



Department for  
Digital, Culture,  
Media & Sport

# **Audiovisual Media Services: Consultation Document**

**May 2019**

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## 1. Introduction

1. Since the initial adoption of the Television without Frontiers Directive (TVwF) in 1989, technological and market developments have made it necessary for the EU to review and amend the audiovisual regulatory framework. The TVwF was revised in 1997 and 2007. With the last revision, the Directive was also renamed **Audiovisual Media Services Directive (AVMSD)** and all the changes made since 1989 were codified in 2010. The AVMSD governs EU-wide coordination of national legislation on all audiovisual media, both traditional television broadcasts and - since 2007 - on-demand services. Once the revised AVMSD is implemented, the European audiovisual rules will be extended to include video-sharing platforms as well.
2. At the heart of AVMSD is **the Country of Origin (COO) principle**, under which audiovisual media service providers only need to abide by the rules of the Member State that has jurisdiction over them, which usually means the Member State in which they are established. The COO facilitates a single market in audio visual services by enabling service providers, especially those wishing to provide cross-border services, to be regulated in one Member State. The AVMSD is a minimum harmonisation directive, which means that all Member States must adhere to minimum standards but are free to adopt stricter rules (provided that doing so is compliant with EU law). Where an EU country adopts national rules that are stricter than the AVMSD, these national rules can only be applied to providers subject to that jurisdiction. The AVMSD also ensures that broadcasters who are not established in the EU are still required to be compliant with EU minimum standards, by ensuring that a Member State has jurisdiction over non-EU providers (using up-links located on their territory or the use of their satellite capacity to determine the jurisdiction).
3. As part of the Digital Single Market Strategy,<sup>1</sup> the European Commission initiated the revision of the AVMSD, which aimed to bring the directive in line with the new media landscapes. The amending directive (EU 2018/1808)<sup>2</sup> was published in the Official Journal of the European Union on 28 November 2018. **Member States, including the UK, have to transpose the new rules into national legislation by 19 September 2020.**
4. This document sets out the proposed approach in the UK to implementing the changes made by the revision of the AVMSD in the 2018 Directive. The newly-introduced and amended provisions have been designed to level the playing

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<sup>1</sup> Communication from the Commission "A digital single market strategy for Europe", 6 May 2015, COM(2015) 192 final, [https://ec.europa.eu/commission/priorities/digital-single-market\\_en#documents](https://ec.europa.eu/commission/priorities/digital-single-market_en#documents) [retrieved on 3 January 2019]

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&qid=1546508006028&from=en> [retrieved on 3 January 2019]

field for all audiovisual media services: both traditional linear services and video on demand. The revision:

- introduces some rules for **video-sharing platforms**;<sup>3</sup>
- focuses on **reinforcing existing rules for the protection of minors**<sup>4</sup> and **combating hate speech** in all audiovisual content;
- places an emphasis on **promoting production and distribution of European works**;
- permits **levies for video on demand and linear services in the country of operation** for the purposes of contributing to national film funds.
- inserts more detail on how Member States should apply **the Country of Origin principle** in order to offer more clarity for providers;
- allows for the option of **more flexibility in television advertising**; and
- **guarantees the independence of audiovisual regulators**.

## 1.1 Relevance of UK withdrawal from the EU

5. The implementation of the AVMSD is required as part of the United Kingdom's obligations arising from its membership of the European Union and until the UK formally leaves the European Union all of its obligations remain in force. Under the terms of the proposed Withdrawal Agreement, the UK is required to implement the amending AVMSD, as its implementation date falls prior to the end of the Implementation Period.
6. If the UK leaves the European Union without a deal, we will not be bound to transpose the AVMSD into UK law. However, we would be free to align domestically in certain areas, following the usual government processes for amending/introducing new legislation. Further analytical work will be required to identify these areas and the best way forward, and this consultation would help inform that work.
7. In absence of the Withdrawal Agreement, the existing broadcasting regulations will continue to apply, however a 'no deal' Statutory Instrument for broadcasting has been laid to fix any inoperabilities in retained EU law; the main legislative inoperability relates to the domestic legislation referring to services over which the UK has jurisdiction under the AVMSD.

## 1.2 Our approach to implementation

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<sup>3</sup> The Commission is required to publish guidance to assist Member States in determining if a video-sharing platform falls within the Scope of AVMSD. This is expected by the end of 2019.

<sup>4</sup> Minors are persons below the age of majority, at which a child becomes an adult and acquires full legal capacity. The age of majority is 18 years in all EU Member States except for Scotland, where children are considered to have full legal capacity from the age of 16 years.

8. Directive EU 2018/1808 (the “2018 Directive”) updates Directive 2010/13/EU<sup>5</sup> (the “2010 Directive”), which updated and codified provision of the Television Without Frontier Directive (Directive 97/36/EC), all of which are implemented in the UK mainly through provisions of the Communications Act 2003 and the Broadcasting Acts 1990 and 1996, and for the BBC, its Charter. Ofcom ensures that the minimum content standards set out in the AVMSD, are reflected in the Ofcom Broadcasting Code<sup>6</sup>; which all television licensees, notified on-demand programme providers, the BBC and S4C are required to comply with. The BBC’s Charter requires Ofcom to prepare and publish an Operating Framework which must contain the provisions Ofcom consider appropriate to secure the effective regulation of the activities of the BBC. Some of the AVMSD also underpins some of the advertising rules which are set out in the Advertising Standards Authority’s Broadcasting Code of Advertising Practice (BCAP) and UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code), as well as the Code on the Scheduling and Amount of Television Advertising (COSTA).<sup>7</sup>
  
9. The 2018 Directive amends certain provisions of the existing AVMSD, and also inserts some provisions which are entirely new.
  
10. Our implementation approach will closely follow **the Guiding Principles**<sup>8</sup> for transposing directives. The Principles state that, when transposing EU law, the government will:
  - a. ensure that (save in exceptional circumstances) the UK does not go beyond the minimum requirements of the measure which is being transposed;
  - b. wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation;
  - c. endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts;
  - d. always use copy-out for transposition where it is available, except where doing so would adversely affect UK interests eg. by putting UK businesses at a competitive disadvantage compared with their European counterparts or going beyond the minimum requirements of the measure that is being transposed;
  - e. ensure the necessary implementing measures come into force on (rather than before) the transposition deadline specified in a Directive, unless there are compelling reasons for earlier implementation; and

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<sup>5</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF> [retrieved on 3 January 2019]

<sup>6</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0016/132073/Broadcast-Code-Full.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0016/132073/Broadcast-Code-Full.pdf)

<sup>7</sup> <https://www.asa.org.uk/codes-and-rulings/advertising-codes/broadcast-code.html>, <https://www.asa.org.uk/codes-and-rulings/advertising-codes/non-broadcast-code.html> and <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/code-tv-advertising> [retrieved on 29 March 2019]

<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/682752/eu-transposition-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682752/eu-transposition-guidance.pdf) [retrieved on 4 January 2019]

- f. include a statutory duty for ministerial review up to five years after it came into force for measures with impacts on business significant measures (greater than +/- £5 million net annualised).
11. Noting the guiding principles above, we are consulting on any measures which may go above the minimum requirements, or may require greater understanding of the impact on business, in order to fully inform the implementation approach. We also intend to use copy-out where possible and rely on the recitals as an aid to interpretation to inform any elaboration that may be required in order to clarify meaning.
12. The 2018 Directive envisages self and co-regulation in places and elaborates on these in the new Article 4a and in the Recitals 12-14 and 44, recognising that both co- and self-regulation can be an effective complement to achieving regulatory objectives. In the UK, standards in advertising on television are overseen by a co-regulatory arrangement between Ofcom, which has statutory responsibility, the Broadcast Committee of Advertising Practice (BCAP), which maintains the Television Advertising Standards Code under contract from Ofcom, and the Advertising Standards Authority (ASA) which investigates complaints about apparent breaches of the Code. The UK has an established co-and self regulatory system via the ASA, and such an approach aligns with the guiding principle to implement EU policy and legal obligations through the use of alternatives to regulation, and so we encourage the use where it is appropriate and justified to do so.

## 2. About this consultation

13. This consultation seeks views on the UK government's proposals in relation to the implementation in the areas set out at paragraph 18 and 19. It will run for 12 weeks from 30 May until 22 August 2019. The details of how to respond to this consultation are set out in Section 7 of this consultation document. There are also aspects of the 2018 Directive, which we expect will require or have minimal or no change or impact and on which we are not consulting, although consultees are welcome to provide their views on any aspect of the 2018 Directive.
14. The government invites comments on:
  - a. **The approach towards implementing the amended/new provisions** brought about by 2018 Directive. Questions relating to the implementation approach are listed in pink-coloured boxes at the end of the consultation; and
  - b. **The likely costs and benefits associated with the changes to UK law**, as described in this consultation document. Questions on business impact are listed in grey-coloured boxes.
15. One of the main and most complex changes brought about by the 2018 Directive is **the extension of scope to cover video-sharing platforms (VSPs)**, which will cover

platforms where the provision of programmes or user-generated content is a principal purpose or an essential functionality, including social media sites, video-sharing sites, pornography sites and live streaming services which fulfill this criterion. Many of the measures in the 2018 Directive pertaining to video-sharing platforms complement HMG's proposals set out in the Online Harms White Paper<sup>9</sup> which aims to design a comprehensive regulatory framework addressing harms across a broader range of online service providers. We will therefore review our approach to implementing the VSP measures in light of the work on Online Harms.

**16. Further changes to broadcasting legislation arising from the UK's withdrawal from the EU are not within the remit of this consultation.**

17. The government is seeking detailed responses to the issues raised, accompanied where possible by evidence and analysis of potential impacts and suggestions for alternative approaches. We recognise that some individuals, small businesses and organisations may not be able to provide such detailed views or may want to concentrate on specific questions.

18. This consultation document focuses on the cross-cutting areas which draw together the main amendments made by the 2018 Directive. Each section includes an overview of new/amended provisions, a summary of the proposed government approach and information about the expected impact of these measures on business. The main themes are:

- a. **Country of Origin**
- b. **Protection of minors and of general public**
- c. **Accessibility**
- d. **Commercial communications**
- e. **European works**
- f. **Video-sharing platforms (VSPs)**

19. The consultation also includes questions on other amendments which will be implemented into UK law but are less significant in terms of their scope and impact. This includes new provisions on **signal integrity**; new obligations on promoting **media literacy**; and, an optional measure on **disclosing information about a media service provider's company ownership structure**.

