

2024 AVIA Regulating for Growth – OCC TV Matrix for the EU

Questions	OCC TV	Foreshadowed changes?
<p>1. How regulated? <i>Details of regulator/s</i></p>	<p>The AVMSD</p> <ul style="list-style-type: none"> • Since 2010, the EU's Audio Visual Media Services Directive (AVMSD) has governed EU-wide coordination of national legislation on audiovisual media, including 'on-demand program services'. • The AVMSD does not distinguish between content made available online or via other distribution means. It will regulate OCC services to the extent that they contain linear programming or fall within the definition of an 'on-demand program service', i.e. (i) the principle purpose of the service is to provide "TV-like content" which is accessible on demand, (ii) the same person/entity that has editorial responsibility for the service also makes it available to the public and (iii) that person falls within the jurisdiction of an EU Member State. • Content regulations applicable to broadcasters of on-demand programming are less onerous than those applying to linear services. Rules on harmful material, sponsorship and product placement apply to on-demand broadcasters, as do certain administrative rules. • Member States are free to choose how to implement the AVMSD, but the EU encourages a system of self- and co-regulatory codes to help regulate the sector alongside legislative measures. • Establishing which Member State's jurisdiction an audiovisual media service provider falls under requires an assessment of factual situations against the criteria laid down in the AVMSD. Priority is given to the Member State where the head office is located, and editorial decisions are taken. • On 19 September 2020, the scope of the AVMSD was extended to cover 'video sharing platforms' like You Tube and 'social media services' like Facebook. • The revisions introduced aim to align the regulation of linear and on-demand programming e.g. by increasing the protection of minors against 	<ul style="list-style-type: none"> • The European Commission is preparing an ex-post evaluation of the AVMSD by 19 December 2024 and its added value, accompanied by proposals for further review.

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	<p>harmful content on TV and video-on-demand and imposing the European Works quotas on on-demand services as well as linear.</p> <ul style="list-style-type: none"> • It also increases the protection of the general public from incitement of violence or hatred and public provocation to commit terrorist offences appearing on TV or video-on-demand services. Further a strengthened country of origin principle, with more clarity on which Member State's rules apply, aligned derogation procedures for TV broadcasters and on-demand service providers and possibilities for derogations in the event of public security concerns and serious risk to public health are part of the AVMSD. <p>Digital Services Act</p> <ul style="list-style-type: none"> • There is a new Digital Services Act (DSA), that has been obligatory for all online sharing platforms and intermediaries to follow since February 2024. In particular the DSA is applicable to video sharing platforms such as YouTube but does not cover on-demand services, such as Netflix. • The DSA revises the current rules under the E-Commerce Directive applicable to how intermediaries regulate and influence user activity on their platforms and underlines the EU's increasingly interventionist approach to platform regulation. • Platforms must have mandatory procedures to remove illegal content. • Online marketplaces are also required to track their traders ('Know Your Business Customer'). • The DSA also requires platforms to take measures to reduce risks such as disinformation or election manipulation, cyber violence against women or harm to minors online. <p>P2B regulation</p> <ul style="list-style-type: none"> • EU Regulation on platform-to-business relations (P2B regulation), took effect across all Member States on 21 July 2020. • Under the regulation, online platforms are required to be more transparent with businesses who make their products and services available via their 	

