

50th EPRA meeting
Athens, 23-25 October 2019
Working Group III: Update on
Accessibility of TV and on-demand audiovisual media services
An Overview of Regulatory trends: background document¹
Deirdre Kevin, Commsol

Table of Contents

1. Introduction	2
2. Purpose of the paper and background to research	3
3. Progressive Approaches and Specific Targets	3
4. Obligations on different types of broadcasters.....	4
4.1. Public and private broadcasters	4
4.2. Market power and audience share.....	5
4.3. Free to air and pay television.....	6
4.4. Generalist and “niche programming” broadcasters	6
4.5. Broadcasters targeting other jurisdictions	7
5. Obligations in the on-demand world	8
5.1. Obligations for on-demand audiovisual media service providers	8
5.2. Obligations for broadcasters regarding online content.....	9
5.3. Other initiatives and future developments	9
6. Role of NRAs: monitoring, research, dialogue	10
6.1. Reporting and researching status of accessibility in audiovisual media services.....	10
6.2. Dialogue and meetings with stakeholders.....	11
7. Costs, funding schemes, and other market factors.....	11
7.1. Exemptions and reduced obligations.....	12
7.2. Alternative approaches, cooperation and collaboration	12
7.3. Increasing the availability of accessible content: production.....	12
8. Challenges and Opportunities presented by new technologies	13
8.1. Delivery and distribution of content, and quality of service	13
8.2. On-demand content.....	14
8.3. Innovations, collaborations, new services and reducing costs.....	14
9. Conclusion and focus of discussion for the working group.....	15

¹ **Disclaimer:** this document has been produced for an internal meeting by EPRA, an informal network of 53 regulatory authorities in the field of audiovisual media services. It is not a fully comprehensive overview of the issues, nor does it represent the views or the official position of EPRA or of any member within the EPRA network.

1. Introduction

The Charter of Fundamental Rights of the European Union ratified in 2000 states that the EU recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. (Article 26)

In 2011, the EU became a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD).² The Convention sets out minimum standards for protecting and safeguarding a full range of civil, political, social, and economic rights for people with disabilities. In particular, signatory states shall *ensure that persons with disabilities shall enjoy access to cultural materials in accessible formats and enjoy access to television programmes, films... in accessible formats.*³ The EU has a commitment to building a barrier-free Europe in the EU by 2020, as set out in the European Commission's disability strategy.⁴ One of the main areas for action is accessibility defined as meaning that: *people with disabilities have access, on an equal basis with others, to the physical environment, transportation, information and communications technologies and systems (ICT), and other facilities and services.*⁵

Technical access to audiovisual media services has been covered by the European Accessibility Act,⁶ regarding (in brief) providing electronic programme guides (EPGs) which are perceivable, operable, understandable and robust and provide information about the availability of accessibility; and ensuring that the accessibility components (access services) of the audiovisual media services are fully transmitted with adequate quality for accurate display, and synchronised with sound and video, while allowing for user control of their display and use.

The right of persons with an impairment and of the elderly to participate and be integrated in the social and cultural life of the Union is linked to the provision of accessible audiovisual media services.⁷

Under the revised AVMS Directive, the obligations for Member States to improve the accessibility of audiovisual media services have become stronger⁸. From the previous requirement to: *“encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability”*, Article 7 of the Directive has significantly strengthened obligations: *“Member States shall **ensure, without undue delay**, that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures.*(Par 1)

Article 7 is further expanded to include obligations on media service providers to report on a regular basis to the NRAs. Member States should encourage media service providers to develop accessibility action plans in respect of continuously and progressively making their services more accessible, and communicate these plans to NRAs or relevant bodies. Each Member State should establish a point of contact for providing information and receiving complaints regarding any accessibility issues referred

² UN Convention on the Rights of Persons with Disabilities: Available [here](#)

³ Art. 30 paragraph 1 letter a and b CRPD

⁴ See the European Disability Strategy (2010-2020), available [here](#)
And the Communication from the Commission on the [European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe](#).

⁵ This wording by the EU Commission reproduces Art. 9 para 1 CRPD.

⁶ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services. Available [here](#)

⁷ Preamble paragraph 22. Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU

⁸ See also the toolkit to transpose the AVMSD prepared by the European Disability Forum (EDF): http://www.edf-feph.org/sites/default/files/final_edf_avmsd_toolkit_november_2019_0.pdf

to in this Article. Finally, Member States shall ensure that emergency information, including public communications and announcements in natural disaster situations, made public through audiovisual media services, is provided in a manner which is accessible. It is worth noting that Article 7 (unlike other articles) makes no reference to self or co-regulation on this issue. Therefore, it can be understood that a “soft law” approach is no longer appropriate to achieve these aims.

2. Purpose of the paper and background to research

This paper provides an update on developments in the area of regulating accessibility of audiovisual services for people with disabilities. It is not intended to be a comprehensive overview of all regulatory rules, but to provide a substantial overview of the current trends in regulation of this issue based on a range of questionnaires, research and reports.

Table 1: Jurisdictional data sources

Research	Year	Countries/ jurisdictions covered
Desk research updates for this paper	2019	AT, BE (CSA), DE, GB, IE
Regulatory Authority of Electronic Media, Serbia, questionnaire circulated via EPRA online survey tool	2019	BE (CSA), CH (OFCOM), DE, DK, EE, ES (CAC), FR, GB, GR, IE, LT, MK, NL, PL, PT, RO, SE, SI,
Broadcasting Authority of Ireland, questionnaire circulated via EPRA online survey tool ⁹	2017	BE (CSA), DE, EE, ES (CNMC) ¹⁰ , ES (CAC), FR, GB, PL, SI, UA
BAI Ireland in-depth research	2017	AT, DE, FR, GB, SE (<i>AUS, CAN, NZ, USA</i>)
Press and Broadcasting Authority Sweden Questionnaire	2015	AT, BE (VRM), BG, CZ, EE, FI, GR, HU, IE, IS, LV, LT, LU, MT, NO, PL, PT, SK, SI,
Press and Broadcasting Authority Sweden, desk research	2015	BE, DK, HR, NL, GB

This paper is intended to feed into the Working Group discussion by raising questions such as:

- How to establish a continuous and progressive process of providing accessible content?
- What is the approach to treatment of different types of broadcasters? And different types of content? What are proportionate measures?
- What are the main developments in the regulation of online and on-demand services?
- How are issues of cost addressed? Is there funding to aid the provision of access services?
- What is the role of the NRA in monitoring obligations, monitoring progress, and encouraging consultation and collaboration between stakeholders?
- What challenges and opportunities are presented by the digitisation of media services?