20. The 2018 Directive introduces new requirements relating to the National Regulatory Authority, and in particular matters concerning its independence. We consider that the UK already has appropriate measures in place to meet these new requirements, and we are not consulting specifically on these matters as a result. Ofcom is the National Regulatory Authority for audiovisual media services in the UK, established under the Office of Communications Act 2002 and which has many duties and

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<sup>9</sup> <https://www.gov.uk/government/consultations/online-harms-white-paper> [retrieved 17 May 2019]

functions under the Communications Acts 2003 and related legislation. We will assess any new National Regulatory Authority that may be given functions in relation to video-sharing platforms against these new requirements and as part of the government's work on online harms.

21. While newspaper websites remain outside the scope of the 2018 Directive, standalone parts of newspapers' websites providing video services do fall into scope.<sup>10</sup> However, the occasional use of videos on websites, blogs and news portals falls outside the scope of the new provisions.
22. This consultation is relevant to anyone with an interest in audiovisual media services and video sharing platforms that provide access to audiovisual content in the UK. These will include, but are not limited to: UK-based media services providers; video-sharing platforms, production companies and other relevant businesses and individuals operating in the audio-visual space; relevant trade associations; consumers; academics and research bodies; non-governmental organisations with an interest in media services and their audiences/users.

### **3. Amendments for consultation**

#### **3.1 Country of Origin**

23. The Country of Origin (COO) principle is the cornerstone of the Directive. It aims to protect citizens and consumers by ensuring minimum content standards for audiovisual content exists for all of the EU in order to protect minors and to protect from hate speech regardless from which Member State the service originates. Media service providers are only required to adhere to the regulations in the country where the service is established, which has facilitated the development of the single European market.
24. The COO principle, which sets out that a service is subject to regulation in the EU Member State which has jurisdiction over it, has been retained in the 2018 Directive, with some minor changes.
25. The new Directive clarifies some of the rules pertaining to the COO principle by:

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<sup>10</sup> This is reflective of the position under the existing Directive as interpreted in accordance with EU case law, [where "an assessment of the principal purpose of a service making videos available offered in the electronic version of a newspaper must focus on whether that service as such has content and form which is independent of that of the journalistic activity of the operator of the website at issue, and is not merely an indissociable complement to that activity, in particular as a result of the links between the audiovisual offer and the offer in text form"] (see Case C-347/14)

- a. **jurisdiction criteria:** The process allowing Member States to establish jurisdiction over audiovisual media services has not changed notably; however some **further detail is provided on establishing criteria where a provider has staff and functions across a number of Member States.** Priority is given to the Member State where the head office and editorial decisions are taken. Where this is in two different Member States, it will be where the majority of the workforce **involved in programme-related work is located**, and if in both, priority is given to the Member State where the head office is located (see Article 2(3)(b)). **‘Editorial decision’** is now defined as a decision taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of the service. In addition, Member States and National Regulatory Authorities are now also obliged to **list all services under their jurisdiction** (including video-sharing platforms) and provide information to the European Commission for the purpose of publication. Additionally, service providers are now required to notify of **any changes** that would affect **determination of jurisdiction.**
  - b. **Aligning the derogation procedures<sup>11</sup> for both linear broadcasters and on-demand service providers:**
  - c. The 2018 Directive **introduces new grounds for derogations for Member States in relation to serious risks to public health and public provocation to commit a terrorist offence.**
  - d. Article 3 also introduces a **new urgency procedure** in cases of **public security concern** and **public provocation to commit terrorist offences.**
26. These derogation procedures are not required to be set out in the UK statute book, but applied by Ofcom in assessing whether individual services fall under UK jurisdiction or when considering cases for derogation. We may need to implement the new information requirements by updating the Communications Act 2003.

### **Proposed government approach**

27. The aforementioned changes are not deemed controversial for the UK and are likely to require no, or minimal legislative change for linear or video on demand audiovisual services to meet these requirements, however relevant legislation will be amended where appropriate.

### **Cost to business**

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<sup>11</sup> Derogation here refers to an exemption of a rule. The AVMSD specifies when Member States may derogate from the Country of Origin principle and temporarily restrict retransmission of a service in specific circumstances.

28. We do not expect that the aforementioned amendments relating to the Country of Origin principle for linear services and video on demand services will have any quantifiable impact on businesses.

**Questions on business impact - Country of Origin**

1. Will the additional references in jurisdiction criteria, relating to the location of staff making programme related decisions, or the reference to editorial decisions, relating to the day-to-day activity, affect you or your business?
  - a. Yes (please give details)
  - b. No
  - c. Don't know
  
2. Will the amended derogation procedures affect you or your business?
  - a. Yes (please give details)
  - b. No
  - c. Don't know

### 3.2 Protection of minors and protection of the general public

29. The 2010 Directive protects minors more on linear TV and less in relation to on-demand content. In the context of young people watching less linear TV and an increasing amount of on-demand content<sup>12</sup>, the 2018 Directive introduces a set of measures which aim to align the protection of minors on linear and on-demand services with safeguards on linear TV, as well as require protection in relation to content on video-sharing platforms (which is considered in section 3.6). For all of these services, the 2018 Directive will amend the 2010 Directive to require:

- a. that **audiovisual media services that may impair the physical, mental or moral development of minors (harmful content) are only made available in such a way as to ensure that minors will not normally hear or see them**. This is regardless of whether such programmes are broadcast by TV broadcasters or provided by on-demand providers. VSPs will also have to adopt measures to protect minors, which is considered in more detail in Section 3.6;

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<sup>12</sup> According to Ofcom's Communications Market Report 2018, live broadcast TV viewing has declined – steeply, among young people. Children's viewing fell by 15% in 2017 to an average of 1 hour 24 minutes, and 16-24s' viewing fell by 12% to an average of 1 hour 40 minutes. Young adults (16- 24s) watch an average of an hour of YouTube a day, and in Ofcom's research into children's media literacy found that YouTube and Netflix had higher brand recognition than BBC or ITV among 12-15 year-olds. Levelling the playing field between linear services and video on demand services is thus deemed a crucial step for providing the necessary protection of underage audiovisual consumers.

- b. **the most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures providing a high degree of protection**, such as age verification measures, effective parental controls and other technical measures (see Article 6a(1) and Recital 20);
- c. that for linear and on-demand services, Member States ensure that media service providers **provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors** (see Article 6a(3)). For this purpose, media service providers shall use a system describing the potentially harmful nature of the content of an audiovisual media service. The use of co-regulation is encouraged. As laid out in Recital 19, that could be done, for example, through a system of content descriptors, an acoustic warning, a visual symbol or any other means, describing the nature of the content;
- d. **a new measure pertaining to collecting or otherwise generating personal data of minors**. This measure requires that any data of minors collected for example through age verification tools, or other technical measures, is not then used for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising (see Article 6a(2) and 28b(3));
- e. extending the obligation of Member States to respect and protect human dignity, by ensuring that audiovisual media services do not contain any: **incitement to violence or hatred directed against a group of persons** or a member of a group based on any of the grounds referred to in Article 21 of the Charter or **public provocation to commit a terrorist offence** as set out in Article 5 of Directive (EU) 2017/541.

#### **Proposed government approach**

- 30. The first two measures detailed in paragraph 29 (a) and 29 (b) are already in place in the UK regulatory framework for linear. For video-on-demand, amendments will need to be made to s368E(5)(c) of the Communications Act 2003 to align the requirements between linear and video-on-demand. Ofcom's Broadcasting Code will also mostly likely need to be updated to reflect this.
- 31. **Providing sufficient information to viewers about content which may impair the physical, mental or moral development of minors**: this obligation is already in place in relation to linear television and is being extended to video-on-demand by the 2018 Directive. The Broadcasting Code already has measures in place to ensure that linear content protects under 18s using a variety of means, including, but not limited to, rules around the watershed. Section 1.7 of the Broadcasting Code requires that *"For television programmes broadcast before the watershed, or for radio programmes*

*broadcast when children are particularly likely to be listening, or for BBC ODPS content that is likely to be accessed by children, clear information about content that may distress some children should be given, if appropriate, to the audience (taking into account the context)."*

32. We intend to ensure this requirement to provide sufficient information to viewers is extended to video-on-demand by updating section 368E of the Communications Act 2019.
33. In updating this part of the Communications Act 2003, the government is considering if it should have specific regard to Recital 19 of the 2018 Directive in the implementation provisions, which indicates that media service providers should provide viewers with sufficient information about the content that may impair minors' physical, mental or moral development, and gives examples such as a system of content descriptors, an acoustic warning, a visual symbol or other means. This could be achieved in a number of ways, for example by Ofcom updating the relevant sections of the Broadcasting Code; having a regulatory or co-regulatory body to issue guidance; or having a standardised system of content descriptors. The government has taken no firm position at this point and is seeking views on approach, and is asking questions to determine if anything further than Ofcom updating the Broadcasting Code should be done.
34. **Collecting/generating personal data of minors:** The 2018 Directive prohibits providers from processing minors' personal data for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising. Article 6.a specifies this provision for linear and VoD service providers, and Article 28.b does so for VSPs. This goes further than the requirements set out in Article 8 of the GDPR, which allows the processing of children's personal data to the extent that consent is given or authorised by the holder of parental responsibility over the child. A specific amendment will need to be made to the Communications Act 2003 in a new section to ensure that this requirement applicable to audiovisual media service providers and VSPs are prohibited from further processing of minors personal data.
35. **Including or promoting discrimination:** The existing rules extend to new categories of discrimination, such as disability, age, ethnic origin and sexual orientation. We propose to amend the Communications Act 2003 to accommodate the new additions. There are already provisions in the Ofcom Broadcasting Code to deal with public provocation to commit a terrorist offence which may need to be updated, which is also a criminal offence. We propose to amend the s.368E of the Communications Act 2003 in relation to on-demand services to cover these additional matters.

36. The government will ensure that the updated rules on broadcasting standards apply to the BBC, whose compliance will be enforced by Ofcom.

**Business impact**

37. We are using this consultation to gather further evidence around the potential impact the new measures might have for the industry.

**Questions on implementation - Protection of Minors**

1. Do you agree with our proposed approach to amend s.368E of the Communications Act 2003 to align the protection of minor requirements for linear and on-demand?

- a. Yes
- b. No
- c. If No, please give details.

2. Noting that Recital 19 envisages that a system of that viewers should be provided with sufficient information regarding the nature of the content, should be equally applicable to both video-on-demand and linear services. Do you consider that Ofcom updating the relevant sections of the Broadcasting Code would be enough to sufficiently meet this requirement?

