



Subgroup 1

Consistent implementation and enforcement of the new AVMSD framework

Workstream 1

Best practice exchange: Analysis of implementing national measures

**Deliverable: Overview document on the exchange of best practices regarding
Art. 7a and 7b AVMSD**



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Art. 7a AVMSD

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Prominence of general interest content

1 Introduction

Findability is key in today's information environment, especially for media and news content online. Media markets are in a constant state of change and digitization will keep bringing innovation and will continue to produce various new kinds of communication and information services with audiovisual media content. There are more channels, more websites, more news portals and more video-sharing platforms than ever before. These market changes lead to the fact that offers that are not only particularly valuable but also particularly important for the formation of public opinion are more difficult to find within the broad variety of offers.

In other words and in order to stay within the wording of the revised Audiovisual Media Service Directive (AVMSD), the *"appropriate prominence of audiovisual media services of general interest"* has been a crucial discussion topic in the European media sector over the past years and can still be considered highly relevant for its regulation in the upcoming years. This is mainly due to three reasons:

- To ensure that relevant offers are present within the limited attention of users, while the degree of fragmentation within the media market is continuously increasing.
- To enable media content providers to refinance the production of general interest content, bearing in mind that the users' attention, clicks and viewing time generate advertising revenues.
- To safeguard a pluralistic and diverse media landscape, as mentioned in Recital 25 of the AVMSD.

In order to contribute to these three objectives, Art. 7a of the revised AVMSD includes a provision, allowing Member States to *"take measures to ensure the appropriate prominence of audiovisual media services of general interest"*. Fostering a coherent implementation of the revised AVMSD has been a key topic for ERGA since its adoption in 2018. In order to guarantee a harmonized and applicative approach, ERGA will keep track on how implementation occurs across the EU and continuously work on the consistent implementation and enforcement of the new AVMSD framework.

To achieve this goal, ERGA already started an exchange of views between members regarding their understanding of the provision for prominence of general interest content in Art. 7a of the revised AVMSD within the ERGA Subgroup 3 in 2020. The purpose of this working group was to obtain preliminary knowledge about national regulations that already existed and to highlight different aspects that needed further discussions. Last year's final report¹ recommended that further work on harmonizing potential definitions and approaches in relation to Article 7a AVMSD should be conducted. The results of ERGA SG 3 2020 thereby constitute the basis for the work in 2021.

¹ https://erga-online.eu/wp-content/uploads/2021/01/ERGA_SG3_2020_Report_Art.7a_final.pdf



ERGA's work programme for 2021 starts where it left off last year to ensure a smooth and consistent implementation and enforcement of the revised AVMSD. Therefore, ERGA Subgroup 1 2021 has been working on exchanging best practice examples on the new rules on prominence of general interest content. The work of the Subgroup 1 Workstream 1 2021 included

- regular Subgroup 1 Meetings,
- several meetings of the drafters of the Workstream 1,
- a qualitative survey within Subgroup 1 on how Article 7a AVMSD has been transposed in their jurisdiction,
- in addition, a panel discussion on prominence of general interest content with participation from academia and relevant stakeholders as part of the Subgroup 1 workshop.

It is the purpose of this report to provide an overview on the current state of the national implementation and to continue an exchange of best practice examples regarding Art. 7a AVMSD. In particular, this report aims at an examination and evaluation of national measures advised or already in force. It is also among the objectives of this report to discuss different notions of possible criteria for general interest content, to foster a more common understanding of the regulatory mechanism of the provision and to further define possible measures for the implementation of "appropriate prominence". Ultimately, this report also aims at identifying the possible challenges and opportunities of prominence regulation.

2 Results of ERGA SG 1 questionnaire on Art. 7a AVMSD

Since the end of the work of ERGA Subgroup 3 during 2020, many Member States have concluded their national transposition efforts of the revised AVMSD. Hence, it was necessary to address ERGA members with updated questions on the state of implementation of Art. 7a AVMSD in order to build up the work of this year based on a broad picture of the ongoing processes of national transposition. Therefore, all Subgroup 1 members were invited to provide answers to a digital questionnaire ([Annex 1](#)) on the implementation of Art. 7a AVMSD in April and May 2021.

The main intention of this survey among Subgroup 1 members was to gather substantial information on the state of national transposition of Art. 7a AVMSD, especially to give all Subgroup 1 members the possibility to contribute to the objectives of this report and in order to allow drafters to choose from a broad range of best practice examples for the later course of this report.

Subgroup members were asked to provide information on the state of the national transposition efforts in Member States as well as ongoing legislative processes in Member States and to report on any coherent political discussions in their countries. The digital questionnaire also included questions regarding the understanding of the scope, definitions and measures of the provisions.

The Subgroup received feedback from 24 ERGA Subgroup 1 members (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden).

The following section of the report is supposed to reflect on the evaluation of the survey and to summarize the answers of ERGA members.



2.1 The current state of national transposition

The first question of the ERGA survey asked members to indicate whether Art. 7a AVSD had been transposed in their Member State and to specify on the current state of implementation. The answers by Subgroup 1 members show that the current state of national implementations of Art. 7a AVMSD varies largely between Member States. At the time of the survey in April and May 2021, just 6 out of 24 countries who provided answers to the ERGA questionnaire stated that their countries had transposed the provision of the directive into national regulation.

As Art. 7a AVMS-D states that „Member States may take measures to ensure the appropriate prominence of audiovisual media services of general interest”, it is non-obligatory for Member States to transpose this provision into national law. This fact possibly accounts for part of the reason why Art. 7a AVMSD has only been transposed by a few Member States. As it is one of the main tasks of ERGA to provide technical expertise to the Commission in its task to ensure a consistent implementation of the AVMSD in the different Member States, it is necessary to shed a light on provisions of the AVMSD that are not mandatory and therefore will naturally vary in the degree of their implementation.

A majority of ERGA members stated that their national media regulation in transposition of the revised AVMSD does not foresee the transposition of Art. 7a AVMSD. Some explained that the legislative authorities in their Member States did not use the opportunity to enshrine the provision on appropriate prominence of audiovisual services of general interest into national law. A few ERGA members concluded that their national legislators opted for a minimum harmonization and therefore only implemented the AVMSD provisions, which are of a mandatory nature. Consequently, Art. 7a of the AVMSD has not been included within the national transposition efforts of these countries.

A few ERGA members even clearly stated that their legislator won't use the possibility of transposing this article to national law and this was due to different reasons. One answer states that an obligation to safeguard general interest objectives can only be imposed if they are necessary to achieve clearly defined objectives. During the development of the draft legislation, including the study of the situation and developing trends of media policy, no problems were identified in ensuring general interest objectives and no reasons emerged why it would have been necessary to highlight audiovisual services of general interest. Another answer stated that the measures as such would be excessive and audiovisual media services providers should retain their discretion regarding national measures for prominence of general interest.

