to those who may at some point fall within scope – for example, local television channels newly licensed by Ofcom. In relation to content issues, ATVOD responds to complaints but also pro-actively monitors services considered to be ‘high risk’ in terms of compliance, specifically those offering hardcore adult material.

In **Germany**, under the principle of "regulated self-regulation", the Commission for the Protection of Minors (KJM) certifies voluntary self-regulation organisations<sup>20</sup> and controls whether the decisions taken by the organisation are taken within their scope of assessment. If a voluntary self-regulation organisation exceeds the scope for legal assessment, the KJM can take legal measures. In addition, the KJM develops statutes and directives which the self-regulation organisations must adhere to.

In **Finland**, The Finnish Centre for Media Education and Audiovisual Media for protection of minors’ purposes is a new authority established on January 2012. The authority is responsible for the supervision of audiovisual programme provision (classification of films, protection of minors) and the coordination and promotion of national media education. So far eight service providers are registered with the coregulator (on demand service providers are required to register if their programmes need to be classified and labeled for the protection of minors).

### **3.2. Application of Art.13: Method of calculation of the percentage of European works in catalogues**

Recently, the European Commission has asked NRAs to provide information on the method of calculation of the percentage of European works in catalogues to assess whether an indicator based on hours is the most appropriate one or whether it would be preferable to use the number of titles of European works in catalogue/service.

Nine countries use a method of calculation of the percentage of European works in catalogues, five of which use an indicator based on hours while the remaining four countries use a method based on titles.

In **Poland**, the content of European works in the catalogue is calculated based on the total **duration** of the programmes multiplied by the total broadcasting time of the programmes in the catalogue during a given calendar quarter. In **Slovakia**, it is the ratio of the total length of the EU works in the catalogue in comparison with the total hours. In **Italy**, operators can choose between the number of hours of European works made available in their catalogues (20% of annual available hours from 2015; during the implementation years (2011-2014) 5%) and amount of investments (5% of annual revenues from VOD services from 2015; during the implementation years (2011-2014) 2%). So far a very small number of operators have reported about their options, so ad hoc checks are being carried out. In **the UK**, it is the percentage of total hours of programming comprising European works, as an average on the basis of total hours over the period 1 January to 31 December. In **Slovenia**, the APEK plans to calculate the total duration of the European works in the catalogues

---

<sup>20</sup> As specified in Art. 19 JMStV (FSK, FSM, FSF).

multiplied by their time being present in the catalogue during a given calendar interval. In the **Czech Republic**, the calculation is based on the percentage of the total **number of programmes** offered in a service's catalogue, during a reporting period. In **Denmark**, all service providers calculated the percentage of European works as the share of this type of programmes in comparison with all the programmes (titles) in their catalogue. In **France**, the CSA asks the service providers to report about their catalogues (titles) at two dates chosen randomly. **Luxembourg** is in favour of indicators based on the number of titles available in a catalogue rather than the hours of programming.

In **Lithuania**, service providers calculate the percentage of European works with the method they choose themselves.

### 3.2.1. Indicators considered as useful to control prominence tools of European works

In the **French speaking Community of Belgium**, the CSA makes a comparison between the share of European films in the top 50 consumer service providers, the share of European films in catalogues and finally the share of European films in promotional occurrences made by service providers about the movies available on their platform. This is considered useful as it shows whether European films were "positively discriminated" in the promotion (i.e. if this share is higher than the share of European works in the catalogue) and if this positive discrimination is reflected in the consumption by the viewers (top 50).

Such a comparison allows the NRA to control the implementation of specific measures to promote European works and the effectiveness of these measures. In addition, the CSA also collects information regarding the recent nature of the works, their entry in and exit of the catalogue and promotional dates, where they have been promoted (tabs heart stroke, European cinema magazine page, etc..), the country of production for films in promotion (this information is not transmitted by the providers to the public in the general information provided for each film), any marketing data that providers have compiled and can give to the NRA and the results of cinema admissions for films found in catalogues. Currently, the NRA only collects such information for films and creative documentaries present in VOD catalogues.