- a. Yes
- b. No
- c. If no, please give details

3. If no, what would be your preferred way of introducing a new requirement for ensuring that viewers have sufficient information about the nature of content on video-on-demand catalogues? Could you indicate from the following:

- a. Using acoustic warning
- b. Content descriptors
- c. Visual symbols
- d. Age-ratings
- e. Other means (please specify)

4. Should the measures above use standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand?

5. What would the benefits/obstacles be for introducing a standardised system to such content?

6. Should the government consider a self- or co-regulatory model for provision of sufficient information to protect minors?

**Questions on business impact - Protection of Minors**

3. Do you expect the new measure which restricts processing, collecting or otherwise generating personal data of minors for commercial purposes set out in Article 6a(2) to impact your audiovisual media service (or video sharing platform in the case of VSP providers)?

- a. Yes (please give details)
- b. No
- c. Don't know

4. Noting the government preferred approach to update s368 of the Communications Act 2003 to align the protection of minors requirements for video on demand with linear television, which would anticipate Ofcom to do a corresponding update to the Broadcasting Code. Do you expect the new measure on providing sufficient information to viewers about content which may impair the physical, mental or moral development of minors, by providing sufficient information to viewers about the nature of the content, as set out in Article 6a(3), to impact your audiovisual media service?

5. Would a standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand to provide sufficient information to viewers about content impact on your audiovisual media service?

### 3.3 Commercial communications/advertising provisions

38. Audiovisual commercial communication is defined in Article 1(h) of the Directive as *'images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany or are included in a programme or user-generated video in return for payment or similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement'*.

39. The new rules on advertising under the 2018 Directive aim to strike the right balance between consumer protection, more specifically the protection of the most vulnerable consumers, and a more flexible system for linear broadcasters, which aims to level the playing field between traditional broadcasters and other providers of audio-visual content. This does not prevent Member States from applying stricter rules.

40. The 2018 Directive introduces the following changes:

- a. **Extending existing general principles governing advertising in linear broadcast and Video on Demand to Video Sharing Platforms and**

**implementing specific prohibitions** (as set out in Article 9(1) and 28b(2)).

- b. **Strengthening provisions to protect children from inappropriate audiovisual commercial communications of foods high in fat, salt and sodium, and sugars (HFSS)**, by encouraging the use of co-regulation and the fostering of self-regulation through codes of conduct at national level, where necessary (see Article 9(4) and 28(b)(2));
- c. **Tobacco advertising remains forbidden** in all types of media, and additional restrictions are being extended to e-cigarettes and refills (see Article 9(1) and Article 10a). For **alcohol advertising, further development of self- or co-regulation is encouraged**, if necessary also at EU level, to effectively **reduce the exposure of minors to such advertisements** (see Recital 29). The specific requirements concerning alcohol in television advertising and teleshopping are also extended to on-demand; and
- d. **The advertising limit of 20% of broadcasting time will apply from 06:00 to 18:00** (i.e. broadcasters can place advertising up to 20% of the viewing time in that period) and **the same share is allowed during prime time**, ie from 18:00 to midnight (see Article 23(1)). This will enable broadcasters to have more flexibility than the previous requirement of maximum 12 minutes per hour. This amendment was introduced to enable broadcasters to decide when to place advertisements. However, it will simultaneously maintain a sufficient level of consumer protection by ensuring they are not exposed to an excessive amount of advertising during prime time (see Recital 41).
- e. **Product placement** the 2018 Directive amends Article 11, removing the general prohibition on product placement with exceptions, and instead permitting product placement in all audiovisual media services, except in the case of news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes. We propose to review and update the relevant provisions of the Communications Act 2003 (see sections 319, 321, 368H and Schedule 11A) to reflect the changes and in particular the specific prohibition on product placement beyond children's programmes. Ofcom's Broadcasting Code will also require review and updating in light of the changes.

### **Proposed government approach**

- 41. The rules governing advertising on linear broadcast are defined in the BCAP Code, enforced through co-regulation with Ofcom. The rules governing advertising on VSPs are defined in the CAP Code, enforced by the ASA through a system of self-regulation. VoD advertising is also regulated through the self-regulatory CAP

Code, though the requirements in the current AVMSD are enforced through the same system of co-regulation with Ofcom as linear broadcast.

42. The AVMSD requires that Government ensures VSPs comply with certain advertising provisions focused on consumer protection and social responsibility, to better align the rules on audiovisual commercial communication across VSP, VoD and linear broadcasters. While the content of these provisions are broadly encompassed by the CAP Code, the existing system of self-regulation will not be sufficient to meet the requirement. We therefore invite views on how best to implement this requirement, noting the co-regulatory framework which already exists for advertising on linear broadcast and VoD.
43. In February 2019 the Secretary of State for Digital, Culture, Media and Sport announced that the government will conduct a review on how online advertising is regulated in the UK.<sup>13</sup> This review will consider the extent to which the current regulatory regime is equipped to tackle the wide set of economic and social challenges posed by rapid technological developments seen in online advertising, and consider concerns around the inconsistent approach to regulation of advertising online and on TV. The implementation of AVMSD provisions relating to VSPs and VoD will be relevant to the review, and responses to this consultation may help inform that review.
44. The other advertising provisions in the revised Directive are broadly in line with the existing advertising rules in the UK, although some provisions in legislation will need to be updated to completely align these rules. Rules limiting children's exposure to alcohol and high fat, salt and sugar advertisements, and prohibiting tobacco and e-cigarette advertising are applied through the Advertising Codes.<sup>14</sup> Ofcom has a power under s319 to include objectives in the codes relating to international obligations, however on-demand has specific provisions in s368G of the Communications Act 2003 which will need to be updated to ensure that e-cigarettes do not sponsor on-demand programming.
45. The government will also need to implement **some further prohibitions on the content of alcohol advertising in video on demand**, where these prohibitions are not currently subject to co-regulation, and s368F of the Communications Act will need to be amended to reflect the statutory requirement.

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<sup>13</sup> <https://www.gov.uk/government/speeches/jeremy-wrights-statement-on-the-cairn-cross-review>

<sup>14</sup> There is an open consultation considering options for further advertising restrictions on the advertising of high fat, salt or sugar products on TV and online, which goes beyond the requirements of the 2018 Directive  
<https://www.gov.uk/government/consultations/further-advertising-restrictions-for-products-high-in-fat-salt-and-sugar>

46. The responsibility for determining advertising limits falls to Ofcom, which sets out the maximum number of advertising minutes for broadcasters, in the **Code of Advertising and Scheduling (COSTA)**. When exercising its duties under the Communications Act on the setting of the restrictions for the amount of television advertising, Ofcom has to give regard to the requirements within the 2018 Directive. The current regime in the UK has a greater restriction on the amount of advertising minutes than the limits set by existing AVMSD.
47. The current provision set out in the 2010 Directive allows for a 12 minute per clock hour, whereas the 2018 Directive proposes a more flexible approach of 20% of broadcasting time overall, and provides two flexible windows for advertising between 06:00 and 18:00 and 18:00 to 24:00. The 2010 Directive liberalised the overall number of advertising minutes from 9 minutes per clock hour to 12. Ofcom has a number of duties under sections 319, 321 and 322, in relation to setting codes and standards for advertising COSTA and through the coregulation with the Advertising Standard Authority. Ofcom has conducted two reviews since the 2010 Directive, one during the implementation stage in 2008 and another which was completed in 2016, which resulted in the publication of and subsequent updating of the Code of scheduling of television advertising.<sup>15</sup> Noting the implementation principles set out in paragraphs 10 and 11 and that there is no obligation to liberalise the advertising minutes, the 2018 Directive would allow for a different advertising minutes than is currently allowed under the COSTA, and no additional legislative provision is needed.
48. Our proposed approach is not to make legislative change in this area. Noting that this liberalisation was designed to help the broadcasting markets overall with the EU, but recognising that there are a number of different markets operating within that any proposed change to advertising minutes to would require both careful analysis and review of market implications. Our proposed approach is to ask industry to provide evidence relating to advertising minutage to consider if such a review to be justified.

### **Cost to business**

49. **Strengthening provisions to protect children from inappropriate audiovisual commercial communications of foods high in fat, salt and sodium, and sugars:** Since the UK already satisfies the advertising provisions in the amending 2018 Directive, no additional costs to businesses are expected. (The government's separate consultation on "Introducing further advertising restrictions of products high in fat, sugar and salt (HFSS) on TV and online" has not been prompted by the revision of the 2018 Directive, and so any additional costs to businesses arising from

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<sup>15</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/code-tv-advertising>

that consultation are not considered here as they are being addressed in the separate consultation.)<sup>16</sup>

50. **Tobacco and alcohol advertising:** Since the UK already broadly satisfies the advertising provisions in the amending AVMSD in the field of linear and on-demand services, no additional costs to such businesses are expected. While certain prohibitions on the content of alcohol advertising and e-cigarette advertising are being extended from linear broadcast to video on demand services to ensure consistency in regulatory burdens across audiovisual service providers, the cost of this extension to businesses is estimated to be zero as there is no evidence that these practices currently occur on UK video on demand services, and are already broadly restricted by self-regulatory rules. This assumption will be tested during the consultation. Similarly, there is no evidence to suggest that the further restrictions on e-cigarette sponsorship will have an impact on business.
51. **The advertising limit of 20% of broadcasting time:** As set out in paragraph 47, any change to the advertising minutes would require market review and for Ofcom to subsequently update to COSTA and if it were appropriate to reflect the change in advertising minutes as set out in 2018 Directive. No additional costs to businesses are expected as a result of this change and no legislative changes are required. Although we are asking if there is evidence that would justify a review of the advertising minutes for the UK market.

#### Questions on implementation - Advertising

7. The government invites views on how best to implement the requirement to ensure that VSPs comply with the relevant advertising provisions, noting that the Directive encourages the use of co-regulation by Member States to meet its aims, and that there already exists a co-regulatory framework for advertising on linear broadcast and VoD in the UK.

8. The government's preferred approach is not to make legislative change with regards to the change of advertising minutes. Do you agree with this approach?

- a. Yes
- b. No
- c. If no, please explain why

<sup>16</sup> This separate consultation was published on 18 March 2019 and closes on 10 June 2019  
<https://www.gov.uk/government/consultations/further-advertising-restrictions-for-products-high-in-fat-salt-and-sugar>

9. Do you consider that a review of the advertising minutes in the UK market should take place in relation to the liberalisation of scheduling of minutes set out in paragraphs 46-48?

- a. Yes
- b. No
- c. Please provide evidence that supports your view.