2.2 Ongoing regulatory discussions in Member States

The second question of the survey asked members to provide information on any ongoing discussion regarding national measures for prominence of general interest content. A majority of ERGA members, who reported that their countries have not yet implemented Art. 7a AVMSD, also stated that they were not aware of any ongoing political or legislative discussion in their countries regarding measures on prominence regulation of Art. 7a AVMSD. Some answers state that they see no necessity to engage in a discussion, due to the non-mandatory character of the provision.



A few ERGA members stated within their answers that different legal proposals in their countries, that can be regarded in the broader context of Art. 7a AVMSD, are currently under review:

- A possibility for the NRA to determine programmes and the services to be mandatorily distributed in public interest over electronic communications networks for radio and television broadcasting. This process should be done together with the telecommunication regulator to secure the technical measures of it.
- A revision of the must-carry rules regarding the broadcasters and radio channels in cable and IPTV distribution. These rules usually require an assessment on a regular basis. These upcoming discussions might include a broader perspective on the issue of prominence of general interest content.
- Suggestions regarding the introduction of rules on findability in the online environment, preferably in conjunction with a review of the current rules regarding the must carry obligation. It is firmly believed that such an investigation would be very valuable and important for future considerations in terms of prominence of general interest content.

Some members also stated that there were already existing national measures in place and valid long before the revised AVMSD, which would also ensure the accessibility and findability of specific contents and offers. These answers most commonly refer to “must offer” and “must carry” obligations. There are currently a number of provisions to ensure the prominence of broadcasting on all platforms to support the findability of public service broadcasters and certain commercial television services. According to these obligations, an operator distributing television programmes must include certain channels. Existing “must offer” and “must carry” obligations should be clearly distinguished from prominence regulation of general interest content as set out by Art. 7a AVMSD.

2.3 Criteria for general interest content

The third question of the survey asked members to specify their understanding of general interest content and to name possible criteria for its determination. Among the answers to the survey, it is highly consensual that general interest content must promote media pluralism and contribute to the formation of public opinion. Therefore, an adequate and actual public interest can be generally considered as one overarching criteria for the determination of general interest content. Members frequently stated that content in the public interest is mainly created to inform the public and mostly affects major social, cultural or political aspects and other important topics.

In this regard, the answers of members show that services that offer general interest content could be identified by the extent of news and information programmes intended to cover those topics or by the share of time of coverage of local or regional information. In the opinion of most members, this should as well account for the share of national as well as European production works and the representation of programs of own production.

Some answers of members specify additional criteria, which could to be taken into consideration:

- The share of programmes for minors intended for educational, upbringing and informational purposes.
- The coverage of preservation of the national and cultural identity and religious activities.
- Programmes in representation of cultures of national minorities and ethnic groups.



- The topicality of the content or information that is relevant in a specific location or situation.
- The promotion of cultural creativity, the public dialogue, education, science and research.
- The promotion and protection of the nature and the environment, life, and health.
- The share of programmes, which are intended for groups of citizens in social need.

As an evaluation of the survey answers, it can be understood that services that offer content of general interest can be considered as content providers that strongly contribute to media pluralism and diversity of the national media landscape in general. In this regard, some answers specifically refer to (news) programmes, which are subject to quality standards and produced by professional journalists as well as covered by regulations on objectivity and by self-regulatory processes, as a prerequisite condition for meeting the standards of providers of general interest content.

Within their answers, some members highlight the position of public service media in their countries, which fulfil an important function of information and education and which are subject to special obligations in terms of the quality of the content provided. The majority of members accentuate within their answers that a definition of general interest content should not be limited to public service media but shall also include content provided by commercial media services, which aims to fulfil social, democratic and cultural needs. A few answers specifically stated that services of general interest are – in addition to public service media – all commercial providers of audiovisual media content, which play an important role for an informed society.

A few answers also state that payment for access to a service should not necessarily prevent it from being considered as general interest and as eligible to be given appropriate prominence, particularly because payment for trustworthy sources of content is an emerging business model for high quality media offers.

Even though there seems to be a consensus on the criteria of general interest content, some answers to the survey state that content-based definitions of general interest could be a vague legal concept, which must be in line with national case law and always be considered in the specific case. Those answers commonly highlighted that there are also more objective (technical) criteria, which should be taken into account, such as:

- Programmes or offers that support the creation and dissemination of content intended for visually impaired persons and persons with hearing difficulties and the extent to which content is accessible to those audiences. (for example, measures of audio description, translation into sign language, subtitling, easy-to-understand orientation)
- The use of new techniques adapted to the development of appropriate technical infrastructure.
- The suitability of the operator's program for broadcasting urgent notifications in state of crisis or emergency.

In general, most members agree that it is highly important to determine possible objective criteria and standards and not go too much into a detailed content assessment or refer to potentially subjective quality standards, when defining general interest content. A possible determination by specific categories or genres would only represent subjective viewpoints and could not be assumed to be of general interest. Accordingly, the answers to the survey show that a mixed approach for a definition of criteria for general interest is preferable, combined by criteria regarding the content provided but also indicators that are connected to the type of the media service provider.

The survey results show that there is a mutual and broad common understanding regarding the overarching criteria for general interest content among ERGA members. Even so, the majority of



members clarify and support that the specific criteria for a definition of general interest content need to be defined on a Member State level. In addition, some members also highlight the necessity to evaluate the criteria for general interest content according to the ongoing changes within the media landscape, in order to assess and update criteria and the effectiveness of prominence measures.

2.4 Measures to ensure appropriate prominence

The last question of the ERGA survey asked members to specify possible measures that are suitable to ensure prominence of general interest content. Members highlight that there are different technical possibilities to ensure appropriate prominence of audiovisual media content. This is mainly due to the rapid development of the market for audiovisual media.

The results of the answers to this question point out that any measures connected to the implementation of Art. 7a of the AVMSD should be as abstract, principle-based and technologically neutral as possible in order to be future-oriented, as Art. 7a AVMSD potentially relates to both linear and on-demand services. Therefore, any too detailed regulation would incorporate the risk of being outdated soon, especially because technology changes at such a rapid pace. The answers to the survey also highlight the importance of proportionality of all measures for distributors with findability obligations and for content services hoping to benefit from such obligations.

With this in mind, a definition of comprehensive categories of measures or types of measures is recommended, in contrary to a less flexible set of specific measures. For example, measures ensuring prominence when a user accesses a service could be such a category and would comprise measures dealing with visibility on user interfaces or websites. Other measures could fall into the category of alerting users and would eventually cover recommendations, preselected content offers and highlighted information. Another possible category of measures could be dealing with easy navigation for a user within a service such as search options. In any case, categories or examples of measures would need to be defined in a technology-neutral and platform-independent manner in order to be effective and provide optimal clarity.

