



Subgroup 3

Ensuring Prominence and Access of Audiovisual Media Content to all Platforms (Findability)

Deliverable 1: Overview document in relation to Article 7a of the Audiovisual Media Services Directive

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1. Introduction

This paper lays the groundwork for further exchange of views between ERGA members regarding their understanding of the measures taken by Member States of the European Union in respect of the possibilities opened by Article 7a of the revised Audiovisual Media Service Directive (AVMSD) 2018/1808/EU: *“Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest”*.

At the time of writing this report, the transposition process of the revised AVMSD had not yet been fully achieved in most EU countries. While this report was elaborated in a context where most Member States and national regulatory authorities (NRAs) were still considering their approach to the issues at stake, it aims to outline ERGA members’ preliminary views about the implementation of Article 7a of the revised AVMSD.

One of the main tasks of the European Regulators Group for Audiovisual Media Services (ERGA) is to provide technical expertise to the Commission in its task to ensure a consistent implementation of the AVMSD in the different Member States. In this vein, the members of ERGA find it necessary to also shed light on articles that are not mandatory and therefore will vary in the degree of their implementation.

The purpose of Subgroup 3 of ERGA in 2020 was to obtain knowledge about national regulations that already exist in this area and initiatives that are planned on the basis of Article 7a in order to highlight different aspects that need further discussions. A special focus was given on three different aspects:

- The scope of the provision (i.e. the type of services that could fall under Article 7a, as well as the criteria to determine what constitutes audiovisual media services of general interest);
- Appropriate measures guaranteeing that audiovisual media services of general interest are given appropriate prominence;
- The type of regulatory approaches Member States may take.

Therefore, the Subgroup members were asked to provide their views on how the Article should be interpreted and which potential concepts are already discussed in their respective Member States. The Subgroup received feedback from 12 different Member States (Belgium, Bulgaria, Cyprus, Germany, Ireland, Italy, Latvia, Luxembourg, Netherlands, Portugal, Slovakia and Sweden).

2. Setting the Scene

Why may it be considered important to give appropriate prominence to audiovisual media content and services of general interest?¹

The typical company policy of distribution platforms is to highlight primarily those contents that are the most successful – e.g. those with the highest click-through rate – or are most likely to reach an audience based on users’ previous interaction with (similar) services. This content is not necessarily of general interest. Instead, sensational headlines or those leading to superficial content or content of little value may be often used to generate clicks. Professional journalistic content is not necessarily the most successful content in terms of viewers’ reach and this may harm media pluralism. Content of general interest needs to be easily findable and accessible so that it can contribute to the opinion-forming of society. Formation and diversity of opinions, as cornerstones of any democracy, can only be guaranteed if the media landscape provides for reliable and diverse information.

The media landscape is in a constant state of change. Today, anyone can share information and make their views known at any time. The consumption of audiovisual media services is simultaneously increasing in non-linear services and online platforms, where services and information are also available at any time on users’ demand. These reasons, among others, lead to a situation in which users are flooded with a vast amount of information. Innovation has brought and will continue to bring various new forms of communication and information services.

This new media landscape makes it easier to access various sources of information, but at the same time, it has increased the potential for disinformation being disseminated. Furthermore, given the market changes described above, quality content and services of general interest, that due to the peculiarities of the online environment are even more important for the opinion-forming of the public, can be difficult to find. These developments can make it necessary for the Member States to take action.

Article 7a of the AVMSD recognises the potential need to address the new realities of content distribution. As the decisions of the platform operators/content distributors concerning the prominence of content might be more related to their financial interests than to considerations of general interest, Article 7a acknowledges it may be important for Member States to establish incentives for service providers to ensure appropriate prominence of audiovisual media services of general interest with legislative measures.