3. Progressive Approaches and Specific Targets

An overall gradualist approach of increasing quotas on an annual basis has been used in a significant majority of those jurisdictions where concrete obligations are placed on linear audiovisual media services: France, Ireland, the UK, Spain, Sweden, Poland, Portugal, the Netherlands.

The tendency to describe obligations in terms of percentage (or hours) of programming per type (subtitling, audio-description, sign language) as in Ireland, France, Poland, Portugal, Spain and the UK is growing. Recently, the Polish audiovisual law has been amended in order to gradually increase the

⁹ This paper is largely based on a Jurisdictional review prepared by this author for the BAI, Ireland in 2017

¹⁰ CNMC is in charge of monitoring Spanish service providers operating at national level as well as those providers, which according to the country of origin principle target other EU Member States from its establishment in Spain. Regional and local providers are monitored by the media regulators of each of the 17 Autonomous Communities.

percentage of accessible programming from 10% to 50% in the period 2019-2024¹¹. The Swedish authority recently updated their rules to reflect this and be in line with UK policy, as several major players in the Swedish market are licensed in the UK and they wanted the overall regulation to be consistent. The recent changes to the rules in Belgium French Speaking Community (2018) has seen the introduction of percentage-based requirements for both linear and non-linear services.

Some jurisdictions place priorities on different types of content and time blocks. In several countries (FR, GB) accessibility services are expected to be scheduled during peak viewing times, or a larger proportion of peak time programming should be subtitled (IE). There are frequent examples of emphasis being placed on the provision of news and information and emergency information with obligations or agreements to provide such programming in accessible formats (FR, GR, RO, MK, NL). Sign-language is generally recommended for news broadcasts.

The obligations for subtitling are still stronger overall than those for sign language and audio-description. A likely reason is the issue of costs. Obligations exist only for subtitling in the Netherlands. All three are included in the regulations in most countries (ES, CH, FR, GB, IE, PL, PT, SE), but with a lower requirement in terms of hours and percentages. In a couple of jurisdictions, a measurement of accessibility is required but without specifying which tools should be used (CSA-BE, GR).

4. Obligations on different types of broadcasters

The following provides an overview of the extent to which there is a differentiation in treatment of television channels with regard to the provision of access services. This includes distinctions made between:

- public¹² and private broadcasters,
- free to air and pay broadcasters,
- generalist and niche programming broadcasters,
- large (regarding audience share) and small broadcasters,
- and broadcasters that target foreign jurisdictions rather than the domestic market

Policy approaches differ widely and are designed to fit the specific national market.

4.1. Public and private broadcasters

Public service broadcasters (likely due to remits and funding), in general, still have a higher obligation to provide access services for their content. In the EPRA report of 2013 it was noted that stronger obligations were imposed on public broadcasters in Belgium, the Czech Republic, Switzerland, Spain, Ireland, Finland, the UK, Moldova, the Netherlands, Norway, Romania, Portugal, Serbia and Slovakia.

¹³ This is also the case for North Macedonia.

The same obligations are placed on both types of broadcaster in Cyprus, France, Poland, Greece, Israel and Malta. On the other hand, in both Slovenia and Austria, while the public broadcasters have detailed obligations, other services have very “vague” obligations. There are also examples where only public channels have any obligations, such as Denmark where only public service and commercial public service are required to provide access services. There are still no requirements on commercial

¹¹ Consequently, the Polish authority has updated its regulation which determines the definitions of closed captioning, audio description and visual signing, their share in the total transmission time - depending on the broadcast time - the nature and type of programmes which predominate, the reduced share and exemptions for some types of programming. For more details, see the [country report](#).

¹² For an updated and detailed overview of PSM Access Services, see the presentation of Gion Linder, Chair of the EBU expert group on access services presented at the conference Accessible Europe 2019: available [here](#).

¹³ EPRA/2013/05: WGIII: Round Table on Access to Audiovisual Media Services for persons with disabilities.

broadcasters aside from the vague wording to “encourage” media service providers to provide accessibility in a significant number of countries (EE, DE, HR, IS, LT, LU, LV, SI).

There are no specific obligations in the German law for any audiovisual media services to provide accessible content. This is done in a voluntary approach by the public service broadcasters. According to the ARD, their main channel has now reached 98% of content with subtitling. Regarding commercial broadcasters, the German State media regulators have been monitoring the levels of accessible content since 2013. In 2018, the major commercial players reached an average of 13% (RTL) and 18% (ProSiebenSat1) of subtitling respectively for their combined services. This contrasts with the 100% of subtitling reached by the main French commercial broadcasters in 2010.

4.2. Market power and audience share

However, there is a growing trend towards treating public and private in the same way and focusing on market power (usually measured in terms of audience share). This emphasises the principle that people with disabilities are not just a niche audience to be served, but also require equal treatment to other audiences. The extent to which a TV channel is viewed by a large audience (and hence has a stronger market power and more resources) influences the level of obligations it has to provide access services. This also explains why in many countries (as noted above), there may be no distinction between the rules for public and private.

