Approaching jurisdictional issues in European audiovisual law: trends and tensions

IRIS

A publication
of the European Audiovisual Observatory

European Audiovisual Observatory

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

IRIS 2025-02
Approaching jurisdictional issues in European audiovisual law: trends and tensions
European Audiovisual Observatory, Strasbourg, 2025
ISSN 2079-1062

Director of publication – Susanne Nikoltchev, Executive Director
Editorial supervision – Maja Cappello, Head of Department for Legal Information
Editorial team – Amélie Lacourt, Sophie Valais

Author
Olivier Hermanns

Proofreading
Anthony Mills, Aurélie Courtinat, Barbara Grokenberger

Translation
Stefan Pooth, Marco Polo Sàrl

Editorial Assistant – N.N.
Press and Public Relations – Alison Hindhaugh, alison.hindhaugh@coe.int

Publisher
European Audiovisual Observatory
76, allée de la Robertsau, 67000 Strasbourg, France
Tel.: +33 (0)3 90 21 60 00
iris.obs@coe.int
www.obs.coe.int

Cover layout – ALTRAN, France

Please quote this publication as
Hermanns O., *Approaching jurisdictional issues in European audiovisual law: trends and tensions*, IRIS, European Audiovisual Observatory, Strasbourg, July 2025
© European Audiovisual Observatory (Council of Europe), Strasbourg, 2025

Opinions expressed in this publication are personal and do not necessarily represent the views of the Observatory, its members or the Council of Europe.

To promote inclusive language, we follow the guidelines of the Council of Europe.

Approaching Jurisdictional Issues in European Audiovisual Law: Trends and Tensions

Olivier Hermanns

European Audiovisual Observatory

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Foreword

“The secret of change is to focus all of your energy not on fighting the old, but building on the new.” This timeless insight, attributed to Socrates, speaks to the heart of the evolving landscape of audiovisual regulation in a rapidly changing world. As technological advances continue to reshape how content is produced, consumed, and distributed, the regulatory frameworks that once governed these processes now face significant challenges.

These challenges are not only technical in nature. They also have legal aspects, demanding a reimagining of how audiovisual-media National Regulatory Authorities (NRAs) collaborate and enforce decisions across borders. In addition, there may be a geopolitical impact whenever technologies are used as a means of exercising a political influence.

At the same time, the importance of promoting the free flow of information cannot be stressed enough. The international context for audiovisual regulation is undeniably shifting. In an era of globalisation and digital connectivity, traditional models of jurisdiction are being tested by new realities: streaming platforms operate across borders, if not on a global scale; content flows without regard for national boundaries; and the very nature of what constitutes harmful content – such as disinformation or materials that endanger minors – has evolved. As a result, media regulatory authorities are increasingly confronted with the difficulty of balancing national interests with the global reach of digital media.

Central to this dilemma is the debate between the country-of-origin principle and the targeting of specific countries. While the country-of-origin principle, enshrined in many regulatory frameworks of the EU, has historically allowed content providers to operate under the rules of their home country, this approach is increasingly at odds with the power of regulators to address issues like disinformation or the protection of minors. The question now arises: how do regulatory authorities ensure that content circulating globally is subject to appropriate oversight?

This report explores these complexities, underscoring the urgent need for enhanced international cooperation including collaborative mechanisms to address cross-border enforcement.

The opening chapter provides an overview of key elements related to cross-border issues. Chapter 2 outlines the jurisdictional criteria, detailing how states determine their authority over content and services that extend beyond borders. Chapter 3 focuses on the monitoring and enforcement mechanisms in place for addressing cross-border challenges, emphasizing the powers granted to NRAs. Chapter 4 discusses the framework for NRA cooperation, outlining the collaborative efforts between authorities on addressing issues that arise in cross-border situations. Finally, Chapter 5 offers concluding remarks on the evolving landscape of freedom of reception and retransmission.

As Socrates so wisely advised, the focus is on the ongoing attempts to build adequate responses that are robust, responsive, and capable of meeting the demands of a changing world.

Enjoy the read!

Strasbourg, July 2025

Maja Cappello

IRIS Coordinator

Head of the Department for Legal Information

European Audiovisual Observatory

Table of contents

Executive summary **1**

1. Context and key concepts **3**

2. Legal framework on territorial jurisdiction criteria **6**

2.1. The country-of-origin principle 6

2.1.1. A cornerstone of Union audiovisual media law 6

2.1.2. The Convention on Transfrontier Television and jurisdiction 9

2.1.3. Jurisdiction in the post-Brexit United Kingdom 11

2.2. Exceptions to the country-of-origin principle: the "targeted country approach" 12

2.2.1. Exceptions in the E-Commerce Directive 13

2.2.2. Exceptions in the Audiovisual Media Services Directive 13

2.2.3. Exceptions in the Digital Services Act 15

2.2.4. Exceptions in the European Media Freedom Act 15

2.3. Providers established outside the EU 16

2.3.1. Provisions of EU law 16

2.3.2. Foreign influence 17

2.4. Recent initiatives of EU member states 19

2.5. Case study: FAST channels and OTT services 23

3. Legal framework on monitoring and enforcement system **26**

4. Legal framework on cooperation/mutual assistance between regulators **29**

4.1. Mechanisms of the Audiovisual Media Services Directive 30

4.2. Procedures of the European Media Freedom Act 30

4.3. Forms of cooperation in the Digital Services Act 31

4.4. Cooperation under the Political Advertising Regulation 32

4.5. Mechanisms of cooperation under the AI Act 32

4.6. Procedures of the E-Commerce Directive 33

4.7. Summary table 33

4.8. Cooperation under United Kingdom law 35

4.9. EPRA co-operation 36

4.10. Independent advisory Boards at European level 37

5. Challenges regarding jurisdiction issues 39
5.1. Future of freedom of reception and retransmission 39
5.2. Co-operation within the Media Board 41
5.3. Dissemination of disinformation and third-country influence campaigns 42

6. List of abbreviations 43

Figures

Figure 1. Value chain of FAST channels 24

Tables

Table 1. Applicable instrument between two states 10
Table 2. Extraterritorial clauses (AVMSD, EMFA, DSA, Political Advertising Regulation, IA Act and P2B Regulation) 16
Table 3. Possible cross-border issues and respective settlement procedures 34

Executive summary

This report on jurisdictional issues within the European audiovisual media services sector comes five years after the last revision of the Audiovisual Media Services Directive (AVMSD) and the United Kingdom's departure from the European Union (EU), which have significantly impacted the audiovisual market. The study also considers the evolving digital environment and its implications for jurisdictional rules and cross-border enforcement.

It emphasises the "country-of-origin" principle, a cornerstone of European audiovisual media law, which is implicitly referenced in key directives and regulations such as the AVMSD, the E-commerce Directive (ECD), the Digital Services Act (DSA), the European Media Freedom Act (EMFA), the Political Advertising Regulation, the Platform-to-Business Regulation (P2B), and the AI Act. This principle ensures that media service providers are regulated by the laws of the member state where they are established, promoting the integrity of the EU's Single Market for digital services.

However, the "targeted country" approach allows the law of the country where the service is received to be applied, creating tension between the principle of free movement of services and national law enforcement. Derogations from the country-of-origin principle are strictly interpreted and must be proportionate to public policy objectives. The report highlights several exceptions to the country-of-origin principle.

The report then discusses the extraterritorial application of EU rules to providers established outside the EU, particularly under the DSA, the Political Advertising Regulation, the AI Act, and the P2B Regulation. These rules ensure a level playing field and effective protection of rights and freedoms within the EU.

Several challenges can be identified, including those related to the future of freedom of reception and retransmission, cooperation within the European Board for Media Services (Media Board), and the fight against disinformation and foreign influence. Recent legislative initiatives in EU member states aim to address these challenges but must be carefully designed to avoid misuse and ensure proportionality.

This report examines the regulatory implications of free ad-supported streaming television (FAST) channels. FAST platforms may qualify as providers of linear channels or VOD services under the AVMSD or as online platforms under the DSA, depending on their editorial responsibility and decision-making role. Experts are discussing whether rules on the distribution of audiovisual content may need to be included in the AVMSD to address the challenges posed by FAST channels.

The final topic addressed in this report is about the monitoring and enforcement system for audiovisual media services, which is primarily the responsibility of national regulatory authorities (NRAs). Cooperation and mutual assistance mechanisms between

© European Audiovisual Observatory (Council of Europe) 2025

regulators are crucial for effective cross-border enforcement. This report highlights various cooperation mechanisms under the AVMSD, EMFA, DSA, Political Advertising Regulation, AI Act, and ECD.

The report concludes that while the country-of-origin principle remains a fundamental aspect of European audiovisual media law, the targeted country approach and extraterritorial application of EU rules are necessary to address emerging challenges. Effective cooperation and mutual assistance between regulators are essential for ensuring the consistency and effectiveness of EU media law.

© European Audiovisual Observatory (Council of Europe) 2025

1. Context and key concepts

The European Audiovisual Observatory (EAO) has already devoted several studies to the subject of jurisdictional issues.[1] These studies were mainly dedicated to specific themes such as the obligation to invest in European works, the rules applicable to video-sharing platforms or the cooperation between national regulatory authorities and bodies (NRAs).

However, despite a recurrent interest in addressing jurisdictional issues, no EAO study has yet provided a systematic overview of the subject. It seems appropriate to do it now for multiple reasons.

First, it has been five years since the entry into force of the last revision of the Audiovisual Media Services Directive (AVMSD).[2] Its scope was extended in 2018 to video-sharing platforms, and the AVMSD contains long-standing rules on jurisdiction and co-operation between regulatory authorities. The AVMSD was a significant step forward in harmonising audiovisual regulations across the EU based on the country-of-origin principle, but as the digital environment continues to evolve, its effectiveness in addressing emerging issues – such as disinformation, content moderation, and the protection of minors – has come into question. The European Commission reported on the application of the AVMSD for the period 2019-2022 in January 2024[3] and has to submit "by 19 December 2026 at the latest, (…) an ex post evaluation, accompanied where appropriate by proposals for its review, of the impact of this Directive and its added value".[4] Five years have also transpired since Brexit,[5] which led to new audiovisual rules[6] in the United Kingdom, a major player on the audiovisual market in Europe.

Second, the societal significance of digital content has led to increased awareness, in the public debate, of responsibilities and challenges linked to intermediary services (the platforms), but also to cross-border enforcement of decisions by audiovisual regulatory authorities. While intermediary services may be acting globally, the content the dissemination of which they contribute to can target users, communities or even regions or nations. In recent years, several EU member states have enacted national regulations to

---

[1] Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., "Investing in European works: the obligations on VOD providers", *IRIS Plus*, European Audiovisual Observatory, Strasbourg, September 2022; Cabrera Blázquez F.J., Denis G., Machet E., McNulty B., "Media regulatory authorities and the challenges of cooperation", *IRIS Plus*, European Audiovisual Observatory, Strasbourg, December 2021; "Mapping of national rules applicable to video-sharing platforms: Illegal and harmful content online", European Audiovisual Observatory, Strasbourg, 2021.

[2] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

[3] European Commission, Commission staff working document, "Reporting on the application of Directive 2010/13/EU 'Audiovisual Media Services Directive' as amended by Directive (EU) 2018/1808, for the period 2019-2022", SWD(2024) 4 final.

[4] Article 33 AVMSD.

[5] Cabrera Blázquez F.J., "Post-Brexit rules for the European audiovisual sector", European Audiovisual Observatory, Strasbourg, 2021.

[6] See in this context "The Broadcasting (Amendment) (EU Exit) Regulations 2019", and the new rules related to the amendment of the Communications Act 2003 by the Online Safety Act 2023 and the Media Act 2024.

© European Audiovisual Observatory (Council of Europe) 2025

address specific issues like hate speech, the protection of minors online and the financial contributions required from media service providers targeting audiences in territories other than their member state of establishment.

Third, there are many current challenges impacting jurisdictional aspects. In recent years, foreign influence campaigns to manipulate public opinion (FIMI), using platforms, have been reported.[7] In the aftermath of the Russian war of aggression against Ukraine, disinformation campaigns have been launched,[8] as part of an information war.[9] European sanctions against the Russian Federation[10] include a ban on Russian propaganda organs the content of which was also available on platforms. While these sanctions are not based on jurisdictional rules of audiovisual law, a link can be drawn with the issue of foreign influence.

Fourth: an additional challenge in this area is the difficulty posed by targeting services in an increasingly global digital landscape. The last edition of the "Audiovisual media services in Europe" report, based on data from the EAO's MAVISE database,[11] shows that at the end of 2024, 23% of TV channels and 13% of on-demand services and video-sharing platforms services were targeting audiences in at least one territory other than the country of jurisdiction of their provider, whether or not the country jurisdiction was also part of the targeted territories.

The question of jurisdiction is also amplified in the debate on FAST channel providers, due to the multiplicity of stakeholders involved, on the one hand, and the possibility that these providers are established outside the EU and therefore fall outside the scope of the harmonised rules of the AVMSD, on the other hand.

All of this renders it worthwhile to reflect on jurisdictional dynamics again and explore the current state of cross-border enforcement in audiovisual regulation.

This includes considering the jurisdictional principles applicable to service providers, as established by the AVMS Directive, but from a broader perspective. Indeed, there has been an evolution in the regulatory approach, in that the case-by-case content regulation that was applied in the context of audiovisual regulation has been replaced by

[7] For a recent example: Golunova V., "New research investigates the impact of Chinese interference and intimidation on the Dutch media landscape", *IRIS Merlin* 2025-1:1/11, European Audiovisual Observatory, 2025. See also the Resolution of the European Parliament 2025/2515(RSP) – Need to enforce the DSA to protect democracy on social media platforms including against foreign interference and distorted algorithms.

