

## Industry Declaration

### ***Safeguarding the principles of mutual recognition and country of origin is the most effective way of ensuring that consumers are provided with the widest choice of innovative media services by a thriving European media, information, technology and entertainment industries***

The purpose of the 1989 Directive “Television without Frontiers” was to create an Internal Market for television broadcasting through introducing a vital principle: that the country of origin of the broadcaster was the place where media should be regulated, so that programmes could be freely broadcast across borders without reception being blocked within EU countries and that the freedom of speech remained paramount.

The country of origin principle is equally important for all information society services and therefore underpinned the e-Commerce Directive which now provides the legal framework for the freedom to provide all online media services throughout the EU according to one set of rules.

In order to safeguard the freedom to provide media services throughout the European Union, the signatories of this Declaration call on the Council and Members of the European Parliament to:

- Ø Ensure that **Member States do not have new powers to restrict services from service providers established in another Member State** which complies with their home country rules. ‘Audiovisual Media Services’ and the programmes and advertising they carry, should be subject only to the law of the EU country where they are established. In exchange Member States have to ensure that the common rules of the Directive applicable for the whole of the EU are respected by those operators established in their countries.
- Ø **Reject all amendments relating to the articles covering jurisdiction<sup>1</sup>**. The compatibility of these amendments with the Treaty and European Court of Justice case law is seriously questionable as they would contradict fundamental principles of the Internal Market.
- Ø **Leave the original text of the proposal on jurisdiction from the Commission intact** in order to safeguard the integrity of the legislation which already provides for derogations to its country of origin clauses where “manifest”, “serious” or “grave” risk to minors or in respect of incitement to hatred is concerned. The e-Commerce directive has similar derogations for the content of on-demand services.
- Ø Recognise that **without this principle** of mutual recognition of standards harmonised at EU level based on home country control, **media service providers will be subject to content control** on the very broad grounds of unpredictable and widely varying “general public interest” from outside their place of establishment.
- Ø Recognise that, without the COO principle, the provision of cross-border services would be dramatically hampered and EU citizens’ freedom to access to programmes originating from other EU countries substantially damaged

Without a properly functioning internal market in media services, consumers and other users are also discriminated against – unable to benefit from a larger choice of diverse European information and entertainment and of competitively priced and quality media services.

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<sup>1</sup> Articles 2.7, 2.8, 2.9. 2.10, 2a par 1 and article 3 par 1, 2 and 3 of the proposal for a directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (COM(2005)0646 – C6-0443/2005 – 2005/0260(COD)) should remain intact.

## Background

The current TVWF Directive provides for derogations to its country of origin clauses where “manifest”, “serious” or “grave” risk to minors or in respect of incitement to hatred is concerned. The e-Commerce directive has similar derogations for the content of on-demand information society services.

The amendments being considered in Council and Parliament would require home country regulators to request broadcasters to comply with any “more detailed or stricter rules of general public interest” adopted by another Member State. In other words, audiovisual media service providers could be requested to comply with other Member States’ standards, which go beyond those harmonised by the Directive.

The Commission proposal already allows for a derogation. Art 2.7 enables Member States to prevent abuse or fraudulent conduct by media service providers established in another Member State when directing all or most of their activities to the territory of the receiving Member State.

The Council now wishes to dispense with the “abuse or fraudulent conduct” conditions in order to be able to take measures against broadcasters that, while complying with national requirements established in order to transpose the Directive, are judged to be trying to avoid stricter rules adopted in the country of destination.

Although the name of the Directive has been changed, the very principle idea of creating a “European Audiovisual Media Space without Frontiers” based on internal market principles should be maintained when revising the Directive in order a) to maintain its integrity and b) to justify the introduction of harmonised rules for all audiovisual media content.

An Audiovisual Media Service falls within Article 50 of the Treaty which defines services.

Article 49 states that the freedom to provide cross border services is a “fundamental freedom” which is central to the effective functioning of the EU Internal Market.

[http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C\\_2002325EN.003301.html](http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html)

Case law on the freedom to provide services is at

[http://ec.europa.eu/internal\\_market/services/docs/infringements/art49\\_en.pdf](http://ec.europa.eu/internal_market/services/docs/infringements/art49_en.pdf)

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