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2<sup>nd</sup> Plenary Session

**AVMS Implementation: Mission Accomplished or Mission Impossible?  
Outcome of Questionnaire  
Emmanuelle Machet, EPRA Secretariat**

The extension of the material scope from broadcasting services in the Television without Frontiers Directive to 'audiovisual media services' in the AVMS Directive, together with the progress made by the transposition process at national level, has featured prominently in the agenda of EPRA meetings for some time. In Budapest, in October 2005, a special plenary session was dedicated to the review of the TVwF Directive prior to the publication of the first AVMS draft. In Dubrovnik in 2006, the keynote address of Alexander Scheuer focused on issues relating to the distinction between linear and non-linear services, the related consequences in terms of the applicable substantive law and its monitoring, and practical effects both in terms of media regulation as well as implications for media markets<sup>1</sup>. In Sofia, in October 2007, a plenary session on future challenges for media regulators addressed, among other issues, the extension of material scope in the AVMS Directive<sup>2</sup>. In Dublin, in October 2008, the plenary session was dedicated to the practical application of the AVMS provisions with regard to scope by broadcasting regulators<sup>3</sup>. A very first overview of the status of the early transposition process was also presented on this occasion.

A year later, and on the eve of the deadline for transposing the AVMS, it now seems timely to focus on how regulators are preparing for the implementation in practice and especially on any practical arrangements that are envisaged by RAs to deal with the widened substantive scope. However, it is clear that such arrangements depend on the progress made by the transposition process at the national level. This background paper will thus start with a brief update on the transposition before dwelling on more precise issues pertaining to the practical implementation by regulators.

This document is based on the responses to a brief survey prepared and circulated by the EPRA Secretariat. It compiles answers from 26 regulatory authorities: KommAustria (AT), The Communications Regulatory Agency (BA), The Flemish Council for the Media (BE), The Council for Electronic Media (BG), the CSA of the French Community of Belgium, the OFCOM (CH), The Cyprus Radio-Television Authority - CRTA (Cyprus), the Council for Radio and TV Broadcasting (CZ), The Director's Conference of the State Media Authorities (DE), The Catalan Audiovisual Council (ES), The Conseil supérieur de l'audiovisuel - CSA (FR), The Ofcom (GB), The Broadcasting Commission of Ireland (IE), The Autorità per le Garanzie nelle Comunicazioni - AGCOM (IT), The Radio and Television Commission of Lithuania (LT), The Conseil National des Programmes (LU), The Broadcasting Council of Latvia (LV), The Broadcasting Authority (MT), the Commissariaat voor de Media (NL), the Norwegian Media Authority (NO), the National Broadcasting Council - KRRiT (PL), the Entidade Reguladora para a Comunicação Social - ERC (PT), the National Audiovisual Council (RO), The Swedish Radio and Television Authority (SE), The Post and Electronic Communication Agency of the Republic of Slovenia - APEK (SI) and The Council for Broadcasting and Retransmission (SK). Additional information on the status of AVMSD implementation in Hungary and Montenegro - taken from the country reports submitted for the Dresden meeting by the broadcasting Agency and the ORTT - has also been included in the paper.

**1. CURRENT STATUS OF AVMS TRANSPOSITION:**

*"at what stage of the AVMS Transposition does your country currently stand?"*

An important caveat at this point: this overview of the current transposition status is solely reliant on information forwarded by EPRA members and is by no means exhaustive nor "official". It should be kept in mind that while most regulators are generally involved in the national discussions leading to the incorporation of the AVMS in national law and are generally well informed about the process, transposition is a prerogative of the legislative.

For the sake of simplicity, countries have been classified in four categories: countries having completed (most of) AVMS transposition (1), bills undergoing Parliamentary process (2), bill prepared but has yet to enter the parliamentary process (3) and pre-legislative draft not yet available, only at discussion stage (4). As categories go, this classification exercise is of course highly subjective and is bound to oversimplify the complex specificity of each national system. For more detailed information about the transposition process as well as some links, see the annexed table on page 11.

<sup>1</sup> [http://www.epra.org/content/english/press/papers/Plenary\\_EMR\\_word.pdf](http://www.epra.org/content/english/press/papers/Plenary_EMR_word.pdf)

<sup>2</sup> [http://www.epra.org/content/english/members/working\\_papers/Sofia/Plenary\\_challenges\\_final.pdf](http://www.epra.org/content/english/members/working_papers/Sofia/Plenary_challenges_final.pdf)

<sup>3</sup> [http://www.epra.org/content/english/members/working\\_papers/Dublin/AVMS\\_Dublin\\_Plenary\\_paper\\_final.pdf](http://www.epra.org/content/english/members/working_papers/Dublin/AVMS_Dublin_Plenary_paper_final.pdf)

### **1.1. Countries having completed (most of) AVMS transposition**

Only four regulatory authorities report that their countries have completed the transposition of the AVMS Directive in their respective national order: Belgium (French and Flemish speaking Communities) and France.

In Belgium Flanders, the Media Decree was voted in Parliament on March 18 and confirmed by Government on March 27 2009.

In the French Community of Belgium, the Parliament adopted on 3 February the new decree on audiovisual media services. The decree was published in the official journal on 18 March 2009 and came into force on 28 March 2009. However, several provisions need to be completed by governmental 'arrêtés d'application' (on transparency, protection of minors, registration regime) or will be left to co-regulation (accessibility, right to information).

In France, the law n°2009-258 of 5 March 2009 *pertaining to audiovisual communication and the new public service television* transposes in French law the new scope of the Directive and defines on-demand audiovisual media services. Several provisions however will need to be specified in the following months:

- through "deliberations" of the CSA, in the field of protection of minors and programme ethics applicable to on-demand programmes; product placement and,
- through five governmental decrees: on on-demand services - notably on advertising rules and European works (1), jurisdiction and circumvention issues for linear and non-linear services (3) and short news extracts (1).

### **1.2. Bill undergoing Parliamentary process**

In The Czech Republic, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Slovakia and Romania, various texts transposing the AVMS Directive are currently undergoing parliamentary process.

