

# **Implementation of the AVMS Directive in the Netherlands: challenges for regulation and supervision in practice**

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## **Legal tasks and competences CvdM (1)**

- Monitoring, Oversight and Enforcement
  - Compliance with media regulations: advertising, product placement, sponsoring, programming quota, must carry
  - Mediamonitor: analyzing and describing trends in media sectors
  - Measuring customer satisfaction with composition of the cable packages
  - Enforcement of Act on Fixed Book Prices for paper books
  - Meta-supervision of system for protection of minors

Compliance: core business, Fixed Books Prizes: strange animal, minors more about this tomorrow but happy to discuss and answer questions about also today

## **Legal tasks and competences CvdM (2)**

- Monitoring of public service media (PSM)
  - Review of the financial reporting by PSM
  - Advising Minister on budget and policy plans of PSM
  - Review of PSM secondary activities and public-private joint activities
  - Encourage internal governance, risk and compliance policies and procedures
  
- Licensing and Registration

We have a very broad mandate where PSM is regarded, we think this important for maintaining level playing field and also uphold state aid rules

## Media regulation in the Netherlands

- Constitution: article 7 secures freedom of speech, no prior supervision of radio and TV programs
- Media Act: formal law containing most important rules for radio and TV
- Media Decree: delegated regulation containing more detailed rules
- Ministerial Regulation: delegated regulation on specific subjects like compensation of costs of supervision
- Policy Guidelines of the Dutch Media Authority: elaborates how the CvdM will interpret and apply legal definitions and provisions, i.e. sponsoring, product placement of commercial media services, internal checks and balances and governance PSM

Policy guidelines: I am sure RTR/KommAustria had that competence as well

## TV & radio market in the Netherlands

### **Public Service Media:**

- National: 3 TV channels, 6 radio channels, 6 digital theme TV channels, online catch-up service and online streaming ('over the top') of all channels: airtime granted by Ministry
- 13 regional media service providers (TV and radio): airtime granted by CvdM
- ± 260 local media service providers (TV and radio): airtime granted by CvdM

### **Private and Commercial Media:**

- TV (main players RTL and SBS), radio, text TV services: ± 400 services licensed by CvdM
- VoD: 60 services registered with CvdM: Netflix and similar VoD, catch-up services

## Core values and purposes

- Principal core values
  - Independence
  - Diversity
  - Accessibility
  
- Purposes of our work
  - Freedom of information which is widely accessible
  - Independence and diversity of media offer
  - Protection of (minor) viewers
  - Fair competition with private competitors and legitimate spending of public money

More and more we do our work to the backdrop of our core values and principles, more concrete our purposes are...

## Focus of our activities in 2018 and 2019

- **Online domain:** further the enshrinement of the public values of the CvdM in the online domain and the continuing development of the corresponding oversight strategy. How to deal with the online world where there is no formal competence to intervene, i.e. YouTubers, what can be the role of self- and co-regulation and how to encourage codes of conduct set up by the industry, what are the right incentives?
- **Independence:** addressing a number of risks related to independence, due to developments such as declining advertising revenues, new external parties acting in the public media system and a growing number of avoidable advertising by public media institutions.

## **Growing international dimension of media regulation and supervision**

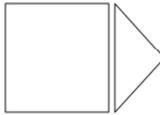
- Regulation: Audiovisual Media Services (AVMS) Directive
- Local context: many foreign media companies choose the Netherlands as place of establishment, also to the backdrop of a possible Brexit
- Globalisation: companies operate on larger and more international scale
- Convergence: online media are crossing borders by nature

Traditionally our media market was always very international oriented but has increased even over the last years

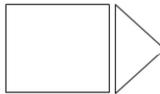
# AUDIOVISUAL MEDIA SERVICES DIRECTIVE (AVMSD)



EU MS need to apply set of basic rules but are free to impose more strict or detailed rules on their national media service providers



Implementation in national legislative framework: Directive need to be transposed (implementation) in national legislation by September 2019, in NL via Media Act 2008



In policy guidelines and regulations of the CvdM rules of Media Act can be further detailed or elaborated

# MAIN PURPOSES OF THE AVMS DIRECTIVE

Protection of consumers

Protection of minors and other vulnerable groups

Protection of editorial independence of programme makers

Ensuring level playing field between media services

Encouraging access to and production of European media content

# MAIN CHANGES IN NEW AVMSD

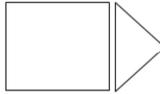
	Material jurisdiction: regulation on system level of video sharing platforms (VSPs)
	Protection of minors: levelling linear and on-demand audio-visual media services, stronger focus on information and classification systems
	Commercial communication: liberalisation product placement and deletion of hourly advertising limit
	Stronger focus on self- and co-regulation (codes of conduct)
	Safeguards for independence media regulators and formal recognition role ERGA

# SCOPE

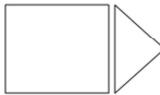
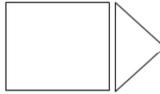
- ▶ New or revised in the Directive: in AVMS definition no more reference to "TV like"
- ▶ Implementation in national regulation and supervision: evaluate definition of AVMS in our policy guidelines (fine-tuning)
- ▶ Challenges: potentially a significant growth of services to be supervised, how to address social influencers and channels operating on YouTube?