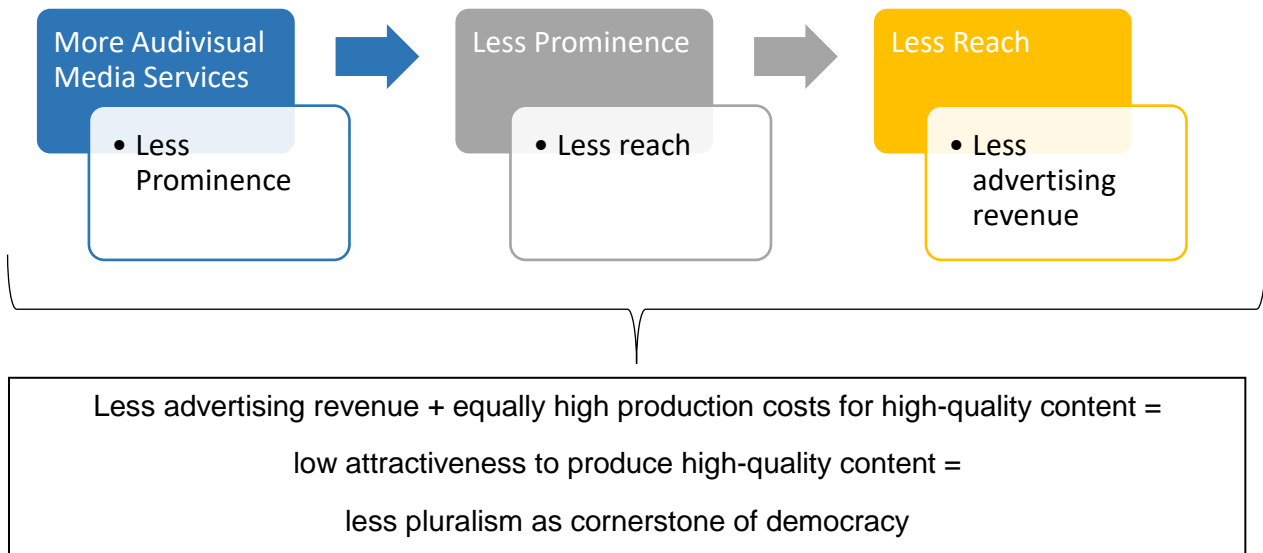
Moreover, Article 7a could contribute to the fight against disinformation. The prominence of general interest content is an essential part of tackling the issue of disinformation, especially in times of crisis when people are seeking factually correct information.

In addition, appropriate prominence can be an incentive to invest in quality media and journalism. Infrastructure (broadcast bandwidth) is no longer a limiting factor for audiovisual media services. Rather, the current challenge is to create incentives for users’ attention to professional editorial media output. The attention that media content draws determines the price of the placed advertising². Yet, if those services are increasingly hard to find, their advertising revenues decrease. This effect

¹ Please note that the AVMSD uses both terms: ‘content of general interest’ (in Recital 25) and ‘audiovisual media services of general interest’ (in Article 7a). Although their meaning is slightly different, their aim appears to be the same.

² Please note that the Public Services Broadcasters of some Member States are not dependant on funding from the advertising market. Therefore, the analysis in relation to the advertising market does not concern them.

intensifies the loss of revenue caused by the fact that the number of providers of media services on the market has increased significantly and creates a lot of fragmentation among the audience. At the same time, it is not likely that the costs of production and research for high-quality (professional) content will become cheaper in the future.



Article 7a of the AVMSD recognises that Member States have the possibility to take measures to increase the prominence of content of general interest, thus making the investment in high-quality (professional) journalism more attractive.

The incentive for audiovisual media service providers could be dual:

- Firstly, the provision can be used to help those who are already producing content of general interest to gain more visibility and thus greater reach. This would provide an incentive for audiovisual media service providers to expand their content and become more attractive to the advertising market. In short, it would signal that it is still worthwhile for audiovisual media service providers to invest in content of general interest.
- Secondly, the provision also could incentivise audiovisual media service providers who are less focussed on provision of general interest content, to increase their coverage of such content. Thus, Article 7a of the AVMSD could contribute to a greater diversity among media providers and their offers, and therefore – to enhanced media pluralism.

3. An Abstract Perspective

Coming from an abstract perspective, this section summarizes different criteria established by the AVMSD that can give guidance on how to understand Article 7a.

Article 7a reads as follows: *“Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest”*.

The corresponding recital, Recital 25 of the AVMSD, is worded as follows: *“Directive 2010/13/EU is without prejudice to the ability of Member States to impose obligations to ensure the appropriate prominence of content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity. Such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in accordance with Union law. Where Member States decide to impose rules on appropriate prominence, they should only impose proportionate obligations on undertakings in the interests of legitimate public policy considerations.”*

The wording of the Article and the Recital leave room for interpretation.

For a better overview, the following section is structured along the following questions:

- Scope: Which addressees could be covered by measures taken by Member States under Article 7a?
- Appropriate prominence: How can “appropriate prominence” be implemented in regulatory/technical terms?
- Content of general interest: What qualifies content or a service as being of “general interest”?