In Slovakia, Latvia and Romania, the parliamentary process seems rather far advanced. In Slovakia, it is announced that the Parliament should adopt a draft in about a month or two. The Act should be effective on 1<sup>st</sup> of December 2009. In Latvia, the draft law is about to receive its first reading in parliament. The law must be adopted before 19.12.2009. In Romania, The AVMS Directive has been transposed by Government Ordinance no 181/2008, which modifies the Audiovisual Law no. 504/2002. The ordinance is in force since 6 December 2008 and is now undergoing parliamentary debates in order to be adopted by the end of 2009<sup>4</sup>. In Ireland, the Broadcasting Act 2009, enacted in July 2009, has transposed some elements of the Directive. Advertising elements for linear services will be transposed through changes to BCI codes. Non-linear and other elements will be transposed through a statutory instrument that is not yet finalised.

The Implementation of the Audiovisual Media Services Directive in the Czech Republic suffered a setback in spring 2009 when the temporary government refused the first version of the AVMS on demand Media Act. An updated proposal went through on 17 August 2009. Due to the complicated political situation, the schedule for the final adoption of a new version is uncertain.

The implementation of the Audiovisual Media Services Directive is far from being accomplished in Hungary also resulting from a complicated political situation. Although a draft bill had been prepared by a parliamentary working group consisting of the representatives of the political factions, the Parliament did not adopt the bill. In Hungary, to adopt any legislation on the audiovisual media, a 2/3 majority of the votes is required. Thus, due to a lack of a broad consensus, no amendment to the Media Act is possible.

In Luxembourg, the transposition of the Directive has been delayed by the national elections that took place in June. The draft text presented by former Minister Schiltz in spring 2009 is now undergoing the parliamentary process. A transposition before the December 2009-deadline is, however, envisaged. Provisions on advertising, sponsorship and teleshopping have already been incorporated into national legislation through a regulation of the Grand Duchy in 2008.

### **1.3. Bill prepared but not yet submitted to Parliament**

In several countries, such as Cyprus, Spain, Germany, Lithuania, Malta and the UK, bills have been prepared but are still to enter the parliamentary process.

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<sup>4</sup> In Romania, it is the legal procedure to pass any Government Ordinance through parliamentary approval, as audiovisual is governed by an organic law. By undergoing this process, changes might occur in the text of the Ordinance. Nevertheless the Ordinance is in force until the Law is promulgated.

In Lithuania, the Draft Law on the Provision of Information to the Public is still undergoing public consultation. In October it will be submitted to the Seimas (Parliament) for approval. The law should be adopted by 19 December 2009.

In the UK, there has been a Government consultation on the main issues raised in relation to the transposition, an Ofcom consultation on some aspects of the implementation, an informal industry consultation on the draft legislation, although draft regulations have not been formally published. Despite these activities draft regulations have not been formally published. In addition, the Government has announced, but not published, a further consultation on Product Placement in broadcast services. Regulations will probably be laid before Parliament in autumn and come into force on the 19th December 2009.

In Germany, at the level of the Länder, the 13th amendment to the Interstate Broadcasting Treaty will transpose some of the provisions of the AVMS Directive concerning commercial communications into German law. At the Federal level, the amending Act to the Federal Act on Telemedia and Preliminary Tobacco Act will complete the implementation process. It is worth noting that the question of scope has already been dealt with in the 12th Amendment, which entered into force on 1 June 2009.

#### **1.4. Pre-legislative draft not yet available, only at discussion stage**

At this point, it appears that a pre-legislative draft is not yet available in Austria, Bulgaria, Italy, Portugal, Slovenia and Sweden but is still at a discussion stage. In Austria, no public consultations have taken place so far.

In Bulgaria, the transposition process was slowed down due to Parliamentary elections which were held in July 2009 and led to a change in the Parliament and a new government.

In Italy, the text has not yet been formalised in a parliamentary bill but the Council of Ministers on 28 August 2009 delegated the task of transposing the AVMS Directive to the Government.

In Poland, the Ministry of Culture and National Heritage has presented the cornerstones for the new media law in August 2009. A public consultation took place on this preliminary text. On its basis the new legislation is supposed to be drafted and finally sent to the Parliament.

In Portugal, the Portuguese Government has instructed GMCS - Gabinete para os Meios de Comunicação Social (the Portuguese Office for the Media) to draft the legislative proposals necessary for transposing the AVMS Directive.

In Sweden, in December 2008, the Swedish AV-Commission presented its report on how the AVMS Directive may be transposed. The report was open for public comments until 16 March 2009. The Ministry of Culture is now preparing a report based on the public comments and the AV-Commission's findings. Once finished, the report will be examined by the Council of Legislation. The Government will then present a proposal, presumably during January 2010, for discussion and voting in the Parliament.

Slovenia is currently waiting for the draft law on the change of the Mass Media Act to be presented, first for discussion within a group of experts and after their approval to the public. The draft is being prepared by the Ministry of Culture. The public consultation on the draft law is expected to begin in November, whereas it is hoped that the parliamentary procedure will start by the end of the year.

In Norway, which as an EEA Member State is also under the obligation to transpose the Directive, the Ministry of Culture and Church Affairs has published a public consultation paper on 9 July 2009. The deadline for responding to the consultation paper was 9 October 2009.

#### **1.5. Non-EU Member States parties to the ECTT**

Bosnia and Herzegovina is a party to the ECTT and currently considering the harmonization of CRA rules and regulations with the revised Convention. Their focus includes some of the issues referred to in the questionnaire, but mainly commercial communication rules and licensing/content regulation of non-linear services.

Switzerland will sign the revised Convention. In order to comply with the revised Convention on Transfrontier Television the Federal Law on Radio and Television as well as the Ordinance are being revised. The revision process of the ordinance has already started. The OFCOM has produced a draft, which is at the moment subject of a public consultation procedure. This draft is intended to adapt notably the Swiss legislation on advertising and sponsoring in order to comply with the Convention's rulings. This revision will enter into force mid-2010.

