

Definitions in the proposal for an Audiovisual Media Services Directive (AVD)

This paper is based on the legislative proposal COM (2005) 646 final, especially the explanatory memorandum, as well as the related impact assessment and the relevant press releases. All these documents are available on the Commission's website.¹

1. Definition of audiovisual media services

Art 1 (a) - on "audiovisual media services" - is the core definition in the amending Directive. All other definitions are built on this definition: "media service provider" [Art 1 (b)] defines those who hold editorial responsibility and determines the manner in which it is organized; linear services are defined in Art 1 (c) and non-linear services in Art 1 (e).

- Linear services

Since this Directive amends the current Television without Frontiers (TVWF) Directive, the definitions have to keep the terms "television broadcasting" and "television broadcast", which are used throughout the current Directive. Art 1 (c) equates "television broadcasting" and "television broadcast" with a linear audiovisual media service and defines it as a service "where a media service provider decides upon the moment in time when a specific programme is transmitted and establishes the programme schedule".

- Non-linear services

By contrast 'non-linear service' means an audiovisual media service where the user decides upon the moment in time when a specific programme is transmitted on the basis of a choice of content selected by the media service provider [Art 1(e)].

The definition of "audiovisual media services" (AVMS) is build on six elements to which Recitals 13 to 17 of the amending Directive provide further explanation.

'audiovisual media service' means a service as defined by Articles 49 and 50 of the Treaty the principal purpose of which is the delivery of moving images with or without sound, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC of the European Parliament and of the Council²;

¹ http://europa.eu.int/comm/avpolicy/regul/regul_en.htm#4

² OJ L 108, 24.04.2002, p33.

Defining element	Which excludes
<i>Services as defined by treaty</i>	non-economic activities, such as purely private websites, blogs
<i>The principal purpose of which</i>	Services where audiovisual element is only ancillary (example: travel agency website, gambling websites)
<i>Delivery of moving images with or without sound</i>	does not cover audio transmission or radio or electronic versions of newspapers
<i>In order to inform, entertain or educate</i>	Audiovisual content without editorial aspects – e.g. car traffic web cams
<i>To general public</i>	Private correspondence – e.g. e-mails
<i>By electronic networks³</i>	e.g. DVD-rental, cinema

This definition is intended to regulate as a function of the centre of gravity of the service sector concerned, not as a function of borderline cases. The definitions need to be sufficiently flexible to provide a future proof framework and at the same time sufficiently rigorous to guarantee coherent application of the Directive. Furthermore a directive is addressed to Member States .It is binding as to the result to be achieved but leaves to the national authorities the choice of form and methods.

2. Difference between linear and non-linear services

The proposal distinguishes between “linear” services (e.g. scheduled broadcasting via traditional TV, the internet, or mobile phones, which “pushes” content to viewers), and “non-linear” ones, such as on-demand films or news, which the viewer “pulls” from a network.

The linear/non-linear or push/pull distinction ultimately depends upon who decides when a specific programme is transmitted and whether schedules exist. Linear services are those “pushed” by broadcasters. Non-linear services are defined as “any audiovisual media service where the **user** decides upon the moment in time when a specific programme is transmitted on the basis of a choice of content selected by the media service provider”.

Today’s TV broadcasting rules would apply to linear services in a modernised, more flexible form, whereas non-linear ones would be subject only to a basic set of minimum principles, e.g. to protect minors and prevent incitement to racial hatred. The differing degrees of regulation of content “pushed” by suppliers or “pulled” by users reflects differences in user choice and control and regarding the likely impact on society as well as the need to take account of the principle of proportionality

³ This is a reference to the legal definition in Art 2 (a) of Directive 2002/21/EC: “*electronic communications network*” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

Linear and non-linear services / platforms⁴

Service/ platform	Analogue Terrestrial TV Analogue cable Analogue satellite	Digital terrestrial TV	Digital Satellite	Digital TV cable	IP services via broadband connections on ADSL or Internet	Mobile phone Internet Protocol streaming	Digital broadcasting to mobile phones Mobile phone
Traditional TV (linear service)	PSB ⁵ channels, free-to-air and some pay-TVs	PSB channels, free-to-air and some pay-TVs	PSB channels, free-to-air and pay-TVs	PSB channels, free-to-air and pay- TVs	IPTV : PSB channels, free- to-air and pay- TVs ⁶	PSB channels, free-to-air and pay-TVs ⁷	PSB channels, free-to-air pay TV channels ⁸
Pay-per-view (linear service)		Sport events, films and other events ⁹	Sport events, films and other events ¹⁰	Sport events, films and other events ¹¹	Sport events		
<i>Video-on- demand (non-linear service)</i>				<i>Films, serials TV programme s, and music (concerts, clips)¹²</i>	<i>Films, serials, TV programmes, sport events, music (concerts, clips, tracks), videogames¹³¹⁴</i>	<i>News, "mobisodes", reality shows, music and sport clips¹⁵</i>	<i>News, reality shows, music clips</i>

⁴ Source: European Audiovisual Observatory

⁵ Public service broadcasters

⁶ Main operators/services : 26 operators, almost all Telcos and ISPs, as of 12/2005 in 18 MS among which: AON (A), Belgacom (B), T Online (D), TDC (DK), Free, MaLigneTV (FR), Fastweb (IT), KPN (NL), Fast, Teliasonera (SW)

⁷ Main operators/services : SFR (FR), Vodafone (UK, D, GR,IT, NL, PO, ES, B, FR, A), Belgacom (B)

⁸ Not yet operational

⁹ Main operators/services: Mediaset (IT), Setanta (UK)

¹⁰ Main operators/services: Canal+, TPS (FR), Sky Italia (IT), BSkyB (UK), Premiere (D), Viasat (SW), Sogetel (ES)

¹¹ Main operators/services: BSkyB, Telewest (UK), Premiere, Kabelvision, Tividi (D), UPC Chello (NL), ONO (ES)

¹² Main operators/services: Telewest, NTL (UK),

¹³ Main operators/services: 35 services operational as of 12/2005 in most MS, among which: Telcos, ISPs, cable operators, broadcasters, specialised content providers, film archives, video publishers and Apple's iTunes Music store (FR,D,US)

¹⁴ Main operators/services: AON (A), Belgacom (B), T Online, Arcor, 4 friends (D), Svensk Filmindustri, Live Networks, Bredbandsbolaget (S), Imagenio (ES), Canalsatellite, TF1, TPS, Cinezime (F), Video Networks, World Cinema (UK), Fastweb, RAIClick, Telecom Italia, Tiscali (IT), Casema, RTLNederland, Tiscali (NL)

¹⁵ Main operators/services: Orange, SFR, Proximus, E-Plus, Cosmote, Endemol and some broadcasters

	Audiovisual media service	Other services not covered by the proposal
Film, telefilms, serials on demand	X	
Sport events on demand	X	
Entertainment shows on demand	X	
Reality shows on demand	X	
Video reports of concerts and live arts performances on demand	X	
TV news reports on demand	X	
Advertising - other than text and still images - delivered in connection with on demand services mentioned above	X	
Advertising – pop-up clips other than text and still images– not delivered in connection with on demand services mentioned above		X
Video clips inserted in web-sites when the main purpose is not the delivery of audiovisual content but to deliver information on the activities (commercial and non commercial) of the site owner		X
Animated images inserted on press (newspapers, periodicals, agencies) web-sites – if of ancillary nature		X
Blogs for non-commercial purposes		X