In Hungary, audiovisual public service media and commercial media service providers with over 15% of market share must provide access services to people with hearing difficulties for almost all programmes. The audience share approach is used to distinguish the two sets of channels in the UK with regard to obligations: those with larger audience shares and those with smaller audience shares. Similarly, in Sweden, “general obligations” are applied to channels with audience shares of less than 1%, while “special obligations” are applied to those with audiences greater than 1%.

The French law also distinguishes between channels with a 2,5% or greater audience share, and those with less than 2,5% share. It should be noted that many regulatory approaches combine both. For example, in the UK, public broadcasters have stronger obligations, but at the same time obligations for private broadcasters are imposed according to audience shares.

This is also the case in the French speaking Community of Belgium where both public and private channels have obligations with the public having higher quotas to reach. Since 2018, there are two sets of obligations: for channels whose average annual audience is equal to or greater than 2.5% of the average annual audience of all available audiovisual media services in the French speaking Community; and those whose average annual audience is less than 2.5% of the average.¹⁴ This now reflects the French system of audience share differentiation. The Belgian Flanders region uses a 2% threshold for obligations and the rules concerning subtitling are very detailed, with a distinction made between broadcasters with a market share more than 30%, between 30% and 15%, and less than 15%.

The use of turnover as a threshold regarding implementation of obligations is significant for ensuring that too great a burden is not placed on smaller broadcasters. The French system reduces sign language obligations for broadcasters with a turnover of between 3 and 7 million euros, while channels with a turnover of less than 3 million euros are completely exempt. A similar threshold applies in Switzerland, where broadcasters with operating costs less than 1 million Swiss Francs are exempt. In fact, the turnover threshold can also be used across the board to limit the expenditure on access services or to completely exempt broadcasters from obligations. In Sweden, the costs of implementing audio-subtitling and subtitling incurred by an operator other than a public service

¹⁴ CSA (2018): Règlement relatif à l’accessibilité des programmes aux personnes en situation de déficience sensorielle. Available [here](#)

television broadcaster shall not exceed 1% of the operator's prior financial period.¹⁵ In the UK, channels are not expected to spend more than 1% of their relevant turnover.¹⁶

In Ireland, channels are assessed on a case-by-case basis and assessed according to a range of principles (with regard to serving the audience with high quality access to as broad a range of content as is possible), and according to certain influencing factors (concerning the particular channel and its nature, programming, capacity and financing etc.).

4.3. Free to air and pay television

It is regularly the case that free to air channels have larger audiences than pay TV channels. Public and private broadcasters may be treated in the same way but with obligations only placed on free to air DTT channels (Bulgaria, Spain). In others pay TV are also included, but often with less obligations. For example, in France, DTT channels must provide a higher percentage of accessible programmes than cable and satellite channels. In Bulgaria, the law encourages operators to *"guarantee that their services gradually become accessible for people with vision and hearing problems"*. However, in DTT licensing agreements, they are required to *"make sure their content becomes accessible"*. The response to the Swedish questionnaire claimed *"the best examples for compliance in this respect are probably the public broadcaster's channels"*.

The Finnish legislation applies to the public service broadcaster YLE, and commercial channels that are known as *"public interest programmes"*. These have been defined¹⁷ as being: 1) freely available; 2) available throughout Finland; 3) containing daily Finnish or Swedish programmes; 4) containing daily news and current affair programmes. In practice, just the top channels in terms of audience share are included.

4.4. Generalist and "niche programming" broadcasters

The examination of a range of jurisdictions revealed that there may be certain niche channels that have less obligations (or are exempted) and other niche channels that may have particular obligations. Examples include news channels, music channels, children's channels and sports channels. In many cases this is due to the difficulty of subtitling live programming (news, sports, etc.), while for young children's programmes the necessity to use subtitling may be removed due to the inability of the age group to read text.

Live music shows or subscription television music services tend to have less obligations or be exempt for example, in the Polish legislation¹⁸ specialised music programmes have reduced subtitling obligations. In Belgium (Flanders), obligations do not apply on teleshopping programmes or programmes for children younger than eight years. In Finland, audio-subtitling¹⁹ and subtitling services do not need to be added to music presentations or sports programmes.

In France, the CSA introduced some innovative solutions for a range of niche channels that were having difficulties in meeting subtitling quota requirements, often due to the types of content that they show, or the audiences that they address. Different obligations were applied to news programmes, children's television (age 3-6), sports channels, and channels with low turn-overs. For many channels, the obligations for subtitles are reduced or replaced with obligations to provide a certain number of accessible programmes per week – and in particular the need to broadcast a number of programmes with French sign language.

¹⁵ According to Information Society Code (917/2014) [section 211](#)

¹⁶ Ofcom (May 2017): Television access services report 2016. Available [here](#)

¹⁷ Decree on Television and Radio Operations (1245/2014) [section 8](#) Data from Swedish questionnaire 2015

¹⁸ According to the Regulation of KRRiT of 15 November 2018.

¹⁹ Audio-subtitling (spoken subtitling): a system for automatic reading and broadcasting of subtitles.

4.5. Broadcasters targeting other jurisdictions

There is considerable cross-border availability of audiovisual services in Europe regarding both services that are available in other countries, and also services that specifically target other countries. According to the European Audiovisual Observatory in 2017: “one third of all television channels and on-demand services established in the EU specifically target foreign markets”.²⁰ The main countries of origin of such channels are the UK, the Czech Republic, France, the Netherlands, Luxembourg, Sweden and Bulgaria.

The UK is the only country with a developed policy (since 2014) of requiring broadcasters that target other countries to include accessibility options in programming. The rationale for the policy is Ofcom’s “*duty to regulate in ways that are transparent and consistent*”, and to place obligations on non-domestic broadcasters that are “*consistent with the arrangements for domestic channels*”.²¹ Many non-domestic broadcasters are niche channels with very insignificant audience shares, while some represent important players on the market in other member states (such as in Sweden, Denmark etc.). Ofcom have developed a detailed policy, distinguishing between channels with larger and smaller audience shares, and established audience thresholds for each EU member State.