In Montenegro, the implementation of the AVMS Directive shall be ensured through the drafting of the new Electronic Media Law. The DG Information Society and Media of the EU Commission provided detailed suggestions for revising the draft law in order to harmonise it with the set of relevant EU directives. During several months of debate, a significant number of comments and suggestions were submitted by regulators, broadcasters and cable operators, as well as other interested parties. It is expected that the Ministry of Culture will soon prepare the draft law taking into account the comments it received.

## **2. How is your RA preparing for the practical implementation of the AVMS Directive?**

Another important caveat at this point: while the transposition is still ongoing in many countries, often at a rather early stage, most answers about the practical preparations made by RAs are still very tentative. The authorities from Malta and Sweden were even unable to provide any answers as it is too early in the transposition process.

### **2.1 PERSONNEL ISSUES: "Do you anticipate recruiting new staff?"**

The majority of regulatory authorities which were consulted, at this early stage before the transposition of the Directive, do not anticipate recruiting new staff: this is the case in Belgium (VRM and CSA), the Czech Republic, Germany, Switzerland, Ireland, Italy, Spain (CAC Catalonia), Latvia, Lithuania, Portugal, Romania, Slovakia and the UK. The issue has not yet been discussed in Austria and Norway.

Only five regulatory authorities declare that they anticipate the recruitment of new staff: Cyprus, France, Luxembourg, Slovakia and Bosnia and Herzegovina. In Bosnia and Herzegovina, the recruitment of new staff is planned for the forthcoming period, however not specifically for the purpose of implementing the AVMS Directive.

In Poland, the National Broadcasting Council has conducted an internal analysis and concluded that due to the broader scope of the AVMS Directive the employment of new personnel seems to be essential, especially concerning the Programme Department (estimated increase of around 13%). Moreover, the strong need to strengthen the technical capacities of the regulatory authority in order to fulfill the new tasks imposed on KRRiT has been emphasised. However, the outcome will depend on financial capacities and political decisions (estimated increase of KRRiT budget – 13%).

The Dutch CvdM might consider hiring temporary assistance for the identification of non-linear audiovisual media services.

In the UK, the Ofcom does not anticipate recruiting new staff. However, in the (likely) event that responsibility is devolved to co-regulatory bodies, these will have staffing requirements.

Some authorities, such as the Belgian RAs, are already in charge of new media services. This provides a possible explanation as to why their staff will not increase. However, the economic recession and the subsequent cuts on public spending may also account for several (negative) answers, such as in Latvia, Lithuania, Ireland and Slovenia.

In Latvia, there are serious personnel cuts throughout the state administration. On 1. October 2009 the Parliament amended the current Radio and TV law to reduce the number of members of the National Broadcasting Council from 9 to 5. This is supposedly an interim measure until the new law is adopted. In Lithuania, there are no plans to expand the existing staff due to the current financial situation. The situation is similar in Slovenia, despite the fact that the RA anticipates a substantial increase of its competences; the APEK cannot count on recruiting new staff at the moment. Due to recession, they have a ban on employing new people.

### **2.2. TRAINING:**

*"Will you provide any staff training? If so, what is the envisaged focus?"*

The issue of specific staff training to adapt to the extended scope of the AVMS Directive has not been discussed so far in Norway. No specific training is envisaged in Switzerland, Ireland, Italy, Latvia, Portugal and the UK. The Latvian regulator reports that the National Broadcasting Council has currently no funds for seminars or hiring external expertise. Staff will need to learn on the job.

However, in Austria, Bosnia and Herzegovina, Belgium (VRM), the Czech Republic, Catalonia, Luxembourg, Slovenia and Slovakia, training activities are scheduled.

Within the Belgian CSA, some internal work has already been conducted on the interpretation of the criteria defining the notion of scope. In addition, the CSA will organise on 11 December and in

cooperation with the UCL Law University, its annual conference which will be dedicated to the new European legal framework for broadcasting.

In Slovenia, the APEK will provide additional staff training, especially by organising both internal and external training and through participation in seminars. In cooperation with the University of Ljubljana's Faculty for Electrical Engineering, the APEK has already started a series of classes in Information and Communication Technologies, designated for staff lacking the necessary technical background. In an effort to encourage public debate on the challenges that the AVMS Directive places on to the existing regulation, APEK also conducted a series of public workshops from February till June 2009. The workshops shed some light on the practical aspects of how to use the AVMS Directive provisions and focused mostly on the anticipated changes of the regulation of commercial communications and on introduction of regulation in the field of non-linear AVMS. The discussions touched also upon the possibility of introducing co-regulatory measures in regulation of TV advertising and regulation of non-linear services.

In Belgium Flanders, the VRM has already organised an information session for its staff. VRM staff also participate in several seminars organised by universities. In Poland, the KRRiT already conducted two internal workshops for its staff. The special focus was on the provisions of the AVMS Directive regarding product placement and on-demand services.

More generally, the envisaged training activities appear to focus on commercial communication, including product placement (Bosnia Herzegovina, Germany or Poland) and issues pertaining to the regulation and monitoring of non-linear services (Bosnia Herzegovina, Germany, Poland or Slovakia), and the improvement of the monitoring of AVMS provisions (Romania).

Some authorities, such as the Austrian and Slovakian regulators, are more likely, at this point, to provide internal training, whereas others, such as those in Bosnia and Herzegovina, will rather rely on external training by international/EU experts in the form of lectures, workshops and seminars with the focus on best EU practice and lessons learned. Several RAs, such as in Slovenia and Cyprus, foresee a combination of both internal and external training.

### **2.3. REGISTRATION or/and LICENSING:**

*"Will non-linear audiovisual media services be under the obligation to register with your RA?"*

*"Will non-linear audiovisual media services be subject to licensing?"*

As far as one can predict at this point, non-linear audiovisual media services will NOT be subject to licensing in the vast majority of countries: Belgium, Czech Republic, Catalonia, France, Germany, Ireland, Lithuania, Latvia, Netherlands, Norway, Poland, Portugal, Slovenia, Slovakia, Switzerland and the UK. In Bosnia this issue is still being considered.