More specific measures on prominence regulation described by members include the following:

- Measures suitable to ensure the appropriate prominence can be denoting content of general interest in EPG's, ensure a prominent position and numbering of such channels and include notification about such channels when turning on the TV.
- Appropriate prominence of audiovisual media content can be improved through various technical solutions, such as adjustment of different user interfaces (also in smart TVs and websites) and exposure of such content in prominent places.
- Measures on the visibility of audiovisual electronic mass media content, must be of high quality, trustworthy and easy to use in order to give users positive experiences.

It is mostly consensual among the answers that audiovisual media content of general interest and especially individual services selected should appear in both recommendations and search functions of networks and distributors. The answers to the survey highlight that the right labeling of such services within the user interface is highly important to ensure an appropriate prominence. It is also considered necessary that broadcasting services of general interest are placed in a prominent position on the channel list of network operators.



Some members highlight that all measures to ensure the appropriate prominence of the audiovisual media content should be dependent on the consent of the audiovisual media content provider and that such measures should be offered free of any additional charge. Those measures should not – without the consent of the content provider – be used for additional advertising or sponsoring purposes by the network or operator.

3 Implementation of Art. 7a AVMSD: A best practice exchange

The following part of the report describes and assesses a number of national regulatory approaches in order to ensure the appropriate prominence of general interest content within different Member States. The selection of best practice examples either relates to national regulation already in force or draft legislation, which still has to be finally consolidated on a national level. This best practice exchange on the national implementation of Art. 7a AVMSD has selected the few existing transposition examples of Belgium, France, Germany and Ireland. These best practice examples include detailed information that have been provided by the respective ERGA members within the answers to the survey of Subgroup 1. Where available, this section outlines the national legislation related to the objectives of Art. 7a AVMSD.

3.1 Belgium

Art. 7a AVMSD has been transposed in the revised Decree of the French-speaking Community of Belgium as previous obligations have been maintained in the main transposition exercise of the 2018 Directive on Audiovisual Media Services. The visibility of content and services of general interest is an important issue for public audiovisual policies in Belgium, which was already reflected in various forms in the 2009 Decree of the French-speaking Community of Belgium on audiovisual media services.

The obligations are imposed on both public and private players and are addressed to audiovisual media service providers and distributors of audiovisual media services, i.e. players aggregating audiovisual media services and offering them to the public through any technological manner. This includes the following measures imposed on audiovisual media service providers. Each category of media service provider is subject to specific measures grouped in a generic chapter of the above-mentioned decree radio (i.e. quotas for French-language music and national creators, local productions), television (i.e. quotas for European and national works in the French language, music quotas), video-on-demand services (i.e. catalogue quotas and promotion of European and national works).

Several measures concern all media service providers, whether public or private. However, national and local public service providers are subject to more voluntary measures, in return for a public grant, particularly within a negotiated management contract.

The measures were extended to non-linear audiovisual media services in 2009. In the case of VOD-services - which are mainly composed of films and documentaries - the emphasis has been placed in particular on prominence and promotion of European works. Additionally, for public services, their



non-linear services are also subject to specific measures. The Decree of the French-speaking Community of Belgium includes the following measures imposed on AVMS distributors:

- Must-carry rules for national and regional public service linear and non-linear AVMS providers.
- Must-carry rules for private AVMS meeting general interest obligations.
- Rules on positioning in the numbering of these offers.
- Rules on the transparency and neutrality of content recommendation algorithms.
- Rules for the installation, access and presentation of electronic programme guides.
- Rules for access to network operators' application interfaces.

The CSA has also noted the value of a more thorough transposition of Article 7a, from the perspective of the visibility of content in online services. A recent CSA study on new audiovisual media consumption practices in Belgium concluded with the following question: “Does it make sense to limit the debate on the “discoverability” of content – particularly public interest content – to a question of obligations to be imposed on video-on-demand providers, as a counterpart to the must-carry obligations previously imposed on cable operators? In fact, the process of searching for and selecting content seems to take shape, nowadays, by a search for content between the different consumption modes rather than within the same consumption mode”.

On this point, the study further recommended to reflect on the various issues linked to “discoverability”, in particular by comparing the global strategies of the major players who are focussing on the actual consumption habits of the general public on the various issues in the entire value chain. These various questions are invitations to the Government and stakeholders to reflect in greater depth on the transposition of the objectives of visibility of general interest content to the new modes of distribution, and beyond that, on the material scope of public audiovisual policies and regulation in this area. These reflections could include the question of the responsibility of intermediaries.

In the non-linear environment, the CSA has favoured a transposition of prominence measures in the form of intensification of content promotion tools on all media (homepages, websites), considering the ineffective character of catalogue quotas. On this occasion, the CSA identifies the mechanisms of recommendations based on algorithms as a potential difficulty for the practice of prescribing content of general interest. It further underlined the necessity to strike the right balance between the objective of ensuring the visibility of the aforementioned content and the need to allow platforms to provide their users with the service they are aiming to deliver.

The CSA recommended to support an investment project on “Digitisation of the cultural and media sectors” in the context of the National Plan for Recovery and Resilience - itself supported by European funding. This project, led by a consortium of Belgian media players, focuses on strengthening the presence and discoverability of national cultural and media content.

3.2 France

Art. 7a AVMSD has been transposed into national law in France within the AVMS transposition act of December 2020. This text introduced a new article in the French Broadcasting Act. It sets out the concept of due prominence and adapts it to the French context of audiovisual and cinema industries.



French lawmakers consider that the principle of due prominence shall apply to all “user interfaces” embedded in a TV-set or in any devices connected to a screen, smart speakers, VOD or any apps stores. In the French regulatory approach, the obligations depend on the important condition of the number of users. Therefore, a threshold is still to be defined by the Government.

As of January 2022, operators who determine the terms of presentation of services on user interfaces and who exceed the threshold of numbers of users set by the decree, have to ensure an appropriate visibility of all or part of the services of general interest under conditions specified by the CSA within a period specified by the same decree.

Under French law, due prominence is primarily applicable to content provided by public service broadcasters: TV and radios. It is however up to the French CSA to add some commercial services that it would consider of general interest under the condition that they contribute to pluralism and cultural diversity. This addition can only be done after a public survey and be has to be publically announced.

Pursuant to this regulation, it is the responsibility of providers of user interfaces to grant due prominence to general interest services through various ways. They can do it on the homepage of the interface, through recommendation engines, through the results of search queries or also with the help of the remote control devices, which allows access to audiovisual communication services. Nevertheless, in addition to those possibilities, the service provider shall always be identifiable.

To enforce those rules, the providers have to regularly report to the CSA about the way they apply the rules. The CSA has to determine the information that needs to be collected. On that basis, the CSA will issue a global report about the application and the effectiveness of those measures. In case of difficulties in obtaining information from the stakeholders, the CSA is entitled to use its powers and may warn offenders and possibly impose a fine after a due process of law.