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	<p>platforms, for instance by explaining how different products and services are ranked in search results on their platforms. In theory, this could mean that OCC providers are required to give greater clarity to their content providers on how they rank and display content on their services, making it easier for smaller content providers to enter the OCC market.</p> <p>National regulators</p> <ul style="list-style-type: none"> • Member States are free to determine the form of the competent independent regulatory body(ies) in charge of implementing and enforcing the directive under the AVMSD. The AVMSD requires each Member State to designate one or more national regulatory authorities, bodies, or both, which must be legally distinct from, and functionally independent of, the government and of any other public or private body. • Each Member State must clearly set out in national law: the competencies and powers of the national regulators; how they will be held accountable; and the conditions and procedures for the appointment and dismissal of the head of the regulator. <p>EU regulators</p> <ul style="list-style-type: none"> • The European Commission is ultimately responsible for ensuring the AVMSD is properly implemented by Member States, but the European Regulators Group for Audiovisual Media Services (ERGA) advises the Commission on the implementation of the AVMSD. ERGA is comprised of representatives from national regulatory bodies. 	
2. Copyright protection?	<ul style="list-style-type: none"> • EU copyright law is governed by the principle of territoriality, meaning that each Member State has a separate system of rules. However, a series of EU directives have largely harmonised national copyright laws across the EU and provides strong protection and significant penalties for infringement. • Copyright registration is not required for copyright protection in the EU. The key piece of harmonising legislation is the InfoSoc Directive. • Implementation, interpretation and enforcement of EU copyright law still varies between Member States. 	<p>Territorial licensing</p> <ul style="list-style-type: none"> • It seems likely that further attempts will be made to limit territorial licensing in the coming years (e.g. by the extension of the Geo Blocking Regulation referred to below) and remains to be seen whether the industry will be as successful in fighting such attempts.

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	<ul style="list-style-type: none"> • The Commission monitors Member States' implementation of the EU copyright law but, particularly in recent years, the Court of Justice of the European Union (CJEU) has played a key role in shaping EU copyright law through developing a substantive body of case law interpreting the provisions of the directives. • The European Audiovisual Observatory provides statistical and analytical information on film, television, video/DVD, new audiovisual media services and public policy on film and television. Together with the CREATIVE EUROPE programme of the European Union, it has created the MAVISE database of TV and on-demand audiovisual services and companies across Europe. Historically, regulators and online platforms tend only to respond to reports of infringement rather than being required to take an active role in identifying and stopping infringement. This means that private entities play an important role in combating piracy. <p>Digital Single Market Directive</p> <ul style="list-style-type: none"> • The Digital Single Market Directive (DSM Directive) had to be implemented by national legislators by 7 July 2021. It introduced: <ul style="list-style-type: none"> ○ new remuneration provisions; ○ a contract adjustment mechanism; and ○ a mechanism for the revocation of rights. <p>DSA</p> <ul style="list-style-type: none"> • The law has been fully applicable since 17 February 2024. • With the Digital Services Act, illegal content can be removed more quickly. The fundamental rights of users on the internet are also protected more comprehensively. • Large online platforms and search engines that reach at least 45 million active users per month are subject to special due diligence requirements, such as the obligation to analyse and minimise risks. To this end, illegal content on platforms can be combated more effectively. 	

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3. Convergence and new technologies	<ul style="list-style-type: none"> Broadly speaking, regulation in the EU is technology-neutral. As a general rule, OCC services tend to be less heavily regulated than linear programming in the EU. However, the AVMSD seeks to align rules applicable to linear and OCC services. 	
4. Licensing of foreign channels <i>Allowed, prohibited or unregulated?</i>	<p>Freedom of reception</p> <ul style="list-style-type: none"> Under the AVMSD, there is a general obligation for Member States to ensure freedom of reception for all audiovisual media services. However, restrictions on reception can be imposed on specific limited grounds. For linear services, those grounds include audiovisual media services which may harm children or incite hatred. For on demand services, the grounds are broader and include public policy (in particular in relation to criminal offences), the protection of public health, public security, and the protection of consumers (including investors). In the case <i>Baltic Media Alliance Ltd v Lietuvos radijo ir televizijos komisija (Case C622/17), EU:C:2019:566 (4 July 2019)</i>, the CJEU held that a Member State could impose a temporary 'restriction' on the broadcast or retransmission of a TV channel from another Member State on grounds of public policy by only allowing the channel to be available in pay TV packages. The AVMSD aligns the procedure for restricting freedom of reception of TV broadcasting with on-demand content, allowing such restrictions where the media service manifestly, seriously and gravely infringes (a) the prohibition against incitement to violence or hatred on racial grounds and the requirements on protecting children from harmful content or (b) the prohibition against audiovisual media services containing public provocation to commit a terrorist offence or prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence. 	<p>Unjustified geo blocking</p> <ul style="list-style-type: none"> The Geo Blocking Regulation was introduced in 2018 to prevent 'unjustified geo blocking' i.e. discrimination between EU customers to segment markets along national borders and to increase profits to the detriment of foreign customers. Audiovisual services are currently excluded from the scope of the Geo Blocking Regulation. The EU Parliament recently voted against Geo Blocking of Audiovisual Sports and Film Content. However, this decision is just for now and the greatest threat currently facing the broadcasting/OCC sector at the moment is a potential extension of the Geo Blocking Regulation to the audiovisual sector in the course of its review.