3.1 Scope

According to its wording, Article 7a of the AVMSD does not exclude any type of audiovisual media services (such as television broadcasts, on-demand audiovisual media services³) or their providers from its scope of application. It is therefore possible for the Member States to set regulations on the appropriate prominence for providers of all audiovisual media services. It is important to note that following the analysis undertaken for this report and discussions with the industry in a dedicated workshop, it appears that distributors of audiovisual media services would seem to be the main potential addressees of measures taken under Article 7a.

3.2 Appropriate Prominence

The concept of ‘appropriate prominence’ presupposes some kind of separation or highlighting of certain services or content. Approaches to implementation could consist of direct access through e.g. a button on the remote control or in the virtual user interface, easy findability in individual menus or categories or a targeted and prioritized display.

It is advisable that neither the legislators nor the NRAs decide in detail on how to achieve appropriate prominence. Audiovisual media services are received via a range of delivery mechanisms which are

³ Article 1(1)(a) of the revised AVMSD.

constantly changing. In addition, while the power of media services to influence opinion-forming of the public and their relevance for democracy may justify certain prescriptions – but the basis should always be proportionality of regulation.

In view of a large number of different types of media content delivery systems, it is unlikely that a one-size-fits-all solution is feasible. As developments in recent years have shown, it is not possible to anticipate all possible future ways of media distribution that may emerge. Having a too detailed regulation would lead to a constant need for change and improvement, which can never be state of the art. Therefore, if and when implementing Article 7a of the AVMSD, it is recommended that any regulation is kept as principle-based and technologically neutral as possible to remain future-proof, not least because of the rapid development of the market for audiovisual media content distribution.

Possible regulation in this area could require the industry to set out the specific technical manner in which the objectives of measures taken under Article 7a could be met. Furthermore, the industry may have insights about what can be implemented effectively while also retaining the attractiveness of the distribution platform to users and maintaining space for innovation. With this approach, the NRAs could check on a case-by-case basis whether the guidelines set up by the industry are being implemented satisfactorily and possibly intervene where this is provided for in the national regulatory framework.

3.3 Content and Services of General Interest

It is up to the Member States to decide what they classify as audiovisual media services of general interest, sometimes also referred to as public value or public interest content.

Rather than setting down a strict definition which leaves little room for taking into account specificities of different media market realities, legislators should concentrate on identifying platform-neutral criteria to be used to identify the content of general interest. This would ensure clear parameters for regulation without being unduly prescriptive or lacking in terms of its future-proof nature.

In addition, the constitutionally protected rights of the providers need to be taken into account. It should be borne in mind that too prescriptive or constraining regulation can lead to providers disappearing from the market because they do not have enough resources to comply. In order to protect media pluralism, such an effect should be avoided. At the same time, this must be balanced against the public interest objectives of Article 7a of the AVMSD.

4. Existing and Potential Approaches on National Level

The following section outlines the possible regulatory approaches to the issue of findability in several Member States represented in ERGA. Where available, the section outlines national legislation related to the objectives of Article 7a of the AVMSD. The aim is to gather the different national approaches and to launch an exchange of views regarding best-practice approaches in view of possible national measures taken under this provision.

Flemish area of Belgium // Vlaamse Regulator voor de Media (VRM)

The current Flemish Media Act (Article 181) already offers the possibility, in some way comparable to the new Article 7a of the AVMSD, to impose obligations on service providers and/or the distributors concerning (the presentation of) their Electronic Programme Guides (EPGs). However, Article 181 of the Media Act has never been put in practice, for the lack of an implementing decree.

The 'Strategical Advisory Board for Media Policy' (SARC), composed of media experts and industry representatives, issued an opinion on the transposition of the new AVMSD on the 18th of November 2019⁴. One of the topics its opinion stresses is Article 7a of the AVMSD and the importance of appropriate prominence of local Flemish content and services for the Flemish media ecosystem and media pluralism.

When it comes to implementing **appropriate prominence**, the VRM is of the opinion that it seems preferable not to restrict findability measures, as a principle, to services or content of the public service broadcasters (PSBs). Other programmes or productions that meet certain quality and originality requirements, possibly diversified over certain genres, should also be able to enjoy appropriate prominence. Content of general interest should also appear in recommendations and search functions, especially for individual programmes. Within the SARC, however, two different views exist on how to ensure appropriate prominence: cooperation and self-regulation (arguing this also allows for a broader scope) vs. additional legislation (giving as an example the plans of the UK's Ofcom regarding prominence⁵).

When it comes to **content of general interest**, VRM thinks that one option could be to give some sort of 'quality label' to certain productions to guarantee more attention. This could possibly be linked to a 'must offer' obligation for such content if commercial negotiations fail.