3.3 Germany

In Germany, Art. 7a AVMSD has been transposed in the revised Interstate Media Treaty by the German *Länder*. This specific part of the new media regulation entered into force in September 2021 and includes a mechanism facilitating the findability of certain offers on user interfaces that are particularly relevant to the formation of public opinion. The German regulation covers the full variety of audiovisual media content by German public media providers (broadcasting and online offers). Additionally, it applies to certain offers of commercial providers, which make a significant contribution to the diversity of opinions and offers in Germany.

The appropriate prominence of all public broadcasters and their audiovisual media services is embedded in the regulation itself. The commercial audiovisual media services are not listed in the regulation itself and need to be approved up on application of the media service provider as “offers of public value” by the German media authorities (DLM).

The German media authorities determine the commercial providers of general interest in accordance with the Interstate Media Treaty. Those offers are appointed by the state media authorities for a period of three years and published in a list on the state media authorities' website. The following criteria (exhaustive list by the legislator) must be considered when making this decision:

- the amount of time spent reporting on political and historical events,



- the amount of time spent reporting on regional and local information,
- the ratio between in-house productions and programme content produced by third parties,
- the quota of accessible offers,
- the ratio between trained employees and employees who still need to be trained, involved in creating the programme,
- the quota of European productions, and
- the quota of offers for young target groups.

The rules on prominence of general interest content in Germany constitute an “easy-to-find” regulation. The regulation addresses providers of user interfaces. All offers with the so-called “public-value-status” (all public services and the selected commercial offers) need to be “easy to find” within user interfaces, as they usually are the access point where users get into contact with audiovisual media content from different audiovisual media service providers. User interfaces may for example include or be provided within

- offers that give a scheduled overview (EPGs).
- all Hbb-TV or Smart-TV interfaces (TV manufacturers).
- interfaces by cable network suppliers.
- interfaces of set-top-boxes.
- acoustic interfaces of smart speakers.

The regulation does not address internet platforms – such as Social Media or search engines – because of their different business models and their function as “intermediaries” for content, in opposition to the “closed shop” of media platforms or user interfaces where the provider decides, which contents gets access. The status as an offer of general interest in the meaning of the German regulation does not include the access to all user interfaces.

Within the German regulation, there is no certain predefined form or type of measures of appropriate prominence. The technical implementation is not regulated in detail within the legislature. It lies within the competence and the responsibility of the providers of the user interface to ensure the appropriate prominence of the selected offers, taking into account the differences among interfaces addressed by this regulation and the rapid technological development. Once providers of user interfaces have concluded the technical implementation and provided prominence measures, the German media authorities (DLM) are responsible of supervising if the selected offers are easy-to-find with the user interface and whether the providers meets the requirements of the regulation.

3.4 Ireland

The Irish government recently published its proposed approach to implementing Article 7a of the AVMSD, meaning that the legislation to transpose the AVMS Directive is currently still under review by the Houses of the Oireachtas, the Irish parliament. The proposal will be worked into legislative wording and then will be subject to parliamentary debate before final wording is agreed.

The current legislative approach does not include prescriptive provisions but rather sets out duties and obligations for the Media Commission, which is the regulator to be created for online regulation in Ireland - including audiovisual media services and VSPs. This approach is taken in part to ensure that



the legislation is future-proofed and allows the regulator to be responsive to technological and market changes.

For the purposes of the Irish legislative proposal, “public service content” means audiovisual content that:

- informs, educates and entertains the Irish public with regard to matters of Irish culture, identity, sport, language and other matters inherent to Ireland and the Irish people.
- provides the public access to high quality, impartial, independent journalism, reporting on matters of local, regional, national, European and international importance in a balanced way and which contributes to democratic discourse.
- brings the nation, including the diaspora, together at moments of great national importance.
- is of social and cultural value to the people of the island of Ireland.

Such “public service content” can be provided by audiovisual media services operated by either a public service broadcasting corporation, the national commercial television programme service contractor or other audiovisual media services by ministerial order following a recommendation from the Media Commission.

According to the Irish proposal, the Media Commission shall prepare rules with respect to the prominence and findability of public service content delivered through services providing access to audiovisual media services. The Media Commission, in developing these rules, shall do so in order to achieve the following public interest objectives:

- ensuring the ease of access to public service content in light of the rapidly evolving technological environment,
- ensuring that public service content reaches the widest possible audience,
- promoting access to accurate, trustworthy and reliable information,
- promoting access to public service content, which has the objective to inform, entertain and educate.

In preparing these rules, the Media Commission is required to have regard to:

- the definition of public service content provided in the legislation,
- the nature and scale of audiovisual media services providing public service content,
- the public interest objectives set out in the legislation (and outlined above),
- the likely expectation of the audience as to the nature of public service content,
- the nature and scale of services providing access to audiovisual media services,
- the fundamental rights of the audiences and operators of services providing access to audiovisual media services,
- any contractual arrangements relating to prominence which are in place between a public service content provider and a provider of a service providing access to audiovisual media services.

The prominence requirements apply to “services providing access to audiovisual media services.” This means that TV platforms will be required to ensure that their user interfaces give due prominence to public service content in accordance with rules set by the regulator. User interfaces on devices such as Smart TVs and streaming sticks are covered by this requirement. The regulation does not address internet platforms (i.e. social Media or search engines).



Some examples of the possible rules that the regulator could make in this respect are set out below:

- The regulator may require that platform providers reserve a portion of their homepage to highlight certain categories of PSB content or certain PSB services as the regulator may set out in the rules.
- The regulator may require that each platform include a prominent link to the Electronic Programme Guide on the home screen.
- The regulator may require that platforms provide appropriate search functionality in order for users to easily find public service content.

3.5 Others

Austria

Art. 7a AVMSD has been transposed into national law through Art 30a of the Audiovisual Media Act. It covers the obligation for broadcasters to allow federal, regional authorities to give a possibility for public calls or warnings in case of crisis, emergency or catastrophic events. This obligation ensures that important information reaches the public as well as private persons in reasoned and emergency situations in order to avoid potential endangering for life and harm of people at any time in a way appropriate to the need and situation, free of charge.

The information has to be provided in a way of appropriate accessibility in a barrier-free way. This also includes that broadcasting services offer a variety of services to provide public information in case of a crisis like the corona pandemic, ranging from barrier-free broadcasting of news, a specific info point section in their online news portal and an app to distribute critical information to its users. Such content is usually followed by a visible and acoustical information that an information in the interest of the general public will follow.

Bulgaria:

Art. 7a has been transposed into the revised national media law the Radio and Television Act (RTA) in Bulgaria, which is in force since December 2020. The Council for Electronic Media may take measures for the appropriate prominence of audiovisual media services of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity.

Greece:

Art. 7a has been transposed in to national law in Greece with article 11 of Law 4779/2021. This article provides that “by decree issued following a proposal of the Minister to whom the responsibilities of the General Secretariat of Communication and Information have been assigned and the opinion of the ESR, measures may be taken to ensure the proper promotion of audiovisual media services of general interest and in particular services that promote pluralism, freedom of speech and cultural diversity”. For the time of the survey, there is no discussion on the elaboration of the decree in Greece.