In French-speaking Belgium, Catalonia and in France, media service providers wishing to use analogue or digital terrestrial frequencies would still be subject to licensing.

In Italy, according to the current regulation, non-linear services are subject to an authorisation procedure managed by the Communication Department of the Ministry of economic development.

The Authorities in Romania and Cyprus have stated that it is envisaged that non-linear services would be subject to licensing. However, no further details were provided.

The vast majority of respondents state that the non-linear services, which fall under their jurisdiction, will be under the obligation to register with their regulatory authority, as is already happening in Belgium (CSA & VRM) or Italy and is very likely to be the case in Austria, Belgium, Catalonia, Czech Republic, Cyprus, Catalonia (CAC), Germany, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovakia and Slovenia.

This issue is still being considered in Bosnia and Herzegovina, Portugal and Switzerland.

In Italy, all communication operators, according to the law 249/97, are obliged to enter a public register managed by the AGCOM. Activity and the services provided are to be described in the registration forms.

In Belgium (Flanders), the Flemish Regulator for the Media has to be notified at least fourteen calendar days prior to the start of service of a non-linear *radio* service. This notification must contain at least the following information: the place of broadcast, the place of establishment, the manner in which the programme signal is distributed and the articles of association.

The VRM has to be notified at least fourteen calendar days prior to the start of service of a non-linear *television* service. The notification has to contain at least the following information: all the information which can serve to determine whether the Flemish Community is competent for the television service

concerned, the articles of association, the financial structure and a clear description of the service to be provided.

In French speaking Belgium, service providers, either of radio or television services, must make a prior notification to the CSA for each service.

In the Netherlands, the registration should take place within a period of 2 weeks after starting or ending a non-linear audiovisual media service. The name, place of establishment, contact data (such as e-mail address or internet URL) should be submitted by the media service provider. The media service provider has to make these data also available in an accessible, direct and permanent manner to the audience via its media offer. The name of the CvdM, being responsible for supervision, must also be mentioned.

In Slovakia, media service providers will have to provide the necessary information in order to allow some monitoring as well as some data to assess the proper jurisdiction. It might be done ex post within the period of 60 days.

The Catalonia Audiovisual Council is currently elaborating a general instruction on the prior communication regime further to art. 63 of the Catalan Broadcasting Act.

In Ireland, Norway<sup>5</sup>, the UK and France<sup>6</sup>, it appears that media service providers are not required to register with the broadcasting regulator. It is unclear from the responses whether another organisation will be in charge of the registering process (as in the UK) or whether media services providers are completely exonerated from this formality. Should the last hypothesis prove true, it would be interesting to see which arrangements have been made to ensure the transparency of basic information on media service providers towards the public as required by Art. 3a of the AVMS Directive.

In Luxembourg, registrations fall within the remit of the Media Service of the Government.

In the UK, it is currently proposed that service providers would be required to notify the ADVOD (the suggested co-regulatory body) if they are operating (or intend to operate) a VOD service that falls within scope. The ADVOD would be responsible for timescale of notification, receipt of notification and extent and management of notification while Ofcom would retain responsibility for decision-making on borderline scope decisions and the enforcement of decisions surrounding notification and scope.

The process of notification would be incorporated into documentation, to be published and owned by the ADVOD. This documentation would act as an *aide memoire* for the co-regulator and VOD service providers concerning: when new or existing VOD services should be notified; when variations in a VOD service should be notified; and when the intention to cease a VOD service should be notified. It is foreseen that the co-regulator would set out a process for investigating whether any particular VOD service, which it has reason to believe may be in scope but which has not provided a notification, should in fact do so. The proposed Regulations provide the regulator with the power to require a potential service provider to supply this information.

The issue of whether the registration process is linked to the payment of a fee - either of an administrative character or in order to cover supervision costs - would be worth expanding. The payment of a small administration fee is foreseen in Latvia. In the UK, the recent proposals made by Ofcom include the payment of an initial notification fee likely to be between £2,000 and £2,500 for each service (up to £500 for the period 19 December 2009 to 31 March 2010 and up to an additional £2,000 to cover the period 1 April 2010 to 31 March 2011). This fee would be broadly similar to that paid to Ofcom by applicants for Ofcom Television Licensable Content Service Licences. Ofcom envisages collecting and processing the fee, given that it already has in place processes for the collection and administration of fees from its licensees.

#### **2.4. ACTIVE SEARCH:**

*"Will your RA actively search for non-linear audiovisual media services?"*

RAs from Bosnia and Herzegovina, Germany, Ireland, Lithuania, Latvia, Romania, Slovenia and Norway do not currently envisage actively searching for non-linear audiovisual media services. The Lithuanian regulator reports that it does not have enough human and financial resources at its disposal for such a task. The issue is still undecided in France, Switzerland, Slovakia and the UK.

The authorities in Cyprus, the Czech Republic, and the Netherlands currently foresee an active search for non-linear services. Likewise, the Norwegian Media Authority is likely to undertake such a task in addition to handling complaints from the public. The KommAustria is also envisaging this, conditional on the human resources and the legal specifications. The Dutch CvdM will have at random checks of the existence of non-linear audiovisual media services via internet and other platforms and will also have to

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<sup>5</sup> According to the consultation paper.

<sup>6</sup> unless they broadcast terrestrially. In that case, a licence whose modalities are still to be defined would be required.

check linear audiovisual media services on the internet. In Belgian Flanders, non-linear and linear audiovisual services are both already being monitored by the VRM. In Italy, further to current legal provisions providing that a single broadcaster cannot manage more than 20% of the overall programme transmitted by terrestrial networks (analogue & digital), AGCOM, in late September, opened a new procedure to assess the key characteristics of non-linear services, with specific regard to DTT transmissions, in order to evaluate how these services/programmes should be considered for the calculation of the 20% limit. AGCOM is also preparing a White Book on new digital contents. Because new digital content is often provided through non-linear platforms, this field of research also touch the regulation of non-linear services.