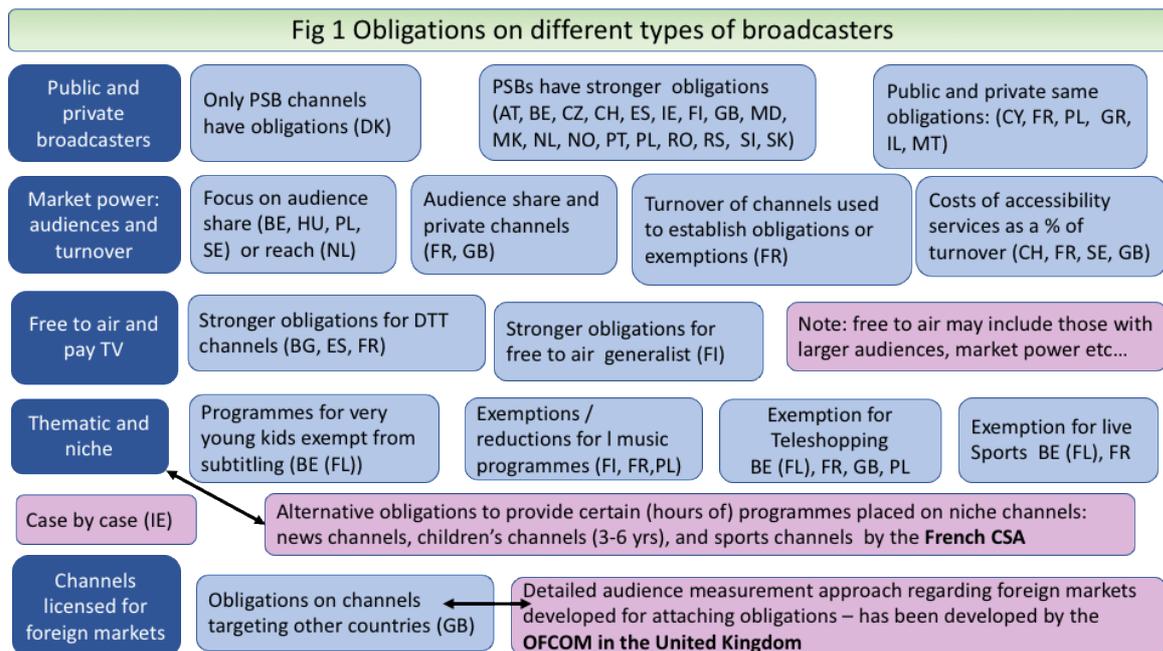
Several other countries licence a significant number of channels that are targeting other countries. Examples include: the Czech Republic (where the obligations on private TV are not very specific); Sweden, where general obligations (without quotas) would apply to channels with less than 1% share; Bulgaria, where obligations apply only to free to air television; the Netherlands, where obligations apply only to channels that reach at least 75% of Dutch households; and France, where cable and satellite channels must make at least 20% of their programming accessible.

The French response to the BAI questionnaire noted that services established in France and broadcast abroad are issued a license on the same basis as other services, meaning that they comprise subtitling obligations. However, the main distinction in the regulation of the Ofcom is that they specifically assess the role that these broadcasters play in the various markets that they target.

It is worth considering to what extent channels that target other countries and include subtitling (for translation purposes) in the target language might be considered to contribute to accessibility. In the UK, for the purposes of the quotas enforced by Ofcom, hard-of-hearing (HoH) subtitling is treated the same as foreign language subtitling. Where foreign language subtitling forms an integral part of the picture (‘open’ subtitles) it is not practicable to include HoH subtitling as well. Despite this, Ofcom encourages broadcasters to include HoH subtitling of domestic language programming when fulfilling their quotas.

²⁰ European Audiovisual Observatory press release (26/02/2017): One third of all television channels and on-demand services established in the EU specifically target foreign markets. <http://www.obs.coe.int/>

²¹ Ofcom (2015): Non-domestic TV channels: proposals to modify access service obligations. Available [here](#)



5. Obligations in the on-demand world

There are several areas of relevance in the regulation of the online content of broadcasters, and in the regulation of on-demand services with regard to accessibility that emerged in the BAI research. As this is a relatively new area of regulation, the *soft regulatory approach* to “encourage”, “invite”, “recommend” the Provision of access services on on-demand content is prevalent throughout Europe.

5.1. Obligations for on-demand audiovisual media service providers

In Poland, providers of on-demand audiovisual media services shall aim at gradually ensuring the availability of such programmes through the introduction of appropriate tools.²² In the Czech Republic, on-demand audiovisual media service providers shall *where appropriate* provide a programme with accessibility options *if available*, or shall otherwise *ensure* that certain programmes provided via an on-demand audiovisual media service are accessible. In Croatia, all media service providers are *invited* to ensure accessibility for persons with disabilities.