Italy:

The Delegation Law does not include, in its criteria, any specific point regarding the provisions of Article 7a of the AVMSD. Nevertheless, in Italy, all audiovisual media service providers should respect



several general principles. Within the respect to these general principles, Italian legislation confers a particular status as regards the information activity (for example news and current affairs programmes). Art. 7 of the AVMS Code qualifies 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:

- truthful presentation of the facts and events,
- daily transmission of newscasts,
- right of access for all political subjects in term of equal treatment and impartiality,
- obligation for all providers to transmit press releases and official declarations of the constitutional bodies,
- absolute prohibition to use methodologies and techniques capable of manipulating the content of the information in an unrecognizable way.

The provisions of Art. 7 of the Italian AVMS Code are applicable to all media service providers (public and private).

Malta:

In Malta, no specific measures were taken in relation to Article 7a of the AVMSD. However, the Broadcasting Act includes a definition of a “general interest objective service”. It is described as “a television broadcasting service which takes on the obligation of broadcasting a specified quantum of programmes which are of general interest. A general interest objective service may be either a generalist service or a niche service. A “niche service” means a television broadcasting service, which predominantly transmits programmes of a limited number of genres of a specialist subject matter.

The regulation sets out a number of criteria through which the Broadcasting Authority determines whether a television service is to be considered of general interest. These include;

- A minimum of programme content of continuous duration (expressed in time).
- The inclusion of a percentage of genres (i.e. discussion programmes dealing with topics of a social, cultural, educational, environmental, economical, industrial or political nature.)
- A maximum period for teleshopping.
- Obligatory news bulletins and current affairs programmes.
- Minimum weekly programming for persons with disability (accessibility).
- An annual maximum percentage of repeated content.

4 Learnings: Challenges and opportunities of prominence regulation

Technological challenges and opportunities

Ensuring an appropriate prominence for media content of general interest has potential benefits for users and an informed society, media service providers as well as for the online media environment in general. A relevant part of the discussion on prominence regulation is focused on the technical implementation of appropriate prominence. Therefore, it is necessary to facilitate a better understanding of “appropriate measures” that are suited to give prominence to certain content. Different opinions towards the technical implementation of measures regarding Art. 7a AVMSD have been discussed in between stakeholders and ERGA in the Subgroup 1 workshop on September 22nd.



From a scientific point of view, giving prominence to content can be considered as a possibility to counter existing knowledge gaps within society by technological means. To achieve this goal, the “prominence design” of platforms and user interface and the impact of technical measures on users are key for the possible effects of prominence. Additionally, a high level of transparency and standards for user autonomy should be essential when defining prominence measures for audiovisual media content.

There are several reasons why neither the legislators nor the national regulatory authorities should decide in detail how appropriate prominence can be achieved. Audiovisual media services are received in a variety of different ways, which are constantly changing. There is the large number of systems in which media services are presented and there is a high technical diversification. Having a too detailed regulation might lead to a constant need for change and improvement, lacking behind the state of technological developments.

Prominence regulation should be more abstract and general when it comes to different ways of technical implementation. Therefore, it might be advisable to leave the details of technical implementation of prominence measures to the industry. As long as the legislator defines clear and comprehensive objectives of the regulation, it can be up to the industry to develop different solutions. After the technical implementation of prominence measures, NRA’s should decide whether the suggested technical solutions are adequate to meet the standard of the regulation.

From a technological perspective, it might be favourable to facilitate a harmonized approach on prominence regulation within the EU Member States in order to avoid that the programming and settings of devices – which are produced for the European market – have to be constantly altered by manufacturers according to divergent rules across the EU. As divergent regulations might slow down technological improvements, this might also be seen as a possible benefit to users, who show a constant demand for new products and technologies.

Economic challenges and opportunities

The production costs for quality content for audiovisual media providers are constantly on a high level. In many cases, desired public value contents like news are especially hard to re-finance, for example due to stricter advertising rules. Unchanging costs with lower revenues mean that it becomes less attractive to produce or purchase such content. It is therefore no longer worthwhile to produce what is commonly referred to as “valuable content”. In this regard, the regulatory mechanism behind the prominence regulation from Art.7a AVMSD can precisely address this issue.

Implementing Art. 7a AVMSD offers Member States a regulatory possibility that gives providers of general interest content an incentive for producing such content. Findability and an appropriate prominence can help to make it more attractive for providers of audiovisual media services to invest in the production of such content and is likely to stimulate the competition between providers of “general interest content”. Appropriate prominence could intend to encourage existing players who offer content relevant to the formation of public opinion and to make this commitment interesting for other providers.

A regulation on the appropriate prominence of content of general interest may affect the competitive conditions for the different audiovisual media services and may affect different players in the distribution chain. In this regard, Art. 7a AVMSD enables the Member States to take accompanying regulatory measures for appropriate prominence, which enable the market to rebalance itself. The



imbalance between the number of services in general and the number of services, which contribute in particular to the formation of public opinion, could be fixed that way.

Legal challenges and opportunities

Art. 7a AVMSD allows Member States to put measures in place and to provide clear guidelines on key general objectives and set important safeguards and requirements for the regulation of prominence. Still, it can be concluded from the evaluation of the answers to the survey that a constant common understanding of the scope, the definitions and the possible measures in transposition of the provision is not self-evident and should not to be taken for granted.

The media regulation in many European Member States has a long tradition of securing accessibility for (public) media service providers, predominantly by must-carry provisions. Most national media laws already require prominence for public service remit, which must be accessible and available to the majority of audience. Additional rules on prominence of general interest content, as intended by Art. 7a AVMSD, do not necessarily mean that a certain content – even if selected as general interest content – has to be granted access to a certain media network or be accessible via any user interface. In this regard, it is important to distinguish the different regulatory mechanism between the well-known “must-carry” rules and the provision for prominence regulation of general interest content.

The formation of public opinion and is of high value for democratic states and society. This might justify many restrictions, but the proportionality of all regulatory measures has to be taken into account. Especially commercial audiovisual media service providers should not be forced to show or produce content of general interest. If legislators chose a regulation that is intervening too strong, it could push some service providers out of the market altogether. Therefore, legislators should take into account the framework for the production of content of general interest when developing measures for prominence of general interest content.

Cultural challenges and opportunities

There are societal challenges we face today that might make it necessary to give more visibility to general interest content that is following the journalistic and ethical standards. As a matter of course, there are the public broadcasters who play a major role in the formation of public opinion. However, beside the public sector, a pluralistic media environment also needs commercial services as part of a well-functioning system.

Prominence regulation has a direct benefit for the individual recipient, which also affects public opinion formation as a whole. In light of the rapidly evolving media environment where there is an increased spread of disinformation, it can be considered desirable to ensure the promotion of audiovisual media services with a high information value in order to ensure that the public has continued access to accurate, trustworthy and reliable information. This can be seen a chance to evaluate possible contributions of prominence regulation to the fight against disinformation.