#### Questions on business impact - Advertising

6. Would the further prohibitions on alcohol and e-cigarette advertising as referenced in paragraph 45 have an impact on your business?

- a. Yes (please give details)
- b. No
- c. Don't know

### 3.4 Accessibility

52. The 2018 Directive strives to ensure that Member States make certain that media services under their jurisdiction contribute to equality and accessibility with regard to content distribution. The 2010 Directive only called upon Member States to encourage media service providers in their country to ensure that their services are gradually made accessible to people who are deaf, hard of hearing, blind or partially sighted. The updated Directive has strengthened the requirements, regarding accessibility, as follows:

- a. an obligation for Member States to **ensure that linear providers, as well as video on-demand platforms make their services continuously and progressively more accessible to persons with disabilities through proportionate measures** (see Article 7(1))<sup>17</sup>;
- b. **reporting obligations on accessibility** for audiovisual media services providers and for Member States, which will report to the European Commission about the progress they made in the area of accessibility (see Article 7(2));

<sup>17</sup> Recital 23 sets out four main access services, namely subtitles for the deaf and hard of hearing; sign language interpretation; audio description; and spoken subtitles.

- c. an obligation for Member States to encourage media service providers to develop accessibility plans, to be reported to the national regulatory authority (see Article 7(3));
- d. **a single and accessible contact point** to provide information and to receive complaints from viewers regarding accessibility (see Article 7(4)); and
- e. Member States will also ensure that **emergency information**, including public communications and announcements in natural disaster situations, which is broadcast to the public through audiovisual media services, is **provided in an accessible manner**, unless there are exceptional circumstances which do not allow for that (see Article 7(5)).

### **Proposed government approach**

53. For linear television, section 303 of the Communications Act 2003 requires Ofcom to draw up and review from time to time a code in relation to accessibility of television services.<sup>18</sup> The current Code sets 10 year targets for subtitling, audio description and signing as well as further 5 year targets for subtitling, and sets out different requirements for services with a larger or smaller audience share and allows for some exemptions. The provisions in s303, allow Ofcom to set targets for accessibility, whilst taking into account the size of audience and extent of benefit. These targets are progressive, in that the amount a service provides increases each year, and are continuous in that they are revised each year. We therefore consider that these provisions to be sufficient to enable the updated requirements of Article 7 to be met which requires that services continuously and progressively make their services more accessible.

54. The Digital Economy Act 2017 gave additional powers to the Secretary of State to put in place specific accessibility obligations for video on demand platforms which we are planning to implement through secondary legislation, to be supported by a guidance to be issued by Ofcom. This power includes the requirement for Ofcom to conduct a consultation and publish a report on the **accessibility of on-demand programme services (AODPS)**. Ofcom's report<sup>19</sup> recommends a two year interim target of 40% subtitling, 5% audio description and 5% signing to allow time for platform infrastructure establishment and a four year target of 80% subtitling, 10% audio description and 5% signing to allow time for providers to work through any inaccessible archive content. The government is working closely with Ofcom to ensure that the interim targets will align with minimum standards set out by the AVMSD. The government is considering how to take forward the recommendations in Ofcom's report, and will make decisions regarding design and implementation in due

<sup>18</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/97040/Access-service-code-Jan-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/97040/Access-service-code-Jan-2017.pdf)

<sup>19</sup> Ofcom, December 2018, Making on-demand accessible, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/131063/Statement-Making-on-demand-services-accessible.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/131063/Statement-Making-on-demand-services-accessible.pdf) [Retrieved: 4 March 2019]

course. If that does not align with the implementation timelines for 2018 Directive, we will implement the minimum requirements by amending s.368BC of the Communications Act 2003 video-on-demand.

55. **Emergency communication:** At the moment, emergency communication is domestically covered in the Communications Act 2003. Section 336 of the Act sets out that *"the Secretary of State may, at any time, by notice require Ofcom to direct the holders of the Broadcasting Act licences specified in the notice to refrain from including in their licensed services any matter, or description of matter, specified in the notice."* Recital 24 recognises that there may be exceptional cases where it may not be possible to provide emergency communications in a manner which is accessible.
56. As the Communications Act provides that the Secretary of State may issue a notice in relation to emergency communications, our preferred approach would be to ensure that if such a notice were made, it would include a requirement to make the emergency communication accessible, save for exceptional circumstances where it would not be possible.

### **Cost to business**

57. **Video on demand accessibility:** As detailed in paragraph 54, Ofcom's report on the accessibility of on-demand programme services (AODPS) is likely to result in a new set of regulations for video on demand services which will enter into force before AVMSD will be transposed into UK law and will align with minimum standards set out by the 2018 Directive. A full impact assessment is being prepared for the AODPS domestic legislation. This legislation will be based on recommendations from Ofcom and feedback from industry and will contain details on the breakdown of the costs to business.
58. **Reporting obligations:** Based on the European Commission's impact assessment figures,<sup>20</sup> the estimated total cost to business (UK VoD service providers and broadcasters) from compiling and reporting compliance data to the national regulator over the 10 year appraisal period will be £119,050. However, the UK VOD services and broadcasters are already subject to reporting obligations, therefore the new requirement is not expected to increase administrative burdens above the current level. To the extent that accessibility for ODPS providers creates new reporting obligations, the costs will be assessed as part of the part of the AODPS process noted in the paragraph above.

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<https://ec.europa.eu/digital-single-market/en/news/impact-assessment-accompanying-proposal-updated-audiovisual-media-services-directive>, Table A1.5 [retrieved on 6 January 2019]

59. **Emergency communication:** As noted above, Article 7(1) requires that accessibility services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures. Therefore if a service is required to provide accessibility services, they would also be required to do so in the event of an emergency communication. We therefore do not expect this provision would generate any extra costs for businesses.

#### Questions on implementation - Accessibility

10. The government's preferred approach is to consider the recommendations set out in Ofcom's report on accessibility for on-demand regarding the design and implementation of accessibility for on-demand; in the event that time-scales do not align with the implementation deadline of 19 September 2020 that copy-out is used to update the wording s368BC for video-on-demand of the Communications Act 2003. Do you agree with this approach?

- a. Yes
- b. No
- c. If no, please explain why

11. Do you agree with the government's preferred approach to ensure that the accessibility of emergency communications is made through existing provisions in Section 336 of the Communications Act?

- a. Yes
- b. No
- c. If no, please explain why

**Questions on business impact - Accessibility**

7. Would reporting obligations, set out in Article 7(2) of the 2018 Directive, occur any administrative costs to your business? If so, can you quantify them [answers must be provided as total cost in pounds sterling]?

8. Would the development of accessibility action plans in respect of continuously and progressively making services more accessible to persons with disabilities, as set out in Article 7(3), occur any administrative costs to your business?

9. Would the new requirement on the accessibility of emergency communication have any impact on your business?

- a. Yes (please give details)
- b. No
- c. Don't know

**3.5 European works**

60. The 2018 Directive has two broad aims: to strengthen the competitiveness of the European audiovisual industry, and at the same time to promote cultural diversity and heritage in Europe. To fulfil this aim, the 2018 Directive contains a number of measures which are designed to strengthen requirements to regulating the promotion and distribution of European works.<sup>21</sup> It does so through quotas, through a prominence criteria for online catalogues and through optional country of destination levies.

61. **Video on demand European works quotas:** Under the 2010 Directive and as implemented in the Communications Act 2003,<sup>22</sup> video on demand services must promote, where practicable and by appropriate means, production of and access to European works. The amending 2018 Directive updates Article 13(1) to require that video on demand service providers:

- a. **reserve a minimum 30% share of European works** (ie relevant films and TV programmes produced in Member States and the European Convention on Transfrontier Television (ECTT) countries) **in their catalogues.** The European Commission is required to produce guidelines regarding the

<sup>21</sup> European Works are defined in Article 1(n) and includes works that originate from EU Member States as well as countries who have signed and ratified the Council of Europe's Convention on Transfrontier Television. The UK's exit from the EU does not affect the European Works status, which is confirmed by the Commission in the exit preparedness notices. [https://ec.europa.eu/info/sites/info/files/file\\_import/audiovisual\\_media\\_services\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/audiovisual_media_services_en.pdf) (retrieved 31 March 2019)

<sup>22</sup> S 368 C of [Communications Act 2003](#) [retrieved on 7 January 2019]

calculation of the share of European Works, which we anticipate will be published before the transposition deadline of 19 September 2019; and

- b. **ensure prominence of these works.** While prominence is not defined, Recital 35 of the 2018 Directive provides some examples about how that could be achieved in practice. This could cover a wide range of practices, for example, the various means of ensuring prominence may include providing for a separate section dedicated to European works that is accessible from the service's homepage; giving users the possibility to search for European works in the search tool; or using European works in campaigns of the service.

62. New Article 13(6) gives regard to new market entrants and small players in relation to the European Works quota and prominence requirement. The new rules do not apply to companies with a low turnover or low audiences. It also allows Member States to waive the requirements in cases where – given the nature or theme of the on-demand audiovisual media services – they would be impracticable or unjustified.

**63. Optional 'country of destination' levies for linear and on-demand services:**

Article 13(2) - (3) provides that Member States may **impose financial contributions (direct investments or levies payable to a fund) upon media service providers, including those established in a different Member State but that are targeting their national audiences.** This is an optional voluntary measure for Member States. Some Member States have a national content funding scheme which operates where providers either make a direct financial contribution to a fund, or in some cases commit to direct content investment. Some Member States, considered that the amount of activity in a national market justified the extension of that scheme to all available providers, regardless of the country of origin, and raised concerns that in markets where national levies exist, all parties in the market should have the same obligations. As a result, the 2018 Directive included this as an optional measure.

**Proposed government approach**

64. **Video on demand European works quota:** According to Ofcom, the majority of UK-based VoD services already meet the 30% quota for European works<sup>23</sup>; however this requirement is not set out in law, which currently only requires that, where practicable, providers should promote European works. We will need to amend UK legislation accordingly. The calculation of the quota could be based on more than one approach; for example it could be calculated by minutes or by titles. It is

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<sup>23</sup> Source Ofcom data return to the Commission for European Works. This return was based on number of hours, however Ofcom collects data based on both number of titles and number of hours. Commission is yet to publish guidance on the method to calculate European Works.

anticipated that the European Commission will publish guidance to assist Member States with the calculation of European Works prior to the implementation deadline.