Several RAs, while still unsure whether they will actively search for these services in the future, have already attempted to conduct (or commission) a first census of existing non-linear services.

In the UK, a recent survey of broadcasters provisionally identified 90 notifiable services. The various sources that Ofcom has considered suggest that there will be in the region of 150-200 notifiable VOD services<sup>7</sup>. The French CSA, by means of an external study, has identified 175 VOD services which will be subject to their regulatory oversight across traditional broadcaster and new internet service providers. In Poland, a first survey was conducted by KRRiT several months ago. Since this market develops very quickly it seems reasonable to monitor it on regular basis. In the French Community of Belgium, a monitoring of potential non-linear AVMS on the Internet has recently been conducted by the CSA as a stock-taking exercise. Until now, however, the CSA does not have enough resources for a regular monitoring on the Internet.

## **2.5. TECHNICAL TOOLKIT:**

*"Have specific technical tools been developed for the tracing, the identification or monitoring of non-linear audiovisual media services (e.g. spiders, bots etc.)?"*

Only two regulators so far are in the process of developing applications for the tracing, the identification or monitoring of non-linear audiovisual media services.

The Slovak Council is currently testing some applications which are able to record everything that happens on the screen. In the Netherlands, the CvdM reports that *"a spider/search robot has been developed to trace down audiovisual media services on the internet. It will try to identify audiovisual media services by a set of basic indicators such as audiovisual content and (at a later stage) the presence of a programme database or schedule. After this automated process, we will have additional manual checks."*

## **2.6. ANALYTICAL TOOLKIT:**

*"Have you developed (or planning to) guidelines to identify non-linear audiovisual media services?"*

So far only a few RAs are in the process of developing specific guidelines to identify non-linear audiovisual media services. The Lithuanian Council envisages drafting such guidelines in the near future.

As previously mentioned, the CSA of the French Community of Belgium has been working on internal guidelines to fine-tune material jurisdiction criteria and assess and anticipate potential interpretation and identification problems. In France, the CSA has launched on 26 June a consultation aiming at specifying some aspects pertaining to the regulation of on-demand services<sup>8</sup>. The Slovenian APEK has developed some basic guidelines on the basis of the AVMS Directive. As soon as they will be acquainted with the new legislation, they will start to work out more detailed guidelines and tips both for public and internal use.

The Dutch CvdM has prepared internal guidelines for the monitoring process which will be fine-tuned in near future. In the UK, the recent Ofcom proposals include non-binding draft guidance on scope which has been drawn up to help service providers determine whether they will be subject to regulation. The consultation document also lays out an indicative, non-exhaustive list of services which Ofcom believes, on a preliminary analysis, are likely to be considered to be in scope. It is suggested that ATVOD would have ultimately have ownership of the Scope Guidance.

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<sup>7</sup> See Ofcom proposals for the regulation of VOD services of 15 September 2009

<http://www.ofcom.org.uk/consult/condocs/vod/vod.pdf>

<sup>8</sup> [http://www.csa.fr/actualite/decisions/decisions\\_detail.php?id=128843](http://www.csa.fr/actualite/decisions/decisions_detail.php?id=128843)

## **2.7. MONITORING: "Will your RA monitor non-linear audiovisual media services?"**

The issue of the monitoring of non-linear audiovisual media services has not yet been decided in Bosnia and Herzegovina, Latvia, Poland, and Switzerland. In the UK, details of the approach to monitoring which the co-regulator will undertake have not been determined. The RAs in Ireland and Portugal report that they will not be in charge of monitoring such services.

Some RAs, on the contrary, are already monitoring non-linear audiovisual media services. In the French Community of Belgium, the CSA was already entrusted with the regulation of non-linear services before the adoption of the AVMS Directive. Similarly, the VRM is already monitoring linear and non-linear audiovisual media services on the basis of ad-hoc random checks. In Italy, the AGCOM is already in charge of monitoring new obligations on non-linear services, *inter alia* in relation to the European works.

As a rule, it seems that the regulatory authorities in charge of broadcasting matters will be entrusted in most countries with the monitoring of the non-linear media services. This is likely to be the case in Austria, the Czech Republic, Cyprus, France, Lithuania, Luxembourg, Netherlands, Norway, Romania, Slovakia and Slovenia. As an example, in France, the law of 5 March 2009 has entrusted the CSA with the monitoring of non-linear services.

It is envisaged that most authorities will rely on complaints from the public, as in Norway, Romania, Slovakia and Slovenia. So far, it appears that the methodology of ad-hoc random checks will eventually be adopted as in Czech Republic, Lithuania, Netherlands, Norway and Slovenia. The Czech Council is also envisaging outsourcing in addition to ad-hoc random checks. In the Netherlands, the CvdM envisages performing ad-hoc random checks of a population of possible audiovisual media services gathered by the automated spider process especially at the beginning.

## **2.8. CO-REGULATION: "Will a co-regulatory system be implemented in your country?"**

The issue of whether a co-regulatory system will be established as a consequence of the transposition of the Directive is still undecided in Austria, Bosnia and Herzegovina, Italy, Poland (even though the KRRiT in its official position has expressed its readiness for cooperation with industry in the frame of co-regulation and encouraged industry to establish self-regulatory bodies in the media field), Portugal and Switzerland.

In several countries, such as in Cyprus, France, Lithuania, Luxembourg, it is likely that no co-regulatory system will be implemented.

Co-regulatory elements are already present or are likely to be introduced in the following countries: Belgium (CSA & VRM), Catalonia, Czech Republic, Germany, Ireland, Latvia, Netherlands, Norway, Romania, Slovenia and Slovakia. In the Czech Republic, it is proposed that the RA will cooperate with self-regulation bodies. Further to Article 78 of the Catalan Broadcasting Act, the Catalan Audiovisual Council shall promote the signing of agreements among the various broadcasting services providers to facilitate and guarantee the adequate delimitation of the compliance with obligations and duties regarding content.

