



Audio Visual Media Services Directive

Guidance on compliance
with Articles 16 and 17

Guidance

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Guidance on compliance with Articles 16 and 17 of the Audio Visual Media Services Directive

[Note: this guidance, previously issued in relation to the Television without Frontiers Directive, reflects the amended provisions of the Audio Visual Media Services Directive. References are to the codified version:

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>).

While article numbers have changed, the only substantive change concerns the definition of European programming, which no longer allows some programmes partly financed from European sources to be counted in proportion to that funding – 6 October 2009]

1. In accordance with the Audio Visual Media Services ('AVMS') Directive, television broadcasters shall ensure that, where practicable, and subject to paragraphs 2 and 3:

- a) a majority of their Transmission Time is devoted to European programming;
- b) at least 10% of their Transmission Time or programming budget is devoted to European programming created by producers who are independent of broadcasters; and
- c) at least 50% of programming included in their Transmission Time in accordance with (b) above is created no less than five years earlier by producers who are independent of broadcasters.

2. The requirements in paragraph 1 shall apply as follows:

- a) new channels are required to meet the targets set in paragraph 1 within five years of their launch, and should demonstrate progress towards those targets during the five year transitional period. In cases of doubt, Ofcom will determine whether a channel is a new channel or the continuation of a previous channel; and
- b) television broadcasters who consider that it would not be practicable to meet one or more of the targets set out in paragraph 1 should explain why to Ofcom, which will advise whether any remedial measures are necessary.

3. Television channels that:

- a) are not receivable in the European Union;
- b) comprise programming broadcast in a language other than a language of the European Union;
- c) serve a local or regional audience, and do not form part of a national network; or
- d) are comprised wholly of news or sports event programming, games, teletext services or teleshopping, are exempt from the requirements of paragraph 1.

Reports

4. To enable the United Kingdom to fulfil its reporting obligations under AVMS Directive, television broadcasters must report to Ofcom, as part of the annual return:

- a) the performance of each channel in relation to the targets set out in paragraph 1;
- b) the reasons for the failure to achieve any of the targets set out in paragraph 1, and the remedial measures they are undertaking; and
- c) the grounds for any exemption they are claiming for any channel from the requirements set out in paragraph 1.

5. The format of the reports required will be set out in guidance on the annual return.

Definitions

‘Television broadcasters’ means television broadcasters licensed in the United Kingdom and the BBC.

‘European programming’ has the meaning attributed to ‘European works’ in Article 1 of the AVMS Directive. This includes:

- a) works originating in European Union Member States;
- b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe; and
- c) works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements.

Notes:

The works referred to in paragraphs (a) and (b) above are works mainly made with authors and workers residing in one or more States referred to in those paragraphs provided that they comply with one of the following three conditions:

- i) they are made by one or more producers established in one or more of those States; or
- ii) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or
- iii) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

The works referred to in paragraph (c) are works made exclusively or in coproduction with producers established in one or more Member States by producers established in one or more European third countries with which the Community has concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States.

It should be noted that application of the provisions of (b) and (c) is conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.

Moreover, works that are not European works within the meaning of the above provisions but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the Member States.

‘European programming created by producers who are independent of broadcasters’ means European programming (as defined) created by ‘independent producers, as defined in the Broadcasting (Independent Productions) Order 1991, and amended by the Broadcasting (Independent Productions) (Amendment) Order 1995 and the Broadcasting (Independent Productions)(Amendment) Order 2003.

The **‘Audio Visual Media Services (AVMS) Directive’** is the European Council Directive of 11 December 2007 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting services.

‘Transmission time’ means the period during the day when the broadcaster is broadcasting, but excludes the time used for transmitting news, sports events, games, advertising, teletext services and teleshopping programmes. It also excludes the time used for broadcasting programmes in languages other than Community languages, where these comprise a substantial proportion of Transmission Time.