Bulgaria // Council for Electronic Media (CEM)

The direct text of Article 7a appears to have been transposed into the revised draft legislation (The Bulgarian Radio and Television Act) without further discussions on the practical implementations of it.

According to CEM, the **scope** of Article 7a of the AVMSD could cover the distributors of audiovisual media services. Measures guaranteeing **appropriate prominence** could include easy findability, prioritised presentation, and/or a prominent place on the "home page"/user interface. CEM believes that ideal national legislation should include a definition of **audiovisual media services of general interest**. Inspired by § 84 para. 5 of the German Interstate Media Treaty, the criteria for granting a

⁴ https://cjsm.be/sarc/SR_media/adviezen/20191118_Advies_omzetting_herziene_AVMD-richtlijn.pdf.

⁵ <https://www.ofcom.org.uk/search?query=prominence>.

label for such content or service should include the share of time spent on news coverage of political and contemporary events, the share of time for regional and local information, and the ratio between in-house and third-party produced content among others.

Cyprus // Cyprus Radiotelevision Authority (CRTA)

CRTA considers Article 7a of the AVMSD a topical issue. The broad phrasing and the non-binding nature of the provision offers Member States the possibility to adopt equally broad approaches.

Similarly to the opinion of VRM, CRTA also states that private, commercial audiovisual media service providers should not *a priori* be precluded from enjoying appropriate prominence under the condition that quality requirements are fulfilled in productions and/or programmes. These quality requirements and criteria could refer, for instance, to a particular quota regarding current affairs programmes, cultural and/or educational, or children’s programmes.

CRTA is of the opinion that audiovisual media services of general interest should remain easily findable not only within an EPG of linear services but also within the online environment and connected devices.

On prominence, CRTA states that it can be ensured through technical measures, for instance, in the placement of audiovisual media services of general interest at a better position in relevant applications in smart devices and/or on websites or through publishing annual reports and through promotion or marketing activities.

Germany // die medienanstalten (DLM)

In Germany, the regulation implementing Article 7a can be found for the first time in the new Interstate Media Treaty (*Medienstaatsvertrag (MStV)*)⁶.

According to the German perspective, the **scope** of Article 7a of the AVMSD is to be seen widely. Nonetheless, in the German provisions on findability, the addressees of the obligation to give appropriate prominence to content of general interest are (at the moment) only user interfaces and software-based applications.

However, as the German media law is based on a different terminology than the AVMSD, it is important to give an overview of what is meant by “telemedia” and “broadcasting-like telemedia” mentioned in the legislation:

In general, telemedia are all electronic information and communication services, unless they are telecommunications services which consist entirely of the transmission of signals via telecommunications networks, or telecommunications-supported services, or broadcasting.⁷ Therefore, broadcasting-like telemedia are telemedia with content, which is similar in form and design to radio or television and which is provided from a catalogue specified by a provider for individual retrieval at a time chosen by the user (on demand audio and audiovisual media services); content available on broadcasting-like telemedia is in particular audiobooks, feature films, series, reports, documentaries, entertainment, information, or children’s programmes.⁸

⁶ <https://www.rlp.de/index.php?id=32764>.

⁷ § 2 para. 1 sentence 3 Interstate Media Treaty.

⁸ § 2 para. 2 No. 13 Interstate Media Treaty.

All ways of reception or usage of audiovisual media services can be considered to fall under the scope of Article 7a of the AVMSD. First and foremost, producers of devices that primarily serve this purpose – such as smart TVs, smart audio devices, and corresponding set-top boxes such as Apple TV or Google Chromecast, Amazon FireTV, etc. – should be considered. Increasingly, the reception of audiovisual media services is becoming less dependent on the choice of hardware. Rather, it is virtual non-hardware platforms that aggregate and compile offers from different providers. On these platforms, visibility is even more important for the content, which makes a particular contribution to the opinion-forming of the public. In Germany's view, such platforms are also important addressees of corresponding regulations and can be obliged to implement suitable measures.

That is why the German provisions⁹ on findability apply to user interfaces that display or acoustically convey broadcasting, broadcast-like telemedia, and telemedia that provide services which are designed and configured in a journalistic way, parts thereof or software-based applications which mainly provide direct control of broadcasting, broadcast-like telemedia, and telemedia that provide services which are designed and configured in a journalistic way. Similar offers or contents may not be treated differently in terms of findability, in particular, sorting, arrangement, or presentation in user interfaces, without an objectively justified reason.¹⁰

Regarding the procedure¹¹, the media authorities shall immediately determine the beginning and end of a cut-off period in which providers may submit written applications for admission to the list. The beginning and end of the application period, the procedure and the essential requirements for the application shall be determined by the media authorities in an announcement. The announcement shall be published in an appropriate manner.