In **The Netherlands**, the CvdM decided to use the indicators which are mentioned in the updated reporting guidelines of the European Commission but **only those which can be applied relatively easily in practice**. Keeping administrative burdens as low as possible is a declared aim; collecting and reporting the data should not be a too time-consuming exercise for media service providers. The same logic applies for the CvdM when it comes to check the data's validity and reliability and monitoring the compliance with European quota obligations. Media service providers are required to report each year on the amount of European works in their catalogue on at least one reference date picked at random every year. Furthermore share is defined in terms of duration of videos. The CvdM explains which programme categories can be left out from the calculation because they should be considered as games, news or current affairs. The CvdM is willing to apply indicators consisting of the following questions which can be answered relatively easily:

- Can the user search within the catalogue for videos labelled as European works? For instance are tags or labels regarding nationality/origin used?
- Has the service provider developed tools in order to recommend European works to users?
- Does the catalogue, website or EPG contain a special section dedicated to European works?

Six countries (Poland, Bosnia and Herzegovina, Norway, the Flemish speaking Community of Belgium, the Czech Republic and Spain-CAC) mention **percentages** as useful to control prominence of European works.



In addition to the percentage of European works, Poland and Norway consider an adequate **visibility** to European works and **categorizations** like “Nordic movies” or “European movies” as useful. In France, the CSA considers the homepage as a good tool to promote European works, not only the titles but accompanied with previews for example.

The **consumption** of European works seems to appear as a very reliable indicator of the behaviour of operators and consumers in Italy and is indicated as a useful tool by Slovakia.

### 3.2.2. Verification of figures on European works supplied by on-demand service providers to NRAs

To the question “Do you carry out independent monitoring on European works on demand audiovisual media services?” most NRAs answer “no”. **Only six NRAs out of 29 indicate that they verify data provided by service providers.**

In **The Netherlands**, the NRA carries out random checks of all data provided by the media service providers. In **Italy**, all operators have to report each year about their fulfilment of existing obligations and in the new tender for the outsourcing of the monitoring service a specific reporting activity has been requested on a sample of two operators, which will rotate each year. In the **French speaking Community of Belgium**, the NRA verifies the catalogue’s content and promotional occurrences. In **France**, the CSA checks the coherence of data transmitted. In **Slovenia**, the APEK monitors the validity of the reported shares.

In the **Flemish speaking Community of Belgium**, the verification is made indirectly: most non-linear television services are also linear. The non-linear as well as the linear TV services have an extended offer with European works. The NRA carries out random checks of all data provided by TV services and thus indirectly controls VOD services.

### **3.3. Non-compliance of on-demand media services providers with legal provisions: what sanctions in practice?**

As the vast majority of NRAs declared that they did not issue any sanction last year, only scarce information could be collected about the sanctions considered in practice as the most effective in case of non-compliance by on-demand media services providers with legal provisions (e.g. protection of minors or commercial communications rules).

**The Netherlands**, the **French speaking Community of Belgium**, **Norway** and **Finland** specify that they first favour smooth methods, such as a monitoring period after an infringement (BE), allowing new services providers to better understand the requirements and expectations before immediately respond by imposing sanctions when the authority observes infringements (NL), warnings (NO) or a reminder before a conditional fine (FI). On the contrary, **Slovenia** considers financial sanctions as the most appropriate sanctions in case of non compliance of on-demand media service providers with legal provisions, although they did not impose any so far.

Only in **the UK** sanctions (fines) have been recently issued, all of them concerning protection of minors.

While ATVOD determines if a service is in breach of its Rules, Ofcom retains the power to sanction providers in breach of those Rules. Ofcom has sanctioned three services for breaches of ATVOD’s Rule 11 which states that material which might seriously impair the physical, mental or moral development of persons under-eighteen must be made available in a manner which secures that

such persons will not normally see or hear it. These decisions were published in December 2012 and January 2013:

- Ofcom fined provider Strictly Broadband Limited £60,000 for breaching Rule 11. Ofcom found its service contained a large amount of R18 equivalent material before any paywall and that the paywall was inefficient, in that it allowed users to use debit cards or mobile phones which under-eighteens can access<sup>21</sup>.