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	<p>Licensing requirements</p> <ul style="list-style-type: none"> Licensing requirements are a matter of national law and therefore vary between Member States. For instance, in France, OCC platforms must be declared to the French regulator if the service provider is established in France, but do not require a licence or permission to operate. In Denmark, linear streaming services must be registered with the Danish Radio and Television board, but do not require a licence or permission to operate. For on-demand audiovisual content, the service does not even need to be registered, but it would still need to comply with the regulatory regime of the Danish Radio and Television Broadcasting Act (through which Denmark implemented the AVMSD). Despite these national variations, cross-border access to online content is positively encouraged by the EU. The cornerstone of the AVMSD is the 'country of origin' principle. This is the principle that a service regulated in an EU Member State can be transmitted for reception in any other Member States without being subject to further regulation in those other Member States. Owing to this principle, offshore services only need to be licensed in one Member State in order to transmit services throughout the EU. For instance, if an undertaking established in another EU Member State provides online audiovisual content directed towards a Danish audience, its operations in accordance with the country of origin principle of the AVMSD are subject to regulation in such Member State and not in Denmark, unless significant staff with authority to make editorial decisions are present in Denmark. <p>Portability</p> <ul style="list-style-type: none"> In addition, the Portability Regulation requires OCC providers to enable subscribers who are temporarily present in a Member State to access and use the online content service in the same manner as in they would in their Member State of residence. 	

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<p>5. Licence fees and taxation</p>	<ul style="list-style-type: none"> • There are no industry-specific licensing fees or taxes imposed on OCC players at EU level, but they may be imposed by Member States at national level. • For instance, in France Network Personal Video Recorder (NPVR) services may be subject to copyright levies in France if the service offers a recording feature and a storage capacity. <p>National Levies</p> <ul style="list-style-type: none"> • National levies mean that independent producers could end up subsidising productions by public service broadcasters. Since this is a voluntary measure for Member States, not an obligation, the situation also does not create a harmonised audiovisual market. • Package providers would be exempted from the investment obligation because they already pay a must-carry fee to public and commercial broadcasters. Video sharing platforms are also exempted because these services offer user-generated videos. Where package providers or video platforms offer SVOD or TVOD services, the investment obligation on the turnover generated by these services shall apply. • There is concern in the industry about the new rules introduced by the revisions to the AVMSD which make it possible for Member States to impose financial contributions (direct investments or levies payable to a fund) upon media service providers, including those established in a different Member State but that are targeting their national audiences. • Many EU countries have already introduced financial obligations for both domestic and non-domestic VODs. Each Member State has the ability to set out the quota and sub-quota regime for the financial obligations, but the AVMSD requires that any financial obligations must be “proportionate and non-discriminatory”. 	
<p>6. Rate regulation <i>Including wholesale and retail rate regulation and whether there are any price controls on eg. basic tier</i></p>	<ul style="list-style-type: none"> • There is no specific regulation of pricing of OCC services at EU level. • All service providers will be required to comply with general competition law restrictions. 	<ul style="list-style-type: none"> • See comments in section 1 above regarding platform to business transparency rules and proposals for new competition tools, which could have indirect consequences on bundling, tiering etc.