[8] Regarding disinformation, see the website of the European Digital Media Observatory (EDMO), an interdisciplinary network countering disinformation, www.edmo.eu. See also Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., "User empowerment against disinformation online", I*RIS Plus*, European Audiovisual Observatory, Strasbourg, September 2022.

[9] Other common fields of disinformation investigated by EDMO include the Israel-Hamas conflict, various electoral polls, climate change, etc. For a presentation of EDMO see Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., "User empowerment against disinformation online", op. cit., pp. 21-23.

[10] Cabrera Blázquez F.J., "The implementation of EU sanctions against RT and Sputnik", European Audiovisual Observatory, Strasbourg, 2022.

[11] Tran J.-A., "Audiovisual media services in Europe", European Audiovisual Observatory, Strasbourg, July 2025.

© European Audiovisual Observatory (Council of Europe) 2025

systemic regulation,[12] according to which the provider is regarded as being more at the centre and must therefore take general mitigation measures and apply further action mechanisms. As a result, the scope of this report, building on the jurisdictional provisions of the AVMSD, is extended to other provisions of the following instruments:

- The E-commerce Directive (ECD),[13]
- The Digital Services Act (DSA),[14]
- The European Media Freedom Act (EMFA),[15]
- The P2B Regulation,[16]
- The Political Advertising Regulation[17] and
- The AI Act.[18]

Finally, this report seeks to examine recent developments in legislation and case-law from a pan-European perspective, including Council of Europe member states. It takes into account providers of linear and non-linear services established or located both within the European Union and in a third country (in particular in the case of the DSA, the Political Advertising Regulation, the P2B Regulation and the AI Act).

[12] The use of the term "systemic risk" in the DSA relates to the impact of online platforms on the economy and society due to their extensive scale. It derives from the concept of systemic risk in financial markets (Broughton Micova S., Calef A., "Elements for effective systemic risk assessment under the DSA", Centre on Regulation in Europe, Brussels, July 2023, pp. 12-13, 16-23).

[13] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ L 178, 17.7.2000, pp. 1-16.

[14] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 266, 27.10.2022, pp. 1-102.

[15] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), OJ L, 2024/1083, 17.4.2024.

[16] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186, 11.7.2019, pp. 57–79.

[17] Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising, OJ L, 2024/900, 20.3.2024.

[18] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ L, 2024/1689, 12.7.2024.

© European Audiovisual Observatory (Council of Europe) 2025

2. Legal framework on territorial jurisdiction criteria

This chapter describes the legal framework on territorial jurisdiction criteria regarding both linear and non-linear services.

The issue of territorial jurisdiction in European audiovisual media law has gained increasing relevance in recent years, especially with the rise of digital platforms and the European Union's efforts to regulate them. Central to this debate is the interplay between the country-of-origin principle and what might be called the targeted country approach, whereby the law of the country in which the harm occurs can be applied. The conflict between these two principles has implications for the integrity of the EU's Single Market for digital services and presents challenges in the regulation of online content.

2.1. The country-of-origin principle

2.1.1. A cornerstone of Union audiovisual media law

The country-of-origin principle is a cornerstone of European audiovisual media law. While it is not explicitly mentioned in the legal texts, it is certainly implied in the AVMSD, the ECD, the DSA, the EMFA, the Political Advertising Regulation, the P2B Regulation and the AI Act.

Firstly, the AVMSD, which governs audiovisual content, aligns with the country-of-origin principle in its regulation of TV broadcasting, on-demand services, and video-sharing platforms (VSPs).

According to Article 2(2)-(4) AVMSD, a provider of linear or non-linear audiovisual media services or of a VSP is subject to the rules of the member state in which it is established or under the jurisdiction of which it is deemed to be because of its use of a satellite up-link situated in that member state or of satellite capacity appertaining to that member state, regardless of where its content is consumed across the EU. Against this background, it is noteworthy that, as a European Parliament report of 2023 outlines, Article 2(4) AVMSD "now unintentionally works in favour of third country providers, since satellite capacities are now straightforwardly and quickly available and uplinks are easily accessible and interchangeable, so that the latter can be redistributed relatively straightforwardly and

© European Audiovisual Observatory (Council of Europe) 2025

quickly (immediately) without restriction, while the question of legal attribution to the jurisdiction of a Member State continues to be contentious."[19]

Furthermore, member states shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other member states for reasons which fall within the fields coordinated by this Directive (Article 3(1) AVMSD).

Secondly, the country-of-origin principle is also relevant in the context of information society services.[20] Article 3 ECD states that information society services provided by a service provider established in one EU member state shall be regulated by the laws of that member state, even if the services are provided in other member states. The Court of Justice of the European Union (CJEU) also uses in this case the expression "principle of control in the Member State of origin set out in Article 3(1) of Directive 2000/31" or "principle of control in the home state".[21] It aims to preserve the integrity of the single market for digital services by avoiding the application of a patchwork of national rules.

Thirdly, the DSA, which applies to providers of certain information society services as defined in Directive (EU) 2015/1535, states: "The Member State in which the main establishment of the provider of intermediary services is located shall have exclusive powers to supervise and enforce this Regulation, except for the powers provided for in paragraphs 2, 3 and 4." (Article 56(1) DSA). At the same time, the DSA applies "to providers of intermediary services irrespective of their place of establishment or their location, in so far as they offer services in the Union, as evidenced by a substantial connection to the Union" (Recital 7). A "substantial connection to the Union" is considered to exist "where the service provider has an establishment in the Union or, in the absence of such an establishment, where the **number of recipients** of the service in one or more member states is significant in relation to the population thereof, or on the basis of the **targeting of activities** towards one or more member states". The factors from which such a targeting could derive include:

- The use of a language or a currency generally used in that member states,
- The possibility of ordering products or services,
- The use of a relevant top-level domain,
- The availability of an application in the relevant national application store,
- The provision of local advertising or advertising in a language used in that member state,
- The handling of customer relations such as by providing customer service in a language generally used in that member state,

[19] European Parliament, Report on the implementation of the revised Audiovisual Media Services Directive, 12.4.2023 (2022/2038(INI)),"3. Challenges in upholding the country-of-origin principle".
[20] Ukrow J., "Framework for law enforcement against online and foreign content providers" , in Cappello M. (ed.), *Media law enforcement without frontiers*, *IRIS Special*, European Audiovisual Observatory, Strasbourg, 2018, p. 18.
[21] Judgment of the Court (Second Chamber), Case C-376/22, 9 November 2023, *Google Ireland Limited, Meta Platforms Ireland Limited, Tik Tok Technology Limited v. Kommunikationsbehörde Austria (KommAustria)*, ECLI:EU:C:2023:835, Paragraph 47.

© European Audiovisual Observatory (Council of Europe) 2025

- Where a service provider directs its activities to one or more member states within the meaning of Article 17(1)(c) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council (Recital 8).

Fourthly, the EMFA complements the AVMSD and intends to uphold the country-of-origin principle. This is explicitly stated in Recitals 44 and 45 and implicitly in Article 15(1) of the EMFA, according to which the requesting authority of a country of destination of the service may submit a request to the requested authority of the country of origin, "without prejudice to Article 3 of Directive 2000/31/EC" (i.e. the ECD), a provision based on the idea that "information society services should be supervised at the source of the activity" (Recital 22 of the ECD).

Similarly, the Political Advertising Regulation, the AI Act and the P2B Regulation do not mention explicitly the country-of-origin principle, but it may be argued that they rely on it.[22] Noteworthy is the fact that the AI Act and the P2B Regulation, as was the case with the DSA, have an extraterritorial scope and therefore also apply to providers established in third countries. The rationale behind this rule is that it is necessary "to ensure a level playing field and an effective protection of rights and freedoms of individuals across the Union".[23] This does not, however, exclude the maintenance of the country-of-origin principle for the benefit of providers established within the EU.

[22] According to Article 23(1) of the Political Advertising Regulation, "Compliance with this Regulation by providers of political advertising services and sponsors shall be subject to the competence of the Member State where the provider has its establishment. In the event that the provider is established in more than one Member State, it shall be deemed to be under the jurisdiction of the Member State in which it has its main establishment." In addition, pursuant to Article 2(3) of the Political Advertising Regulation, this regulation is without prejudice to the rules laid down by Directive 2000/31/EC (ECD), Directive 2006/123/EC (Services Directive), Directive 2010/13/EU (AVMSD), Regulation (EU) 2022/2065 (DSA), Regulation (EU) 2019/1150 (P2B Regulation), etc., i.e. instruments that are based on the country-of-origin principle. In the P2B Regulation, one of the constitutive criteria of the concept of 'online intermediation services' is the constitution of information society services within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 (Article 2(2)(a) P2B Regulation). The latter intends to avoid that member states set out technical regulation that may create obstacles to the free movement of services or to the freedom of establishment of service operators within the internal market.

[23] Article 2(1) and Recitals 21 and 22 AI Act. In the context of copyright and related rights, see also Recital 106 AI Act and Quintais J. P., "Copyright, the AI Act and extraterritoriality", 28 November 2024.

© European Audiovisual Observatory (Council of Europe) 2025

2.1.2. The Convention on Transfrontier Television and jurisdiction

At the level of the Council of Europe, the European Convention on Transfrontier Television (ECTT)[24] is also based on the country-of-origin principle (Article 5(1) of the ECTT).[25] The ECTT was amended by the 1998 Protocol, also regarding the provisions on jurisdiction.[26]

However, the ECTT applies to providers of linear services only. Additionally, attempts to further amend the Convention by means of a new protocol ultimately failed.[27]

Some countries are only party to the ECTT in its original version of 1989, some to the ECTT version as amended by the Protocol 1998. Some are only subject to the AVMSD. Some are subject to both the ECTT (in its 1989 or 1998 version) and the AVMSD. In other cases, none of these instruments applies.

The following table illustrates which instrument (essentially the AVMSD or the ECTT 1989) is applicable in relations between two states. It helps to identify the requirements for broadcasters wishing to provide their services beyond the borders of their country of jurisdiction.

[24] European Convention on Transfrontier Television, ETS No. 132, Strasbourg, 5 May 1989, as amended by the Protocol ETS No. 171 which entered into force on 1 March 2002.

[25] The principle is defined similarly in the ECTT and the AVMSD. "Each transmitting Party shall ensure that all programme services transmitted by broadcasters within its jurisdiction comply with the terms of this Convention." (Article 5(1) of the ECTT). The corresponding provision of the AVMSD reads: "Each Member State shall ensure that all audiovisual media services transmitted by media service providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State." (Article 2(1) of the AVMSD). The criteria of jurisdiction, laid down in Article 5(2) to (5) of the ECTT, are aligned with those laid down in Article 3 of the AVMSD.

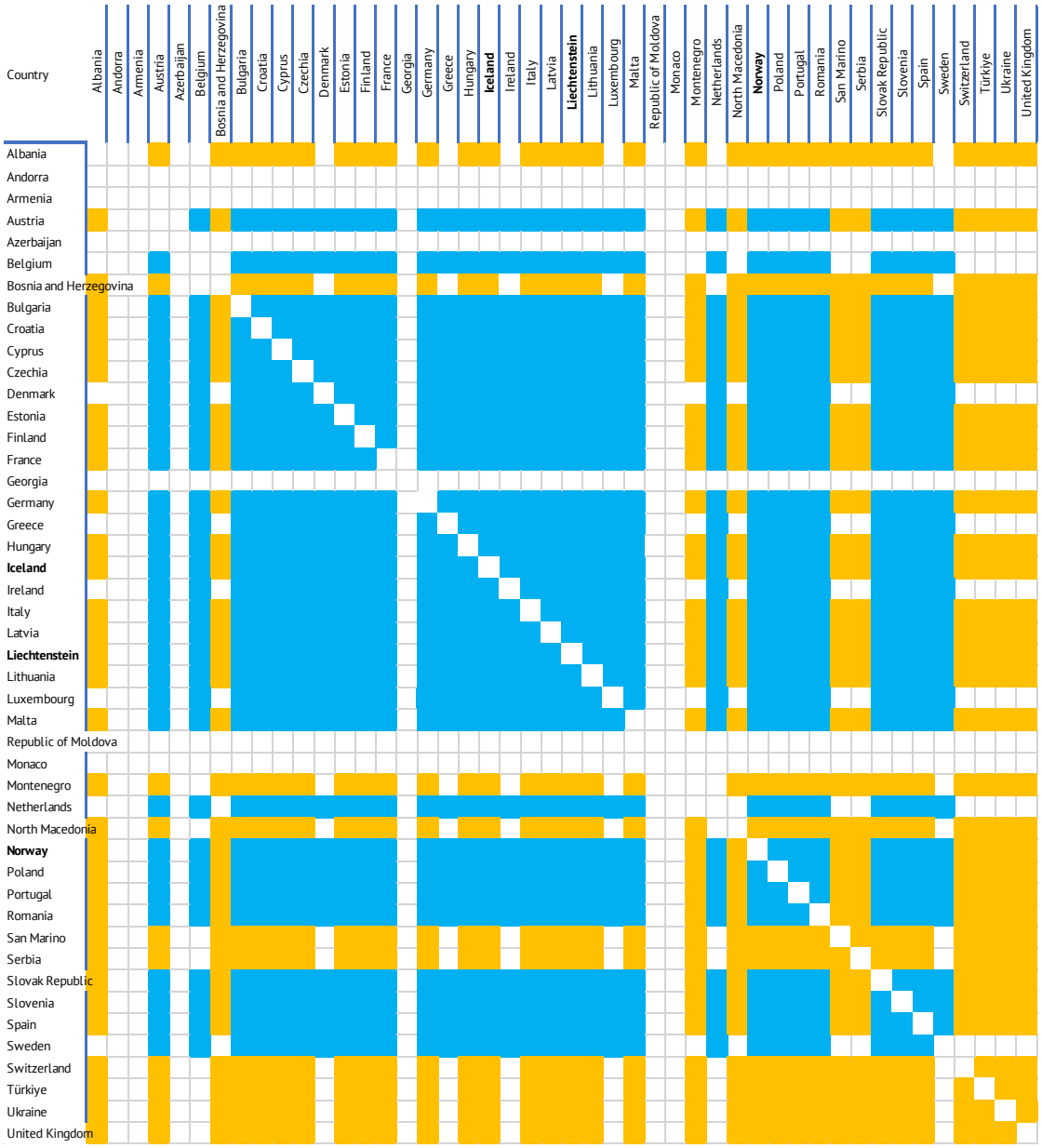
[26] Protocol amending the European Convention on Transfrontier Television (ETS No. 171), Strasbourg, 9 September 1998, Article 7. Amendment of the ECTT 1989 was intended to develop a coherent approach to transfrontier television between the ECTT and the AVMSD (at this time, the Television without Frontiers (TVWF) Directive as amended by Directive 97/36/EC).