I am happy to report that we are exploring this important issue with fellow NRAs, right now even with our Austrian colleagues

# MATERIAL JURISDICTION

-  New or revised in the Directive: new definition of “editorial decision”, explicit reference to the day-to-day operation of the AVMS
-  Implementation in national regulation and supervision: reference in NL Media Act to relevant provisions in AVMS Directive
-  Challenges: we will evaluate media services specifically targeting NL from abroad and examine whether their place of establishment must be seen differently in the light of new definition of “editorial decision”

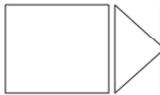
# TERRITORIAL JURISDICTION

-  New or revised in the Directive: more options to derogate from CoO principle (article 3) or act in cases of “circumvention” (article 4); now also for on-demand and when public health in targeted country is concerned
-  Implementation in national regulation and supervision: work in progress, coordination with other MS and NRA's, EC and ERGA
-  Challenges: there is a huge number of AVMS, targeting (exclusively) other MS, so potentially the CvdM could be involved or even challenged in many jurisdiction cases and procedures

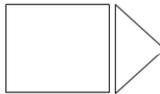
# PROMOTION OF EUROPEAN WORKS



New or revised in the Directive: minimum of 30% share and prominence for EW in catalogues of VoD services

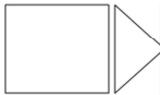
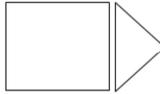


Implementation in national regulation and supervision: amend our policy guidelines and reporting instructions and reach out to industry to inform and encourage compliance



Challenges: VoD services are not used to reporting obligations, potentially many interpretation issues: how to deal with multi-catalogues and multi-outlet services, how to calculate series?

# PROMOTION OF EUROPEAN WORKS 2

-  New or revised in the Directive: NRAs must introduce exemptions for players with low turnover or low audience
-  Implementation in national regulation and supervision: amend our policy guidelines and reporting instructions and reach out to industry to inform and encourage compliance
-  Challenges: how to measure low audience and how to access figures on low turnover? More powers and cooperation to retrieve data, guidance of the EC will come late

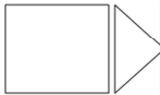
# PROMOTION OF EUROPEAN WORKS 3

-  New or revised in the Directive: MS can introduce financial levies for AVMS targeting their territories while under jurisdiction of other MS
-  Implementation in national regulation and supervision: work in progress, needs practical arrangements, unclear if NL will introduce levy system
-  Challenges: NL has Netflix: potentially many countries will refer to CvdM, manage maybe too high expectations of other NRAs, we can facilitate but as a principle other NRAs will need to deal also directly with Netflix

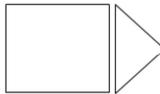
# COMMERCIAL COMMUNICATION



New or revised in the Directive: PP in general now allowed, no more general advertising limit of 20% per hour, remains for peak times only



Implementation in national regulation and supervision: work in progress, requires practical arrangements, amendments of our policy guidelines

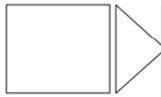


Challenges: abolishing general hourly limit makes monitoring more complex and time-consuming, you need to measure over more timeslots

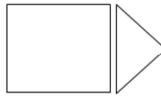
# PROTECTION OF MINORS



New or revised in the Directive: levelling of protection against harmful content between linear and on-demand, no more clear cut between seriously and other harmful content



Implementation in national regulation and supervision: now seriously harmful content is in our scope and rest with NICAM, when distinction disappears we will need new practical arrangements with NICAM

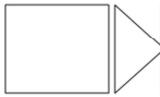


Challenges: we will need to assess whether protection measures are adequate/appropriate, especially online this can be challenging, do we oversee all potentially harmful AVMS on the open internet?

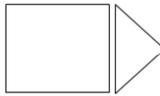
# VIDEO SHARING PLATFORMS REGULATION



New or revised in the Directive: VSPs must take appropriate measures to protect minors from impairing content and protect general audience from incitements to hatred, provocations to commit criminal offences



Implementation in national regulation and supervision: general references in media legislation, codes of conduct based on self-regulation



Challenges: how to assess appropriateness of measures taken by VSPs? Incitement to hatred and criminal offences are in NL penal code and not in our scope based on the Media Act, coordination with public prosecutor and comparable authorities necessary.

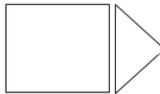
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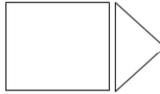
Implementation in national regulation and supervision: general references in media legislation, codes of conduct based on self-regulation



Challenges: encourage development codes of conduct by industry, how to ensure everyone is on board and how to enforce compliance (backstop powers)? We can learn from ERGA's explorations in field of co-regulation, an ERGA subgroup has identified the relevant questions when designing co-regulation systems.

The ERGA exercises have demonstrated there is no one size fits all solution. But we can learn a lot from each other experiences. It is key that you ask yourself all the right questions when you start designing a system

# ACCESSIBILITY & MEDIA LITERACY

-  New or revised in the Directive: MS get new reporting obligations in sphere of accessibility and media literacy
-  Implementation in national regulation and supervision: work in progress, needs practical arrangements, also with national media literacy institute
-  Challenges: new domain for our NRA, new skills and expertise required to submit observations and comments

# NEXT STEPS REGULATION AND OVERSIGHT

Implementation  
AVMS Directive  
in the Dutch  
Media Act  
before  
September  
2020

Scope:  
AVMD or  
VSP?

Impact  
assessment

Exchange of  
best practices,  
ie Ireland  
which has  
jurisdiction  
over YouTube

Possible  
guidelines  
CvdM and/or  
ERGA

# QUESTIONS?