According to the provisions of the MStV on **appropriate prominence**, the broadcasting service offered in a user interface shall be directly accessible and easy to find in its entirety at the first selection level.

Within the broadcasting sector, the services of public and commercial broadcasters that have to include externally produced content of regional importance as well as the private services which make a significant contribution to the diversity of opinions and offerings, especially news, shall be easy to find.¹²

If broadcasting services which have to include externally produced content of regional importance are displayed or transmitted acoustically, those services shall be displayed with priority in the area for which they are licensed compared with the main service without the externally produced content of regional importance and compared with the services that include externally produced content of regional importance that are licensed for other areas.¹³

Also, the ARD¹⁴, the ZDF¹⁵ and Deutschlandradio or comparable commercial broadcasting-like telemedia services or comparable commercial telemedia services that compile broadcasting services, broadcast-like telemedia or telemedia that provide services which are designed and configured in a journalistic way which make a significant contribution to the diversity of opinions and offerings in

⁹ § 84 para. 1 Interstate Media Treaty.

¹⁰ § 84 para. 2 Interstate Media Treaty.

¹¹ § 84 para. 5 sentence 3 and 4 Interstate Media Treaty.

¹² § 84 para. 3 sentence 1 and 2 Interstate Media Treaty.

¹³ § 84 para. 3 sentence 2 Interstate Media Treaty.

¹⁴ Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland.

¹⁵ Zweites Deutsches Fernsehen.

Germany, or software-based services which provide direct control of those services shall be easy to find within the presentation of broadcast-like telemedia or software-based services which provide direct control of those services.¹⁶ The commercial services within this meaning shall be determined by the German media authorities for a period of three years and shall be published on a list on the die medienanstalten website.¹⁷

Moreover, the MStV states that it must be possible for the user to easily and permanently individualise the sorting or arrangement of offers or contents.¹⁸

The above-mentioned provisions regarding the findability shall not apply to user interfaces if the provider proves that subsequent implementation is technically impossible or only possible with a disproportionate effort.¹⁹

Regarding **content of general interest**, the German regulation focuses on the legal framework of the production of the content of general interest.²⁰ The criteria are the following:

- a) the share of time spent on news coverage of political and contemporary events;
- b) the share of time for regional and local information;
- c) the ratio between in-house and third-party produced content;
- d) the share of barrier-free offers;
- e) the ratio between trained staff and trainees involved in programme development;
- f) the share of European works and the share of offers for young target groups.

Ireland // Broadcasting Authority of Ireland (BAI)

Under the Irish Broadcasting Act 2009, there are currently a number of provisions that support the findability of Irish PSBs and certain commercial television services. These relate to 'Must Offer/Must Carry' obligations and placement on EPGs.

In January 2020, the Irish government published the draft Online Safety and Media Regulation Bill 2019, which allows for the transposition of the AVMSD. Provisions in respect of Article 7a have not been made public at this time. The BAI anticipates that the topic will be addressed in the forthcoming legislation on the transposition of the AVMSD.

The existing statutory provisions in Ireland implicitly include both public service as well as commercial broadcasting services with public interest content (news, current affairs and culturally relevant content). The BAI is of the view that given the inclusion of both linear and on-demand services, a future-focused approach is important.

Concerning **appropriate prominence**, under s77 of the Broadcasting Act 2009, certain television services are designated for findability through 'must carry/must offer' obligations. This provides findability for public service broadcasters as well as the parliamentary channel 'Oireachtas TV'. In addition, findability must also be given further to commercial 'free to air' services, which are awarded contracts under that Act.

¹⁶ § 84 para. 4 Interstate Media Treaty.

¹⁷ § 84 para. 5 sentence 1 Interstate Media Treaty.

¹⁸ § 84 para. 6 Interstate Media Treaty.

¹⁹ § 84 para. 7 Interstate Media Treaty.

²⁰ § 84 para. 5 sentence 2 Interstate Media Treaty.

The 2009 Act requires that providers of EPGs must have a contract to operate (s74). The contract must include a provision whereby certain designated services are given prominence on the EPGs provided under this contract. These services are the public service channels of RTÉ and TG4 and those of the national commercial services (Virgin Media One and Two). Section 75 of the 2009 Act empowers the BAI to set the format for information provided on EPGs. Due to the advancement of technology and the inclusion of audiovisual content in current EPGs, this section of the Act could not be applied by the BAI. Therefore, in Ireland, EPGs are licensed under programme content contracts rather than EPG contracts. However, the BAI has actively engaged with television distributors in this respect ensuring that Irish services of general interest are the first channels listed on the EPGs for cable, satellite, and DTT services receivable in Ireland.