Areas of envisaged co-regulation include:

- *Advertising (UK, Slovenia, Romania)*

In Romania, the National Audiovisual Council concluded agreements with several organisations and bodies, such as the Romanian Advertising Council Union, for monitoring the regulations concerning advertising.

In the UK, subject to the outcome of Ofcom's current consultation, the ASA (Advertising Standards Authority) would be in charge of day to day regulation for VOD advertising content and responsible for investigating complaints. The ASA would be expected to refer repeated or serious matters to Ofcom to consider whether to take action under the Regulations (as is currently in place for broadcast advertising). ASA would report each year on matters such as: the number of complaints received; how many cases of advertising these involved; and the breakdown of complaints that were upheld, partially upheld, or not upheld.

- *Media literacy (Belgium VRM)*

- *Protection of minors (Netherlands, Norway, Slovenia, Germany)*

In the Netherlands, the already existing co-regulatory system of NICAM and Kijkwijzer will apply to non-linear audiovisual media services of PSB.



In Norway, it is suggested in the consultation paper from the government that a co-regulatory body shall monitor the compliance with Article 3 h in the Directive.

- *Non-linear services (Ireland, Slovenia, the UK)*

In Ireland, non-linear service will be required to establish their own regulatory structure and devise their own codes. BAI will have to sign off on these codes. In Slovenia, it is expected that the new law will give the APEK the legal basis for the development and introduction of co-regulatory mechanisms in the field of TV advertising and protection of minors and eventually also in the field of non-linear AVMS.

In the UK, a co-regulatory system is suggested with ATVOD (Association for Television On Demand) being responsible for editorial VOD editorial content. ATVOD is to draft and publish a set of enforcement and sanctions procedures. ATVOD would adjudicate on complaints. Cases in which statutory sanctions (e.g. fines) may be appropriate should be referred to Ofcom. Ofcom would therefore not designate functions relating to the issuing of enforcement notifications, the imposition of financial penalties and suspension of services.

- *Codes of conduct including HFSS food (Latvia)*

In Latvia, service providers will be expected to develop their own codes of conduct and it is to be hoped they will include rules on the advertising of junk food.

- *Consumer and ethical issues:* In Romania, the National Audiovisual Council concluded agreements with the National Authority for Consumers Protection, in order to identify unfair commercial practices and the Journalists Association in Romania, for implementing the deontological rules in the audiovisual domain.

- *Sanctions:* The Slovak CBR added to their provisions on sanctions the possibility to take into account the eventual sanction imposed by the self-regulation body.

## **2.9. COOPERATION ISSUES:**

*"Please specify whether any specific policy, tools or processes have been developed to this aim"*

Recital 66 and Art. 23b. of the AVMS Directive lay the emphasis on a reinforced cooperation between European RAs and with the Commission to ensure the correct application of the Directive. However, so far, no specific policy, tools or processes have been developed at this stage in Austria, Belgium (VRM), Czech Republic, Cyprus, France, Italy, Netherlands, Norway, Poland, Portugal and Slovenia.

Several networks of European regulators (such as the tripartite meetings between French, UK and German RAs, or the EPRA) have been mentioned by respondents in this context. The Lithuanian authority reported on their cooperation agreement with the Latvian and the Estonian regulator and the Estonian Ministry of Culture, which they deem very helpful to solve different issues. In Latvia, where a new service envisages a target audience outside Latvia, the draft law contains a provision obliging the Council to consult with the relevant RAs.

In Romania, the National Audiovisual Council concluded collaboration Protocols with similar RAs from the Republic of Macedonia and Hungary, and is open to new partnerships.

In the UK, Ofcom has agreed a process for handling cooperation requests with Government; Ofcom will be responsible for communication with service-providers as required under the co-operation procedure. This duty will be assigned to Ofcom in the implementation regulations.

## **2.10. CHALLENGING AREAS:**

*"What, if any, areas does your RA envisage will be particularly challenging during the implementation?"*

### Scope and regulation of non-linear services:

Not surprisingly, the issues linked to scope and the regulation of non-linear services are considered by most RAs, as in Austria, Germany, Slovenia, Poland and Slovakia, as likely to be the most challenging during the implementation.

The Dutch regulator foresees future challenges in the jurisdiction over non-linear audiovisual media services, the obligation for providers of non-linear audiovisual media services to register and the obligation to pay for costs of supervision.

The British Ofcom deems that one of the most challenging areas will be educating consumers as to the scope of regulation: where they can expect regulatory protection, and where they cannot. Another

difficult issue will be establishing and maintaining a clear and consistent approach to the scope of regulation.

Advertising matters:

The implementation of commercial communication rules is considered as particularly challenging in Bosnia and Herzegovina, Portugal and Latvia. Controlling the implementation of the requirements for advertising, sponsorship and product placement is quoted by the RAs of Lithuania and Norway. The application of new rules on product placement is considered particularly sensitive in Belgium, Latvia, Poland and Norway.

Other issues:

- *Lack of necessary resources (Ireland)*

The Irish BCI considers that the most challenging aspect will be of having the resources to do what they are required to do in the available time – particularly staff.

- *AVMS translation issues (Lithuania):*

The Lithuanian RTCL reports that a linguistic problem arises in using the definition “programme” as in Lithuanian there is a different word for a part of a programme, which in translation is “broadcast”. In Lithuanian “programme” means the whole of broadcasts. Thus, broadcasters might (on purpose or because of ignorance) misinterpret e. g. sponsorship or advertising rules, where in fact the requirements apply for a broadcast, but not the whole programme.

- *Media literacy (Latvia)*

So far, Latvia has no criteria for assessing the level of media literacy.

- *Co-regulation (Norway)*

Introducing and organising a co-regulatory body will probably be challenging since this is a relatively new form of regulation in Norway.

- *Change of subsidiary jurisdiction criteria (Slovenia)*

This change is very likely affect the APEK significantly, since in Slovenia there are some important up-link providers, one of them being STN, a leading player in the region.

- *Digitisation (Romania)*

Digitisation represents an important challenge both for the National Audiovisual Council and the Communications and Information Society Ministry, which is responsible for observing the AVMS schedule.