This is also why appropriate prominence of public value content goes along with the objective of society as a whole. It must make sense for commercial audiovisual media providers to invest in public value content. As the national regulatory authorities, the goal and the legal obligation of ERGA members is to safeguard media pluralism and media diversity. Rules on prominence of general interest content can contribute to the overall media diversity. The national regulatory authorities also have the protection of users firmly in mind. It should be intended to make it easy for them to actually



identify and find those services that contribute to the formation of opinion. Therefore, companies, which provide audiovisual media services, could be enabled to place such offers in a prominently.

5 Conclusions

This report is supposed to provide an overview on the current state of the national implementation of Art. 7a AVMSD, to continue the exchange of best practice examples and to facilitate a common understanding of the regulatory mechanism of the provision. Therefore, ERGA members were invited to provide answers to a digital questionnaire on the implementation of Art. 7a AVMSD. The drafters of this report received feedback from 24 ERGA members in total.

The answers by ERGA members demonstrate that the current state of national implementation of Art. 7a AVMSD varies largely in between Member States. At the time of the survey in April and May 2021, just 6 out of 24 countries who provided answers to the questionnaire stated that their countries had transposed the provision of the directive into national regulation. This inconsistency is predominantly due to the non-obligatory nature of the provision or the national legislators opting for a minimum transposition. A majority of ERGA members stated that they were not aware of an ongoing legislative discussion in their countries regarding measures on prominence regulation of Art. 7a AVMSD.

The few transposition examples already in place indicate a few common denominators. In terms of possible criteria for the determination of general interest content, the survey results clearly show that there is a broad mutual understanding regarding some overarching criteria among ERGA members (e.g. share of news, share of local information, share of own production and European works within the programming). It is also mostly consensual that general interest content must promote media pluralism and must be of an adequate and actual public interest. The majority of members accentuate within their answers that a definition of general interest content should not be limited to public service media but shall also include content provided by commercial media services, which aims to fulfil social, democratic and cultural needs.

Hence, most members agree that it is highly important to determine as possible objective criteria and not to refer to potentially subjective quality standards. Therefore, a mixed approach for a definition of criteria for general interest content is preferable, composed by criteria regarding the content provided but also indicators that are connected to the type and formation of the media service provider. More objective technical criteria (e.g. barrier-free offers) should also be taken into account.

The result of the report also show similarities regarding the understanding of the technical implementation of prominence measures. As there are many different technical possibilities to ensure appropriate prominence of audiovisual media content, very detailed or less flexible measures incorporate the risk to be outdated soon since technology changes at a rapid space. Any measures connected to the implementation of Art. 7a of the AVMSD should be kept as abstract, principle-based and technologically neutral as possible in order to be future-oriented. Having a too detailed regulation might lead to a constant need for change and improvement, lacking behind the state of technological developments.

National regulatory approaches of a more flexible and adaptive nature could ensure the space for innovation by regulated entities, allow for market and technological changes to align with regulation



and encourage dialogue between parties in the supply and regulatory chain and minimise the potential for a technically driven regulatory approach.

The exchange of best practice examples of prominence regulation in transposition of Art. 7a AVMSD outlined above shows that the few regulatory approaches share a lot of similarities regarding the regulatory objectives, the definition of criteria for general interest content, the scope of the regulation and the regulatory perspective regarding the technical implementation of measures.

Even so, due to the lack of a greater number of transposition examples effectively in force, any references concerning a more harmonized approach among Member States would be very difficult and premature at this time. NRA's should work closely together to support and foster the regulatory mechanism behind Art. 7a AVMSD, as described in this report and as highlighted in the best practice transposition examples in order to illustrate that prominence regulation can be a possible benefit for individual users, the economic situation of media outlets and for media pluralism and diversity in general.



Art. 7b AVMSD

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Signal integrity

1 Introduction

The following section aims to provide an overview of the understanding of and the measures taken by the different Member States of the European Union in respect of Article 7b of the Audiovisual Media Service Directive (AVMSD), also known as signal integrity rules.

Article 7b states:

‘Member States shall take 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.

For the purposes of this Article, Member States shall specify the regulatory details, including exceptions, notably in relation to safeguarding the legitimate interests of users while taking into account the legitimate interests of the media service providers that originally provided the audiovisual media services.’

The Article is accompanied by Recital 26:

‘In order to protect the editorial responsibility of media service providers and the audiovisual value chain, it is essential to be able to guarantee the integrity of programmes and audiovisual media services supplied by media service providers. Programmes and audiovisual media services should not be transmitted in a shortened form, altered or interrupted, or overlaid for commercial purposes, without the explicit consent of the media service provider. Member States should ensure that overlays solely initiated or authorised by the recipient of the service for private use, such as overlays resulting from services for individual communications, do not require the consent of the media service provider. Control elements of any user interface necessary for the operation of the device or programme navigation, such as volume bars, search functions, navigation menus or lists of channels, should not be covered. Legitimate overlays, such as warning information, general public interest information, subtitles or commercial communications overlays provided by the media service provider, should also not be covered. Without prejudice to Article 3(3) of Regulation (EU) 2015/2120 of the European Parliament and of the Council (10), data compression techniques which reduce the size of a data file and other techniques to adapt a service to the distribution means, such as resolution and coding, without any modification of the content, should not be covered either.

Measures to protect the integrity of programmes and audiovisual media services should be imposed where they are necessary to meet general interest objectives clearly defined by Member States in accordance with Union law. Such measures should impose proportionate obligations on undertakings in the interest of legitimate public policy considerations.’



Article 7b aims to protect the rights of the media service providers by prohibiting overlaying for commercial purposes or modifying their media services without their explicit consent. The media service can be modified in a number of different ways, by shortening, altering or interrupting the content. By modifying the content, the viewer does not receive it in a way envisioned by the media service provider. Therefore, the obligation in Article 7b intends to guarantee the integrity of programmes and audiovisual media services. That way, media service providers can protect their editorial responsibility and ensure that the viewers receive their content in the intended way. It is clear that Article 7b is mainly concerned with electronic communications networks (e.g. retransmission operators) and TV manufacturers which can have the biggest impact on the final look of the audiovisual media services.

Overlaying the audiovisual media service means placing messages (usually graphics, animation or text) on top of other media so part of the media service will be covered by other content. Overlays can be used for various purposes. One purpose is advertising, by showing a logo on screen or having a scrolling text at the bottom of the screen. It is often used for self-promotion where a broadcaster announces an upcoming programme on his channel. Another purpose is graphics indicating the status of TV functionalities, i.e. volume bars, search functions, navigation menus or lists of channels. These overlays are explicitly said in Recital 26 to be exempt from the obligation laid down in Article 7b as they are not used for commercial purposes and are initiated by the viewer.