65. **European works prominence in catalogues:** We recommend amending provision in section 368C(3) (368Q(3) for Welsh Authority) of the Communications Act 2003, to bring in the 30% quota and by inserting a duty for VoD providers to make European Works prominent. We propose that Ofcom be given a duty to produce guidance based on the criteria in paragraph 22(b) on how prominence may be achieved, noting that, under the Digital Economy Act 2017, they already have to report on the prominence of linear and video-on-demand public service content. Although the BBC greatly exceeds the quota, the government will consider any necessary amendments to the regulatory framework of the BBC.
66. It is worth noting that Article 13 places an obligation to report every two years on both the quota and prominence of European Works, and we will reflect this in our amendments to the relevant Communications Act provisions.
67. Article 13(6) allows for exemptions from this quota and prominence obligation for services with low turnover or low audience. It also allows for an exemption when the nature of the service means it would be impracticable or unjustified. Article 13(7) requires the European Commission to produce guidance with regarding low turnover and low audience, which we anticipate will be published prior to the implementation date of 19 September 2020. We propose to amend the provision in section 368C(3) (368Q(3) for Welsh Authority) of the Communications Act 2003, which will allow for exemptions to be made based on these criteria.
68. **Optional Country of Destination levies:** The revised AVMSD rules will allow Member States to impose levies for the purpose of ensuring adequate levels of investment in European Works, on incoming audio visual services from other Member States. This amendment is aimed primarily at EU Member States which have existing national levy schemes. The UK does not have such a scheme and is not planning to introduce such a scheme at this time, and therefore would not require a legislative provision. Our proposed approach is to ask if there is evidence that the government should consider in relation to national content funding.

### **Cost to business**

69. **Video on demand European works quota:** Under the 2010 Directive, video on demand services are already encouraged to promote European works. Under the amending Directive, they are now subject to more specific obligations; they have to ensure that **at least 30% share of their content is European works and they are required to give good visibility (prominence) to European content.**

70. The European Commission's Impact Assessment (IA) on updating the AVMSD,<sup>24</sup> which at the time was assessing a 20% EW minimum, asserted the following: "The cost of complying with the 20% share is deemed to be limited as on-demand services business models are based on revenue sharing" In other words, the model used by the Commission in their IA, indicated video on demand platforms would do not incur **any new costs** related to the acquisition of content upfront as they pay a share of the revenue generated to right holders. Therefore, an estimate of the cost to business is not known due to uncertainties on how the requirement will affect the revenue sharing business model. Whilst we know that not all businesses use this model and some do pay upfront costs, granular data regarding the distinction between upfront spend and revenue share is not available.
71. That said, it is likely that any costs to business of VoD service providers in the UK are will be low. There are relatively few unexempted (based on the type of content) UK VoD service providers that don't meet the quota - 35 have been identified to fall under UK jurisdiction. In 2014, the largest UK-based unexempted providers were all close to the 30% minimum, and it is likely that any costs would be relatively small to reach this requirement. This assumption is tested in this consultation, and we are inviting stakeholders to provide information that will inform our final impact assessment.
72. The European Commission's IA also states that "given the fact that small operators are normally exempted from the rules with the highest economic impact, the effect of the AVMSD on SMEs is deemed to be small. The preferred option foresees that Member States would be required to waive the requirements on the promotion of European works for low audience and thematic on-demand service providers or for small and micro enterprises." For these reasons, we expect the costs on small and micro businesses to be small, but we are inviting further evidence and stakeholders' views to inform our final impact assessment.
73. **Optional Country of Destination levies:** As per detailed in paragraph 68, the UK is not intending to implement the optional Country of Destination Levies at this time. Therefore, this recommended option imposes no additional costs to business or regulators. However, we acknowledge that the imposition of Country of Destination levies will potentially generate costs for UK-based businesses targeting EU territories. We are using this consultation to check the potential impact on UK businesses targeting the EU. We would also welcome views about whether this approach should be considered by the UK in the future.

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<https://ec.europa.eu/digital-single-market/en/news/impact-assessment-accompanying-proposal-updated-audiovisual-media-services-directive>, p. 30 [Retrieved on 4 January 2019]

### Questions on implementation - European Works

12. We propose that government amends the Communications Act 2003 to ensure that Ofcom produces a report every two years on the European Works quotas and prominence obligations, via copy-out. Do you agree?

- a. Yes
- b. No
- c. If no, please explain why

13. We propose that government amends the Communications Act 2003 to ensure that Ofcom has to produce guidance on prominence of European Works in video-on-demand catalogues. Do you agree?

- a. Yes
- b. No
- c. If no, please explain why

14. Are there core framework elements that should be included in this requirement to produce guidance?

15. Noting that prominence in on-line catalogues could encompass a wide range of practices (eg separate section, dedicated search, information on home page), please indicate which would consider would be appropriate:

- a. Separate section
- b. Dedicated search
- c. Information on home page
- d. Other (please specify)

16. What would be your preferred way of introducing a new prominence requirement for European works content on video-on-demand catalogues?

17. Noting that the Commission is due to publish guidance in relation to low turnover and low audience, do you agree with the proposed approach that we allow for exemptions for quota and prominence obligations by amendment to section 368C(3) and 368Q (3) for the Welsh Authority of the Communications Act 2003

- a. Yes
- b. No
- c. If no, please explain why

18. Do you consider that the current level of funding for European Works in the UK is sufficient? Please provide evidence.

19. The government currently has no plans to introduce a levy, however, do you think a levy scheme to fund European Works could be an effective way to provide funding? Please explain why.

20. Are there alternative methods of funding European Works that you wish to provide views on?

**Questions on business impact - European Works**

10. For on-demand providers, how much of your catalogue currently consists of European works (based on minutage)?

11. For on-demand providers, how much of your catalogue currently consists of European works (based on titles)?

12. Will meeting the new 30% requirement of European works in on-demand catalogues financially impact your business?

- a. Yes (please give details)
- b. No
- c. Don't know

13. Will making European Works prominent in you catalogues financially impact on your business?

- a. Yes (please give details)
- b. No
- c. Don't know

14. Noting that the European Commission is required by Article 13 to publish guidance on the definition of low audience and low turnover. Do you anticipate that your on-demand service to be exempt from the obligations on the basis of a low audience or low turnover definition?

- a. Yes (please give details on why you think this should apply to your service)
- b. No
- c. Don't know

15. Do you expect the new reporting obligations mentioned in paragraph 66 to generate any additional costs to your business?

- a. Yes (please give details)
- b. No
- c. Don't know

16. How much revenue do you currently generate from EU countries if transmitting in the EU? Please give your answer to the nearest £1000.

17. Which European Union countries do you generate revenue from?

### 3.6 Video Sharing Platforms

74. The 2018 Directive has extended the scope of the 2010 Directive also to cover video-sharing platforms (VSPs). As per article 1(b), a VSP is defined as a commercial service addressed to the public:
- a. where the **principal purpose** of the service or of a dissociable section thereof or **an essential functionality** of such service is devoted to **providing programmes and/or user-generated videos to the general public, in order to inform, entertain or educate**;
  - b. which is made available by **electronic communications networks**; and
  - c. where the content is **organised in a way determined by the provider of the service**, including by automatic means or algorithms in particular by displaying, tagging and sequencing.
75. This means that services such as video-sharing services, audiovisual content shared on social media sites where video is ‘an essential functionality’, live-streaming audiovisual services such as pornography websites, will likely fall under the scope of the revised Directive.
76. The 2018 Directive introduces a set of new obligations pertaining to VSPs, requiring Member States to ensure that these platforms put in place measures to:
- a. **protect minors from harmful content** (which may impair their physical, mental or moral development); and
  - b. **protect the general public from incitement to violence or hatred and content constituting criminal offences** (public provocation to commit terrorist offences, child pornography and racism or xenophobia).
77. In addition, VSPs will also have to respect certain obligations around **commercial communications** - in that basic standards around advertising on their platforms are introduced aligning with the requirements of Article 9 (1) of the 2018 Directive, with which other audiovisual media service providers have to comply with. For example, rules around the transparency of advertising, and the consumer protection rules around advertising of alcohol, tobacco, medicine and foods high in fat, salt and sodium, and sugar. VSPs will also have to take appropriate measures to help ensure that advertising contained within content uploaded by users complies with these rules.
78. The measures listed in the 2018 Directive that Member States will need to ensure VSPs have in place are achievable within the framework of the e-Commerce

Directive.<sup>25</sup> They include **flagging and reporting mechanisms, age verification systems, systems to rate the content by the uploaders or users, and parental control systems**, as well as clarification in the terms and conditions of the platform of **a prohibition for users to share the content citizens should be protected from such as hate-speech** (see Article 28a(3)). It is at each Member State's discretion what type of content and services these different measures should apply to, to allow for an approach which is proportionate to the size of VSPs, potential harm and type of user at risk.

79. The National Regulatory Authority appointed to regulate VSPs would be expected to apply the jurisdictional criteria set out in 2018 Directive, and determine the video-service providers within its scope. Services within their jurisdiction would then be regulated on an EU wide basis as a result of the "Country of Origin" principle of the single market. The criteria for determining the Member State with jurisdiction over a VSP under the Country of Origin principle is as follows:

- a. firstly, if a VSP is already **established in a Member State as an 'information society service' under the E-Commerce Directive** it will also be under the jurisdiction of that Member State in relation to the 2018 Directive;
- b. secondly, if the VSP is not already established in a Member State under the E-Commerce Directive, then it falls under the jurisdiction of the Member State **where the parent undertaking is based** (ie from where one or more subsidiary is controlled);
- c. thirdly, if there is no parent undertaking, the VSP will fall under the jurisdiction of **where any subsidiary is based**; and
- d. finally, if there are no subsidiaries, jurisdiction will be determined by where **any undertaking by the group is established**.

80. Member States are able to adopt stricter rules than proposed by the 2018 Directive for video-sharing platforms under their jurisdiction. Any measures under the new rules will need to remain compatible with the liability exemption for digital intermediaries in the e-Commerce Directive.

### **Proposed government approach**

81. The government's preferred approach to implementing the requirements in 2018 Directive pertaining to VSPs, excluding those relating to commercial communications,

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<sup>25</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

is through the regulatory framework outlined in the Online Harms White Paper, published jointly by the Department for Digital, Culture, Media and Sport and the Home Office on 8 April.<sup>26</sup> This White Paper sets out the definitive steps we intend to take to tackle the full range of online harms through future legislation. As the 2018 Directive is based on minimum harmonisation rules, the UK will have to ensure any regulatory framework covering VSPs meets the minimum requirements laid out in the 2018 Directive.

82. Should it become apparent that the necessary legislation for giving effect to the framework outlined in the White Paper will not be passed in time to meet the implementation deadline for 2018 Directive (September 2020), the UK plans to place the VSP requirements into UK law through an alternative mechanism and appoint Ofcom as the National Regulatory Authority as an interim measure.