The BAI states that it will be a practical challenge how to maintain audience choice while also providing prominence in the context of recommendations, searches, and other measures over which the distributor has control.

Italy // Autorità per le Garanzie nelle Comunicazioni (AGCOM)

In Italy, all audiovisual media service providers should respect several general principles (for example, media pluralism, freedom of expression, objectivity and loyalty) established by the AVMS Code²¹.

A specific aspect in respect to **appropriate prominence** is related to the regulation concerning the Logical Channel Numbering. Following the AVMS Code²², the AGCOM issued a regulation²³ concerning the automatic numbering plan to list channels on the digital terrestrial television. The numbering plan shall be easy to use and preserve the viewers' habits. Channels shall be divided according to specific genres: generalist channels, semi-generalist channels, kids and teens, news and current affairs, culture, sport, music, and teleshopping. In any case, viewers shall be free to rearrange the list of channels, according to their preferences. According to the said regulation, national generalist channels (i.e. "general interest channels") shall be listed between nr.1 and nr.9, and at least nr.20 of the LCN (numbers between 11 and 19 are attributed to local channels). These channels are the ones which broadcast free-to-air "generalist programmes" and are requested to include news and current affairs content in their schedules (using a news organisation).

Italian legislation confers a particular status as regards the information activity (i.e. news and current affairs programmes) qualifying news and current affairs content as a **media service of general interest**. Accordingly, audiovisual media service providers who broadcast such content must comply with the following principles:

- a) truthful presentation of the facts and events;
- b) daily transmission of newscasts;
- c) right of access for all political subjects in term of equal treatment and impartiality;
- d) absolute prohibition on the use of methodologies and techniques capable of manipulating the content of the information in an unrecognizable way.

²¹ Art. 3 of the AVMS Code, (Legislative Decree 31 July 2005, n.177).

²² Art. 32 para. 2 AVMS Code.

²³ The regulation was approved in 2010, decision n. 366/10/CONS, and, despite several legal disputes, it is still in force nowadays.

As far as the PSB is concerned, AGCOM underlines that Art.1 of the Agreement between Rai and the Italian State, signed in 2017, considers the PSB activity as a general interest service, consisting of production and broadcasting activity on all distribution platforms for direct audiovisual and multimedia contents. This includes the production and broadcasting activity through the use of new technologies, ensuring complete and impartial information, as well as encouraging education, civil growth, progress, and social cohesion, promoting the Italian language, culture and creativity, safeguarding the national identity and ensuring socially useful services. Furthermore, Art.3 of the Agreement between Rai and the Italian State, and Art.25, para.1i of the Service Agreement prescribes that the entire output of Rai shall be accessible on the DTT platform, where practicable, or through cable and satellite. The live streaming should also be available on the IP platform.

Latvia // National Electronic Mass Media Council (NEPLP)

Within the framework of the bill of the Latvian Electronic Mass Media Law, there are no intentions to make amendments, which would include new provisions to exercise the right of choice that would ensure prominence of audiovisual media services of general interest.

Electronic Mass Media Law already requires **appropriate prominence** in the public service remit, as such services must be accessible and available to the majority of the audience. This requires that services fulfil several important tasks related to **content of general interest** such as promoting objective, independent, and thematically balanced news, and analytical broadcasts about events in Latvia. They must promote the integrity of society, preservation, and development of the Latvian language, promote the development of Latvian culture, as well as other requirements. The law states that the content must be general and cover as broad part of the public as possible. If the NEPLP, by tender, has granted the right to create projects in the public service remit in commercial electronic mass media programmes, the audience must be informed that the broadcast has been produced within the public service framework (the funds intended for the production of the broadcast have been assigned from the state budget) by audio or audiovisual means. However, with regard to the public service placements in electronic mass media, there are no other specific rules to increase their prominence.

Luxembourg // Autorité Luxembourgeoise indépendante de l'audiovisuel (ALIA)

Currently there are no provisions in Luxembourg's legislation on the appropriate prominence of content of general interest. Nevertheless, ALIA argues that Article 7a could be of great importance, given that the consumption of audiovisual media services has considerably changed, requiring media service providers to change the way content is distributed. As platform operators' decisions concerning prominence of content might be driven more by their financial interests than considerations of general interest, ALIA finds it reasonable to incite the easy findability and visibility of public value content with legislative measures.