[27] Standing Committee on Transfrontier Television, Report, 45th meeting, 1 and 2 July 2010. Cole M. D., "The AVMSD Jurisdiction Criteria concerning Audiovisual Media Service Providers after the 2018 Reform", Institute of European Media Law, Saarbrücken, December 2018, p. 26. See Draft second protocol amending the European Convention on Transfrontier Television, Document T-TT(2009)007rev, Item 3, 2009. For a comprehensive presentation of the discussions until 2017, see Steering Committee on Media and Information Society (CDMSI), Information note on the Revision of the European Convention on Transfrontier Television (ECTT), CDMSI(2017)004, 3 March 2017. For a state of play regarding the ECTT, see Bureau of the Steering Committee on Media and Information, Draft report 24th meeting (13 April 2023), CDMSI-BU(2023)002, point 4, p. 2.

© European Audiovisual Observatory (Council of Europe) 2025

Table 1. Applicable instrument between two states

	Both countries apply the AVMSD in their relations.
	Both countries apply the ECTT 1989 in their relations.
	Other situations.



Source: Elaboration of the author; situation as at 8 March 2025

© European Audiovisual Observatory (Council of Europe) 2025

2.1.3. Jurisdiction in the post-Brexit United Kingdom

The United Kingdom (UK) is a party to the ECTT 1998. This is important since the UK left the EU in 2020. The consequences of Brexit include departure from the country-of-origin principle and freedom of movement.[28] The audiovisual sector is not included in the post-Brexit arrangements laid down in the EU-UK Withdrawal Agreement[29] and in the Trade and Cooperation Agreement (TCA).[30] The UK amended its "Broadcasting Regulations" (including the Communications Act 2003[31]) through The Broadcasting (Amendment) (EU Exit) Regulations 2019[32] and The Audiovisual Media Services (Amendment) (EU Exit) Regulations 2020.[33]

A search of the EAO's MAVISE-Database offers clues on the movements of audiovisual media service providers since Brexit.[34] It appears that most UK-based channels that relocated to the EU[35] until 2020 were targeting audiences in EU member states. "Half of the channels available in Europe outside their country of origin (as defined by the European regulations) fell under UK jurisdiction in 2018, as opposed to only 10% of them at the end of 2020."[36] Between 2019 and 2020, the TV channel supply market experienced significant shifts in connection with Brexit. Many UK-based cross-border TV channels relocated to maintain their distribution outside the UK, relying on the ECTT post-Brexit. Key destinations for relocating networks included Spain, the Netherlands, Germany, Sweden and the Czech Republic, while Luxembourg was preferred by broadcasters using satellite uplinks or capacity usage. Major transnational networks like Warner Bros. Discovery, Disney, Viaplay, NBC, Paramount, Antenna, SPI International, and versions of Sky and the BBC targeting foreign markets, were among those that relocated. The market stabilised in 2021, returning to pre-Brexit levels and remaining steady through the first half of 2022.[37]

Moreover, post-Brexit UK legislation includes several jurisdictional criteria.

- One of the criteria for "independent television services" is that they must be "provided from places in the United Kingdom". This applies to television

[28] Due to lack of consideration in the TCA, UK-based audiovisual media services were excluded from non-discriminatory treatment. On this question see Harcourt A., "Brexit and the Digital Single Market", Oxford University Press, 2023. See especially Chapter 2 entitled "Audio-Visual Media Services: The New Regulatory Environment".

[29] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L29, 31.1.2020, pp. 7–187. Harcourt A., *Brexit and the Digital Single Market*, Oxford University Press, 2023.

[30] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 149, 30.4.2021, pp. 10–2539.

[31] https://www.legislation.gov.uk/ukpga/2003/21/contents.

[32] https://www.legislation.gov.uk/uksi/2019/224/contents/made. See Cabrera Blázquez F.J., "Post-Brexit rules for the European audiovisual sector", European Audiovisual Observatory, Strasbourg, 2021.

[33] https://www.legislation.gov.uk/uksi/2020/1536/contents/made.

[34] EAO, MAVISE – Database on audiovisual services and their jurisdiction in Europe.

[35] Mostly to the Netherlands, Luxembourg and Spain.

[36] EAO, "70% of cross-border TV channels now fall under the AVMSD jurisdiction of The Netherlands, Luxembourg and Spain", Press release, 17 June 2021.

[37] EAO, "Relocation of broadcasting registrations for cross-border TV channels back to pre-Brexit levels", Press release, 1 September 2022.

© European Audiovisual Observatory (Council of Europe) 2025

broadcasting services, restricted television services and additional television services.[38]

- Two of the criteria for an "on-demand programme service" are that the person who has editorial responsibility for the service has their head office in the United Kingdom, and that editorial decisions about the service are taken in the United Kingdom.[39]
- A "non-UK on-demand programme service" is legally defined as a service (or a dissociable section of a service), provided, among other things, that "the members of the public for whose use it is made available are or include members of the public in the United Kingdom".[40]
- One of the criteria for a "video-sharing platform service" is that the person providing it has the required connection with the United Kingdom.[41]

In addition, UK post-Brexit legislation provides for the concept of "exempt foreign services" (section 211B of the Communications Act 2003). "Services that are from countries that have not signed and ratified the ECTT need a licence from Ofcom to be received in the UK. Alternatively, the broadcaster can change the way it operates so it falls within the jurisdiction of another ECTT country. The UK is committed to continued licence-free reception for TG4, RTÉ1 and RTÉ2 to reflect the commitments in the Good Friday agreement."[42] Additionally, the Media Act 2024 "contains amendments of the Broadcasting Act 1990, the Broadcasting Act 1996 and the Communications Act 2003 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union" (section 51 Media Act 2024).

2.2. Exceptions to the country-of-origin principle: the "targeted country approach"

In contrast to the country-of-origin principle, there is what might be called the "targeted country approach", whereby the law of the country in which the service is received – and sometimes where the harm occurs – can be applied, even if the service is provided by a company based elsewhere.

This creates tension between the principle of free movement of services (Article 56 TFEU) and the enforcement of national laws in the countries of destination.

Derogations from the country-of-origin principle can be found in several provisions of Union law:

[38] Section 211 of the Communications Act 2003.
[39] Section 368A(1) (e)(f) of the Communications Act 2003.
[40] Section 368AA of the Communications Act 2003.
[41] Section 368S of the Communications Act 2003. On the UK see also https://committees.parliament.uk/writtenevidence/75609/pdf/.
[42] James S., "Government publishes updated guidance on broadcasting and video on-demand services between the UK and EU", 11 January 2021.

© European Audiovisual Observatory (Council of Europe) 2025

- In respect of a given information society service (Article 3(4) ECD);
- In respect of audiovisual media services by means of a suspension in the targeted member state (Article 3(2) AVMSD) or of the 'anti-circumvention procedure' (Article 4 AVMSD);[43]
- In order to impose a financial contribution for media services providers targeting audiences (Article 13(2) AVMSD);
- By issuing orders to providers of intermediary services on a cross-border basis (Article 9 DSA).

As such derogations are exceptions to the principle, they must be interpreted strictly, according to well-established case-law of the Court of Justice of the European Union. In addition, according to the European Parliament resolution of 9 May 2023 on the implementation of the revised Audiovisual Media Services Directive, "any derogation related to the country-of-origin principle and the introduction of any new barriers and restrictions to the freedom to provide services, as established under Articles 56-62 TFEU, need to be assessed against proportionality, flexibility, predictability and non-discrimination safeguards".[44]

2.2.1. Exceptions in the E-Commerce Directive

Pursuant to Article 3(4) ECD, member states may take measures to derogate from the country-of-origin principle in respect of a given information society service if certain conditions are fulfilled.

These measures shall be necessary for achieving objectives of public policy and public security, for the protection of public health or of consumers. They shall be taken against a given information society service and be proportionate to the abovementioned objectives.

2.2.2. Exceptions in the Audiovisual Media Services Directive

Pursuant to Article 3(2) AVMSD, an audiovisual media service provided by a media service provider under the jurisdiction of another member state may provisionally be suspended in the targeted member state in particularly severe cases. Such cases include:

[43] Situations not covered by the co-ordinated area of the AVMSD, where a member state would undertake measures against a provider of an audiovisual media service under the jurisdiction of another member state, could also be considered as an exception to the country-of-origin principle under the AVMSD, see Ukrow J., "Framework for law enforcement against online and foreign content providers" , in Cappello M. (ed.), *Media law enforcement without frontiers*, *IRIS Special*, European Audiovisual Observatory, Strasbourg, 2018, p. 15.

[44] European Parliament resolution of 9 May 2023 on the implementation of the revised Audiovisual Media Services Directive (2022/2038(INI)).

© European Audiovisual Observatory (Council of Europe) 2025

- Manifest, serious and grave incitement to violence or hatred (infringements of Article 6(1) (a) AVMSD) or absence of measures to restrain the availability of harmful content that may impair the physical, mental or moral development of minors (infringements of Article 6a(1) AVMSD) and
- Services prejudicing or presenting a serious and grave risk of prejudice to public health.

Article 3(3) AVMSD allows a further derogation where an audiovisual media service from another member state

- Manifestly, seriously and gravely infringes the prohibition of public provocation to commit a terrorist offence (Article 6(1) (b) AVMSD) or
- Prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence.

Both procedures involve the European Commission. It shall take a decision on whether those measures taken in derogation of the country-of-origin principle are compatible with Union law.

Article 4 AVMSD provides for an "anti-circumvention procedure" against a media service provider under the jurisdiction of another member state providing an audiovisual media service which is wholly or mostly directed towards its territory. The application of the procedure has already been requested in cases regarding the targeted countries Belgium and Sweden. Here again, the European Commission has to decide whether the measures are compatible with Union law.

- The Belgian case concerned a dispute over which country, Belgium or Luxembourg, had jurisdiction over audiovisual media services. From 1987 until 2005, the Belgian company TVi (today's RTL Belgium) was registered with the Belgian CSA. In 1995, the Luxembourgish company CLT obtained from the Luxemburgish Government a concession for the same TV stations "with international reach".[45] The CSA considered that this situation was aimed at circumventing stricter Belgian rules.
- In the Swedish case, Swedish authorities wanted to impose a ban on alcohol advertising on two UK broadcasters, MTG and Discovery, which had allegedly established themselves in the UK in order to circumvent the stricter Swedish rules although they were broadcast in Swedish or had Swedish subtitles and were therefore targeting Sweden. On this occasion, the European Commission issued its

[45] The application of the procedure was requested under the former version of Article 4 AVMSD, i.e. before the revision of the Directive in 2018. The Sixth Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 89/552/EEC "Television without Frontiers", COM/2007/0452 final, summarises the dispute as follows: "Problems likewise arose in deciding the relevant jurisdiction for the services RTL-TVi, Club RTL and "Plug TV", specifically whether Belgium or Luxembourg was competent. At the meeting of the Contact Committee on 15 November 2006, the Belgian delegation presented its submission concerning the issue. A discussion followed with other interested delegations. The delegations agreed to cooperate better in order to find concrete solutions to such problems."

© European Audiovisual Observatory (Council of Europe) 2025

first decision based on Article 4 AVMSD.[46] It came to the conclusion that the measures notified to the Commission by Sweden were incompatible with Union law.

Article 13(2) AVMSD entitles member states to require that media service providers targeting audiences in their territories contribute financially to the production of European works, subject to the condition that they impose the same requirement from the providers under their jurisdiction. Any financial contribution shall be based only on the revenues earned in the targeted member states and comply with Union law.

2.2.3. Exceptions in the Digital Services Act

Where national judicial or administrative authorities from the member states of destination of intermediary services are entitled – under applicable Union law or national law in compliance with Union law – to issue orders to providers of intermediary services to take action against one or more specific items of illegal content, the providers shall inform those authorities of any effect given to the order (Article 9 DSA).[47] The country-of-origin principle is referred to in Recital 38 DSA.

The orders must contain certain elements, and their territorial scope must be limited to what is strictly necessary to achieve their objective and they must be drafted in the language declared by the provider of intermediary services or in another bilaterally agreed language or accompanied by a translation.