In Portugal, the regulator has issued a decree with *recommendations* regarding accessibility (including for on-demand operators) which encourages on-demand services to adapt new techniques, technological innovations, and to exploit the capacities of digital platforms. They recommend that subtitles should be extended to all TV programmes dubbed into Portuguese language, as well as to audiovisual content provided on-demand. Broadcasters and on-demand audiovisual media providers should adapt their websites to the specific needs of persons with a visual or hearing disability.²³

The Belgian CSA (French speaking Community) updated its “Règlement accessibilité” in 2018. The rules distinguish between pay (SVOD) services and free (open platform) services. The stronger requirements are on the pay services. The rules now require that non-linear (closed, SVOD) services must provide 25% of their catalogues with subtitles, and 25% with audio-description. They should develop an easy to use platform and provide visibility and prominence of content which is accessible. A more general

²² Art 47g of the Broadcasting Act (from Swedish research, 2015)

²³ Portugal ERC/11/2015/970 (from Swedish research, 2015)

obligation is applied to free services which should make every effort to develop the accessibility of their programmes.²⁴

In Greece, a very specific obligation is placed on on-demand services. Non-linear AVMS providers should provide at least 20% of the content offered in their catalogues with Greek subtitles. If the on-demand service catalogues include news, it is subject to the same rules for providing sign language as the linear TV services.²⁵

5.2. Obligations for broadcasters regarding online content

According to the response from the Catalan regulatory authority to the BAI questionnaire, the broadcasters have to make their content accessible, including that provided online in accordance with the technological possibilities.²⁶ In Slovenia, only the public broadcaster has specific obligations to provide accessibility services and this includes on their on-demand services.²⁷ An interesting requirement (Canada and the USA) where broadcasters have to transfer captioning (subtitling) that appeared in broadcasting when putting the same content online.

As a way of alleviating some of the burden on broadcasters, and also encouraging accessibility online, in several countries, *accessible online content can be part of the overall quotas* in the provision of access services by broadcasters (Sweden, Finland). In Finland, there is no requirement for broadcasters to accessible services to their video-on-demand services. However, one third of the quota obligations can be transmitted in a television broadcaster's on-demand service. The Finnish have introduced a 30% limit on the possibility to count non-linear content as part of the quotas.²⁸ As Sweden developed their new policies, they also imposed this 30% limit - it is possible to obtain partial credit by including programming provided on their on-demand services. However, this 'credit' should not exceed 30% of the expected air time in the quotas, is only relevant for the programming with audio description, sign language interpretation, and spoken text.²⁹ According to the Swedish policy document,³⁰ the rationale for allowing online content to be part of the quotas was to help broadcasters to fulfil requirements. There was a desire from disability organisations that accessible content would not migrate completely to the Internet. They stressed that *"it is very important for users that programmes be available on all platforms.... the entire population does not have access to adequate internet, some users have difficulty to use a computer, tablet or mobile and many are older and not used to the new technology."*

Finally, as with linear content, on-demand content that includes access services should be promoted and findable (for example in the Slovak Republic).

5.3. Other initiatives and future developments

There are many other public or voluntary initiatives to increase the availability of accessible content online. In Slovenia, the public broadcaster RTV Slovenia has a special web portal³¹ for people with disabilities that provides the archive of RTV Slovenia's in-house production with subtitles, sign language and audio description. The on-demand service of the Catalan Public broadcaster TV3 a la

²⁴ CSA (2018): Règlement relatif à l'accessibilité des programmes aux personnes en situation de déficience sensorielle. Available [here](#)

²⁵ Data according to Swedish survey 2015

²⁶ Article 8 of general instruction from the CAC on the accessibility to the audiovisual contents. Available [here](#)
Information from the BAI/EPRA Questionnaire 2017

²⁷ Art. 4 of Radiotelevizija Slovenia Act (ZRTVS-1. Available [here](#) (BAI/EPRA Questionnaire 2017)

²⁸ According to the regulator response to the Swedish questionnaire, 2015

²⁹ Audio-subtitling (or spoken subtitling) is a system for automatic reading and broadcasting of subtitles.

³⁰ Swedish Press and Broadcasting Authority (2016): Requirements for access to television broadcasts by persons with disabilities, 1 July 2016. Available [here](#)

³¹ Data from BAI/EPRA Questionnaire. [Slovenian PSB portal](#)

carta³² offers all the content on-demand with subtitles, and some with audio description and with sign language. From the results of the Swedish questionnaire, it was noted that in Greece, the Hellenic Centre for Social Solidarity, funded by the EU (80%) and the Greek State (20%) manages the collection, production, enrichment and exploitation of existing multimedia content that is accessible. In Austria, the dedicated video on-demand service, called “signtime.tv” offers news and reports in sign language.³³

Other non-regulatory approaches include encouraging dialogue, required reporting on accessibility, and self-regulatory codes. In Ireland, the on-demand sector is (currently) self-regulated and operates under a code of practice wherein: “Media service providers of on-demand audiovisual media services shall endeavour to ensure that their services are gradually made accessible to people with a visual or hearing disability”.³⁴

In the UK, the regulator must encourage providers of on-demand programme services to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both.³⁵ Their approach to this is outlined in the Ofcom Statement on accessibility of on-demand programme services³⁶. It involves gathering of data on what proportion of programmes on those services carry subtitles, signing and audio description. In April 2017, the Digital Economy Act³⁷ became law in the UK and amended the Communications Act 2003. This has paved the way for the introduction of obligations on providers of on-demand services to include subtitles, sign language and audio description when providing video-on-demand. According to Ofcom, the Act provides for the Secretary of State to make regulations that will mandate access services on video on-demand, after consulting with Ofcom.³⁸ Such a regulation will also require the Ofcom to draw up a code on accessibility for guidance to the on-demand providers.

In Germany, the latest Interstate Broadcasting and Telemedia Treaty makes references to a requirement for accessibility for on-demand services – but only in relation to PSBs: *This design of telemedia offers should take the interests of people with disabilities in particular consideration, especially through the provision of audio descriptions and manuscripts or by providing telemedia in simple language.*³⁹

6. Role of NRAs: monitoring, research, dialogue

6.1. Reporting and researching status of accessibility in audiovisual media services

In many countries, media service operators are required to report to the NRAs on the extent of accessibility services they provide (CSA-BE, CH, CZ, ES, FI, FR, IE, NL, GB, GR from 2020, PL, SE). In addition, several of the NRAs then publish reports according to this data (ES, FR, IE from 2019, GB). In some cases, the media service providers are required to submit reports to other agencies or bodies such as ministries or consumer bodies (DK for PSB, EE).