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7. Programme packaging <i>Including tiering, bundling, any mandatory a la carte</i>	<ul style="list-style-type: none"> Packaging and bundling of OCC content is not regulated at EU level but must comply with general competition law. 	<ul style="list-style-type: none"> See comments in section 1 above regarding platform to business transparency rules and proposals for new competition tools, which could have indirect consequences on bundling, tiering etc.
8. Restrictions on advertising <i>Including localisation rules, revenue and minutage restrictions</i>	<ul style="list-style-type: none"> The AVMSD requires advertising and teleshopping to be recognisable and distinguishable from editorial content. All commercial communications must comply with a set of qualitative advertising standards and specific rules on programme sponsorship under the AVMSD. Product placement is generally permitted under the AVMSD except within news and children's programmes. Sponsorship is also generally permitted if sponsorship credits do not contain advertising, but is not permitted for news and current affairs programmes. Owing to the country of origin principle, service providers established in an EU Member State are only required to comply with advertising rules applicable in that Member State. Member States are free to impose stricter restrictions on advertising than those set out in the AVMSD. For instance, Denmark has more restrictive rules on advertising than many other Member States. Most notably, the Danish Radio and Television Broadcasting Act prescribes that television ads may only be sent in blocks placed in between programmes. This has caused several of the major commercial broadcasters to broadcast channels targeted at Denmark from e.g. London (or now, post-Brexit, Luxembourg or Stockholm). While the individual ads broadcast by such stations will still be subject to Danish marketing practices and advertising regulations, the AVMSD prescribes that broadcasters are subject to regulation in the (EU) jurisdiction from which they operate. Accordingly, a broadcaster operating from e.g. Luxembourg or Stockholm owing to the country of origin principle will not be subject to regulation under the Danish Radio and Television Broadcasting Act including the abovementioned prohibition against interrupting programmes with advertising blocks. This is even though they broadcast to Denmark. 	<p>Product Liability Directive</p> <ul style="list-style-type: none"> The extension of the scope of the product liability directive to OCC TVs could impose restrictions on advertising in order to avoid liability cases

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	<ul style="list-style-type: none"> OCC providers should consider the differing national advertising regulations when contemplating where to establish their cross-border operations within the EU. The AVMSD encourages the development of self or co-regulatory codes of conduct on commercial communications of foods high in fat, salt, sodium and sugars. The AVMSD also gives broadcasters and on-demand providers greater flexibility to use product placement and sponsorship, as long as viewers are kept informed, making product placement generally admissible except in certain types of programmes and for certain products. For linear programming, no more than 20% of broadcasting time can be dedicated to advertising between 6:00AM and 6:00PM, and between 6:00PM and 12:00AM. The AVMSD removes the current restriction of 12 minutes per hour, giving broadcasters more freedom to choose when to show advertisements. <p>DSA</p> <ul style="list-style-type: none"> The new DSA contains additional restrictions on advertising, and in particular measures to tackle issues relating to misleading advertising and transparency of advertising. 	
<p>9. (a) Content regulation <i>Including local content quotas, content control and insertion of classification and other content labels into international feeds</i></p>	<ul style="list-style-type: none"> The AVMSD sets out minimum standards for content regulation, including obligations to protect minors, prohibitions against categories of 'harmful content' and restrictions around advertising and promotions. Member States are entitled to impose stricter standards for content regulation and as a result standards vary between Member States. Due to the country of origin principle, services from within the EU are only subject to content regulation applicable in their country of origin, except in limited circumstances laid down in the AVMSD e.g. incitement to hatred. There is no EU-wide system for content classification and providers therefore need to consider national content classification systems. In Spain, for instance, all audiovisual service providers must ensure that all audiovisual products distributed through their service, both linear and on- 	