2.2.4. Exceptions in the European Media Freedom Act

Finally, Article 15 EMFA sets out a procedure to ensure the enforcement of the obligations by video-sharing providers under the AVMSD. This new specific mechanism was conceived as a response to the fact that: "In the specific situation of video-sharing platforms distributing pornographic content, some Member States have used the derogation procedure set out in Article 28a(5) AVMSD in connection with Article 3 of the e-Commerce Directive, when they have considered that the authority in the country of origin was not taking sufficient action."[48]

---

[46] European Commission, Decision of 31.1.2018 on the incompatibility of measures notified by the Kingdom of Sweden pursuant to Art. 4 (5) of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, COM(2018) 532 final of 31.1.2018. Yakovleva S., "European Commission: Imposing Swedish ban on alcohol advertising on two UK broadcasters is not compatible with EU law", *IRIS Merlin* 2018-4:1/8, European Audiovisual Observatory, 2018.

[47] See also Recital 31 DSA.

[48] European Commission, Commission staff working document, Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022, SWD(2024) 4 final, p. 7.

© European Audiovisual Observatory (Council of Europe) 2025

2.3. Providers established outside the EU

2.3.1. Provisions of EU law

Some EU rules may apply to providers established outside the EU. The AVMSD, the EMFA, the DSA, the Political Advertising Regulation, the IA Act and the P2B Regulation lay down extraterritorial clauses that make Union law applicable to certain providers from third countries.

These clauses set out criteria regarding connection to the EU. Such criteria can consist in the use of a satellite link or capacity, the targeting of persons in the EU, the placing on the market within the EU, or the offering of goods or services to consumers in the EU.

Table 2. Extraterritorial clauses (AVMSD, EMFA, DSA, Political Advertising Regulation, IA Act and P2B Regulation)

Providers from third countries	Connection criterion	Source in Union law
Media service providers	Using a **satellite** up-link situated in a member state or using a satellite capacity appertaining to a member state	Article 2(4) AVMSD
Media service providers	Providing media services that, irrespective of their means of distribution or access, **target** or reach audiences in the Union	Article 17(1) EMFA
Providers of intermediary services[49]	Having a "substantial connection to the Union" resulting from specific factual criteria, such as a significant **number of recipients** of the service or the **targeting of activities** at EU member states	Article 3(e) DSA

[49] Political advertising publishers may also be very large online platforms and very large online search engines within the meaning of Regulation (EU) 2022/2065 (Political Advertising Regulation, Recital 46).

© European Audiovisual Observatory (Council of Europe) 2025

Providers[50] or sponsors[51] of political advertising service	The political advertisement is **disseminated** in the Union, is **brought into the public domain** in one or several member states or is **directed** at Union citizens	Article 2(1) Political Advertising Regulation
Providers	**Placing on the market** or **putting into service** AI systems or **placing on the market** general-purpose AI models in the Union[52]	Article 2(1) (a) AI Act
Providers and deployers of AI systems	The **output** produced by the AI system is **used** in the Union	Article 2(1) (c) AI Act
Providers of online intermediation services and online search engines	**Offering goods or services** to consumers located in the Union through those services or engines	Article 1(2) P2B Regulation

2.3.2. Foreign influence

The principle of sovereignty, which includes territorial sovereignty, implies a limitation, for a targeted country, to respond to actions undertaken by third countries. On the other hand, international law bans intervention, i.e. it restricts states from interfering in the internal affairs of other states.[53]

In recent years, there have been several cases in which broadcasters established elsewhere in the Union targeted audiences in Baltic states with programmes including incitement to hatred:

[50] "In order to cover the broad range of relevant service providers connected to political advertising services, providers of political advertising services should be understood as comprising providers involved in the preparation, placement, promotion, publication, delivery or dissemination of political advertisements. For example, providers of political advertising services can act on behalf of the sponsors by initiating political advertising services on their behalf." (Political Advertising Regulation, Recital 38).

[51] "A sponsor should be defined as the person or entity on whose behalf a political advertisement is prepared, placed, promoted, published, delivered or disseminated, for instance an individual candidate in an election or a political party, and who is normally the person or entity providing remuneration in exchange for political advertising services." (Political Advertising Regulation, Recital 40).

[52] Providers of general-purpose AI models shall also put in place a policy to comply with Union law on copyright and related rights pursuant to Article 53(1) (c) AI Act. "Any provider placing a general-purpose AI model on the Union market should comply with this obligation, regardless of the jurisdiction in which the copyright-relevant acts underpinning the training of those general-purpose AI models take place. This is necessary to ensure a level playing field among providers of general-purpose AI models where no provider should be able to gain a competitive advantage in the Union market by applying lower copyright standards than those provided in the Union." (Recital 106 AI Act).

[53] Ukrow J., "Framework for law enforcement against online and foreign content providers" , in Cappello M. (ed.), *Media law enforcement without frontiers*, *IRIS Special*, European Audiovisual Observatory, Strasbourg, 2018, pp. 22-25.

© European Audiovisual Observatory (Council of Europe) 2025

- The UK-based channel NTV Mir Lithuania targeting the Russian-speaking minority in Lithuania,
- The Sweden-based, Russian-language television channel RTR Planeta targeting Lithuania, and
- The Sweden-based, Russian-language television channel Rossiya RTR targeting Latvia.

In reaction, the targeted member states took different measures, namely, in the first case, enforcing an obligation to broadcast in Lithuania only in the form of pay-to-view packages, and, in the second and third cases, suspending retransmission of the channel in Lithuania and Latvia, respectively, for a 12-month period.

The freedom-of-reception and retransmission principle was at stake in all cases.[54]

In the first case, the CJEU stated in a preliminary ruling that such a public policy measure does not restrict retransmission as such in the territory of the receiving member state of television programmes from another member state of the television channel at which that measure is directed. Such a measure is not therefore covered by Article 3(1) and (2) of the AVMSD.[55]

In the second and third cases, both the Lithuanian regulator Lietuvos Radijo ir Televizijos Komisija and the Latvian regulator National Electronic Mass Media Council applied the procedure laid down in Article 3(2) AVMSD and notified the European Commission, which requested an opinion from the European Group of Audiovisual Media

[54] These cases are to be distinguished from the imposition of sanctions against Russia under Article 29 TEU, Article 215 TFEU and Article 2f and Annex XV of Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. On this topic, see Radel-Cormann J., "Council Implementing Regulation (EU) 2022/994 of 24 June 2022 implementing Regulation (EU) 2022/879 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine", *IRIS Merlin* 2022-7:1/2, European Audiovisual Observatory, 2022; Cabrera Blázquez F. J., "European Court of Justice rejects RT France's urgent application for lifting of EU sanctions", *IRIS Merlin* 2022-4:1/2, European Audiovisual Observatory, 2022; Cabrera Blázquez F. J., "European Commission: Banning of Russia Today and Sputnik", *IRIS Merlin* 2022-3:1/6, European Audiovisual Observatory, 2022; Richter A., "Sanction law against Russian and Belarusian audiovisual media", European Audiovisual Observatory, Strasbourg, November 2022; Cabrera Blázquez F.J., "The implementation of EU sanctions against RT and Sputnik", European Audiovisual Observatory, Strasbourg, 2022.

[55] Judgment of the Court (Second Chamber), *Baltic Media Alliance v Lietuvos radijo ir televizijos komisija*, Case C-622/17, 4 July 2019, ECLI:EU:C:2019:566, Paragraphs 82 and 83. See also Ó Fathaigh R., "Court of Justice of the European Union: Pay-to-view restriction on foreign TV channel now permissible", *IRIS Merlin* 2019-8:1/3, European Audiovisual Observatory, 2019.

© European Audiovisual Observatory (Council of Europe) 2025

Services (ERGA). In both cases, the European Commission decided that the suspension of retransmission was proportionate and justified.[56] [57]

Against this background, it is noteworthy that several recitals of the EMFA mention the "risks of foreign information manipulation and interference" (FIMI). These recitals outline the challenge posed by the use of the internal market freedoms for abusive purposes,[58] the importance of quality media services as an antidote against disinformation and foreign information manipulation and interference[59] or the threat represented by systematic international campaigns that aim to destabilise the Union as a whole or particular member states.[60] The 'monitoring exercise' aimed at providing an independent assessment of the risks to the functioning of the internal market for media services shall include the risks of foreign information manipulation and interference (Article 26 DSA). Furthermore, the abovementioned European Parliament report of 2023 warned against a misuse of the jurisdiction rules under Article 2(4) AVMSD in case of satellite capacities and uplinks, in favour of third country providers.[61]

2.4. Recent initiatives of EU member states

In recent years, legislative initiatives have, in many member states, been directed at implementation of derogations from the country-of-origin principle provided in secondary European law. Moreover, some member states have regulated or proposed to regulate online service providers established in other member states, at the risk of bypassing the country-of-origin principle.

For example, Austria has adopted the following two laws:

- The *Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen* (Federal Law on measures for the protection of users of communications platforms – *Kommunikationsplattformen-Gesetz* or KoPl-G)[62] provides a derogation from the country-of-origin principle by adopting general and

[56] European Commission, Decision on the compatibility of the measures adopted by Latvia pursuant to Article 3(2) of Directive 2010/13/EU of the European Parliament and of the Council to restrict retransmission on its territory of an audiovisual media service from another Member State, C(2021) 3162 final, 7 May 2021. See also Ó Fathaigh R., "European Commission: Decision to suspend broadcast of Rossiya RTR in Latvia compatible with AVMS Directive", *IRIS Merlin* 2021-7:1/26, European Audiovisual Observatory, 2021. Regarding the procedure, see Latvian National Electronic Mass Media Council, Decision No. 68/1-2 On the Restriction of Distribution of the Programme "Rossiya RTR" in the territory of Republic of Latvia, 8 February 2021 (in English). ERGA, Opinion on decision No. 68/1-2 of the Latvian National Electronic Mass Media Council restricting the retransmission of the channel Rossija RTR in the territory of Latvia for 12 months, 10 July 2020. ERGA has been replaced by the European Board for Media Services, established on 10 February 2025.

[57] European Commission, Commission Decision of 4.5.2018 on the compatibility of the measures adopted by Lithuania pursuant to Article 3 (2) of Directive 2010/13/EU, C(2018) 2665 final.

[58] DSA, Recital 4.

[59] DSA, Recital 14.

[60] DSA, Recital 47.

[61] European Parliament, "Report on the implementation of the revised Audiovisual Media Services Directive", 12.4.2023 (2022/2038(INI)),"3. Challenges in upholding the country-of-origin principle".

[62] Bundesgesetzblatt (Official gazette) I No 151/2020.

© European Audiovisual Observatory (Council of Europe) 2025

abstract measures aimed at a category of given information society services described in general terms and determining application without distinction to any provider of that category of services. The law was subject to a judgment of the CJEU (*Google Ireland and Others)*[63] ruling that such measures do not fall within the exception laid down in Article 3(4) ECD. The law was repealed on 16 February 2024.

- The *Hass-im-Netz-Bekämpfungs-Gesetz* (Hate Speech Act – HiNBG).[64]

In Belgium, the French-speaking audiovisual media regulatory authority CSA launched a debate on efforts to counter hate speech in 2020.[65] In addition, both the French Community and the Flemish Community passed decrees imposing financial contributions to the production of audiovisual works on foreign VOD providers. However, actions relating to annulment of these decrees are currently pending before the Constitutional Court.[66]

Another example of implementation of Article 13(2) AVMSD can be found in the Danish *Lov om visse medietjenesteudbyderes bidrag til fremme af dansk kultur (kulturbidragsloven)* (Act on Certain Media Service Providers' Contribution to Promoting Danish Culture – Act on Cultural Contribution).[67]

France has also adopted several instruments:

- The *Loi n° 2020-766 du 24 juin 2020 visant à lutter contre les contenus haineux sur internet* (Law No. 2020-766 of 24 June 2020 aimed at combating hateful content on the internet – Loi Avia); many provisions were declared unconstitutional by decision of the Constitutional Council.[68]

[63] Judgment of the Court (Second Chamber) of 9 November 2023, *Google Ireland and Others v Kommunikationsbehörde Austria*, C-376/22, EU:C:2023:835.
[64] BGBl. I No 148/2021.
[65] Conseil supérieur de l'audiovisuel, *Guidance note of the Belgian CSA on the fight against certain forms of illegal Internet content, in particular hate speech* (in French), 2020. See Hermanns O., Carrere S., "Proposals for co-regulation in the fight against illegal content on online content-sharing platforms", *IRIS Merlin* 2020-3:1/17, European Audiovisual Observatory, 2020.
[66] Action relating to partial annulment of the *Décret du 7 décembre 2023 modifiant le décret du 4 février 2021 relatif aux services de médias audiovisuels et aux services de partage de vidéos* (Decree of the French Community of 7 December 2023 amending the decree of 4 February 2021 on audiovisual media services and video-sharing services), brought by the Dutch company "Netflix International bv" (Official Journal). Actions relating to partial annulment of the *Decreet van 1 maart 2024 tot wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie, wat betreft het stimuleren van de audiovisuele sector door financiële bijdragen aan de productie van audiovisuele werken* (Decree of the Flemish Community of 1 March 2024 amending the decree of 27 March 2009 on radio and television broadcasting, with regard to the promotion of the audiovisual sector through financial contributions to the production of audiovisual works), brought by Tik Tok Limited, Google Ireland Limited, Meta Platforms Ireland Limited (see Pending cases list under Nos. 8331, 8332 and 8334). On the Flemish legislation see Stolle L., "Investment obligation for streaming and video-sharing platforms", *IRIS Merlin* 2024-4:1/17, European Audiovisual Observatory, 2024.
[67] Foged T., "Danish Act on cultural contribution stipulating a 2% revenue payment for VOD service providers, plus an additional 3% if investment in new Danish content is below 5%", *IRIS Merlin* 2024-2:1/22, European Audiovisual Observatory, 2024.
[68] Conseil constitutionnel, Décision n° 2020-801 DC du 18 juin 2020 (in French).