³² Catalan Public broadcaster [TV3 a la carta website](#)

³³ Data from the Swedish questionnaire. <http://signtime.tv/>

³⁴ Code of Conduct On-Demand Audiovisual Media Services. Available [here](#):

³⁵ 368 C of the Communications Act 2003 as amended by The Audiovisual Media Services Regulations 2009. Since 1 January 2016, Ofcom has been the sole regulator for programming on UK video-on-demand services.

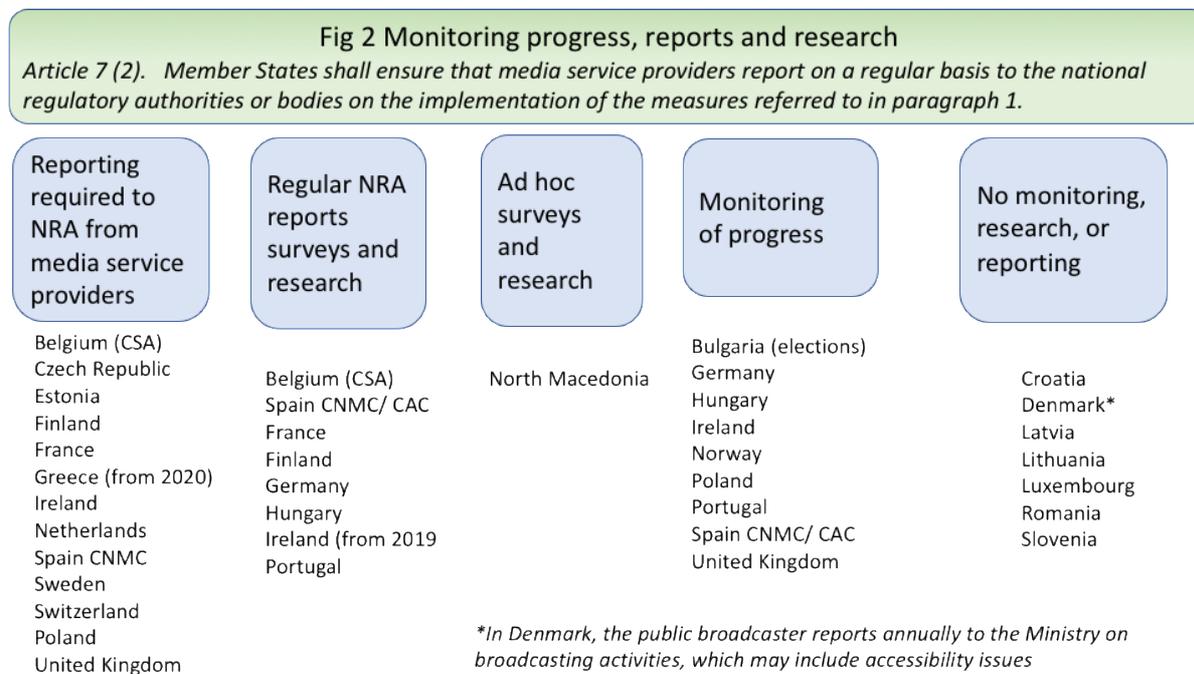
³⁶ Ofcom (April, 2017): Accessibility of on demand programme services. Available [here](#)

³⁷ Digital Economy Act, April 2017. Available [here](#)

³⁸ Ofcom (March, 2017): [Access and Inclusion in 2016 - Outcomes for consumers in vulnerable circumstances](#).

³⁹ Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty) in the version of the 22nd Amendment to the Interstate Broadcasting Treaties Entry into force: 1st May 2019. Available [here](#)

There are several jurisdictions where the NRA is monitoring the implementation of the obligations (IE, ES (CNMC), ES (CAC), GB, HU, NO, PT) and using this data for assessment of compliance (ES, HU, IE, NO) and for elaborating reports (ES⁴⁰, GB, HU, PT).⁴¹ The Bulgarian NRA states that they monitor accessibility during election periods. In some regions or countries where no requirement to report exists, NRAs carry out regular (DE, ES (CAC)) or ad hoc research and surveys (MK) on the issue to monitor the extent of provision of accessibility services. Reports are then published on the status of accessibility.



6.2. Dialogue and meetings with stakeholders

A significant aspect of the regulation of access services is the need to have dialogue with users of accessibility services and their representative associations. Broadcasters are required to meet with and consult with representatives of users groups on a regular basis to assess their concerns and to find out for which type of programmes they would like accessible services (IE, GB) or negotiate actual obligations (CH for PSB). In the United Kingdom, broadcasters should also provide contact details on their websites, including e-mail addresses and telephone and textphone numbers to facilitate feedback from users. Similarly in Belgium (FR), media service providers (and distributors) must appoint an internal contact person for issues related to the accessibility of programmes.

Many of the NRAs hold regular meetings with stakeholders (CSA-BE, ES (CAC/CNMC), DE, FR, GB, GR, IE, MK, PT, SE) – including industry, user groups, and representatives of relevant associations. These meetings may have various purposes: to raise awareness, to inform the industry of the user needs, to promote direct dialogue, and to consult with stakeholders when obligations are under review.

7. Costs, funding schemes, and other market factors

A key issue regarding the provision of access services is that of costs. Many approaches are taken to

⁴⁰ CNMC report on the degree of compliance of the nationwide operators with the accessibility requirements set out in the Audiovisual Law to protect the rights of disabled people (March 2019). Available [here](#).

⁴¹ Data from the Serbian questionnaire 2019 (plus Ofcom Guidelines) and from Swedish questionnaire 2015

help to mitigate these costs, to provide alternative solutions or to provide support for the provision of access services.