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	<p>demand, must have an age rating. The classification must be carried at the beginning of the broadcast of each programme and when it resumes after any advertising, by means of a visual and acoustic warning.</p> <p>Quotas</p> <ul style="list-style-type: none"> • The AVMSD introduces obligations for on-demand services to promote European works. At least a 30% share of the catalogues of all on-demand services will need to be European works and providers of those services must ensure the prominence of this content. There is an exemption for providers with a low turnover and low audiences. • The definition of 'European Works' includes those countries that have signed and ratified the Council of Europe's Transfrontier Television Convention, to which the UK is a party. UK content will therefore continue to be considered European Works for the purpose of this quota after Brexit. • In France, the draft Audiovisual Law that was to be voted provided that 25% of the turnover generated in France will have to be invested in French productions by OCC services providers. Whilst the examination of this draft law is currently off the agenda now due to the Covid-19 crisis, it is anticipated that France may take the opportunity of the implementation of AVMSD to impose this obligation. <p>Derogations from country of origin principle</p> <ul style="list-style-type: none"> • The AVMSD aligns the procedures for making exceptions to the country of origin for TV broadcasting and video on-demand services and introduces grounds for derogations where there is a serious risk to public health or public provocation to commit terrorist offences. 	
<p>9. (b) Content regulation <i>Including languages, dubbing/subtitling and captioning</i></p>	<ul style="list-style-type: none"> • There are no regulatory constraints or obligations on broadcast languages or dubbing at EU level. • Under the AVMSD, Member States must encourage media service providers to ensure that their services are gradually made accessible to people with a visual or hearing disability by means such as sign language, subtitling, audio-description or easily understandable menu navigation. 	<ul style="list-style-type: none"> • The European Accessibility Act (EAA) must be implemented by Member States by 2025. After that the directive comes into force. The EAA sets out accessibility requirements for certain products and services, including those providing access to audiovisual media services and programs.

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	<ul style="list-style-type: none"> In some Member States, such as France, local language must be used in any communication that is made to the public. This would include adverts that an OCC platform serves in France or to French audiences and the platform's terms and conditions of use, privacy policy etc. Improving the accessibility of online goods and services has been an area of focus for the EU in recent years. This is reflected in the revisions introduced by the AVMSD, pursuant to which Member States must encourage service providers to ensure that their services are made <i>continuously and progressively</i> more accessible to <i>persons with disabilities</i> (not just visual or hearing disabilities) through proportionate measures. Service providers will also be required to develop accessibility action plans demonstrating how they will achieve this. 	The EAA is more onerous than the AVMSD and works in parallel by focussing on the infrastructure or the means by which audiovisual content is accessed, such as websites, apps and EPGs, rather than the content itself.
10. Programme supply restrictions <i>Including must provide rules and other restrictions on exclusivity and anti-siphoning rules</i>	<ul style="list-style-type: none"> There is no general rule against exclusive distribution agreements at EU level, although such agreements will need to comply with competition laws. The AVMSD establishes a framework enabling Member States to designate certain events of major importance for society which cannot be made available on an exclusively pay TV basis. These include international events like the Olympic Games and the Football World Cup, or national events such as the inauguration, marriage or burial of a head of state. Lists of the events designated by Member States are available here. Member States must also ensure that all broadcasters established in the EU have access to clips / short extracts of events of 'high interest to the public' which are transmitted on an exclusive basis. Access to such clips must be for use in general news programmes, and must be provided on a fair, reasonable and non-discriminatory basis. 	
11. Restrictions on FDI <i>Including platforms and wholesale supply of programming and Cross-media ownership restrictions</i>	<ul style="list-style-type: none"> There is no specific limit on foreign investment in OCC platforms or content. Mergers and acquisitions, including vertical integration, are subject to general competition law. Member States are entitled to make state aid available to public service broadcasters under Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU). The EU has issued a series of communications on state aid for public service broadcasters, the most recent of which is available here. 	