© European Audiovisual Observatory (Council of Europe) 2025

- Article 10[69] of the *Décret no 2021-793 du 22 juin 2021 relatif aux services de médias audiovisuels à la demande* (Decree No. 2021-793 of 22 June 2021 relating to on-demand audiovisual media services) on financial contribution to the production of audiovisual works.
- Article 6-I.8 of the *Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique* (Law No. 2004-575 of 21 June 2004 on confidence in the digital economy), in the version prior to that contained in Law No. 2021-1109 of 24 August 2021).[70]
- The same Law No. 2004-575 as amended by the *Loi n° 2024-449 du 21 mai 2024 visant à sécuriser et à réguler l'espace numérique* (Law No. 2024-449 of 21 May 2024 to secure and regulate the digital space) regulating the accessibility of pornographic content for minors and extending the territorial scope of the law to linear and non-linear services broadcast in France and not falling under a member state of the EU, the EEA or the ECTT.[71]
- The *Décret n° 2021-1306 du 7 octobre 2021 relatif aux modalités de mise œuvre des mesures visant à protéger les mineurs contre l'accès à des sites diffusant un contenu pornographique* (Decree No. 2021-1306 of 7 October 2021 relating to the methods of implementing measures aimed at protecting minors against access to sites distributing pornographic content),[72] relating to application of Article 23 of Law No. 2020-936 of 30 July 2020 aimed at protecting victims of domestic violence. However, Article 23 of this law was repealed and replaced by the system provided for by Law No. 2024-449 of 21 May 2024 to secure and regulate the digital space.[73]
- The draft "Legislative provisions to secure and regulate the digital space (Notification: 2023/0461/FR[74]) amending the Law of 21 June 2004 on confidence in the digital economy".

Similarly, Germany has adopted several instruments regarding media intermediaries applicable to providers established outside Germany. The European Commission expressed

[69] « Les dispositions du présent chapitre sont applicables aux services de médias audiovisuels à la demande, y compris ceux qui ne sont pas établis en France et ne relèvent pas de la compétence de la France au sens de l'article 43-2 de la loi du 30 septembre 1986 susvisée mais visent le territoire français, qui répondent aux conditions suivantes : (…) » ("The provisions of this chapter are applicable to on-demand audiovisual media services, including those which are not established in France and do not fall under the jurisdiction of France within the meaning of Article 43-2 of the aforementioned law of 30 September 1986 but which target French territory, which meet the following conditions: (…)").

[70] Blocman A., "Request to block pornographic website: Internet access providers can be taken to court before acting against hosting providers, publishers or authors", *IRIS Merlin* 2023-10:1/11, European Audiovisual Observatory, 2023.

[71] See Blocman A., "New digital safety and regulation law", *IRIS Merlin* 2024-6:1/15, European Audiovisual Observatory, 2024; Blocman A., "Access to pornographic websites for minors: Conseil d'Etat submits three preliminary questions to CJEU", *IRIS Merlin* 2024-4:1/12, European Audiovisual Observatory, 2024.

[72] Décret n° 2021-1306 du 7 octobre 2021 relatif aux modalités de mise œuvre des mesures visant à protéger les mineurs contre l'accès à des sites diffusant un contenu pornographique, JORF n°0235 8 October 2021.

[73] Blocman A., "ARCOM president's request to block pornographic websites: judicial court stays proceedings pending outcome of Conseil d'Etat appeal", *IRIS Merlin* 2023-8:1/22, European Audiovisual Observatory, 2023.

[74] European Commission, Reaction of the Commission to the response of a Member State/Country notifying a draft regarding comments(5.2)/request for supplementary information, TRIS/(2024) 0683.

© European Audiovisual Observatory (Council of Europe) 2025

reservations and made comments.[75] In particular, the *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act – NetzDG)[76] and the *Medienstaatsvertrag* (Media State Treaty – MStV)[77] as amended in April 2020 were subject to criticisms, since the European Commission and German tribunals[78] saw, in both instruments, infringements against the country-of-origin principle enshrined in the E-Commerce Directive.[79]

Finally, Italy has also adopted several legal texts. Noteworthy is, firstly, Law No 178 of 30 December 2020.[80] This law provided, with reference to the P2B Regulation 2019/1150, for the obligation to be entered in the Register of Communications Operators (RCO) maintained by AGCOM for providers of online intermediation services and online search engines offering services in Italy, even if they were not established there. Furthermore, these providers were obliged to make a financial contribution to AGCOM. This legislation was submitted to the CJEU for a preliminary ruling concerning the interpretation of Regulation (EU) 2019/1150. The Court objected that Article 3 ECD precluded measures adopted by a member state such as Italy in this case, "with the stated aim of ensuring the adequate and effective enforcement of Regulation (EU) 2019/1150".[81]

---

[75] Notifications 2020/26/D, 2020/813/D, 2021/39/D, 2021/45/D, 2021/204/D, 2021/38/D and 2021/159/D.

[76] Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG) vom 1. September 2017, BGBl. I, p. 3352. Original version of the text: https://www.bmj.de/SharedDocs/Downloads/DE/Gesetzgebung/BGBl/BGBl_NetzDG.pdf?__blob=publicationFile&v=3. For a general presentation of the law see Ukrow J., Germany, in Cappello M. (ed.), "Media law enforcement without frontiers", IRIS *Special*, European Audiovisual Observatory, Strasbourg, 2018, pp. 49-50. See also Cabrera Blázquez F.J., Cappello M., Talavera Milla J., Valais S., "User empowerment against disinformation online", op. cit., p. 26.

[77] For the legal scope of "Medienintermediäre" (media intermediaries) see § 1(8) MStV: "(…) Media intermediaries, media platforms or user interfaces are considered to be intended for use in Germany if, as a whole, they are aimed at users in Germany, in particular through the language used, the content offered or marketing activities, or if they generate a significant portion of their refinancing in Germany. (…)". Such media intermediaries, media platforms or user interfaces do not need to be established in Germany to fall within the scope of the MStV.

[78] Etteldorf C., "Cologne Administrative Court: new Network Enforcement Act provisions breach EU law", *IRIS Merlin* 2022-4:1/23, European Audiovisual Observatory, 2022.

[79] Cornils M., „*Unionale und mitgliedstaatliche Intermediärregulierung, Zur unionsrechtlichen Beurteilung möglicher Überschneidungen der Vorschriften über Medienintermediäre im Medienstaatsvertrag (§§ 91 ff. MStV) mit Rechtsakten der Europäischen Union*" (in German), October 2020. Institute of European Media Law (EMR), *Neuer Medienstaatsvertrag in Deutschland im November in Kraft getreten*, 25 November 2020.

[80] Legge n. 178 – Bilancio di previsione dello Stato per l'anno finanziario 2021 e bilancio pluriennale per il triennio 2021-2023 (Law No 178 of 30 December 2020 concerning the State's forecast balance sheet for the financial year 2021 and the multiannual balance sheet for the three-year period 2021-2023). This law amended Legge n. 249 – Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo (Law No 249 establishing the Communications Regulatory Authority and telecommunications and broadcasting standards) of 31 July 1997).

[81] Judgment of the Court (Second Chamber) of 30 May 2024, *Airbnb Ireland UC and Amazon Services Europe Sàrl v Autorità per le Garanzie nelle Comunicazioni*, Joined Cases C-662/22 and C-667/22. See Radel-Cormann J., "Opinion of Advocate General Szpunar in the joined cases of Airbnb, Amazon and others", *IRIS Merlin* 2024-2:1/16, European Audiovisual Observatory, 2024.

© European Audiovisual Observatory (Council of Europe) 2025

Secondly, following a public consultation launched in 2023 by the regulatory authority AGCOM,[82] Italy amended in 2024,[83] as regards, among other things, the financial contribution to the production of European works, its *Decreto legislativo* of 8 November 2021, also known as the TUSMA, an acronym for *"testo unico per la fornitura di servizi di media audiovisivi"* ("Consolidated text for the provision of audiovisual media services"). The draft 2024 amendment was notified to the European Commission under Directive (EU) 2015/1535.[84] The Commission noted that the notified draft provided for an investment obligation on the part of media service providers not established in Italy, but targeting audiences in Italy.[85]

2.5. Case study: FAST channels and OTT services

Free ad-supported streaming television (FAST channels)[86] is a recent manifestation of linear audiovisual content, available over-the-top (OTT). In comparison to traditional linear TV channels, FAST channels tend to be more thematic and are more often temporary pop-up channels.[87] They are aggregated and/or distributed by FAST platforms. Such platforms can be "pure" FAST platforms (historically, they were the platforms that initially introduced FAST channels on the audiovisual market) or "mixed" FAST platforms[88] (the ones that complemented their existing portfolio with FAST channels aiming at strong convergent offers to stay competitive). FAST platforms usually also make FAST channel programmes available on demand.

Regardless of the type of platform, the route to market can be shorter or longer, depending on the financial and working flows between participants and the value chain. This means that one and the same actor in the value chain can sometimes play multiple roles. For example, both IP owners and FAST platforms can be providers of FAST channels. Also, FAST platforms can be IP owners.

---

[82] Di Giorgi F., "AGCOM launches the public consultation on video-sharing platforms: more protections for platforms' Italian users", *IRIS Merlin* 2023-5:1/5, European Audiovisual Observatory, 2023.

[83] Decreto legislativo 8 novembre 2021 n.208, Attuazione della direttiva (UE) 2018/1808 del Parlamento europeo e del Consiglio, del 14 novembre 2018, recante modifica della direttiva 2010/13/UE, relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri, concernente il testo unico per la fornitura di servizi di media audiovisivi in considerazione dell'evoluzione delle realtà del mercato, as amended by the Decreto legislativo 25 marzo 2024, n. 50, Disposizioni integrative e correttive del decreto legislativo 8 novembre 2021, n. 208, recante il testo unico dei servizi di media audiovisivi in considerazione dell'evoluzione delle realta' del mercato, in attuazione della direttiva (UE) 2018/1808 di modifica della direttiva 2010/13/UE.

[84] European Commission, Detailed opinion on Notification 2023/554/IT, C(2023) 9083 final.

[85] Communication from the Commission - TRIS/(2023) 2914.

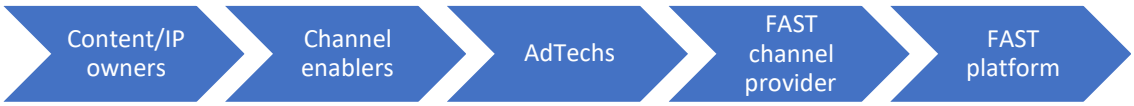
[86] This section was enriched by exchanges with Laura Ene, TV and VOD markets analyst, who manages the MAVISE database at the Department for Market Information of the EAO.

[87] Presentation by Laura Ene, given during a workshop on FAST channels organised by the EAO on 12 March 2025.

[88] TVOD, SVOD, BVOD (broadcast video on demand, i.e. video-on-demand services offered by broadcasters on their own platform (TF1+, RTL+, ARD Mediathek, RTBF Auvio, BBC iPlayer, etc.)), AVOD, HVOD, CTVs, VSPs, pay TV VODs, etc. For a comprehensive list of the most common abbreviations, consult section 6 of this report.

© European Audiovisual Observatory (Council of Europe) 2025

Figure 1. Value chain of FAST channels



FAST platforms may be qualified as providers of linear channels[89] and/or VOD service providers within the meaning of the AVMSD, on the condition that they fulfil the criteria of having editorial responsibility and deciding about the organisation of the service (in most cases, such providers are the owners of the audiovisual media service). In these cases, they fall under the jurisdiction of the member state where they are established.

For example:

- Rakuten TV registered both its linear (FAST channels) and VOD service in Spain,
- Pluto TV registered both its linear (FAST channels) and VOD service in Sweden and Germany,
- Molotov registered its VOD service in France.

Such situations may be compared to those of other OTT services, i.e. the question of which member state has jurisdiction over the respective media service provider is primarily to be determined in accordance with Article 2(3) AVMSD, that is to say in determining whether the provider is established in a member state. The second connection criterion, mentioned in Article 2(4) AVMSD, relating to whether or not the provider uses a satellite up-link situated in a member state or uses satellite capacity appertaining to that member state, is not applicable. If the first connection criterion, i.e. establishment of the provider within the EEA, is not fulfilled, the criteria of the Treaty shall apply (Article 2(5) AVMSD)).[90] In some cases, there will be no connection criteria at all, since neither Article 2(4) nor Article 2(5) AVMSD would apply to these media services from third countries, distributed via the Internet. As the European Commission stated in its 2024 report on the application of the AVMSD, such services therefore "can be regulated by every Member State in which they can be received according to the respective national law. Enforcement in these cases may however be difficult, as it has been reported by some Member States."[91]

In other cases, however, FAST platforms may merely distribute third-party FAST channels and VOD services. In such cases, they might qualify as providers of online

[89] For an Italian example, see AGCOM, "Prime autorizzazioni per canali Fast channels" (in Italian), Press release, 20 March 2025.
[90] This refers to the criteria of establishment laid down in Articles 49 to 55 TFUE as construed by the Court of Justice of the European Union.
[91] European Commission, Commission staff working document, Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022, SWD(2024) 4 final, p. 5.

© European Audiovisual Observatory (Council of Europe) 2025

platforms within the meaning of the DSA[92] and be subject to the rules of the DSA irrespective of their establishment.