- Ofcom fined Playboy TV UK/Benelux Ltd £35,000 for breaching Rule 11, the breaches related to its service Playboy TV. Ofcom found that there was an inadequate paywall which allowed debit cards and no age verification system in place<sup>22</sup>.

- Ofcom also fined Playboy TV UK/Benelux Ltd £65,000 for breaching Rule 11, the breaches related to its service Demand Adult. Ofcom found there were R18 still images before the paywall and that the paywall was not an adequate age verification system, in that it accepted debit cards<sup>23</sup>.

In the cases above, Ofcom considered that **the use of financial sanction was the most appropriate mechanism to ensure compliance, but also to provide a clear message to other providers about the potential financial repercussions of breaching Rule 11**. Ofcom may also consider other types of sanction such as: instructing a service provider to publish a statement of Ofcom's finding on its service; instructing the service provider to provide additional information to users of the service prior to the selection of a specific programme by the user for viewing; issuing a notice restricting an element of the service; and/or issuing a notice suspending a service. Non compliance with such a notice can result in a criminal prosecution for those who provide the service.

### **3.4. Appropriate sanction in case of non-compliance with the notification requirement**

In last survey of May 2012, only one NRA<sup>24</sup> had reported that two providers had been sanctioned for non-compliance with the registration requirement. In the new survey only one NRA (KommAustria), issued four fines for non-compliance with the registration requirement.

Several NRAs (**Netherlands, Bosnia and Herzegovina, the Flemish speaking Community of Belgium, Czech Republic and Denmark (reprimand)**) consider that warning would be the most appropriate sanction.

### **3.5. Identifying three main challenges regarding new audiovisual media services regulation**

A first group of NRAs (the **French speaking Community of Belgium, Bosnia and Herzegovina, Norway, Finland, Lithuania, Bulgaria, Czech Republic, Italy, Denmark**) identify concrete challenges around the identification and notification of services and services providers and the monitoring and application of legal provisions to on-demand audiovisual services.

With regard to identification and notification, the French speaking Community of Belgium considers that it is challenging to maintain a permanent monitoring to be informed of new services which comply with the AVMS criteria and to convince them to register if they comply with the definition.

---

<sup>21</sup> The full decision can be found here: <http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Strictly-Broadband.pdf>

<sup>22</sup> The full decision can be found here: [http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Playboy\\_TV\\_Sanction.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Playboy_TV_Sanction.pdf)

<sup>23</sup> The full decision can be found here: [http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Demand\\_Adult.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Demand_Adult.pdf)

<sup>24</sup> See EPRA/2012/02a

France mentions the difficulty to identify services if no notification is required. Lithuania and Finland mention the difficulty of tracing providers of new audiovisual media services. In the Czech Republic, identifying and defining the term of "economic activity" is considered as the main problem. In Finland and Norway, jurisdiction issues are seen as the main challenges. With regard to the monitoring and application of legal provisions to on-demand audiovisual services, Italy and Lithuania consider the monitoring of online content as particularly challenging (especially for copyright questions in Lithuania). In Bosnia and Herzegovina, the CRA considers also as challenge to monitor political communications regarding pluralism and protection of minors regarding technical measures. For the **Flemish speaking Community of Belgium**, the first challenge is not to hinder innovation with too many administrative burdens for new and small scale operators. In the same spirit, **Lithuania** emphasises the challenge to foster the emergence of new services, whereby the objective is not to replace the traditional concept of linear TV but rather to enrich it. **Italy** identifies as a challenge the distinction between the scopes of the e-commerce Directive and the AVMSD and the correct application of the principles of country of origin and reception. **Denmark** considers as a challenge the development of the cooperation with service providers, in order to make sure that correct data are transmitted to the European Commission.