*Scope of the Online Harms White Paper*

83. Through the framework outlined in the White Paper, companies will be held to account for tackling a comprehensive set of online harms. These range from illegal activity and content, such as child sexual exploitation, terrorist use of the internet and encouragement of suicide, to behaviours that may not be illegal but are nonetheless highly damaging to individuals or threaten our way of life in the UK, such as cyberbullying, disinformation and extremist content. This range of harms would cover the principles outlined in the 2018 Directive to protect minors from harmful content, and the general public from content that incites violence or hate and which constitutes a criminal offence.
84. Bodies caught in scope of this regulatory framework will include any organisation that allows users to share or discover user-generated content or interact with each other online. These services are offered by a very wide range of companies of all sizes, including social media platforms, video sharing platforms, file hosting sites, public discussion forums, messaging services, and search engines, for example. The scope of the regulatory framework is a point of consultation in the White Paper.
85. In practice, therefore, the regulatory framework outlined in the White Paper seeks to address a wider range of harmful content across a broader range of mediums and platforms than prescribed by the 2018 Directive. Implementing VSP provisions in this way would, therefore, facilitate the development of a single and coherent legislative framework for online harms from the outset.

*Measures outlined in the Online Harms White Paper and how this relates to the 2018 Directive*

86. As outlined in the White Paper, the underlying legislative basis for the regulatory framework will be to establish in law a new statutory duty of care towards users that will be overseen by an independent regulator. In order to fulfill their duty of care,

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<sup>26</sup> <https://www.gov.uk/government/consultations/online-harms-white-paper>

companies in scope will, where relevant, be required to build an understanding of the risks associated with their services, take reasonable steps to guard against harm to their users, and meet transparency requirements.

87. The independent regulator will have powers to issue codes of practice that set out in detail the steps that companies should take to fulfill their duty of care. This might include, for example, measures to ensure that processes for reporting and moderating content and activity are transparent and effective and that age verification or parental control mechanisms are in place. The regulator will also assess whether companies have fulfilled their duty of care by assessing compliance with the companies' own relevant terms and conditions.
88. The proposed framework, therefore, takes a principles based approach in aiming to ensure that companies have the right processes and measures in place to protect their users from the proscribed harms. The independent regulator will then assess whether the necessary steps have been taken to protect users. This approach, and the potential areas to be included in codes of practice put forward in the White Paper, align with the approach outlined in the 2018 Directive. Moreover, under the framework it is likely that the UK will prescribe more stringent and prescriptive measures in relation to certain harms, particularly terrorist use of the internet and child sexual abuse and exploitation, thereby going beyond the minimum requirements of the Directive.

*Enforcement and redress outlined in the Online Harms White Paper and how this relates to the 2018 Directive*

89. It is a matter for individual Member States to decide what powers and sanctions are appropriate and required by the regulator, in order to ensure that it meets its obligations under the 2018 Directive. The White Paper outlines a number of potential enforcement mechanisms on which we are consulting. These include:
- a. Issuing civil fines for proven failures in clearly defined circumstances.
  - b. Serving a notice to a company that it is alleged to have breached standards, and setting a timeframe to respond with an action plan to rectify the issue.
  - c. Requiring additional information from the company regarding the alleged breach.
  - d. Publishing public notices about the proven failure of the company to comply with standards.
90. In the most extreme circumstances, we are also considering potential powers that, as a last resort, would allow the regulator to disrupt the business activities of platforms, block websites or apps or pursue the liability of individual senior managers.
91. A key element of the regulator's approach will be the principle of proportionality. The regulator will be required to assess companies according to their size and resources.

The regulator will also take a risk-based approach, with its initial focus being on those companies whose services pose the biggest risk of harm to users, based on factors such as the scale of the service, characteristics of its user base or the known prevalence of harms.

92. Transparency is a crucial element of the regulatory model to ensure the regulator has appropriate oversight and can take action where necessary. The White Paper sets out in detail what information a new regulator might gather from companies in scope. This includes, for example, information on the enforcement of terms and conditions, processes for managing illegal content, and proactive content moderation.
93. Finally, while we do not expect the regulator to adjudicate on individual complaints, we are consulting on potential methods for individual users to have redress against decisions made by companies in scope, including a possible system of 'super complaints' to the regulator. Such a system allowing the impartial settlement of disputes between users and VSPs is also required under the 2018 Directive.
94. A detailed public consultation is being run separately on the proposals set out in the White Paper which are summarised above. This consultation opened on 8 April and closes on 1 July and can be accessed here: <https://www.gov.uk/government/consultations/online-harms-white-paper>. We, therefore, kindly invite respondents to this consultation to consider responding to the Online Harms White Paper Consultation.

### **Business Impact**

95. Given that VSPs have not been in scope of the 2018 Directive previously, new costs to business are expected. They include:
  - i. Initial familiarisation costs to business to understand new regulations.
  - ii. Transition costs of adopting new mechanisms to adhere to new regulations.
  - iii. Ongoing monitoring costs to ensure a VSP is in compliance with regulations.
  - iv. Potential fees or reporting costs to a regulatory body.
96. The number of VSPs potentially subject to UK regulation is unknown at this stage, making it impossible to estimate the cumulative cost to industry. This is because of a lack of clarity around the meaning of the definition used in the Directive and which services this would capture, and uncertainty around which jurisdiction certain platforms would fall under. The European Commission is issuing further guidance on the definition of VSPs by December 2019, and we hope better to understand which platforms might fall under UK jurisdiction through the AVMSD consultation and our ongoing analysis. As part of the government's work following publication of the Online Harms White Paper, further work is being done to assess the impact of the regulatory framework on industry.

**Costs to regulator**

97. VSPs are not currently regulated in the UK by any regulatory body. There are several options as to who the responsible regulatory authority could be, in terms of either extending the powers of an existing regulator, such as Ofcom, or establishing a new regulatory body, as outlined in the Online Harms White Paper. As part of the government's work following publication of the White Paper, further work is being done to assess the potential costs to the public sector of implementing a new regulatory framework and models for funding.

**Monitoring system**

98. The European Commission Impact Assessment estimated that if the monitoring of VSPs is done via a complaint-based mechanism, the related administrative costs for all EU regulators have been estimated at EUR 600,000.<sup>27</sup> Making the assumption that the UK proportion of total EU gross national income (GNI) is 15.5% and applying this to the EUR 600,000 figure, the total cost over the 10-year appraisal period to the regulator would be approximately £380,000. However, the final figure is likely to be significantly different as we do not expect the number of VSPs to be proportionally distributed according to each Member State's GNI, and we do not yet know the number of VSPs that would be subject to UK regulation.

**Familiarisation costs**

99. It has not been possible to estimate the costs to VSPs due to evidence gaps in the number that fall under the UK's jurisdiction and guidance from the European Commission on the scope of which VSPs will need to comply to AVMSD. These costs are expected to be monetised in the final Impact Assessment for the Online Harms White Paper when the required evidence is available.

**Questions on implementation - Video Sharing Platforms**

21. Do you agree with the proposed approach of implementing the provisions pertaining to VSPs in the 2018 Directive through the regulatory framework outlined in the Online Harms White Paper?

- a. Yes
- b. No
- c. Don't know

<sup>27</sup><https://ec.europa.eu/digital-single-market/en/news/impact-assessment-accompanying-proposal-updated-audiovisual-media-services-directive>, p.20 [Retrieved on 22 November 2018]

22. If not, please explain why you deem this approach to be deficient and what alternative approach you would advocate.

23. Do you agree with the approach set out in paragraph 82 to appoint Ofcom as the National Regulatory Authority as an interim measure if required?

- a. Yes
- b. No
- c. If no, please explain why

24. Which VSPs, if any, do you expect would fall under the UK's jurisdiction under the Country of Origin principle? Please explain your answer.

Please refer to the Online Harms White Paper Consultation for other questions related to the implementation of 2018 Directive, including:

- the scope of the proposed regulatory framework and measures;
- the appointment of an independent regulator; and
- the funding and enforcement powers of said regulator.

### **3.7 Signal integrity**

100. The 2018 Directive introduces new measures to ensure (Article 7b), with an obligation on Member States to ensure that appropriate and proportionate measures to ensure that audiovisual media services provided by media service providers are not, without the explicit consent of those providers, overlaid for commercial purposes or modified. Recital 26 gives further detail to aid interpretation indicating that this does not apply to legitimate overlays such as subtitles, or navigation menus. The issue set out in Article 7b, is not an issue that we are aware has resulted in problems for providers in the UK, however there is still at theoretical risk to service providers of their content being overlaid and the government will use this consultation to determine the extent of any appropriate and proportionate measures that are needed.

#### **Proposed government approach**

101. We do not have a preferred approach for implementation and would welcome views. We would be particularly interested in the views of broadcasters and rights holders on this issue.

### **Business impact**

102. We are using this consultation to gather further evidence around the potential impact of possible new in this area on industry.

#### **Questions on implementation - Signal Integrity**

25. What would be your preferred way of introducing a new requirement for ensuring that appropriate and proportionate measures to ensure that audiovisual media services provided by media service providers are not, without the explicit consent of those providers, overlaid for commercial purposes or modified?

#### **Questions on business impact - Signal Integrity**

18. Do you expect the new provision, set out in Article 7b, will generate any impact on your media service?
- a. Yes (please give details)
  - b. No
  - c. Don't know

### **3.8 Media literacy**

103. Article 33a of the 2018 Directive states that “Member States shall promote and take measures for the development of media literacy skills”. Recital 59 of the 2018 Directive sets out that media literacy “refers to skills, knowledge and understanding that allow citizens to use media effectively and safely.” It also says that media literacy should exceed learning about tools and technologies, and should aim “to equip citizens with the critical thinking skills required to exercise judgment, analyse complex realities and recognise the difference between opinion and fact.” The same Recital emphasises the importance of cooperation between media service providers, video-sharing platform providers and relevant stakeholders to “promote the development of media literacy in all sections of society, for citizens of all ages, and for all media and that progress in that regard is followed closely.”
104. The government is committed to ensuring that the UK public have the skills they need to fully assess the information they consume in the mainstream media and online. The Online Harms White Paper states that the government will develop an

online media literacy strategy. The media literacy field is a broad one, and we will therefore consult widely, possibly through a new taskforce. The first step will be a comprehensive mapping exercise to identify what actions are already underway, and to determine the objectives of an online media literacy strategy.