### State of play on the Transposition of the new Directive in EU Member States – October 2009

	Stage of transposition process	State of play, October 09	Further info, e.g. role played by RA	Link to drafts & documents
<b>AT</b>	Pre-legislative draft not yet available, at discussion stage	Legislation on TV advertising rules for private broadcasters in force on 1/03/09. Pre-legislative draft for other rules being discussed. No public consultation as yet		
<b>BE (FR)</b>	Main transposition completed BUT Provisions to be completed by governmental 'arrêtés d'application' (transparency, protection of minors, registration regime) or left to co-regulation (accessibility, right to info).	Decree approved by Parl. on Feb 3, by Gov on Feb 5. Published in the OJ on March 18. Came into force on 28/03/09. Official consolidation prepared by Parl. OJ of 24/07/09 published arrêté of Gov of 26/03 consolidating the Decree.	<a href="#">non official consolidation by CSA</a>	<a href="#">Official consolidation by Parliament</a>
<b>BE- (FL)</b>	Transposition completed	Decree voted in Parliament on March 18 Confirmed by Government on March 27. Publication before end of April and in force from first half of May.		<a href="http://www.vlaamseregulatormedia.be/media/10719/mediadecreet%2027%20maart%202009%20-%20decreetwijziging%2024%20juli%202009.pdf">http://www.vlaamseregulatormedia.be/media/10719/mediadecreet%2027%20maart%202009%20-%20decreetwijziging%2024%20juli%202009.pdf</a> (Flemish) Unofficial English translation: <a href="http://www.vlaamseregulatormedia.be/media/9726/newdecrees.pdf">http://www.vlaamseregulatormedia.be/media/9726/newdecrees.pdf</a>
<b>BG</b>	Pre-legislative draft not yet available, only at discussion stage	Pre-legislative draft not available, being discussed. Parliamentary elections in July 09 led to new gov & slowed down process.	CEM taking part in all discussions	
<b>CY</b>	Draft law prepared but has yet to enter parliamentary process	Cyprus still in process of amending its national legislative framework. After this stage the Min of Interior with the General Attorney's Office will proceed with legislative changes	CRTA, with the Min of Interior, conducted public consultation on product placement, media literacy, short extracts etc and has just finished evaluation of results. Suggestions have been drafted to facilitate transposition of AVMSD	
<b>CZ</b>	Draft law undergoing parliamentary process.	Implementation experienced delay in spring as 1st version of AVMS on-demand Media Act rejected by gov. Updated proposal went through on 17/08/09 and has been submitted to the Parl. Schedule for adoption difficult to predict!	Public consultation on the draft legislation took place with interested parties (broadcasters, service providers and others)	Draft (in Czech) <a href="http://www.psp.cz/sqw/text/orig2_sqw?idd=58087">http://www.psp.cz/sqw/text/orig2_sqw?idd=58087</a>
<b>DE</b>	Draft law prepared (in parts only) but has yet to enter the parliamentary process.	Länder: 13th Amendment to State treaty in preparation. (12th amendment to State Treaty (in force 1/6/09) already addressed scope issues) Bund: amending Act to Act on Telemedia and preliminary Tobacco Act in preparation.		State Treaty (12 <sup>th</sup> amendment) <a href="http://www.alm.de/fileadmin/Download/Gesetze/RStV_aktuell.pdf">http://www.alm.de/fileadmin/Download/Gesetze/RStV_aktuell.pdf</a>
<b>ES</b>	Draft law prepared but has yet to enter the parliamentary process	Draft is envisaged to be passed during 2010.		
<b>FR</b>	Main transposition achieved BUT still to come : CSA délibérations on protection of minors, programme ethics, on-demand progr and product placement. In addition 5 gov. décrets d'application - on OD services (1 : Art. 33-2) - jurisdiction & circumvention issues (3: Art 43-8, Art 43-9 Art 43-10) - news extracts (1).	Loi n°2009-258 du 5 mars 2009 relative à la communication audiovisuelle et au nouveau service public de la télévision, approved by Parl and published on 5/03/09.		<a href="http://www.csa.fr/upload/publication/avril2009_loi86-1067.pdf">http://www.csa.fr/upload/publication/avril2009_loi86-1067.pdf</a>