While some traditional distributors of audiovisual media services (i.e. pay-TV packagers) distribute proprietary channels, a tendency to do so, or greater incidence thereof, can be observed for FAST platforms. In addition, the latter appear more often involved in content curation than in merely bringing fully-fledged channels together. This could explain why some experts refer to FAST platforms as "aggregators", a concept that differs from mere "distributors".[93]

More generally, the phenomenon of FAST channels raises the question of whether rules on the distribution of audiovisual content should be included in the AVMSD in the future. Indeed, FAST channels pose questions, among others, regarding their identification and monitoring by NRAs.

[92] The legal definition reads as follows: "'online platform' means a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation" (Article 3(i) DSA). Very large online platforms (VLOPs) within the meaning of this Regulation are those platforms that have a significant reach due to the number of recipients of their service. They are subject to additional obligations, provided they are designated as VLOPs by the European Commission (Recitals 75 to 78 and Article 33 DSA).

[93] For example, French legislation defines the concept of "service distributor" as "any person who establishes contractual relations with service providers with a view to establishing an offer of audiovisual communication services made available to the public by an electronic communications network within the meaning of 2° of Article L. 32 of the Postal and Electronic Communications Code". It adds: "A service distributor is also considered to be any person who constitutes such an offer by establishing contractual relations with other distributors." (Article 2-1 of the Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication (Law No. 86-1067 of 30 September 1986 on freedom of communication). Similarly, but not identically, the French Community of Belgium defines the "services distributor" as "any legal entity that makes one or more audiovisual media services available to the public in any manner whatsoever, including terrestrial broadcasting, satellite or through a cable television network. The service offering may include services published by the legal entity itself and services published by third parties with whom it establishes contractual relationships. Any legal entity that constitutes a service offering by establishing contractual relationships with other distributors is also considered a service distributor." (Article 1.3-1 No. 12 of the Decree of 4 February 2021 on audiovisual media services and video-sharing services). A very similar definition exists in the Flemish Decree of 27 March 2009 on radio and television broadcasting, Article 2 No. 7. If defined as a service that distributes over-the-top web-based streaming media content from multiple sources to a broad audience, an 'aggregator' would only differ from other types of 'distributor' within the meaning of such national provisions because it relies on the Internet rather than on terrestrial, satellite or cable broadcasting.

© European Audiovisual Observatory (Council of Europe) 2025

3. Legal framework on monitoring and enforcement system

National regulatory authorities (NRAs) or bodies have the power to supervise the activities of providers of audiovisual media service providers. In addition, in the event of infringements of national law, each regulator can apply any remedy or sanction relating to the infringements in question, as set out by national law, contributing to the enforcement of the rules. Another consequence of the country-of-origin principle is that the monitoring and enforcement system lies, in principle, in the hands of the member state which has jurisdiction over the media service provider concerned.

Some of these powers with regard to monitoring and enforcement are already laid down by Union law instruments.[94]

For example, under the AVMSD, member states shall establish and update a list of media service providers under their jurisdiction (Article 2(5b) AVMSD) and of video-sharing platform providers established or deemed to be established on their territory (Article 28a(6) AVMSD). Member states shall also entrust the assessment of the measures taken by video-sharing platform providers to protect minors and the general public to the national regulatory authorities or bodies (Article 28b(5) AVMSD). These obligations, set out in a directive, are binding on the member states as to the result to be achieved, but each addressee is free to choose how to achieve the result. In practice, member states tend to establish a monitoring and enforcement system based on independent NRAs specialised in the audiovisual sector. This does not prevent member states from setting up regulators having oversight over different sectors (Article 30(1) sentence 2 AVMSD). In any case, member states shall clearly define in law the competences and powers of their regulators, as well as the ways of making them accountable (Article 30 AVMSD).

Differently, under the DSA, enforcement is provided by:

- the European Commission,
- the Digital Services Coordinators (DSCs), in principle "responsible for all matters relating to supervision and enforcement" of the DSA in each member state,[95] and

[94] Cappello M. (ed.), *Media law enforcement without frontiers*, *IRIS Special*, European Audiovisual Observatory, Strasbourg, 2018. This report contains a presentation of practical experiences from selected EU countries and Türkiye.

[95] Article 49(2) DSA: "Member States shall designate one of the competent authorities as their Digital Services Coordinator. The Digital Services Coordinator shall be responsible for all matters relating to supervision and enforcement of this Regulation in that Member State, unless the Member State concerned has assigned certain specific tasks or sectors to other competent authorities. The Digital Services Coordinator shall in any event be responsible for ensuring coordination at national level in respect of those matters and for contributing to the effective and consistent supervision and enforcement of this Regulation throughout the Union.
For that purpose, Digital Services Coordinators shall cooperate with each other, other national competent authorities, the Board and the Commission, without prejudice to the possibility for Member States to provide

© European Audiovisual Observatory (Council of Europe) 2025

- potentially the media NRAs, provided the latter were designed as national competent authorities responsible for the supervision of providers of intermediary services and enforcement of the DSA pursuant to Article 49(1) DSA (Article 49 and recitals 32 and 123 DSA).

Furthermore, the European Commission has signed bilateral administrative agreements with NRAs that aim to support enforcement of the DSA. The NRAs involved so far are Arcom (France), Coimisiún na Meán (Ireland), AGCOM (Italy) and ACM (the Netherlands). These agreements commit the NRAs to gathering evidence on the dissemination of illegal content by VLOPs and VLOSEs within their territories and sharing that evidence with the Commission. The Commission has also signed agreements with the following authorities: ERGA, the Australian eSafety Commissioner and Ofcom (UK).[96] Regarding ERGA, cooperation launched in June 2024 intended to focus on supervising designated VLOPs and VLOSEs.[97]

Under the EMFA, the audiovisual NRAs are entrusted with the enforcement of Chapter III of the EMFA determining the "Framework for regulatory cooperation and a well-functioning internal market for media services" (Article 7 EMFA).

The Political Advertising Regulation 2024/900 sets out that the competent authorities that the member states shall designate as being responsible for the application and enforcement of this Regulation (with the exception of the obligations laid down in its Articles 7 to 17 and 21) may be the same as the NRAs for the audiovisual sector (Article 22(4) of the Political Advertising Regulation). Their powers are listed in Article 22(5) of this Regulation.

Under the AI Act, "national public authorities or bodies which supervise or enforce respect for obligations under Union law protecting fundamental rights, including the right to non-discrimination, in relation to the use of high-risk AI systems (…) shall have the power to request and access any documentation created or maintained under this Regulation (…)" (Article 77(1) AI Act). Audiovisual media regulators are mentioned in the respective national list of public authorities or bodies protecting fundamental rights, e.g. in Austria,[98] Belgium,[99] Ireland,[100] Luxembourg,[101] Malta,[102] and Romania.[103]

---

for cooperation mechanisms and regular exchanges of views between the Digital Services Coordinator and other national authorities where relevant for the performance of their respective tasks.
Where a Member State designates one or more competent authorities in addition to the Digital Services Coordinator, it shall ensure that the respective tasks of those authorities and of the Digital Services Coordinator are clearly defined and that they cooperate closely and effectively when performing their tasks."

[96] European Commission, The cooperation framework under the Digital Services Act, 12 February 2025.

[97] European Commission, "Commission services and ERGA partner in support of Digital Services Act enforcement", Press release, 4 June 2024.

[98] KommAustria. See https://www.digitalaustria.gv.at/Themen/KI/Artikel-77-AI-Act.html.

[99] VRM, CSA and Medienrat. See https://economie.fgov.be/fr/themes/line/intelligence-artificielle.

[100] Coimisiún na Meán. See https://www.gov.ie/en/press-release/edfbf-minister-calleary-announces-key-milestone-in-the-implementation-of-the-eu-regulation-on-ai/.

[101] ALIA. See https://smc.gouvernement.lu/dam-assets/art77-aia-liste-web.pdf.

[102] Malta Broadcasting Authority. See https://mdia.gov.mt/services/artificial-intelligence/.

[103] Consiliul Național al Audiovizualului. See https://www.adr.gov.ro/lista-autoritatilor-publice-nationale-care-supravegheaza-sau-asigura-respectarea-obligatiilor-in-temeiul-dreptului-uniunii-care-protejeaza-drepturile-fundamentale-in-conformitate-cu-art-77-al-regula/.

© European Audiovisual Observatory (Council of Europe) 2025

Finally, under the P2B Regulation, member states shall ensure enforcement. To this end, they can entrust existing authorities.[104]

In comparison, in the UK, OFCOM is responsible for enforcement. It has the function to regulate television services.[105]

A prominent example of monitoring and enforcement concerns the financial contribution to European works under Article 13(2) AVMSD. The requirement to contribute financially may include direct investment in content, through production or acquisition of rights, and contribution to national funds. As mentioned before, member states may require of media service providers targeting audiences in their territories, but established in other member states, that they contribute financially. In practice, this can pose problems regarding cross-border enforcement. Especially audience measurement can be challenging, as media service providers with a low audience are not subject to the requirements set out in the Directive (Article 13(6) AVMSD).[106]

[104] Article 15 and Recital 46 P2B Regulation.
[105] Section 211 of the Communications Act 2003.
[106] ERGA, "Report on the transposition and implementation of Article 13 (1) (Prominence of European Works), Article 13(2) (Financial contribution to the production of European Works) and Article 13 (6) (concerning the low audience exemption)", Part II, pp. 30-37, especially p. 34.

© European Audiovisual Observatory (Council of Europe) 2025

4. Legal framework on cooperation/mutual assistance between regulators

"Swift and efficient implementation" is decisive when it comes to ensuring "the effectiveness of and trust in the procedures set out in Articles 3 and 4" of the AVMSD,[107] which contain the provisions regarding the resolution of disputes on jurisdiction. This observation can be extended to other provisions of Union law where national regulators are involved. This said, cooperation between member states with a view to achieving a mutually satisfactory solution under Article 4 AVMSD is, despite its importance, not addressed in this report.[108]

Over the years, cross-border issues have increasingly made cooperation and mutual assistance mechanisms between regulators indispensable.[109] Such mechanisms have been introduced and sometimes enhanced through Union law. In 2024, ERGA provided a description of each of these mechanisms.[110]

These mechanisms apply for all EEA member states. Beyond the boundaries of the EEA, assistance is in principle on a voluntary basis.[111]

However, Article 19 ECTT on the co-operation between the Parties states that "the Parties undertake to render each other mutual assistance in order to implement [the] Convention". Objects of the requirement on mutual assistance between the authorities designated by the Parties are, among other things:

- the furnishing of information "on the domestic law and practices in the fields covered by [the] Convention";
- co-operation in general, "notably where this would enhance the effectiveness of measures taken in implementation of [the] Convention".

[107] European Parliament, *Report on the implementation of the revised Audiovisual Media Services Directive, 12.4.2023* (2022/2038(INI)),"3. Challenges in upholding the country-of-origin principle".
[108] Cabrera Blázquez F.J., Denis G., Machet E., McNulty B., "Media regulatory authorities and the challenges of cooperation", *IRIS Plus*, European Audiovisual Observatory, Strasbourg, December 2021.
[109] See for example Recital 43 of the EMFA.
[110] ERGA Subgroup 4, *EU regulation of digital services - implementation, enforcement and the role of audiovisual regulators, Deliverable 1, The implementation and cross-border enforcement of the European legal framework for digital and audiovisual media services*, 2024.
[111] Ukrow J., Germany, in Cappello M. (ed.), *Media law enforcement without frontiers*, *IRIS Special*, European Audiovisual Observatory, Strasbourg, 2018, p. 49.

© European Audiovisual Observatory (Council of Europe) 2025

4.1. Mechanisms of the Audiovisual Media Services Directive

While Article 3 AVMSD is formally addressed at member states, in practice the national authority competent for the enforcement is the respectively competent media regulator.

Pursuant to Article 30a AVMSD, the regulator in the member state having jurisdiction is required to inform its counterpart in the targeted member state that it has received information that a media service provider will provide a service wholly or mostly directed at the audience of this targeted member state. This should allow the regulator of the targeted member state to send a request concerning the activities of that provider, where appropriate. The regulator to which this request is addressed shall do its utmost to address the request within (in principle) two months. Stricter time limits may be applicable pursuant to the AVMSD.

The NRA members of ERGA agreed in their (voluntary, non-binding) Memorandum of Understanding of 3 December 2020[112] to provide each other mutual assistance in the implementation and enforcement of the AVMSD. Mutual assistance is subject to a formal request.

Such requests may relate to "any field" coordinated by the AVMSD, including:

> *"(a) Jurisdiction issues (Articles 2 and 28a);*
> *(b) Matters relating to freedom of reception and cases of circumvention (Articles 3 and 4);*
> *(c) Cases where cross-border harm might arise (including, without limitation, Articles 6, 6a, 9-11 and 19-24);*
> *(d) Matters relating to Accessibility (Article 7);*
> *(e) Matters relating to the implementation and enforcement of cross-border financial contributions (Article 13(2)) (...); or*
> *(f) Matters relating to the Implementation and Enforcement of Articles 28a and 28b (Video-Sharing Platform Services) (...)."*[113]

"Accelerated mutual assistance" may be requested in urgent or very important situations.[114]

Specific agreements were made regarding co-operation in respect of Article 28b AVMSD on the enforcement of the obligations imposed on video-sharing platform providers and in respect of Article 13(2) AVMSD on the financial contribution to the production of European works.[115]

4.2. Procedures of the European Media Freedom Act

In addition to the AVMSD, the EMFA sets out several procedures of co-operation.