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	<ul style="list-style-type: none"> The AVMSD requires that the basic information (name, geographical address, email or website, etc.) of audiovisual media service providers is made accessible to the general public. <p>Transparency of media ownership</p> <ul style="list-style-type: none"> The AVMSD aims to improve transparency of media ownership by giving Member States the option to require media service providers to make available information concerning their ownership structure accessible, including the beneficial owners. 	
12. Retransmission arrangements <i>Including must carry and remuneration</i>	<ul style="list-style-type: none"> Retransmission (and relevant payments) for most audiovisual content is decided by commercial negotiation. However, many Member States impose specific “must carry” requirements in relation to access to public service broadcasting. <p>Online transmissions by broadcasting organisations</p> <ul style="list-style-type: none"> In July 2021 the Sat Cab Directive was to be implemented into national laws. The directive aimed to facilitate rights clearance for cross border retransmission within the EU by: <ul style="list-style-type: none"> extending the country of origin principle so that broadcasters are only required to clear relevant rights in their Member State when providing radio programmes, TV news and current affairs programmes and TV programmes which are fully financed own productions of broadcasting organisations via "online ancillary services" (e.g. catch-up and ancillary services); and requiring all rights to works and other subject matter contained in retransmissions of linear programming that are transmitted via various methods, including closed circuit IP-based or mobile networks, to be exclusively cleared by a collective management organisation. Prior existing distribution contracts will not be affected by the new provisions for a period of four years from the entry into force of the directive. 	

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<p>13. Consumer protection Including cooling-off period, termination rights and payment mechanism</p>	<ul style="list-style-type: none"> • There is no specific consumer protection in relation to OCC services at EU level. However, general consumer protection law will apply, including the inclusion of informational requirements and a cooling-off period of (typically) 14 days. • Some Member States have specific laws to protect consumers from recurring online payments (i.e. subscriptions). For instance, in France, providers must inform the consumer, in writing, via a personal letter or to their personal email address, at the earliest three months and at the latest one month, before the end of the period during which parties may decide not to renew the agreement containing an automatic renewal provision (although this does not apply to subscriptions renewed every month under which the consumer can unsubscribe every month without any penalty). <p>DSA</p> <ul style="list-style-type: none"> • The DSA includes measures designed to protect consumers of online services generally. For instance, the possibility of fast removal of illegal activities online such as dangerous and counterfeit products (which could include pirate content), illegal hate speech, disinformation and misleading advertising, among other issues. 	
<p>14. Entering a new market: FAST TV</p>	<ul style="list-style-type: none"> • FAST TV services are not specifically regulated by the EU legislator, meaning that the general legal framework for OCC TV / streaming content will apply to FAST TV accordingly (e.g. AVMSD, etc.). • The AVMSD regulates the provision of audiovisual media services in the EU. It has been updated to cover new forms of services such as video-sharing platforms which includes FAST TV services. • With regard to regulatory or licensing requirements, please refer to Question 1 and Question 5. 	

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15. Data handling	<ul style="list-style-type: none"> All handling of personal data is subject to the EU's General Data Protection Regulation (GDPR). Use of personal data for direct marketing is subject to the ePrivacy Directive. <p>Personal data of minors</p> <ul style="list-style-type: none"> The AVMSD prohibits personal data of minors collected, or otherwise generated, by media service providers being processed for commercial purposes. 	<p>ePrivacy Regulation</p> <ul style="list-style-type: none"> In 2017 the Commission tabled a proposal for a new ePrivacy Regulation to replace the e-Privacy Directive. The proposed changes are aimed at enhancing security and communications confidentiality; defining clearer rules on tracking technologies such as cookies; and achieving greater harmonisation among Member States. However, the EU Council has so far failed to agree an approved text (one of the main sticking points being the use of metadata and content data by electronic communications providers, including for the purposes of detecting, deleting and reporting child abuse imagery). The Commission published a new proposal in 2023, which is yet to be finished.
Other country-specific information not already covered	<ul style="list-style-type: none"> For operators based outside the EU who plan to distribute their services within the EU, it is important to carefully consider under which Member State's jurisdictions they will be deemed to be established under the AVMSD, as it will be that Member State's audiovisual regulations that the operator will primarily be required to comply with, due to the country of origin principle. 	