From the wording of Article 7b, it is apparent that overlays requiring a consent of the media service provider need to be commercial in nature. However, when it comes to altering, shortening and modifying the content, a consent is required whether it is done for commercial purposes or not. Such obligation is logical because a media service provider naturally does not want their content altered in any way. Overlays, on the other hand, which are often neutral in nature and can be initiated by the viewer, do not require a consent of the media service provider.

The second paragraph of Article 7b of the AVMSD lays down that Member States shall specify the regulatory details, including exceptions from the rule set in the first paragraph, i.e. 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. It is therefore envisaged that the rule should not be absolute but there can be exceptions from it, notably in relation to safeguarding the legitimate interests of users while taking into account the legitimate interests of the media service providers that originally provided the audiovisual media services.

Recital 26 mentions several types of overlays which are exempt from the obligation laid down in Article 7b. Overlays solely initiated or authorised by the recipient of the service for private use as well as control elements of any user interface necessary for the operation of the device or programme navigation do not require the consent of the media service provider. In the first type of overlays, it is important to underline the word 'sole', meaning that the decision to call for a commercial listing or to refuse it must be exclusively viewer's. As for the latter type of overlays, it has to be stressed that only when the control elements are strictly neutral, can they be considered exempt from the scope of Article 7b. If they would have a commercial aspect added, they would fall under the provision of Article 7b.

Also, legitimate overlays, such as warning information, general public interest information, subtitles or commercial communications overlays provided by the media service providers themselves are also out of scope of Article 7b. Subtitles relate mainly to the accessibility of the media service and are regulated in Article 7.



One specific type of exemption from Article 7b are data compression techniques which reduce the size of a data file and other techniques to adapt a service to the distribution means, such as resolution and coding, provided of course that no modification to the content occurs.

For a more detailed reading on the new Article 7b regarding signal integrity, we recommend a publication of the European Commission ‘Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD)’ (2021, pages 234-365) available online: <https://digital-strategy.ec.europa.eu/en/library/study-implementation-new-provisions-revised-audiovisual-media-services-directive-avmsd>).

2 Existing and potential approaches on national level

The following section outlines the possible regulatory approaches to the issue of signal integrity in several Member States represented in ERGA. Where available, the section outlines national legislation related to the objectives of Article 7b 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.

For the purpose of gaining information about the transposition of Article 7b of the AVMSD, a short survey ([Annex 1](#)) has been sent to the members of SG1 of ERGA. The questions presented in the survey were:

1. Has your Member State taken any national measures in transposition of Art. 7b AVMS-D? If yes, please specify your answer.
2. If not, please describe any ongoing discussion in your Member State regarding national measures for ensuring signal integrity.
3. Please give examples from your Member State where audiovisual media services by media service providers are either overlaid or modified for commercial purpose.

We received 24 responses to the survey. At the time of receiving the responses (April 2021), 12 Member States had already transposed Article 7b of the AVMSD (**Austria, Bulgaria, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Malta, The Netherlands, Portugal and Sweden**) while 9 Member States were still in the process of transposition (**Czech Republic, Estonia, France, Ireland, Italy, Poland, Slovakia, Slovenia and Spain**).

When transposing Article 7b of the AVMSD, the Government of **the French-speaking community of Belgium** decided not to change the text of the obligation that was already in effect and which they believed to be stricter than the Article 7b of the AVMSD. The obligation states that “Distributors of AVMS services must distribute linear television services in their integrity at the time of broadcast.” Since the obligation can be deemed as regulating the same area as Article 7b of the AVMSD, Belgium is counted among countries that transposed Article 7b of the AVMSD which is reflected in the diagram below.

Two countries, **Croatia and Norway**, have so far not made any steps towards transposing Article 7b of the AVMSD. However, in the case of Norway, a public consultation paper is expected to be published later this year, and then the Norwegian Media Authority will know more about how Article 7b of the AVMSD will be transposed into their national law. Therefore, it would seem that Norway is planning to transpose the Article 7b of the AVMSD but is waiting for the public consultation paper. At the time

of the survey (April 2021), Croatia had not yet transposed Article 7b of the revised AVMSD and there was no ongoing discussion regarding this point.

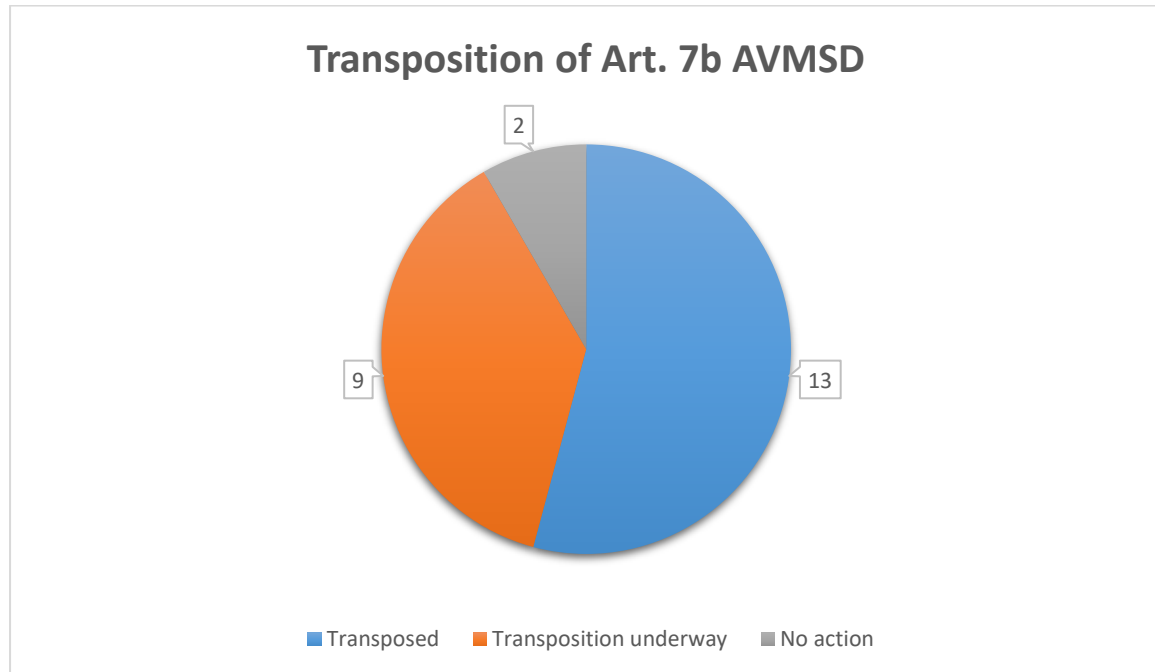


Diagram 1: Overview of the state of transposition of Article 7b AVMSD

The countries that had already transposed Article 7b of the AVMSD mostly transposed it without any changes. Even when the wording of the obligation was slightly changed, the obligation stayed the same. The national provisions are usually a mixture of Article 7b and Recital 26 of the AVMSD, the latter providing the exemptions from the obligation.