---

[112] ERGA, Memorandum of understanding between the National Regulatory Authority Members of the European Regulators Group for Audiovisual Media Services (MoU), 3 December 2020, Point 2.1.3.
[113] ERGA, MoU, op. cit., Point 2.1.3.4.
[114] ERGA, MoU, op. cit., Point 2.1.4.
[115] ERGA, MoU, op. cit., Points 2.2.1 and 2.2.2

© European Audiovisual Observatory (Council of Europe) 2025

Article 14 EMFA lays down a so-called "structured cooperation" mechanism including exchanging information and mutual assistance. They can be used for the implementation of the AVMSD. The European Board for Media Services (hereafter referred to as "the Board") shall issue an opinion in case the matter is referred to it by an authority, where an agreement concerning the request for cooperation cannot be reached. "Structured cooperation", as a binding framework that builds on the voluntary ERGA MoU, "is crucial for upholding the country-of-origin principle".[116]

Article 15 EMFA sets out a specific cooperation procedure for the enforcement of the obligations imposed on video-sharing platform providers under Article 28b AVMSD.

Article 17 EMFA provides for a new procedure regarding the dissemination of or access to media services originating from outside the EU or provided by media service providers established outside the EU (among other things: foreign influence – important in the context of the Russian war of aggression against Ukraine).[117] When requested, the Board shall coordinate relevant measures by the NRAs concerned. The Board shall also "develop a set of criteria" for use by NRAs when they exercise their powers over media service providers established outside the EU.

4.3. Forms of cooperation in the Digital Services Act

Pursuant to Article 9(3) and (4) DSA, a cooperation procedure involving the Digital Services Coordinators (DSCs) of the member states involved applies. It consists in the transmission of information.

Article 49(2)(2) DSA sets out a general requirement that DSCs cooperate with each other, other national competent authorities, the Board and the Commission.

Articles 57 to 60 DSA set out requirements regarding mutual assistance among the DSCs and the European Commission (Article 57), and cross-border cooperation among the DSCs upon request (Article 58). In specific situations, additional procedures can be applied: the possibility of referrals to the European Commission (Article 59) or of joint investigations launched by the DSC of establishment with the participation of one or more other DSCs concerned (Article 60).

Finally, cooperation in the form of a request of a DSC of the country of destination to the European Commission to assess the matter exists where a provider has "infringed the provisions of Section 5 of Chapter III or has systemically infringed any of the provisions

[116] EMFA, Recital 44.

[117] "Some Russian media that are state-owned or closely linked to the Russian government tried to distribute their content via satellite into Member States that had previously suspended these media in their territory under the procedures set out in Article 3 AVMSD (…). The lack of a mechanism in the AVMSD to restrict distribution of such content Union-wide was signalled by one Member State as a regulatory gap." European Commission, Commission staff working document, "Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022", SWD(2024) 4 final, p. 7.

© European Audiovisual Observatory (Council of Europe) 2025

of [the DSA] in a manner that seriously affects recipients of the service" in that country (Article 65 DSA).

4.4. Cooperation under the Political Advertising Regulation

The Political Advertising Regulation extends the tasks of the DSC to coordination at national level in respect of providers of 'intermediary services' within the meaning of the DSA (Article 22 Regulation (EU) 2024/900).

Noteworthy is the obligation for member states to ensure that their national competent authorities "cooperate closely and effectively when performing their tasks" (Article 22(9) Political Advertising Regulation), i.e. within that member state, similar to their obligations under the DSA.

Cross-border cooperation mechanisms and relevant procedures are set out in the form of requests for assistance or information. A national competent authority of a member state can notify the competent authority of the main establishment of the provider in case it suspects an infringement (Article 23 and Recital 98[118] of the Political Advertising Regulation).

4.5. Mechanisms of cooperation under the AI Act

A competent authority can transmit a reasoned request for information to providers of high-risk AI systems (Article 21 AI Act).

The system established by the AI Act is based on national competent authorities. Each member state has to designate at least one notifying authority and at least one market surveillance authority (Article 70 AI Act). Notifying authorities are "responsible for setting up and carrying out the necessary procedures for the assessment, designation and notification of conformity assessment bodies and for their monitoring" (Article 28(1) AI Act). Notified authorities conduct conformity assessment activities in relation to high-risk AI systems (Article 31 AI Act).

The AI Act provides for the establishment of a European Artificial Intelligence Board to facilitate its harmonised implementation (Articles 65 and 66 and Recital 149 AI Act). Amongst other tasks, this Board may:

- "contribute to the coordination among national competent authorities responsible for the application" of the AI Act,

[118] Recital 98 of the Political Advertising Regulation: "In carrying out their supervisory and enforcement powers, the competent authorities of all Member States should cooperate with and assist each other as necessary. If a suspected infringement of this Regulation only involves the competent authority or authorities where the provider of political advertising services does not have its main establishment, the relevant competent authority or authorities should notify the competent authority of the main establishment, which should assess the matter accordingly and, as applicable, take the necessary investigatory and enforcement measures."

© European Audiovisual Observatory (Council of Europe) 2025

- "cooperate, as appropriate, with other Union institutions, bodies, offices and agencies, as well as relevant Union expert groups and networks, in particular in the fields of product safety, cybersecurity, competition, digital and media services, financial services, consumer protection, data and fundamental rights protection" and
- "contribute to effective cooperation with the competent authorities of third countries and with international organisations" (Article 66(a), (h) and (i) AI Act).

4.6. Procedures of the E-Commerce Directive

Where a member state of destination intends to take measures to restrict the freedom to provide a given information society service enjoyed by another member state, it must ask the member state of origin to take measures. Should this step remain unsatisfactory, the member state of destination has to notify the Commission and the member state of origin of its intention to take such measures (Article 3(4) (b) ECD).

4.7. Summary table

The following table displays the procedures that can be applied in case of a cross-border issue affecting the provision of audiovisual media services:[119]

- Article 3 AVMSD procedures.
- Article 9 DSA procedure.
- Article 14 EMFA procedure.
- Article 15 EMFA procedure.
- Article 17 EMFA procedure.
- Articles 58, 59, 60 DSA procedures.
- Article 65 DSA procedure.
- Article 3 ECD procedure.

Some of these procedures only apply if the NRA is also the DSC. National law can provide for a framework allowing national competent authorities to notify their national DSC and ask it to apply the procedure on their behalf (e.g. in Belgium, an instrument of cooperative federalism called "Cooperation agreement" sets out such a framework for the relation between NRAs and DSCs).[120]

[119] For a visual presentation of all of these procedures, see the ERGA Subgroup 4, *EU regulation of digital services - implementation, enforcement and the role of audiovisual regulators, Deliverable 1, The implementation and cross-border enforcement of the European legal framework for digital and audiovisual media services*, 2024.

[120] See Hermanns O., "Adoption of final measures implementing Digital Services Act (DSA)", *IRIS Merlin* 2025-1:1/16, European Audiovisual Observatory, 2025.

© European Audiovisual Observatory (Council of Europe) 2025

Table 3. Possible cross-border issues and respective settlement procedures

Possible cross-border issues			
Issue	Material law concerned	Procedure name	Legal basis for procedure
Items of content violating national law implementing the AVMSD (Audiovisual media services inciting violence or hatred, containing public provocation to commit a terrorist offence, impairing the physical, mental or moral development of minors (including gratuitous violence and pornography), non-recognisable commercial communication)	Articles 6(1), 6a(1), 9(1) AVMSD	Cooperation request	Article 14 EMFA
Audiovisual media service inciting violence or hatred, impairing the physical, mental or moral development of minors (including gratuitous violence and pornography), prejudicing or representing a serious and grave risk of prejudice to public health	Articles 6(1) (a), 6a(1) AVMSD + public health	Provisional derogation procedure I	Article 3(2) AVMSD
Audiovisual media service containing public provocation to commit a terrorist offence, prejudicing or representing a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence	Articles 6(1) (b) + public security, including national security and defence	Provisional derogation procedure II	Article 3(3) AVMSD
Audiovisual media service containing public provocation to commit a terrorist offence, prejudicing or representing a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence	Articles 6(1) (b) + public security, including national security and defence	Provisional derogation procedure in urgent cases	Article 3(5) AVMSD
Specific items of content violating EU law or national law in compliance with EU law	Article 9 DSA	Order to act against the item of content	Article 9 DSA
Infringement of the due diligence obligations of a provider of an intermediary service	Chapter III DSA	Cross-border cooperation among DSCs	Article 58 DSA
Infringement of the due diligence obligations of a provider of an intermediary service	Chapter III DSA	Referral to the European Commission	Article 59 DSA
Infringement of the due diligence obligations of a provider of an intermediary service	Chapter III DSA	Joint investigations (DSC COD + other DSCs concerned)	Article 60 DSA
Obligations of VSP providers (appropriate measures to protect minors from programmes, user-generated videos and AV commercial	Article 28b(1), (2) and (3) AVMSD	Request for enforcement	Article 15 EMFA

© European Audiovisual Observatory (Council of Europe) 2025

communication which may impair their physical, mental or moral development; the general public from those pieces of content containing incitement to violence or hatred; the general public from those pieces of content containing dissemination of a criminal offence under EU law (child pornography and racism/xenophobia)			
VSP providers (as providers of an information society service)	See Article 28a(5)	Derogation of the COO principle	Article 3 ECD
Systemic infringements of the DSA by providers of VLOPs or VLOSEs ("insufficient content moderation, systemic non-compliance with the obligations associated with orders under Article 9 DSA")	DSA	Reasoned request to the EC to assess the matter	Article 65(2) Only for DSCs
Media services originating from outside the EU or provided by media service providers established outside the EU that prejudice or present a serious and grave risk of prejudice to public security	Prejudice to public security	Coordination of measures	Article 17 EMFA
Illegal content in intermediary services, in case an order regarding action under Article 9 DSA is ignored by the intermediary		Derogation of the COO principle	Article 3 ECD

Source: Elaboration of the author, based on the typology according to ERGA Subgroup 4-2024, Deliverable 1, The implementation and cross-border enforcement of the European legal framework for digital and audiovisual media services, p. 4.

4.8. Cooperation under United Kingdom law

The United Kingdom adopted new provisions on co-operation with EEA states in Section 368Z12 Communications Act as substituted by the Online Safety Act 2023[121] and in Section 368OA as substituted by the Media Act 2024.[122] According to these provisions, OFCOM may co-operate with EEA states which are subject to the AVMSD, and with the NRAs of such EEA states in order to facilitate, among other things, the carrying out by OFCOM or the NRAs of

[121] "OFCOM may co-operate with EEA states which are subject to the Audiovisual Media Services Directive, and with the national regulatory authorities of such EEA states, for the following purposes:
(a) facilitating the carrying out by OFCOM of any of their functions under this Part; or
(b) facilitating the carrying out by the national regulatory authorities of the EEA states of any of their functions in relation to video-sharing platform services under that Directive as it has effect in EU law as amended from time to time."

[122] "OFCOM may co-operate with EEA States which are subject to the Audiovisual Media Services Directive, and with the national regulatory authorities of such EEA states, for the following purposes:
(a) facilitating the carrying out by OFCOM of any of their functions under this Part, or
(b) facilitating the carrying out by the national regulatory authorities of the EEA states of any of their functions in relation to on-demand programme services under the Directive as it has effect in EU law as amended from time to time."

© European Audiovisual Observatory (Council of Europe) 2025

the EEA states of any of their functions in relation to on-demand programme services and to video-sharing platform services, respectively, under the Communications Act 2003 or the AVMSD.

In addition, it is noteworthy that Section 335A Communications Act 2003, as substituted by The Broadcasting (Amendment) (EU Exit) Regulations 2019 and entitled "Co-operation with other parties to the European Convention on Transfrontier Television", reads as follows: "OFCOM may do any of the things that paragraph 3 of Article 19 of the European Convention on Transfrontier Television requires to be done by an authority designated under paragraph 2 of that Article." This provision reflects the novel relevance of the ECTT for the UK, against the background of Brexit. Although Article 19 ECTT is concise, it effectively addresses the exchange of information and cooperation between NRAs.

4.9. EPRA co-operation

The European Platform of Regulatory Authorities (EPRA) is a forum which aims to facilitate the sharing of relevant information, best practice, experience and expertise, and the learning about new developments affecting the media between its 56 member NRAs.[123]

Despite national and institutional differences, the EPRA members share common regulatory concerns. In its annual Work Programme, EPRA sets out priorities based on the needs expressed by its members. Protecting children online, media pluralism, evidence-based regulators, and setting strategies in a fast-moving environment are the priorities for 2025. EPRA's work is complementary to that of other regulatory networks.

As EPRA is a pan-European network of NRAs, including those from EU candidate countries, challenges encountered by NRAs from both EU member states and other European countries, such as jurisdiction issues, can be taken on collectively.

In 2023, EPRA facilitated the circulation of a questionnaire of the Council of Europe regarding a possible modernisation of the ECTT amongst its member NRAs.[124] While several regulators evoked propaganda and disinformation originating from non-signatory parties of the ECTT as problems they have encountered, others did not report any major issues of concern that could not have been solved through informal or formal cooperation between the competent NRAs.

In addition, through practical discussion on specific topics, such as hate speech or protection of minors online, EPRA can build bridges and offer a safe space for informal exchanges for the period of time in which EU candidate countries have not implemented

[123] For a presentation of the EPRA network and its aims, see Cabrera Blázquez F.J., Denis G., Machet E., McNulty B., "Media regulatory authorities and the challenges of cooperation", *IRIS Plus*, European Audiovisual Observatory, Strasbourg, December 2021. This section was enriched by exchanges with Emmanuelle Machet, coordinator of the Secretariat of the EPRA.