7.1. Exemptions and reduced obligations

As noted above, in several countries the turnover of the broadcasting company is a decisive factor in deciding the level of obligations, or whether to exempt a company from obligations. The use of turnover as a threshold is significant for ensuring that the regulation does not place too great a burden on smaller broadcasters. In fact, the turnover threshold can also be used across the board to limit the expenditure on access service or to completely exempt broadcasters from obligations. This is the case in the French system, in Sweden and in the UK. In the UK, there exists a system for exempting or reducing the obligations of non-public service channels. This relates to the assessed cost of compliance for a channel and is judged in terms of not spending more than 1% of annual turnover.⁴²

In the Polish legislation, there are examples where services have lower requirements where: services have low audience reach; or are disseminated in telecommunication networks reaching 50 000 people or less; or services have limited broadcast hours per day.⁴³

7.2. Alternative approaches, cooperation and collaboration

The UK has established a system of co-operation via a trust (British Sign Language Broadcasting Trust) allowing broadcasters to contribute to specific projects for the production of accessible content (with sign interpretation) in lieu of certain quota requirements (GB). It is interesting also to note that there are a range of collaborative, co-operative projects developing web portals, aggregating content and sharing content (Greece, Slovenia).

The research for the BAI also highlighted the importance of cooperation between the various actors on the value chain i.e. the different sectors of the media content industry from production to aggregation to distribution. This is encouraged by the UK regulator. The Swedish Broadcasting Authority has developed an area on its website in order to disseminate knowledge and best practice to further assist small players with limited resources. Here the broadcasters can find: information about different access technologies; information from players who have experience in promoting access to TV programmes through various techniques; and information on disability organisations for consultation and dialogue purposes.

7.3. Increasing the availability of accessible content: production

*Making accessibility a consideration early in the creative process—not only in post-production— will help create a cultural shift that will result in accessibility becoming just another consideration in the regular course of doing business.*⁴⁴

To what extent are there grants and subsidies to support the provision of access services for audiovisual content? There are policies that aim to maximise the amount of content produced with access services built in. This is achieved either via obligation, or by encouragement via the criteria for the granting of public funds for film and/or television creation. There are also examples of specific funds to create accessible features in content.

There are several examples of where public funding of audiovisual production requires the inclusion of access services: in Germany (German FFA Federal film funding guidelines);⁴⁵ and in Ireland where

⁴² See more detail here: Ofcom (May 2017): Television access services report 2016. Available [here](#)

⁴³ According to the Regulation of KRRIT of 28 May 2013. Data from the Swedish questionnaire

⁴⁴ Canadian Radio-Television and Communications Commission (2016): Broadcasting Regulatory Policy CRTC 2016-343: Policy framework for Certified Independent Production Funds. Available [here](#)

⁴⁵ Federal Government Commissioner for Culture and the Media “Incentive to Strengthen the Film Industry in Germany” (German Federal Film Fund). Available [here](#)

the Irish Sound and Vision broadcast funding scheme (managed by the regulator, BAI) also incorporates requirements for TV productions to include accessibility subtitling services. Some funded programming is required to make provision for Irish Sign Language (ISL) for deaf or hearing impaired and/or Audio Description (AD) for blind or visually impaired.⁴⁶ Funding is also available to applicants who wish to provide accessibility services in certain audiovisual works. For several public funding schemes, the inclusion of access services in the proposal is a positive criterion in the selection of projects: This includes the Croatian Fund for Promotion of Pluralism and Diversity of Electronic Media, managed by the Electronic Media Agency. The fund has a list of criteria for awarding financing to production projects which includes the accessibility of programmes and content for people with disabilities.

In France, several of the production funds of the CNC consider plans to make an audiovisual work accessible as an important criterion in the decision to award funding in the support for digitisation of a variety of works. The CNC also has a range of schemes for promoting the accessibility of works whereby they directly fund the creation of audio description and subtitling (on feature films). Eligible costs include both the creation of the subtitles and of the audio description, and the transfer of the data to all digital distribution platforms: television, video and video on demand.⁴⁷

The Slovenian Mass Media Act provides support for the creation and dissemination of accessible programmes and this is included in the Ministry of Culture annual public call for applications for production funding.⁴⁸ The Fernsehfonds Austria (i.e. Austrian Television Fund, established by the Regulator RTR) provides funding for the production of accessible versions of programming.⁴⁹ Several Austrian film funds also include the production of accessibility options in films as eligible costs.⁵⁰

8. Challenges and Opportunities presented by new technologies

It is well accepted that the digitisation of the media and the proliferation of platforms for content should enhance the availability of accessible content. There are innovations such as two-screen technologies that allow users to have content without accessibility elements on the main screen, while the second screen (e.g. a smartphone, a tablet) provides subtitles, audio description, audio subtitles or sign language interpretation, usually via an Internet connection. Automatic transcription technologies can also contribute to making content accessible to people with disabilities, through the automation of subtitles, audio synthesizing of text, contextual recognition of images for real-time audio description or translation⁵¹.

8.1. Delivery and distribution of content, and quality of service

A key area of the provision of access services concerns the way in which the additional content linked to programming is delivered to the consumer. As noted in the introduction to this paper, technical access to audiovisual media services has been covered by the European Accessibility Act⁵² as regards

⁴⁶ BAI (2017): Sound and Vision 3. A Broadcasting Funding Scheme: [Guide for Applicants](#)

⁴⁷ CNC [website on accessibility](#)

⁴⁸ Details can be found [here](#)

⁴⁹ Home page of [Austrian Television Funds](#).

⁵⁰ Vienna Film funds guidelines. Available [here](#). Austrian Film Institute (OFI). Information [here](#)

⁵¹ Note that the European Disability Forum has just published a comprehensive report on different emerging technologies and how they can affect persons with disabilities: <http://www.edf-feph.org/newsroom/news/edf-launches-report-plug-and-pray>. See also the report of the seminar: "Using AI to enhance accessibility": <http://www.edf-feph.org/newsroom/news/artificial-intelligence-must-serve-everyone-event-report>

⁵² Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services. Available [here](#)

ensuring that the accessibility components (access services) of the audiovisual media services are fully transmitted with adequate quality for accurate display, and synchronised with sound and video, while allowing for user control of their display and use.

