



Brussels, 19 March 2018

## **NOTICE TO STAKEHOLDERS**

### **WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF AUDIOVISUAL MEDIA SERVICES**

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement<sup>1</sup> establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').<sup>2</sup> The United Kingdom will then become a 'third country'.<sup>3</sup>

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, all interested parties, and especially providers of audiovisual media services, are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the EU rules in the field of audiovisual media services will no longer apply to the United Kingdom. This has in particular the following consequences:

#### **1. COUNTRY OF ORIGIN AND JURISDICTION**

Directive 2010/13/EU<sup>4</sup> (the Audiovisual Media Services Directive) relies on the so-called "Country-of-Origin" principle, according to which media service providers<sup>5</sup> shall, as a

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<sup>1</sup> Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

<sup>2</sup> Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

<sup>3</sup> A third country is a country not member of the EU.

<sup>4</sup> Directive 2010/13/EU 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), OJ L 95, 15.4.2010, 1.

It is noted that the Audiovisual Media Services Directive is currently under review. The Commission adopted on 25 May 2016 a legislative proposal with a view to amend that Directive. See COM(2016)287.

general rule, be subject only to the law and the jurisdiction of their EU Member State of origin (as determined in the Directive), including when their programmes are received and/or re-transmitted in other EU Member States.

The Audiovisual Media Services Directive sets out specific rules for determining which EU Member State has jurisdiction over a media service provider in accordance with the Country-of-Origin principle. In particular, such providers shall be under the jurisdiction of the authorities of the Member State in which they are established on the basis of specific criteria laid down in the Directive.<sup>6</sup> When these criteria are not applicable, subsidiary criteria are set out for media service providers broadcasting via satellite.<sup>7</sup> In cases where none of the above criteria are applicable, the competent Member State shall be that in which the provider is established within the meaning of Article 49 to 55 of the Treaty on the Functioning of the European Union.

As of the withdrawal date, audiovisual media services providers currently under the jurisdiction of United Kingdom authorities (for example because they are established in the United Kingdom within the meaning of the Directive), may fall under the jurisdiction of one of the EU-27 Member States if the criteria laid down in Article 2 of the Audiovisual Media Services Directive are fulfilled. Moreover, EU-27 Member States will be free to take whatever measures they will deem appropriate with regard to audiovisual media services coming from the United Kingdom as a third country and not satisfying the conditions laid down in Article 2 of the Audiovisual Media Services Directive, provided they comply with Union law and the international obligations of the Union and, where applicable, within the limits of the European Convention on Transfrontier Television<sup>8</sup> (cf. recital 54 of the Audiovisual Media Services Directive).

## **2. COUNTRY OF ORIGIN AND FREEDOM OF TRANSMISSION/RECEPTION**

Under Article 3 of the Audiovisual Media Services Directive, EU Member States shall ensure freedom of reception and shall not restrict retransmission on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.

As of the withdrawal date, audiovisual media services of United Kingdom media service providers received or retransmitted in the EU will no longer benefit from the freedom of reception and retransmission laid down in Article 3 of the Audiovisual Media Services Directive. Therefore, EU-27 Member States will be entitled, based on their own national law and, where applicable, within the limits of the European Convention on Transfrontier

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<sup>5</sup> As defined in the Audiovisual Media Services Directive.

<sup>6</sup> Such criteria include, in particular, the location of the provider's head office, the place where editorial decisions about the audiovisual media service are taken, the place from where of the majority of the workforce involved in the service operates (cf. Article 2(3) of the Audiovisual Media Services Directive).

<sup>7</sup> These criteria are: the Member State where the satellite uplink is situated or, in the absence of a satellite uplink in a Member State, the Member State to which the satellite capacity used by the provider appertains (cf. Article 2(4) of the Audiovisual Media Services Directive).

<sup>8</sup> 20 of the EU-27 Member States and the United Kingdom are parties to this Convention. The following EU Member States are not parties: Belgium, Denmark, Greece, Ireland, Luxembourg, Netherlands and Sweden (<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/132>).

Television, to restrict reception and retransmission of audiovisual media services originating from the United Kingdom.<sup>9</sup>

The website of the Commission on audiovisual media services (<https://ec.europa.eu/digital-single-market/en/policies/audiovisual-media-services>) provides general information on the rules concerning audiovisual media services in the Union. These pages will be updated with further information, where necessary.

European Commission

Directorate-General for Communications Networks, Content and Technology

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<sup>9</sup> Under its Articles 13, 16 and 17, the Audiovisual Media Services Directive lays down specific rules for the promotion of distribution and production of European works, such as minimum quota reserved for European works. Article 1(1)(n) of the current Audiovisual Media Services Directive considers as “European” works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3 of the above mentioned Article. Therefore, pursuant to the current version of the Directive and without prejudice to any change to the legal framework, works originating in United Kingdom are considered European works even after the withdrawal date for the purpose of fulfilling the quotas under Article 13, 16 and 17 of the Directive.