[124] Council of Europe, Steering Committee on Media and Information Society (CDMSI), *Meeting report, 14-15 Juni 2023*, point 10, p. 8.

© European Audiovisual Observatory (Council of Europe) 2025

the DSA in their national legislation. This might contribute to helping them combat the dissemination of illegal content and disinformation.[125]

EPRA recently addressed the issue of content published on VSPs that targets audiences (also) in EU candidate countries. In 2022[126] and 2024,[127] experts and regulators specifically discussed hate speech.

4.10. Independent advisory Boards at European level

Recently, various European regulations established independent advisory boards:

- The European Board for Digital Services (Article 61 DSA).
- The European Board for Media Services (Article 8 EMFA), "ex-ERGA" after Article 30b AVMSD was deleted (Articles 8(2) and 28 EMFA). The constitutive meeting of the Media Board took place on 11 February 2025.[128] On 11 April 2025, it adopted its rules of procedure and 2025 work programme.[129] With regard to the work of the ERGA for the period 2019-2022, the Commission Staff working document 2024[130] highlights that ERGA "has provided valuable technical expertise to the Commission and promoted the consistent implementation of the AVMSD" (p. 22). In 2024, ERGA worked on the cooperation mechanisms for enforcement of EU law[131] and on the conversion of the Code of practice on disinformation into a Code of conduct under Article 45 DSA.[132]
- The European Artificial Intelligence Board (Article 65 AI Act).
- The Network of national contact points, which "shall serve as a platform for regular exchange of information, best practices and structured cooperation between national contact points and the Commission on all aspects of this Regulation" (Article 22(8) Political Advertising Regulation).

The Political Advertising Regulation also lays out co-operation of authorities competent to for oversee the Regulation "with each other both at Union and at national level". Such co-

[125] European Commission, "Commission takes first cooperation steps with candidate countries on online platform regulation", Press release, 27 June 2024.
[126] EPRA, *A systemic approach to hate speech and the challenges of practical application*, 29 June 2022.
[127] EPRA, *Fighting hateful content*, 25 October 2024;
[128] European Commission, "Commission welcomes new European Board for Media Services", Press release, 11 February 2025.
[129] European Commission, "The Media Board stands ready to uphold the implementation of the European Media Freedom Act", Press release, 21 April 2025.
[130] European Commission, *Commission staff working document, Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022*, SWD(2024) 4 final, pp. 18-20.
[131] ERGA Subgroup 4, *EU regulation of digital services - implementation, enforcement and the role of audiovisual regulators, Deliverable 1, The implementation and cross-border enforcement of the European legal framework for digital and audiovisual media services*.
[132] ERGA, ERGA Statement on the progress and challenges within the Code of Practice on Disinformation, November 2024. See also Hermanns O., "Commission and EBDS endorse the integration of the Code of Practice on Disinformation into the DSA", *IRIS Merlin* 2025-2:1/3, European Audiovisual Observatory, 2025.

© European Audiovisual Observatory (Council of Europe) 2025

operation shall make "best use of existing structures, including national cooperation networks, the European Cooperation Network on Elections as referred to in the recommendation of the Commission of 12 September 2018 on election cooperation networks, online transparency, protection against cybersecurity incidents and fighting disinformation campaigns in the context of elections to the European Parliament, the European Board for Digital Services as established under Regulation (EU) 2022/2065 and the European Regulators Group for Audiovisual Media Services established under Directive 2010/13/EU, as appropriate."[133]

[133] Political Advertising Regulation, Recital 100.

© European Audiovisual Observatory (Council of Europe) 2025

5. Challenges regarding jurisdiction issues

Territorial jurisdiction in European audiovisual media law remains a complex and evolving issue. The interplay between the country-of-origin principle and the targeted-country approach creates challenges for the regulation of online content, particularly in sensitive areas like hate speech and the protection of minors, but also regarding financial contribution to European works, the dissemination of disinformation or foreign influence.

While national attempts to regulate digital services might be in tension with the principles of EU harmonisation, the AVMSD, the DSA, the EMFA and other recent European regulations represent an effort to address these challenges.

Three challenges in the field of this report are worth closer attention:

a) The future of freedom of reception and retransmission.

b) Cooperation within the Media Board.

c) Third countries and efforts to counter disinformation and foreign influence.

5.1. Future of freedom of reception and retransmission

Freedom of reception and retransmission of audiovisual media services regardless of the technical means of transmission used has its legal basis in both Council of Europe and EU law.

It can be found in Council of Europe conventions, namely Article 4 ECTT and Article 11(2) of the European Charter for Regional or Minority Languages (CETS 148),[134] relating to interaction between the respective parties to these conventions. Freedom of reception and retransmission originates in the ECTT (though limited to television broadcasting since on-demand services did not exist at that time). The aim of the ECTT, which was opened for signature in 1989 and came into force in 1993, was to promote the free flow of ideas and

[134] "The Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

© European Audiovisual Observatory (Council of Europe) 2025

opinions.[135] Within the scope of the Charter for Regional or Minority Languages, retransmission concerns radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language.

In Union law, it is expressed in the AVMSD and therefore applicable between EEA member states (Article 3(1) AVMSD). The revision of Directive 89/552/EEC[136] via Directive 2007/65/EC,[137] which paved the way for the current AVMSD, led the Council of Europe to draw up a new Convention on Transfrontier Audiovisual Media Services.[138] However, this draft convention was never opened for ratification. The European Commission was of the opinion that the matters covered by the draft convention dealt broadly with matters covered by the Directive and that member states "may not conclude alone international agreements which cover matters falling under Community competence".[139]

Against the background of Brexit and the fact that EU candidate countries are also parties to the ECTT, the question may arise as to whether the latter can generate new interest and relaunch discussions on the adoption of a new, updated Council of Europe convention in the field of freedom of reception and retransmission of audiovisual media services.

First, several provisions of UK legislation take the ECTT into account or refer to it. Noteworthy in this context are the following examples:

- "CTT broadcaster" is a notion that means "a person who for the purposes of the European Convention on Transfrontier Television is within the jurisdiction of a CTT State other than the United Kingdom" in Section 12 of the Broadcasting Act 1996 as amended by The Broadcasting (Amendment) (EU Exit) Regulations 2019. Such broadcasters may provide digital programme services broadcast in the United Kingdom under a multiplex licence.
- The concept of "exempt foreign service" in Section 211 of the Communications Act 2003 means, among other things, "a service provided by a person who is for the purposes of the European Convention on Transfrontier Television within the jurisdiction of a CTT State other than the United Kingdom".[140]
- The Secretary of State has the power to proscribe unacceptable foreign television and radio services upon notification made by OFCOM to the Secretary of State, if it

[135] Fink U., „Medienregulierung im Europarat", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 74 (2014), pp. 505-520.
[136] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, OJ L 298, 17.10.1989, pp. 23–30.
[137] Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 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, OJ L 332, 18.12.2007, pp. 27–45.
[138] Fink U., "Medienregulierung im Europarat", op. cit., p. 510.
[139] Cole M. D., "The AVMSD Jurisdiction Criteria concerning Audiovisual Media Service Providers after the 2018 Reform", op. cit., p. 26. Fink U., "Medienregulierung im Europarat", op. cit., p. 510. Mac Sithigh D., "Death of a Convention: Competition between the Council of Europe and European Union in the Regulation of Broadcasting", Edinburgh School of Law Research Paper No 2013/26, 2013. Both refer to an unpublished letter D(09)1713 of 23 October 2009 to the member states, signed by Commissioner Viviane Reding.
[140] Section 211B(1) and (3) of the Communications Act 2003.

© European Audiovisual Observatory (Council of Europe) 2025

> is in the public interest and compatible with the international obligations of the United Kingdom. A service may be considered unacceptable by OFCOM when it includes programmes containing objectionable matter and this inclusion is occurring repeatedly. Section 329 of the Communications Act 2003, as amended by The Broadcasting (Amendment) (EU Exit) Regulations 2019, sets out the criteria of jurisdiction referring to, among other things, the jurisdiction of the United Kingdom for the purposes of the European Convention on Transfrontier Television.

Second, candidate countries that are already parties to the ECTT may be associated with the discussions. This could be a new step towards more harmonisation. However, Stabilisation and Association Agreements with candidate countries represent the first commitment of candidates to align their legislation with EU law. Under certain circumstances, such agreements might not be satisfactorily binding and harmonising with regard to freedom of reception and retransmission.[141] Moreover, association negotiations following the conclusion of Stabilisation and Association Agreements include the progressive alignment of legislation of the candidate country. However, full compliance with Union audiovisual law is not always completely achieved.[142]

Finally, ERGA proposed in 2024 – with a view to a potential review of the AVMSD – to extend the scope of freedom of reception in Article 3(1) AVMSD to "the usage of audiovisual media services". This was intended to strengthen the technology-neutral approach of the legal provision while rendering more precise its wording. ERGA outlines that such a modification would help tackling issues related to initial transmissions via satellite or the Internet, where no intermediary is involved, making enforcement of exceptions to the free reception rule more difficult.[143]

5.2. Co-operation within the Media Board

When it comes to co-operation among the members of the Media Board, several procedures coexist within the EU frameworks.

ERGA is of the opinion that in some cases, a closer alignment of the procedures would make sense. It mentions one case where the AVMSD should be amended in a way that it would:

> *"acknowledge that authorities in a country of destination may enforce measures in the country of destination coordinated by the Media Board when a service is distributed in their country. This may be the case once a service is available via online distribution. This could*

[141] Fink U., „Medienregulierung im Europarat", op. cit., pp. 514-515.
[142] See, for example, European Commission, *Commission Staff Working Document, Bosnia and Herzegovina 2024 Report*, SWD(2024) 691 final, p. 14, stating that: "The Commission's recommendations from last year were not implemented and remain valid. In the coming year, Bosnia and Herzegovina should in particular: (…) develop and adopt a law on electronic communications and electronic media in line with the EU *acquis*, in particular aligning legislations with the European Electronic Communications Code and the Audio-visual and Media Services Directive." Bosnia and Herzegovina is both a candidate country and a party to the ECTT 1989.
[143] ERGA Subgroup 4 deliverable 1, op. cit., p. 16.

© European Audiovisual Observatory (Council of Europe) 2025

be achieved by adding a new provision that enables member state authorities to block access to media services if at least two other authorities have identified the same infringements against the provisions of the AVMSD within their territories, or if the Media Board issues an opinion under Article 17 EMFA suggesting appropriate action against a service. ERGA believes such measures would be possible even if the infringement has not been identified by the authority in the country of origin. Nonetheless, if such a procedure were to be considered, it would need to be designed with the utmost care to be properly protected from misuse and ensure that measures are always proportionate."[144]

5.3. Dissemination of disinformation and third-country influence campaigns

Tensions are especially high around disinformation and foreign information manipulation and interference (FIMI). Several provisions of Union law allow for this issue to be tackled.

ERGA mentions Article 7a AVMSD on the appropriate prominence of audiovisual media services of general interest, whose national transposition is optional, and outlines that

"this provision supports efforts to safeguard democratic discourse and promote informed public debate, making it harder for disinformation to take root".[145]

In addition, Article 17 EMFA deals with the coordination of measures concerning media services from outside the Union. It ensures a new impulse in fighting against foreign disinformation and third-country influence campaigns. However, it doesn't aim at harmonising national rules applicable, where they exist, to third-country media service providers.

Further recent initiatives reflect the prominence of this issue in the political debate in Europe. For example, the Congress of Local and Regional Authorities of the Council of Europe adopted a report on foreign interference in local and regional elections, which includes recommendations.[146] This report outlines that,

"while most information manipulation originates from domestic sources, it has become increasingly clear that foreign actors are also very much involved in pushing some narratives detrimental to local democracy, including through bots and trolls".

[144] ERGA Subgroup 4 deliverable 1, op. cit., p. 17.
[145] ERGA Subgroup 4 deliverable 1, op. cit., p. 18.
[146] Congress of Local and Regional Authorities of the Council of Europe, Committee on the Monitoring of the Implementation of the European Charter of Local Self-Government and on the Respect of Human Rights and the Rule of Law at Local and Regional Levels (Monitoring Committee), "Foreign interference in electoral processes at local and regional levels", Report CG(2025)48-10, 26 March 2025.

© European Audiovisual Observatory (Council of Europe) 2025

6. List of abbreviations

AVMSD	Audiovisual Media Services Directive
AVOD	Advertising-Based Video on Demand
BVOD	Broadcast Video on Demand
CJEU	Court of Justice of the European Union
CTV	Connected TV
DSA	Digital Services Act
DSC	Digital Services Coordinator
EAO	European Audiovisual Observatory
EBU	European Broadcasting Union
ECD	E-Commerce Directive
EEA	European Economic Area
EMFA	European Media Freedom Act
EPRA	European Platform of Regulatory Authorities
ERGA	European Regulators Group of Audiovisual Media Services
EU	European Union
FAST	Free Ad-Supported Streaming Television
FIMI	Foreign Information Manipulation and Interference
HVOD	Hybrid Video on Demand
Media Board	European Board for Media Services
MoU	Memorandum of Understanding
SVOD	Subscription Video on Demand
TCA	Trade and Cooperation Agreement
TFEU	Treaty on the Functioning of the European Union
TVOD	Transactional Video on Demand
UK	United Kingdom
VLOP	Very Large Online Platform
VLOSE	Very Large Online Search Engine
VOD	Video on Demand
VSP	Video-Sharing Platform

© European Audiovisual Observatory (Council of Europe) 2025

A publication
of the European Audiovisual Observatory