Concerning the question of the precise **scope** of this Article, i.e. who the concrete addressees of this Article are, ALIA argues that it will be the entities distributing audiovisual media services (e.g.: connected TVs and EPGs).

ALIA states that measures on **appropriate prominence** might be easy findability, prioritised presentation or prominent placing on the home page or in the user interface.

Furthermore, it should be defined which services qualify as audiovisual **media services of general interest**. By that, criteria to grant a label for such content or service need to be specified. Inspiration may be taken from Art. 84 of the German Interstate Media Treaty. Moreover, it needs to be clarified if distributors would be obliged to consider services of national general interest and their offers exclusively or if all services and contents of general interest should be covered.

Finally, the ALIA considers the question of enforcement to be of great importance.

The Netherlands // Commissariaat voor de Media (CvdM)

The definitions based on the objectives explained in Recital 25 of the AVMSD such as media pluralism, freedom of speech and cultural diversity already form a fundamental basis of several provisions embodied in the current Dutch Media Act regarding the prominence of audiovisual media of general interest. However, the focus in the Dutch legislative system is on the public service media (on national but also regional and local level) that have a public remit, specified in the Dutch Media Act. In addition, must-carry obligations for cable operators and other distributors should ensure accessibility and findability of their programme offer. There are no obligations in the Dutch Media Act for commercial media services to ensure prominence of content that is considered to be of general interest.

The Media Act contains a very extensive set of rules regulating PSB. PSBs are subject to strict rules that must safeguard certain core principles such as media pluralism, accessibility, and high standards of journalism. A PSB is defined in the Dutch Media Act as a legal person who, according to its statutes, has as its sole or main objective to carry out the public media assignment at a national level and to undertake all necessary actions in order to fulfil a public task of general interest. The Dutch Media Act provides some clarity on what is considered as content of general interest by explaining what the public media remit should consist of: the national, regional and local public media services should provide content that reaches a broad and diverse audience and provide content that informs, educates or brings a cultural message to the public.

The Media Act includes rules on **appropriate prominence** by regulating the allocation of the PSB channels. The national public broadcaster NPO fulfils its public service remit by offering its services via (linear) TV channels, radio channels and its online activities. Cable operators and other distributors need to include at least the main TV and radio channels of the national, regional and local public media service providers in their packages. The above-mentioned rules should enhance the visibility and accessibility of audiovisual media services of general interest and make them more prominent to the Dutch public.

Portugal // Entidade Reguladora para a Comunicação Social (ECR)

The ECR does not know whether the Portuguese State will legislate this matter, but they believe it is important for the EU to take a common line of possible applications and adaptations.

For them, prominence in the light of Article 7a refers to all audiovisual programme services, be they public service or commercial services. However, they think that the general interest or public value may be questionable in light of the NRAS's ability to impose rules that prioritise each other in terms of access.

The ECR states that the definition of general interest may be challenging from their point of view as this means imposing rules that can be understood as differentiating between content or programme

services. Two questions arise, in particular, for the ECR when it comes to content of general interest: How to identify a programme of general interest? Will general and specialized information fit within this premise?

Slovakia // Council for Broadcasting and Retransmission of the Slovak Republic (RVR)

In Slovakia, the draft legislation related to the transposition of the AVMSD includes a provision concerning **appropriate prominence**. It imposes an obligation on the PSB to ensure a diverse composition of programmes, in particular, a majority share of programmes in the public interest, in each channel broadcast by it.

Concerning **content of general interest**, according to the legislation, in case of an urgent public interest, the broadcasters are obliged, upon request, to provide free of charge the necessary transmission time for broadcasting by state authorities for important and urgent announcements, calls, or decisions. The PSB is also obliged to keep statistics for the share of the audiovisual media services of general interest for the purposes of effective monitoring. According to the Act on Broadcasting and Retransmission, the Council for Broadcasting and Retransmission (CBR) has an obligation to include the shares of public interest programmes in broadcasts in its Annual report.

Sweden / The Swedish Press and Broadcasting Authority (SPBA)

Sweden has not yet introduced any rules regarding prominence in accordance with Article 7a of the AVMSD.

In 2017, the SPBA published a report regarding inter alia accessibility and findability in an online environment.²⁴ In the report, the SPBA describes and analyses what is needed in order for the public to be able to find and have access to public service radio and TV in an online environment.

An inquiry was commissioned to propose legislative changes and other actions needed to implement the revised AVMSD in August 2019²⁵. It referred to the SPBA report from 2017 and suggested that the question of introducing rules on findability in an online environment should be investigated further, preferably in conjunction with a review of the current rules regarding the must-carry obligation.