105. Ofcom has a duty under section 11 of the Communications Act 2003 to promote media literacy, which at present it does largely through its research output. As part of the strategy, DCMS will continue to work with Ofcom and stakeholders from the mainstream media, tech companies, regulators, academics and voluntary organisations to consider how to strengthen media literacy. This includes supporting and promoting media and digital literacy initiatives that give individuals the critical thinking skills to distinguish trustworthy and untrustworthy sources of news.

#### Questions on implementation - Media Literacy

26. In addition to the measures described in the section on Media Literacy, are there any other legislative and non-legislative measures government should be taking to fulfill the obligations of promoting the development of media literacy skills set out in Article 33a(1)?

## 4. Optional Amendments

### 4.1 Optional provision to require disclosure of information about a media service provider's company ownership structure

106. In the 2018 Directive a 'media service provider' means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised. Article 5 in the current AVMSD requires that the basic information (name, geographical address, email or website, etc.) of the audiovisual media service provider under the jurisdiction of a Member State have is made accessible to the general public.

107. The 2018 Directive extends the scope of this Article by including an option (under paragraph 2) for Member States to take legislative measures providing that media service providers under their jurisdiction **make information concerning their ownership structure accessible, including the beneficial owners.**

108. The UK has a number of measures in place which ensure a certain amount of transparency in company ownership within Part 21A of the Companies Act 2006, which requires companies to identify and keep a register of persons with significant control over them. Significant control for this purpose is defined as anyone with an interest of 25% shareholding or more.

109. There are a number of policy reasons where it may be considered in the public interest to ensure that media service providers provide a greater degree of transparency than other companies, and Recital 16 of the 2018 Directive refers to the nature of audiovisual media services, and especially the impact they have on the way people form opinions, as giving rise to a legitimate interest in knowing who is responsible for the content of those services.

### **Proposed government approach**

110. The government is using this consultation to seek views on whether further transparency is required.

### **Business impact**

111. We are using this consultation to gather further evidence around the potential impact the new measures might have for the industry.

#### **Questions on implementation - Transparency of ownership of audiovisual media Service providers**

27. Are you in favour of introducing additional measures which would require audiovisual media services providers under the UK jurisdiction to make information concerning their ownership structure, including the beneficial owners, accessible?

- a. Yes (please explain why)
- b. No

#### **Questions on business impact - Transparency of ownership of media Service providers**

19. Do you expect such a requirement would generate any impact on your media service?

- a. Yes (please give details)

- b. No  
c. Don't know

## 5. Economic impact

112. We have conducted a De Minimis Assessment<sup>28</sup> which sets out the **costs to business directly from the revised or new AVMSD provisions**. Information relating to the cost to business with implementing certain articles are included in the main body of this document.

113. We anticipate the costs to business directly from the Directive to be small. This is because the UK is already compliant with some of the provisions; has no major video-sharing platforms in its jurisdiction; applies the principle of proportionality which minimises financial burden on smaller audiovisual services; and, due to the government's ongoing and upcoming workstreams which will precede the implementation of the AVMSD (e.g. VoD accessibility regulation), the UK will ensure that services are compliant with minimum AVMSD standards by the time the new/revised measures are transposed into national law. However, there are some measures which could incur more significant costs on business but - due to information gaps or other workstreams making an assessment on them - are yet to be monetised, and we are hoping to fill those gaps by this consultation.

114. **Annual costs (ongoing costs):** The table below summarises where regulatory changes could increase costs to business

Cost to business (10 year appraisal)	Transition cost (£)
1 Advertising minutage (linear broadcasting)	<b>No impact</b> - Current regulations already gold plated above AVMSD minimum.
2. Accessibility of emergency communications (linear broadcasting)	<b>No impact</b> - unlikely this will incur any cost to businesses because infrastructure and processes are already in place to make their services accessible. This will be sense-checked further during the consultation.

<sup>28</sup> A De Minimis Assessment is undertaken for any new measures where the net impact on business is estimated to be below £5 million annually.

3. European Works - Cost to VoD service providers changing content to meet 30% European Works requirement.	<b>Not monetised</b> - It has not been possible to monetise the impact, however the European Commission IA assumes that costs will be low because VoD platforms do not incur any costs related to the acquisition of content upfront. They pay a share of the revenue generated to right holders.
4. Depiction of children consuming alcohol in advertisements	<b>No impact</b> - Unlikely that this occurs on VoD advertisements.
5. VoD accessibility	<b>Not monetised</b> - DCMS will produce an Impact Assessment for the equivalent regulations coming into effect in 2020 based on data from Ofcom and industry.
6. VoD levy scheme	<b>No impact</b> - Preferred option is to not adopt a levy scheme within the UK. It is not possible to assess at this stage what the impact will be of the EU facing aspects of UK businesses, as we do not have foresight of which countries plan to implement.
7. VoD content descriptors	<b>Not monetised</b> - We are awaiting further evidence in order to monetise the impact of video on demand services introducing a system describing the potentially harmful nature of content of an audiovisual media service.
8. Linear broadcasting levy scheme	<b>No impact</b> - Preferred option is to not adopt a levy scheme within the UK. It is not possible to assess at this stage what the impact will be of the EU facing aspects of UK businesses, as we do not have foresight of which countries plan to implement.
9. Familiarisation costs (costs to Broadcasters and VoD platforms to read and circulate relevant changes of AVMSD)	<b>Costs to broadcasters - £0.95m</b> <b>Cost to VoD platforms - £0.48m</b>
<b>Total cost to business</b>	<b>Familiarisation costs - £1.4m</b>

	<p><b>EANDCB<sup>29</sup> - £0.18m</b></p> <p><b>Other costs which were not monetised -</b>          Excluding familiarisation costs to VoD platforms and broadcasters, the majority of the direct costs to business are anticipated to be small or out of scope of this impact assessment.</p>
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115. **Net Impact:** It has not been possible to put a monetary figure on the net costs and benefits of recommended options.

- a. **Linear television:** There are no anticipated costs to business in regard to changes to linear television regulations, however this will be sense-checked after analysing the responses to this consultation.
- b. **Video on demand:** The costs to video on demand service providers has not been monetised. Ofcom are due to release a report providing further details on the new accessibility requirements for video on demand platforms. This consultation aims to fill any evidence gaps on the cost to business, thus enabling us to monetise the impact of new/ amended provisions on video on demand services.
- c. **Video-Sharing Platforms.** The impact of changes for VSPs will be assessed as part of the Online Harms White Paper.

116. Questions relating to the costs and benefits associated with implementing certain articles are included in the main body of this document, where those Articles have warranted specific discussion. In addition, we are interested to hear your views on the following:

117. After considering any comments we receive, and depending on how we decide to implement the proposals, our assessment of the impacts will be finalised and will accompany the draft legislation being put forward for Ministerial approval.

**Questions on cost to business - Economic Impact**

20. What economic impact would new/amended provisions made by the 2018 Directive have on your business? How would the provisions lead to such impact?

<sup>29</sup> Equivalent annual net direct cost to business

21. How would your business familiarise itself with the implications of these changes? Would you use in-house legal support, seek external legal advice or neither?

22. How much time (in hours) would it take for you/your staff/trade mark owners to familiarise yourself with the legal implications of the changes required by the Directive? How much would the use of staff time for this purpose cost your business?

23. Are there any costs to you/your business beyond staff time? For example, preparation of guidance or amending existing licence agreements. Please outline what costs these are, and the financial cost to your business.

## 6. Next steps

118. Once the consultation period has closed, the government will consider the comments received and issue a response document by Autumn 2019.
119. In line with government policy, the intention is that the required changes to the law come into effect on time, by the deadline for implementing the Directive on 19 September 2020.

## 7. Responding to this consultation

120. When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
121. Please respond to this consultation by 22 August 2019, using an online survey available at [https://dcms.eu.qualtrics.com/jfe/form/SV\\_4PFidsbYPr8d84R](https://dcms.eu.qualtrics.com/jfe/form/SV_4PFidsbYPr8d84R).

## 8. Consultation principles

122. This consultation is being run in line with the government's consultation principles.<sup>30</sup> These principles give clear guidance to government departments on conducting public consultations. If you have any comments about the consultation process (as opposed to comments about the issues we are consulting on), including

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<sup>30</sup> [www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf) [Retrieved on 4 January 2019]

if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please respond to the address below (see Comments and Complaints).

## 9. Confidentiality and data protection

123. All responses and personal data will be processed in compliance with the Data Protection Act 2018 and the General Data Protection Regulation. More information on disclosure, confidentiality and data protection is set out in the Privacy Notice at Annex E.

## 10. Comments and complaints

124. Any comments or complaints about the way this consultation has been conducted should be sent to:

Kathleen Stewart  
Head of International Broadcasting  
100 Parliament Street  
London SW1A 2BQ

Email: [avms-consultation@culture.gov.uk](mailto:avms-consultation@culture.gov.uk)  
Telephone: 020 7211 2161

## Annexes

**Annex A:** Consultation questions

**Annex B:** Questions on Business impact

**Annex C:** [2018 AVMSD Directive \(20018/1808/EU\)](#) published alongside this document

**Annex D:** Unofficial consolidation showing amendments made by the 2018 AVMS Directive (2018/1808/EU) to the 2010 AVMS Directive (2010/13/EU) published alongside this document

**Annex E:** Privacy Notice

## Annex A: Questions on Implementation

### Questions on implementation - Protection of Minors

1. Do you agree with our proposed approach to amend s368E of the Communications Act 2003 to align the protection of minor requirements for linear and on-demand?

- a. Yes
- b. No
- c. If No, please give details.

2. Noting that Recital 19 envisages that a system of that viewers should be provided with sufficient information regarding the nature of the content, should be equally applicable to both video-on-demand and linear services. Do you consider that Ofcom updating the relevant sections of the Broadcasting Code would be enough to sufficiently meet this requirement?

- a. Yes
- b. No
- c. If no, please give details

3. If no, what would be your preferred way of introducing a new requirement for ensuring that viewers have sufficient information about the nature of content on video-on-demand catalogues? Could you indicate from the following:

- a. Using acoustic warning
- b. Content descriptors
- c. Visual symbols
- d. Age-ratings
- e. Other means (please specify)

4. Should the measures above use standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand?

5. What would the benefits/obstacles be for introducing a standardised system to such content?

6. Should the government consider a self or co-regulatory model for provision of sufficient information to protect minors?

**Questions on implementation - Advertising**

7. The government invites views on how best to implement the requirement to ensure that VSPs comply with the relevant advertising provisions, noting that the Directive encourages the use of co-regulation by Member States to meet its aims, and that there already exists a co-regulatory framework for advertising on linear broadcast and VoD in the UK.