Many countries in the context of *must-carry rules* include the requirement that distribution companies carried complimentary services, in particular accessibility services to enable appropriate access for people with disabilities (Denmark, Malta, France, Greece, Portugal, Switzerland and the UK). Specific obligations exist in Belgium (French-speaking Community) where there are requirements for distributors (obligations of conduct) to do “everything they can” to route subtitle and audio-description tracks when provided by the broadcasters. Requirements are also placed on the main distribution company in Portugal to ensure that services for people with disabilities are received by end-users

While in most countries, there may not be specific obligations on distribution companies to deliver accessibility services, there have been a range of *agreements, and initiatives* with regard to particular platforms. This includes: in France (a project to develop a DTT receiver with vocalised (text to speech) in the French language); in Ireland (DTT set-top boxes must be able to receive, decode and display the various access services).

Several jurisdictions include guidelines and obligations with regard to the quality of accessibility tools (CSA – BE, IE), while others carry out research (PT) or participate in working groups in this area (ES – CNMC). A related issue is the question of “findability” and the requirements to inform viewers of accessibility functions. These requirements are present in a wide range of countries (the Belgian French-speaking Community, Ireland, Slovakia, Poland, Portugal, the UK). In several countries, while there is no requirement to do so, in practice the broadcasters are adding this information to programme descriptions and TV programme guides (EE, FI, PL), and also informing viewers during the accessible programmes (FI).

8.2. On-demand content

As regards the challenges presented by new technologies, of significance is the proliferation of technologies and standards for access services, especially when it comes to on-demand services and online platforms. For media services this presents challenges when delivering content to different platforms, and to platforms in different countries.

In a 2015 report from the ATVOD (former co-regulator of VOD in the UK), it was noted that providers continue to point to barriers to accessibility on VOD, including technical issues in converting subtitles for multiple platforms, and the associated costs. Ofcom supports the work of the *Television On Demand Industry Forum* in the UK, which established an access services policy working group (to provide an effective means for content providers and platform operators to share experience and technical know-how with a view to increasing accessibility).

8.3. Innovations, collaborations, new services and reducing costs

Collaboration is important at national level involving all stakeholders and also along the production value chain. The work of the eAccessibility forum in the UK led to the development of 'Smart Talk' box for the Freeview (DTT) platform and the technology enables screen information, such as programme information from the EPG, to be spoken aloud.⁵³ There are various other initiatives and networks where broadcasters participate such as the HBB4all-project (funded by the EU).

The study produced by the European Commission in the context of the Impact Assessment noted several important issues with regard to increasing accessibility. This included the need to increase

⁵³ EPRA/2013/05: WGIII: Round Table on Access to Audiovisual Media Services for persons with disabilities, available [here](#).

standardization and reduce fragmentation as the proliferation of technologies and standards for access services, especially re. on-demand services and online platforms increases costs for service providers. It also emphasised the use of technology to develop innovative services.⁵⁴

A wide range of European initiatives exist to address the issues of standardisation as outlined in the 2016 report of the ERGA.⁵⁵ These include the Eurovision Access Services Experts Group of the EBU, which brings together access service experts from public broadcasters all over Europe. The Group's aim is to stimulate and support the exchange of technologies, products and services, and to achieve standardisation in order to develop common formats, guidelines, processes and legislation for authorities and stakeholders.⁵⁶

Some of the most recent technological developments will be presented in the context of the working group in Athens. This includes research on automated approaches to subtitling and signing and the use of avatars. On the latter, the presentation will particularly address the Content4All project, which aims to make more content accessible for the sign language community. This is funded by the EU's Horizon 2020 research and innovation programme.⁵⁷ Content4All involves several renowned research institutes and public service broadcasting organisations. Further, the presentation will examine the extent to which the delivery of accessible content can be improved, the potential for cooperation between broadcasters, on-demand service operators and content producers to use innovative solutions, and most importantly, whether there are potential solutions for reducing costs for the audiovisual media service providers.

9. Conclusion and focus of discussion for the working group

The EPRA working group offers an opportunity for participants to be updated on the most recent regulatory and technological developments in this area, and to discuss best practice in those jurisdictions that have many years of experience in using regulatory tools to enhance the amount of accessible audiovisual content available to people⁵⁸.

For those countries where such regulation is just developing, it is of value to review the approaches taken to regulate services and the extent to which certain types of channels and/or content may be dealt with differently. In this context, the group will also look at developments in relation to on-demand platforms and other non-linear services.

Making content accessible can be an expensive business. Highlighting ways in which incentives or help can be provided in the form of funding, or in the encouragement of collaboration will be a key area of discussion in the working group.

A range of innovations will be described that are helping to deliver content with built in accessibility. It is important to consider how broadcasters, on-demand service operators and content producers could use these tools to co-operate in the process of increasing the availability of accessible content. And what might be the role of the NRAs in facilitating and encouraging such co-operation?

⁵⁴ Visionary Analytics/ SQW Limited/ Ramboll Management Consulting (2016): 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 media freedom, public interest and access for disabled people

⁵⁵ ERGA (2016): ERGA Special Task Group Report on the provision of greater accessibility to audiovisual media services for persons with disabilities – Pilot study: preparing for a possible European benchmarking and bench- learning initiative in the television field. ERGA 2016/12. Available [here](#)

⁵⁶ Eurovision [Access Services Group](#)

⁵⁷ Home Page of [Content4All](#)

⁵⁸ For a summary of the debate and findings of the EPRA Working group in Athens, see: <https://www.epra.org/attachments/athens-wg-iii-summary-of-the-session>