²⁴ Case number 16/01858.

²⁵ SOU 2019:39.

5. Conclusion and Further Issues to Consider

Having examined the submissions of ERGA members received in the Subgroup (not all members participated in the survey), it is clear that most of the Member States that have transposed, or are in the process of transposing the AVMSD, have chosen not to avail themselves of the possibility to take measures foreseen in Article 7a of the AVMSD. It appears to be due to Member States tending to initially restrict themselves to the provisions which they are obliged to transpose. In addition, before considering taking measures with a very broadly defined scope and for which the Directive provides little help in defining the various criteria, a more detailed examination is required.

Article 7a offers a high degree of flexibility for the Member States as it recognises their competence and *possibility* to implement the related measures (in compliance with EU law) rather than an obligation to do so. The wording of the Article as well as of the corresponding Recital are quite broad, and if they were implemented in a similar way into national legislation, it would allow for a wide array of options during practical application.

As a result, many considerations need to be taken into account when taking measures under this Article at the national level. One of them is, for example, the rapid speed of technological innovation: a technology-neutral approach should be envisaged to ensure that the rules can be state-of-the-art.

As already indicated under section 4 of this report, a few Member States already have some rules in place that deal with prominence of content. However, these are not necessarily based on Article 7a of the AVMSD. These regulations currently relate (mostly) only to linear public service broadcasters. So far, only Germany has introduced regulations based on Article 7a within the framework of the implementation of the AVMSD in the Interstate Media Treaty. These rules oblige user interfaces and software-based applications to give appropriate prominence to all kinds of broadcasting services as long as they provide content of general interest.

The AVMSD does not contain a definition of the scope, appropriate prominence or content of general interest. Setting out these criteria is left solely to the individual Member States. And this is also reflected in the current regulations and initial approaches at national level. However, a uniform implementation of the provisions in the Member States who choose to take measures in this respect would be necessary for a European single market.

Therefore, it is highly recommended that further work on harmonising potential definitions and approaches in relation to Article 7a of the AVMSD is conducted.

In the course of its work this year, the Subgroup has developed various points that require more in-depth consideration. Relevant issues to consider include (a non-exhaustive list):

- The definition of the scope of possible measures, and of the notions of ‘appropriate prominence’ and ‘content of general interest’;
- The emergence of on-demand only services with ‘general interest’ content and its impact on how we understand ‘general interest’;

- Whether it is required to rethink the types of services that are traditionally considered to be of “general interest”, i.e. mass media free-to-air services/public service broadcasting services;
- Whether a focus is warranted on the content provided, rather than the type of services or whether a mixed approach is desirable. General interest content could include programme genres commonly used to define a service as having the characteristics of a public service (for example, national language content, children’s programming, news & current affairs programming, coverage of regional/local issues, coverage of parliamentary proceedings, educational content, and other culturally relevant content). The extent to which content is accessible to audiences via subtitling etc. could also be a relevant consideration in this context;
- Whether payment for access to a service should or should not prevent it from being considered as ‘eligible’ to be given appropriate prominence, particularly where payment for trustworthy sources of content previously provided free of charge is an emerging business model;
- Whether the approach to set the criteria for designating a service as being of general interest should be based on factors that exclude a service from being considered as ‘eligible’ to be given appropriate prominence or whether it should focus on factors for inclusion as such. Which would be less complex and easier to manage from a regulatory perspective?;
- The importance of proportionality for both distributors with findability obligations and for content services hoping to benefit from such obligations. As Article 7a potentially relates to both on-demand and linear services, a wide range of on-demand services could, in theory, include ‘general interest’ content. Therefore, the principle of proportionality must be applied in terms of services that require appropriate prominence. Simply including some ‘general interest’ content may not automatically result in the service being considered as ‘eligible’ to be given appropriate prominence and other criteria may be relevant. What are these criteria?;
- Whether legislation on the appropriate prominence of content of general interest may affect the competitive conditions for the different audiovisual media services and whether such regulation may affect the different players in the distribution chain, and if so, how?

In general, ERGA acknowledges that measures taken under Article 7a AVMSD can be of great importance in a developing a more pluralistic media landscape. This is why the Subgroup decided to devote this interim report to emerging issues around this provision. Even though there is no clear picture on national level yet, the report is a good starting point towards exchange best practices in this area. It highlights opportunities and challenges of this new provision and launches an important regulatory debate on possible future ways of guaranteeing that content and services of general interest receive appropriate prominence in order to ensure media diversity in European markets.