However, in some countries, the obligation or exemptions go a little further. In **Austria**, besides the exemptions regarding abovementioned overlays stated in Recital 26, audiovisual commercial communication to which the viewer or user gave their separate consent in individual cases does not require a consent of the media service provider.

Similarly, the **Greek** national law states that any alteration for commercial purposes of audiovisual services and programmes is prohibited. This provision does not apply, inter alia, in cases where the consumers of media services have permitted personalized advertisements.

In **Germany**, without a consent, a media service may not be overlaid or have its image scaled for this purpose, in the course of the image or acoustic reproduction, completely or partially with advertising, or content from broadcasting services or broadcast-like telemedia, including recommendations or references thereto. It also may not be included in bundled offers, or otherwise marketed or made publicly available for a fee or free of charge. It is clear that the scope of the obligation is also extended to include providers of broadcast-like telemedia. HbbTV signal is also subject to the prohibition on modification.

General consent by the user (e.g. in the context of default settings) to overlays that are controlled by the provider of the user interface or media platform are not initiated in individual cases. Even in the event of an individual case, however, overlays that serve the sole purpose of advertising are not



permissible. However, this does not include recommendations or references to the content of broadcast programs or broadcast-like telemedia.

The National Broadcasting Council of **Poland** (KRRiT), noting that Poland is still in the process of transposition of Article 7b of the AVMSD, raised an interesting question regarding retransmission or distribution of broadcasts and/or on-demand services (e.g. via cable, satellite, IPTV, etc.). Distribution should, in its essence, mean that no changes whatsoever are made to the broadcast or on-demand service. If the operator does modify the broadcast or overlays it for commercial purposes, is it still distribution or is it a new broadcast? In this case, it can be argued that it is still distribution but the operator faces a possible reprisal for breaching signal integrity obligations and a possible action from the broadcaster or on-demand service provider themselves. However, it remains to be seen whether this will be the case in practice and it is a point which national regulators should discuss further to achieve a common understanding.

3 Cases concerning Art. 7b AVMSD

Since signal integrity is a new obligation, most of the countries did not yet encounter any breaches of this obligation. Countries that cited any possible cases usually referred to the split-screen advertising or cutting the end credits of movies short, noting however, that the split-screen was on the part of the broadcaster and not the distributor, therefore not falling under the scope of the signal integrity provisions.

In **Slovakia**, there was a case of one retransmission operator overlaying the broadcast of the public service broadcaster with a rolling text at the bottom of the screen promoting the services of the operator. However, there was no provision that would prohibit the operator from doing so at the time, resulting in the operator not breaching the Broadcasting and Retransmission Act.

To sum up, the wording of the obligation in Article 7b of the AVMSD has not yet proven problematic and many countries transpose the obligation without many changes. Individual national laws base the signal integrity obligation upon the restriction of Article 7b of the AVMSD and then set down exemptions from the restriction based on the exemptions in Recital 26 of the AVMSD. So far, there are no best practices that could be shared which will undoubtedly change in the future when Member States start enforcing this obligation.

4 Possible problems with practical implementation

As was already mentioned in the previous section, the transposition of Article 7b of the AVMSD has so far not posed many problems because the wording itself is quite unambiguous. Practical implementation, however, may pose some trouble in deciding which overlays or scaling are still permissible and which are not. It is yet to be seen how will different Member States handle the cases and decide what constitutes a breach of this obligation.

Firstly, however, it is important to point to the fact that obtaining consent may pose a problem for the distributors, TV manufacturers, etc. Consent in this regard suggests a written consent so that there



are no doubts whether the consent has been given or not. There are many electronic communications networks and TV manufacturers, each with their own user interface (UI). Since they may not know on which channel their UI will be initiated, they would need consent from every channel they distribute. However, for many of them, especially the smaller ones, it may be hard to obtain a consent from each and every channel. Trying to be in line with what Article 7b of the AVMSD says, this can result in UIs which are not as user-friendly.

One of the most commonly used overlays is Electronic Programme Guide (EPG). EPGs can have various forms and looks; the broadcast can be squeezed and pushed to the corner with the EPG in the centre of the screen, the EPG can be transparently overlaid over the broadcast or even completely covering the broadcast, leaving only sound. The ordering of the channels in the EPG can be random or sponsored channels can be at the top of the list. Therefore, even though EPG may appear neutral, there are still considerations to be made whether this particular overlay has commercial elements or not and thus either requiring consent of the media service provider or not.

Another possible problem may arise with split-screens. Split-screens are used for showing more information on screen simultaneously. Traditionally, it has been used for showing advertisement alongside a programme, e.g. during the end credits. Nowadays, it is mainly used by TV manufacturers to allow users to do several different things at once, to perform various actions on the screen while still being able to watch the broadcast or on-demand service. The viewer can, for example, watch the broadcast or on-demand service while browsing the internet, using various apps on their TV or even watch simultaneously several different broadcasts or on-demand services. The original broadcast or on-demand service may be thus resized or overlaid and blocking part of the picture. While this is done at the request of the viewer, it may not always be clear whether it falls under the exemption 'user interface necessary for the operation of the device or programme navigation'. A possible commercial nature of the overlay may be a deciding factor in determining if the TV manufacturer needs consent of the broadcaster and/or on-demand service provider.

The audiovisual value chain involves several different players, notably audiovisual media service providers, distributors, online video platforms, smart TV manufacturers and consumers. Most of the players aim to increase their profit while audiovisual media service providers also want to protect their editorial responsibility. On the other hand, consumers want as user-friendly system as possible, being able to choose the system that works for them the best. If the application of Article 7b of the AVMSD is too lenient, audiovisual media service providers may not be able to maintain their editorial responsibility and the end users do not receive the content in the intended way. Conversely, if the application is too strict, this may negatively impact the distributors and TV manufacturers as it may hinder innovation and competition. Therefore, there is a need to strike a balance when regulating signal integrity. Ideally, the goals and needs of each party should be met to the more or less same extent.

5 Conclusions

Although the signal integrity obligation laid down in Article 7b of the AVMSD is a new one, its transposition into national laws of the individual Member States has not posed many problems as of yet. The obligation itself is quite clear so Member States have so far been able to transpose it word for word or with only slight changes.



So far, there have not been any cases of breaches of the signal integrity obligation. Therefore, it is yet to be seen how easy the practical implementation will be. As mentioned above, in practice, regulators will have to ascertain the commercial nature of the various overlays that could be used mainly by distributors and TV manufacturers.

It is not feasible for electronic communications networks and TV manufacturers to develop a specific system for each country in which they sell their products. If one country has stricter measures than other countries, distributors and manufacturers may decide that it is easier to model every product in a way that meets the strictest measures, thus also affecting viewers from other countries. A common approach and consistent implementation of the new rules across the European Union will be beneficial for every party involved. Therefore, an exchange of best practices regarding the implementation of the rule is crucial. ERGA, in this regard, is the perfect forum for Member States to exchange experiences, aiding a consistent application of the signal integrity obligation.