8. The government's preferred approach is not to make legislative change with regard to the change of advertising minutes. Do you agree with this approach?

- a. Yes
- b. No
- c. If no, please explain why

9. Do you consider that a review of the advertising minutes in the UK market should take place in relation to the liberalisation of scheduling of minutes set out in paragraphs 46-48?

- a. Yes
- b. No
- c. Please provide evidence that supports your view.

### Questions on implementation - Accessibility

10. The government's preferred approach is to consider the recommendations set out in Ofcom's report on accessibility for on-demand regarding the design and implementation of accessibility for on-demand; in the event that time-scales do not align with the implementation deadline of 19 September 2020 that copy-out is used to update the wording s368BC for video-on-demand of the Communications Act 2003. Do you agree with this approach?

- a. Yes
- b. No
- c. If no, please explain why

11. Do you agree with the government's preferred approach to ensure that the accessibility of emergency communications is made through existing provisions in Section 336 of the Communications Act?

- a. Yes
- b. No
- c. If no, please explain why

### Questions on implementation - European Works

12. We propose that government amends the Communications Act 2003 to ensure that Ofcom produces a report every two years on the European Works quotas and prominence obligations, via copy-out. Do you agree?

- a. Yes
- b. No
- c. If no, please explain why

13. We propose that government amends the Communications Act 2003 to ensure that Ofcom has to produce guidance on prominence of European Works in video-on-demand catalogues. Do you agree?

- a. Yes
- b. No
- c. If no, please explain why

14. Are there core framework elements that should be included in this requirement to produce guidance?

15. Noting that prominence in on-line catalogues could encompass a wide

range of practices (e.g separate section, dedicated search, information on home page), please indicate which would consider would be appropriate:

- a. Separate section
- b. Dedicated search
- c. Information on home page
- d. Other (please specify)

16. What would be your preferred way of introducing a new prominence requirement for European works content on video-on-demand catalogues?

17. Noting that the Commission is due to publish guidance in relation to low turnover and low audience, do you agree with the proposed approach that we allow for exemptions for quota and prominence obligations by amendment to section 368C(3) and 368Q (3) for the Welsh Authority of the Communications Act 2003

- a. Yes
- b. No
- c. If no, please explain why

18. Do you consider that the current level of funding for European Works in the UK is sufficient? Please provide evidence.

19. The government currently has no plans to introduce a levy, however, do you think a levy scheme to fund European Works could be an effective way to provide funding? Please explain why.

20. Are there alternative methods of funding European Works that you wish to provide views on?

### **Questions on implementation - Video Sharing Platforms**

21. Do you agree with the proposed approach of implementing the provisions pertaining to VSPs in the 2018 Directive through the regulatory framework outlined in the Online Harms White Paper?

- a. Yes
- b. No
- c. Don't know

22. If not, please explain why you deem this approach to be deficient and what alternative approach you would advocate.

23. Do you agree with the approach set out in paragraph 82 to appoint Ofcom as the National Regulatory Authority as an interim measure if required?

- a. Yes
- b. No
- c. If no, please explain why

24. Which VSPs, if any, do you expect would fall under the UK's jurisdiction under the Country of Origin principle? Please explain your answer.

Please refer to the Online Harms White Paper Consultation for other questions related to the implementation of 2018 Directive, including:

- the scope of the proposed regulatory framework and measures;
- the appointment of an independent regulator; and
- the funding and enforcement powers of said regulator.

#### **Questions on implementation - Signal Integrity**

25. What would be your preferred way of introducing a new requirement for ensuring that appropriate and proportionate measures to ensure that audiovisual media services provided by media service providers are not, without the explicit consent of those providers, overlaid for commercial purposes or modified?

#### **Questions on implementation - Media Literacy**

26. In addition to the measures described in the section on Media Literacy, are there any other legislative and non-legislative measures government should be taking to fulfill the obligations of promoting the development of media literacy skills set out in Article 33a(1)?

**Questions on implementation - Transparency of ownership of audiovisual media Service providers**

27. Are you in favour of introducing additional measures which would require audiovisual media services providers under the UK jurisdiction to make information concerning their ownership structure, including the beneficial owners, accessible?

- a. Yes (please explain why)
- b. No

## Annex B - Questions on Business Impact

### Questions on business impact - Country of Origin

1. Will the additional references in jurisdiction criteria, relating to the location of staff making programme related decisions, or the reference to editorial decisions, relating to the day-to-day activity, affect you or your business?
  - a. Yes (please give details)
  - b. No
  - c. Don't know
  
2. Will the amended derogation procedures affect you or your business?
  - a. Yes (please give details)
  - b. No
  - c. Don't know

### Questions on business impact - Protection of Minors

3. Do you expect the new measure which restricts processing, collecting or otherwise generating personal data of minors for commercial purposes set out in Article 6a(2) to impact your audiovisual media service (or video sharing platform in the case of VSP providers)?
  - a. Yes (please give details)
  - b. No
  - c. Don't know
  
4. Noting the government preferred approach to update S368 of the Communications Act 2003 to align the protection of minors requirements for video on demand with linear television, which would anticipate Ofcom to do a corresponding update to the Broadcasting Code. Do you expect the new measure on providing sufficient information to viewers about content which may impair the physical, mental or moral development of minors, by providing sufficient information to viewers about the nature of the content, as set out in Article 6a(3), to impact your audiovisual media service?
  
5. Would a standardised system of content descriptors or age-ratings used for broadcast and/or video-on-demand to provide sufficient information to viewers about content impact on your audiovisual media service?

**Questions on business impact - Advertising**

6. Would the further prohibitions on alcohol and e-cigarette advertising as referenced in paragraph 45 have an impact on your business?
- a. Yes (please give details)
  - b. No
  - c. Don't know

**Questions on business impact - Accessibility**

7. Would reporting obligations, set out in Article 7(2) of the 2018 Directive, occur any administrative costs to your business? If so, can you quantify them [answers must be provided as total cost in pounds sterling]?
8. Would the development of accessibility action plans in respect of continuously and progressively making services more accessible to persons with disabilities, as set out in Article 7(3), occur any administrative costs to your business?
9. Would the new requirement on the accessibility of emergency communication have any impact on your business?
- a. Yes (please give details)
  - b. No
  - c. Don't know

**Questions on business impact - European Works**

10. For on-demand providers, how much of your catalogue currently consists of European works (based on minutage)?
11. For on-demand providers, how much of your catalogue currently consists of European works (based on titles)?
12. Will meeting the new 30% requirement of European works in on-demand catalogues financially impact your business?
- a. Yes (please give details)
  - b. No
  - c. Don't know
13. Will making European Works prominent in you catalogues financially impact on your business?

- a. Yes (please give details)
- b. No
- c. Don't know

14. Noting that the European Commission is required by Article 13 to publish guidance on the definition of low audience and low turnover. Do you anticipate that your on-demand service to be exempt from the obligations on the basis of a low audience or low turnover definition?

- a. Yes (please give details on why you think this should apply to your service)
- b. No
- c. Don't know

15. Do you expect the new reporting obligations mentioned in paragraph 66 to generate any additional costs to your business?

- a. Yes (please give details)
- b. No
- c. Don't know

16. How much revenue do you currently generate from EU countries if transmitting in the EU? Please give your answer to the nearest £1000.

17. Which European Union countries do you generate revenue from?

#### **Questions on business impact - Signal Integrity**

18. Do you expect the new provision, set out in Article 7b, will generate any impact on your media service?

- a. Yes (please give details)
- b. No
- c. Don't know

#### **Questions on business impact - Transparency of ownership of media Service providers**

19. Do you expect such a requirement would generate any impact on your media service?

- a. Yes (please give details)
- b. No
- c. Don't know



**Questions on cost to business - Economic Impact**

20. What economic impact would new/amended provisions made by the 2018 Directive have on your business? How would the provisions lead to such impact?

21. How would your business familiarise itself with the implications of these changes? Would you use in-house legal support, seek external legal advice or neither?

22. How much time (in hours) would it take for you/your staff/trade mark owners to familiarise yourself with the legal implications of the changes required by the Directive? How much would the use of staff time for this purpose cost your business?

23. Are there any costs to you/your business beyond staff time? For example, preparation of guidance or amending existing licence agreements. Please outline what costs these are, and the financial cost to your business.

## Annex E: Privacy Notice

1. Information provided through this consultation may include the name, email address, and employer of the respondents, as well as their opinions. It is possible that respondents will volunteer additional identifying information about themselves or third parties.
2. The personal information is processed for the purpose of obtaining the opinions of representatives of organisations and companies as well as citizens to help inform the government's position on the implementation of particular provisions in the amending AVMSD. We may also use this personal data to contact respondents in relation to their response.
3. The processing is necessary for the effective performance of a task carried out in the public interest or in the exercise of official authority vested in DCMS.
4. This is a public consultation, and we intend that the responses to this consultation be made available to the public via the gov.uk website. Information provided in responses may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).
5. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.
6. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on DCMS.
7. Personal information in responses will be retained for two calendar years after the consultation has concluded. This is so that the DCMS is able to contact you regarding your response.
8. Your rights:
  - a. you have the right to request information about how your personal data are processed and to request a copy of that personal data;
  - b. you have the right to request that any inaccuracies in your personal data are rectified without delay;

- c. you have the right to request that your personal data are erased if there is no longer a justification for them to be processed;
  - d. you have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted; and
  - e. you have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
9. Your personal data will not be sent overseas.
10. Your personal data will not be used for any automated decision making.
11. Your personal data will be stored in a secure government IT system.
12. The data controller for any personal data collected as part of this questionnaire is the Department for Digital, Culture, Media and Sport (“DCMS”), the contact details for which are:

Department for Digital, Culture, Media and Sport  
100 Parliament Street  
London SW1 2BQ  
Telephone - 020 7211 6000  
Email - [avms-consultation@culture.gov.uk](mailto:avms-consultation@culture.gov.uk)

The contact details for the DCMS Data Protection Officer are:

The Data Protection Officer  
Department for Digital, Culture, Media and Sport  
100 Parliament Street  
London SW1 2BQ  
Email - [dcmsdataprotection@culture.gov.uk](mailto:dcmsdataprotection@culture.gov.uk)

You can find out more [here](#).

13. If you have any concerns about the use of your personal data, please contact us via this mailbox: [dcmsdataprotection@culture.gov.uk](mailto:dcmsdataprotection@culture.gov.uk). If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK’s independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF

Telephone - 0303 123 1113

Email - [casework@ico.org.uk](mailto:casework@ico.org.uk)

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.