<b>GB</b>	Regulations being drafted	Gov consultation on main issues raised in implementation took place. Ongoing Ofcom consultation on some aspects of implementation. Informal industry consultation took place on draft legislation, though draft regulations have not been formally published Gov announced, (not published), further consultation on Product Placement. Regulations to be laid before Parl in autumn and come into force on 19/12/09	Ofcom consultations e.g. on VOD.	Gov Consultation: <a href="http://www.culture.gov.uk/reference_library/consultations/5309.aspx">http://www.culture.gov.uk/reference_library/consultations/5309.aspx</a> Ofcom consultation on VOD: <a href="http://www.ofcom.org.uk/consult/condocs/vod/">http://www.ofcom.org.uk/consult/condocs/vod/</a>
<b>HU</b>	Draft text undergoing parliamentary process	Bill prepared by parliamentary WG consisting of the representatives of political factions, but so far not accepted by Parl (2/3 majority of votes is required!)		
<b>IE</b>	Broadcasting Act 2009 enacted BUT Advertising elements for linear services being transposed through changes to BCI codes. Non-linear and other elements being transposed through a statutory instrument not yet finalized.	Broadcasting Act 2009 enacted in July transposed some elements.		<a href="http://www.oireachtas.ie/documents/bills28/acts/2009/a1809.pdf">http://www.oireachtas.ie/documents/bills28/acts/2009/a1809.pdf</a>
<b>IT</b>	Pre-legislative draft not yet available only at discussion stage	Text not yet been formalised in a bill. Council of Min on 28/08/09 delegated the Gov for transposition of AVMSD directive. Technical instrument is annual EU Act approved each year by Parl in order to delegate the Gov to implement EU directives. For 2008 the annex includes also AVMSD		<a href="http://www.politichecomunitarie.it/file_download/725">http://www.politichecomunitarie.it/file_download/725</a>
<b>LT</b>	Draft Law on the Provision of Information to the Public undergoing public consultation	Draft Law on the Provision of Information to the Public undergoing public consultation. To be submitted to Parliament for approval in Oct. The law to be adopted by 19-12-2009.		draft (in Lithuanian): <a href="http://www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=3241&amp;p_query=&amp;p_tr2=&amp;p_orq=84&amp;p_fix=">http://www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=3241&amp;p_query=&amp;p_tr2=&amp;p_orq=84&amp;p_fix=</a>
<b>LU</b>	Draft text undergoing parliamentary process	Draft text undergoing parliamentary process (delay due to national elections in June). Still aiming to respect deadline. Amending TV advertising rules adopted in 2008.		<a href="http://www.mediacom.public.lu/legislation/textes_nat_viq/projet_de_loi_5959.pdf">http://www.mediacom.public.lu/legislation/textes_nat_viq/projet_de_loi_5959.pdf</a>
<b>LV</b>	Draft law undergoing parliamentary process	Draft law about to receive 1st reading in parl. The law must be adopted before 19.12.2009.	Initial draft prepared by WG involving stakeholders was available for comment on the RAs website. Draft amended by legal office of parl. Some provisions (e.g. restriction of media concentration & and transparency of ownership) scrapped.	The draft is available (only in Latvian) at: <a href="http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/0F5065B99CB68DDEC22575D7004CF679?OpenDocument">http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/0F5065B99CB68DDEC22575D7004CF679?OpenDocument</a>
<b>MT</b>	Draft law prepared but not yet published and has yet to enter parliamentary process	The draft law has been prepared but not yet published and has yet to enter the parliamentary process		
<b>NL</b>	Draft law undergoing parliamentary process	Draft law undergoing parliamentary process		<a href="http://ikregeer.nl/document/KST132696">http://ikregeer.nl/document/KST132696</a>
<b>PL</b>	Pre-legislative draft not yet available only at discussion stage	In August 2009 Min. of Culture and National Heritage presented premises for the law. Drafted document subject to the consultation. On this basis, the new legislation is supposed to be drafted and sent to the Parliament.	KRRiT conducted public consultation (2nd July- 19 Sept). Report on consultation submitted to Min of Culture & National Heritage, Parl, other authorities involved in AV policy in PL and stakeholders which provided contributions in the frame of consultation.	
<b>PT</b>	Pre-legislative draft not yet available, only at discussion stage	Portuguese Gov instructed GMCS - Gabinete para os Meios de Comunicação Social (PT Office for Media) to draft legislative proposals to transpose AVMSD	GMCS has held several meetings with the interested parties, including TV broadcasters and ERC.	

<b>RO</b>	Draft law undergoing parliamentary process	AVMS Directive transposed by Government Ordinance no 181/2008, which modifies the Audiovisual Law no. 504/2002. Text is in force since 6/12/08 and is undergoing parliamentary debates in order to be adopted by end of 2009.		<a href="http://www.cna.ro/The-Audio-visual-Law,1655.html">http://www.cna.ro/The-Audio-visual-Law,1655.html</a>
<b>SE</b>	Pre-legislative draft not yet available, only at discussion stage	Draft law expected in Oct. Government proposal, presumably to be presented in Jan. 2010, for discussion and voting in Parliament.		
<b>SI</b>	Pre-legislative draft not yet available, at discussion stage.	Draft law on change of the Mass Media Act still to be presented, first for discussion within group of experts and after approval to public. Public consultation expected for Nov., beginning of parliamentary procedure by end of the year.	APEK organised workshops from (Feb-June) on AVMSD to foster debate. Focus: commercial communications, non-linear AVMS, co-regulatory measures for advertising and non-linear services.	
<b>SK</b>	Draft law undergoing parliamentary process	Gov adopted draft and passed it to parl. Parl should adopt draft in 1/2 months. Act to be effective in 1.12.09; draft to be adopted at least 15 days before	Prior to the government adoption there had been discussions with the industry and also public discussions.	

**EEA, Candidate Countries and other countries**

	<b>Stage of transposition process</b>	<b>State of play October 2009</b>	<b>Further info, e.g. role of RA</b>	<b>Link to drafts &amp; documents</b>
<b>NO</b>	Pre-legislative draft not yet available, only at discussion stage	Min. of Culture and Church Affairs drafted public consultation paper. Deadline for responses: 9/10/09	Norwegian Media Authority is currently working with its response to the consultation.	
<b>BA</b>	NOT APPLICABLE!	Harmonisation of CRA rules and regulations with revised ECTT currently considered.	Key issues: commercial communication rules and regulation of non-linear services	
<b>ME</b>	NOT APPLICABLE!	Implementation of the AVMSD sought to be ensured through drafting of the new Electronic Media Law. It is expected that the Ministry of Culture will soon prepare proposal of the law taking into account the comments received.		Comments of the Broadcasting Agency on the Draft Electronic Media Law: <a href="http://www.ardcg.org">www.ardcg.org</a> . See also : <a href="http://www.article19.org/pdfs/analysis/montenegro-note-on-the-draft-law-on-electronic-media.pdf">http://www.article19.org/pdfs/analysis/montenegro-note-on-the-draft-law-on-electronic-media.pdf</a>
<b>CH</b>	NOT APPLICABLE!	To comply with the revised ECTT, Federal Law on Radio and Television as well as the Ordinance are being revised. The revision process of the ordinance (not undergoing the Parl process) already started. This revision will entry into force mid-2010	Ofcom produced a draft on which a public consultation procedure is currently taking place By this draft Ofcom intends notably to adapt its legislation in the field of the rules on advertising and sponsoring in order to comply with the Convention's rulings.	<a href="http://www.bakom.admin.ch/dokumentation/gesetzgebung/00909/03234/index.html?lang=fr">http://www.bakom.admin.ch/dokumentation/gesetzgebung/00909/03234/index.html?lang=fr</a>