



Call for evidence: Single Market Strategy 2025

Introduction

The European Video on Demand Coalition (the “**Coalition**”) welcomes the opportunity to provide input to the European Commission’s (the “**Commission**”) call for evidence on the Single Market Strategy 2025.

The Coalition was formed in 2020 to give a voice to a rapidly evolving sector. The Coalition represents Video on Demand (“**VOD**”) and digital entertainment companies of all sizes who invest in and distribute audiovisual content as their core commercial activity and revenue stream in the European Union. Members promote high quality, diverse European content to wider global audiences and believe in supporting an innovative and sustainable European audiovisual sector, whilst giving consumers unparalleled choice in accessing content. As highly regulated services with editorial responsibility, members provide a highly curated viewing environment for all consumers and implement robust measures to ensure younger viewers are both catered for, with entertaining and educational content, as well as protected from harmful content.

By its dual nature, the VOD sector stands out as an important contributor to European competitiveness. **As a cultural force**, by promoting European culture through high quality, diverse local content: 78% of European households have at least one subscription to a video streaming platform, and 45% have three or more¹. The VOD sector is also **a driver of economic growth** through job creation and investment in local infrastructure such as studios: Subscription Video on Demand (SVOD) services are projected to become the biggest investors in original and acquired film and TV content in numerous European markets².

The importance of the “country-of-origin” principle to the Single Market for VOD Services

The Single Market is an essential element for the growth of a vibrant European audiovisual ecosystem which respects copyright. A key enabler is the country-of-origin principle, as set out under the Audiovisual Media Services Directive³, whereby providers of VOD services established in one Member State are subject to one set of rules from that ‘country of origin’ and are therefore able to offer their VOD service to other Member States seamlessly, provided they comply with the rules of their country of origin and that certain business preconditions are met including there being adequate consumer demand which a provider can reasonably expect to monetise. The legal certainty and predictability offered by the country-of-origin principle is the cornerstone of audiovisual media regulation which has supported the proliferation of

¹ <https://www.oliverwyman.com/our-expertise/insights/2024/apr/europe-video-subscription-boom.html>

² <https://www.ampereanalysis.com/insight/content-spend-in-2024-svod-services-to-surpass-commercial-broadcasters-in-europes-major>

³ <https://eur-lex.europa.eu/eli/dir/2018/1808/oj/eng>



audiovisual services and the availability of diverse high-quality content to consumers across the European Union.

Proportionality and non-discrimination

The principles of proportionality and non-discrimination are general principles of European law which act as key safeguards designed to protect and promote the Single Market. Indeed, according to European case law, measures affecting the freedom to provide services may only be justified if they are proportionate in light of their objectives and do not go beyond what is necessary to attain them.

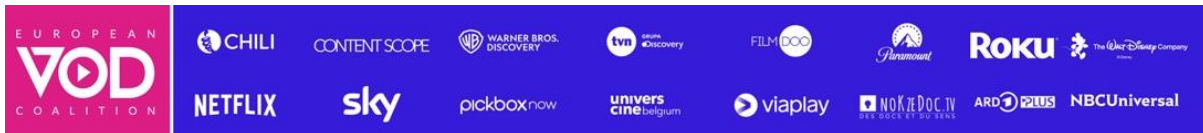
In recent years, some Member States have introduced cross-border financial investment obligations in the audiovisual sector, reflecting a desire to support local content creation. This derogation from the country-of-origin principle was accompanied by language requiring such national measures to be “proportionate and non-discriminatory”. The purpose of this language was to guard against the potentially negative impact of the derogation on the Single Market. At the same time, the varying implementation by Member States has brought about fragmentation and risks undermining legal certainty and a level playing field for the companies operating in the Single Market.

Whilst we understand and share the policy objective of Member States to support the European creative ecosystem, when not implemented in a proportionate manner, this derogation from the country of origin principle, especially when combined with excessively high obligations (be it to invest, or to contribute to a local fund) may result in a significant interference in editorial freedom, create barriers to entry for new market players and undermine expansion across the European Union in a financially sustainable manner. This is exacerbated when there are particularly high sub-quotas that in effect mandate production in a particular or small group of Member States, undermining the Audiovisual Media Services Directive’s explicit focus on European Works. When disproportionately high, these measures hinder the functioning of the Single Market, impede the cross-border provision of services and ultimately limit the diversity of media offerings. This is particularly challenging for our smaller members, in that a high obligation serves as a barrier for their expansion into other European markets, limiting the growth and success of European services.

The Coalition’s priorities for a Single Market Strategy 2025

The Coalition supports the objectives of the Single Market Strategy to enable companies to scale up and compete globally and in ensuring that existing rules are fully implemented to remove existing regulatory and administrative barriers and to prevent new ones.

Currently, an overly burdensome and fragmented regulatory regime as outlined above, is threatening the VOD sector’s ability to both invest in high quality, diverse content and to scale up and expand across new European markets. This in turn impacts jobs and growth as well as the circulation of content across Europe. In considering its Single Market Strategy, we strongly urge the Commission to focus on the following principles:



1. The implementation and enforcement of existing legislation such as the Audiovisual Media Services Directive and the European Media Freedom Act to ensure legal certainty and predictability for the VOD sector.
2. The consistent application of European law at national level, ensuring such implementation is done in a proportionate and non-discriminatory manner. It is particularly important that the principles of non-discrimination and proportionality when it comes to SVOD services remain a priority, with more guidance being offered as to their scope within this framework.
3. New legislation, such as a Digital Fairness Act (**DFA**) or Digital Networks Act, (**DNA**) should only be considered following a thorough impact assessment and consultation with affected stakeholders. The impact of legislation can vary greatly depending on the business and sector, and consequently we do not believe a one-size-fits-all approach is always the right one. The Commission should thus carefully examine the implications of future legislative proposals on different sectors, such as VOD, and draw conclusions based on appropriate scrutiny and interaction with stakeholders. In the two specific cases mentioned above (the DFA and DNA), we do not think there is sufficient evidence of market distortions, failures or gaps in the existing legislation to justify additional regulation – on either interconnection or consumer protection. Indeed, we believe that focusing on effective implementation of existing legislation would be more beneficial for the Single Market than the creation of new legislation without sufficient justification for doing so.
4. Acknowledging that the unique nature of audiovisual content financing requires exclusive territorial licensing backed up with justified geo-blocking to secure on-going investment and the ability for VOD services to personalise their content offerings to different markets, benefiting European consumers. Whilst a derogation to the Single Market principle, it is proportionate in light of the objective of preserving vital content funding mechanism and does not go beyond what is necessary to achieve this aim.

Reinforcing the “country-of-origin” principle as the cornerstone of audiovisual media service regulation and incorporating the above principles into a Single Market Strategy will provide the VOD sector with the legal certainty and stability required to continue to grow and invest in content, jobs and technology, strengthening the European market.