The proper application of Article 13 is also mentioned as a challenge in several countries such as the French speaking Community of Belgium, Bosnia and Herzegovina, Spain and in Norway, where the challenge is, amongst others, how to find a satisfying system for gathering information on European works in on demand audiovisual services. In its response to the Commission's Green paper, the Belgian CSA advocated for the establishment of proper European policy for the promotion of European works, involving all stakeholders.

A second group of NRAs (**UK, Greece, Italy, The Netherlands, Slovakia, Germany, Slovenia and both communities of Belgium**) link the main challenges regarding to new audiovisual media services regulation to the converged audiovisual world and to converging technologies. Several NRAs refer to the recent Green Paper on convergence in their answer. In **Greece**, the NCRT considers that convergence of markets, ways to safeguard the values and principles on which broadcasting is based and the encouragement of self-regulation as key issues to address.

In **the UK**, as VOD consumption changes, and increases on devices such as connected TV and tablets, Ofcom envisages that the current regulatory approaches and structures may not continue to give viewers the protections and assurances they have come to expect. The balance between personal responsibility and increased regulatory protection in a converged world will be an important debate.

How to ensure a level-playing regulatory field between the various types of players in the new media landscape is a concern shared by many, such as the Flemish VRM or the Slovakian NRA. The German **DLM** also points at the discrepancy in the regulation of broadcasting and new media services and the Slovenian APEK between the audiovisual media services and OTT services. In the same spirit, **Lithuania** underlines that regulation is lagging behind the rapid development of new technologies.

Along the same lines, the **Belgian CSA** points out the growing convergence between linear and on-demand services and the regulatory imbalance. Due to the growing accessibility and usability of terminals, the degree of control that the user can have in his use of linear and on-demand services has become comparable. In its response to the Commission's Green Paper, the CSA recommends that the regulatory framework should be adapted to eliminate most of the existing discriminations between linear and on-demand services. Spain (Andalusia) underlines also the necessity to adapt the regulatory framework to eliminate most of the difference between linear and on demand services – especially about protection of minors and vulnerable persons. In the Belgian CSA view, the scope of regulation should be revised to take into account some players who are not currently covered but who play a role in the provision and/or distribution of AVMS. As an example, the category of "service distributor" could be created and subject to specific rules.

In the UK, **Ofcom** considers that in the context of blurring boundaries between content and distribution, there may be an opportunity to establish a core set of principles and aims which are held in common across a diverse media landscape with different regulatory frameworks.

On the specific topic of **protection of minors**, ATVOD have called for an EU consensus to implement the UK's precautionary approach across Member States and have explored the possibility of blocking payments to providers outside of the UK, who do not provide access controls to prevent minors accessing the content. In **Slovakia**, ensuring an effective protection of minors in on-demand services is considered as a crucial challenge with regard to the worldwide nature of connected services. In **Spain-CAC**, protection of minors is also mentioned as a key challenge.

**With regard to jurisdiction**, Ofcom considers it is worth striving to preserve the spirit of the open internet, even if the framework of the AVMS Directive is considered challenging in terms of various aspects of its approach to jurisdiction. In contrast, in Belgium, the CSA considers that the almost exclusively physical link with a Member State that is currently required to establish jurisdiction must be reconsidered and supports the concept of virtual establishment to be applied to non-EU players targeting the EU market. In France, the CSA underlines the difficulty to impose stricter rules in a context of possible relocations of businesses.

#### **4. Summary and questions for debate**

More than one and a half year after the EPRA meeting in Portorož, the objective of this session is to follow-up on issues of scope and implementation by identifying best practices and methodologies for the regulation of on demand audiovisual media services. A particular emphasis will also be laid on the relationship with media service providers and the role played by NRAs.

##### **4.1. Recent changes (since May 2012) related to scope and notification requirement**

###### Guidance

None of the NRAs has developed new guidance related to scope since May 2012. New guidance is however currently developed in the Czech Republic and subject to a consultation in the UK.

