



Brussels, 26 May 2020  
REV1 – replaces the notice  
dated 19 March 2018

## **NOTICE TO STAKEHOLDERS**

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

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.<sup>1</sup> The Withdrawal Agreement<sup>2</sup> provides for a transition period ending on 31 December 2020.<sup>3</sup> Until that date, EU law in its entirety applies to and in the United Kingdom.<sup>4</sup>

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,<sup>5</sup> in the EU Customs Union, and in the VAT and excise duty area.

Moreover, after the end of the transition period the United Kingdom will be a third country as regards the implementation and application of EU law in the EU Member States.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation after the end of the transition period.

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<sup>1</sup> A third country is a country not member of the EU.

<sup>2</sup> 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 L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

<sup>3</sup> The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.

<sup>4</sup> Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

<sup>5</sup> In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

**Advice to stakeholders:**

Service providers within the scope of 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 are in particular advised to assess the consequences of the end of the transition period in view of this notice.

After the end of the transition period, the EU rules in the field of audiovisual and media services, and in particular Directive 2010/13/EU<sup>6</sup> (the Audiovisual Media Services Directive), no longer apply to the United Kingdom. This has in particular the following consequences:

**1. COUNTRY OF ORIGIN AND JURISDICTION**

The Audiovisual Media Services Directive relies on the so-called "Country-of-Origin" principle, according to which media service providers<sup>7</sup> are, as a general rule, to 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 are 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>8</sup> When these criteria are not applicable, subsidiary criteria are set out for media service providers broadcasting via satellite.<sup>9</sup> In cases where none of the above criteria are applicable, the competent Member State is 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.

After the end of the transition period, audiovisual media services providers currently under the jurisdiction of United Kingdom authorities (for example because they are

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<sup>6</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.

This Directive has been recently revised by Directive (EU) 2018/1808 amending 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) in view of changing market realities, OJ L 303, 28.11.2018, 69.

<sup>7</sup> As defined in the Audiovisual Media Services Directive.

<sup>8</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 the majority of the workforce involved in the service operates (cf. Article 2(3) of the Audiovisual Media Services Directive).

<sup>9</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).

established in the United Kingdom within the meaning of the Directive), may fall under the jurisdiction of one of the EU Member States if the criteria laid down in Article 2 of the Audiovisual Media Services Directive are fulfilled. Moreover, EU 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>10</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 are to ensure freedom of reception and not to restrict retransmission on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.

After the end of the transition period, 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 Member States will be entitled, based on their own national law and, where applicable, within the limits of the European Convention on Transfrontier Television and other applicable provisions of international law, to restrict reception and retransmission of audiovisual media services originating from the United Kingdom.<sup>11</sup>

The website of the Commission on EU rules on audiovisual media services (<https://ec.europa.eu/digital-single-market/en/policies/audiovisual-media-services>) provides general information concerning Union legislation applicable to audiovisual media services. 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>10</sup> 20 of the 27 EU 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>). The scope of this Convention is more limited than that of the Audiovisual Media Services Directive as this Convention only regulates television broadcasting services. On demand audiovisual media services and video-sharing platform services are not covered by this Convention.

<sup>11</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 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 Article 1(3) of the Audiovisual Media Services Directive. Therefore, pursuant to the current version of the Directive and without prejudice to any future change to the legal framework, works originating in United Kingdom are considered European works even after the end of the transition for the purpose of fulfilling the quotas under Article 13, 16 and 17 of the Audiovisual Media Services Directive.