###### AVMS criteria still raising difficulties

As in 2012, the concept of “principal purpose” still raises interpretation issues, particularly with regard to newspaper websites. Also pointed out as complex in 2012, the “editorial responsibility” criterion remains problematic in some cases mentioned by different NRAs. In contrast, the criterion “aimed at the general public” seems to raise less concern than one year ago.

The criterion of “economic service” is still problematic for small-scale services in terms of competition. Should they be considered as AVMS when only few people use them as an alternative to larger-scale media?

##### **4.2. Concrete challenges concerning identification of services/service providers**

###### Number of on-demand services and origin of new media services providers

Since May 2011 and May 2012, a steady progress can be observed in the notification process and in the number of on-demand services which have notified so far. It seems that spontaneous notifications are more frequent than notifications following informal requests from the NRAs.

New media services providers are usually originally telecommunications operators, but also “traditional” broadcasters, distributors and press. Many other players (cinema, municipalities...) provide such services but they were mentioned by only a few NRAs.

#### Information about the service and service provider required in order to notify

The degree and the quantity of information required in order to notify vary significantly from an NRA to another: it reveals some heterogeneity among NRAs and legislation concerning the concern of “administrative burdens”. Most NRAs have not mentioned measures taken to facilitate the notification process, with the exception of Ofcom/ATVOD. The Belgian CSA has recently amended its notification forms from an origin-of-providers perspective, with a new form for natural persons.

#### Relations between NRAs and new media players – positive effects of notifying – role of the NRA: where are the roadblocks?

When they get in touch with new media players, a vast majority of NRAs qualify as “very good” or “good” their relations with them. Some point out that it depends on the origin of the provider.

Nevertheless, the answers reveal that many NRAs do not consider that it is their role to guide “small” new media service providers to foster the emergence of new services. Most of them also consider that they do not have to explain the benefits triggered from the notification: it is, for most of them, only a “legal obligation”.

#### Cooperation with platforms/UGC websites/connected device providers

Discussions with platforms/UGC websites/connected device providers appear to be at an early stage for the majority of NRAs. However, ten NRAs have started discussions and had first contacts with these players though with mixed results.

#### New monitoring procedures

Several NRAs look actively for services whose providers might have omitted to register, some with the help of specific software or external sources. Nevertheless, these searches are not described as systematic. Could the new MAVISE database help raising the awareness of NRAs concerning the services and providers who might have omitted to register?

### **4.3. Issues pertaining to the monitoring and application of legal provisions to on-demand audiovisual services**

#### Monitoring on-demand audiovisual media services under NRAs jurisdiction

Most NRAs carry out ad-hoc checks in addition to examining complaints, possibly in combination with samples. About five countries have adopted a system of co-regulation (UK, DE, FI, HU, IE).

#### Method of calculation of the percentage, indicators considered as useful to control prominence tools (article 13 of AVMSD) and verification by NRAs of the figures on European works supplied by providers

Five countries use an indicator based on hours, while four countries use an indicator based on titles.

#### Sanctions in case of non compliance with legal provisions and in case of non compliance with the notification requirement

The majority of NRAs answered that no sanctions were issued last year, with the exception of the UK where sanctions have been recently issued concerning non-compliance with protection of minors’

rules. As a rule NRAs seem to favour soft tools such as warnings in the case of first infringements. Only one NRA issued sanctions for non-compliance with the registration requirement.

#### **4.4. Main challenges regarding to new audiovisual media regulation**

Several NRAs consider the main challenges regarding to new audiovisual media service regulation as linked to either identification and notification or to issues pertaining to the monitoring and application of legal provisions to on demand services.

Perhaps not surprisingly, a second cluster of countries directly link these challenges to the converged audiovisual world and to converging technologies, in reference to the Green Paper of the European Commission. The main issues of concern are:

- protection of viewers and especially minors;
- jurisdiction issues and the correct application of the principles of country of origin and reception;
- European policy about the promotion of European works;
- enlarging the regulatory scope to new actors players
- how to achieve a level playing field between the same services offered on various platforms (cable operator or mobile app) or linear and non linear services.