

Jurisdiction in an evolving European digital landscape - Principle and derogations in a cross-border environment

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Jurisdiction : principle & derogations

Country of
origin

Targeting

Extra-EU reach

Country of origin (COO) principle today

Rule

Objectives

Scope

Country of origin (COO) principle today

Rule

Providers are regulated by the MS where they are **established**

Under AVMSD, MS keep an up-to-date list of media service providers under their jurisdiction

AVMSD criteria:

- **Head office + editorial decisions or workforce / first activity** - Art. 2 (3)
- For 3rd country services: MS where satellite up-link or satellite capacity – Art. 2(4)
- Art. 49-55 TFEU

Objectives

- Internal Market integrity
- Legal certainty to service providers
- Free flow of information and AV programs across EU

Scope

- AVMSD
- SatCab Directive
- E-Commerce Directive
- DSA
- EMFA
- Political Advertising Regulation
- P2B Regulation
- AI Act...

Country of origin (COO) principle today

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Linear TV, on demand, VSP

Information society services : 'home' MS

Certain online platforms : « source of activity »

Derogations: destination or “targeting” country

AVMSD	E-Commerce	DSA	EMFA
<p>Art. 3(2)-(3): suspension of media service providers in severe cases of:</p> <ul style="list-style-type: none">• Incitement to violence or hatred, minors’ protection, public health• Terrorist offence, public security <p>Art. 13(2): financial contribution to the production of European works in targeted country</p>	<p>Art. 3(4): measures against information society services, under strict conditions:</p> <ul style="list-style-type: none">• Public policy: criminal offences, minors, hate speech, human dignity• Public health; public security; protection of consumers <p>Art. 3(5): urgent procedure without prior request</p>	<p>Art 56:</p> <ul style="list-style-type: none">• Mirroring and updating Art. 3(4)-(6) ECD: strictly framed derogations based on similar public policy grounds• Towards providers of certain intermediary services based on “substantial connection” or “targeting activities”	<p>Art. 15 Procedure to ensure the enforcement of the obligations by VSP providers under the AVMSD</p>

Art. 4 AVMSD
Anti-circumvention procedure

Art. 3(4)–(5) ECD
Prior request to country of origin + EC notification

“substantial connection” and targeting criteria

Extra-EU reach

AVMSD	EMFA	DSA	Other
<p>Art. 2(4)</p> <ul style="list-style-type: none">• Media service providers from third countries• Using satellite up-link situated in a Member State or using a satellite capacity from that Member State	<p>Art. 17(1)</p> <ul style="list-style-type: none">• Media service providers from third countries• Providing media services that, irrespective of their means of distribution or access, target or reach audiences in the Union	<p>Art. 3(e)</p> <ul style="list-style-type: none">• Providers of intermediary services• Having a “substantial connection to the Union” resulting from factual criteria, e.g. significant number of recipients of the service or the targeting of activities at EU member state	<p>Art. 2(1) Political Advertising Regulation</p> <ul style="list-style-type: none">• Providers or sponsors of political ad services• Political ad disseminated in the EU, brought into public domain in one or several MS or directed at EU’s citizens <p>Art. 2(1) AI Act</p> <ul style="list-style-type: none">• Providers• Placing on the market/ putting into service/ output used in the EU <p>Art 1(2) P2B Regulation</p> <p>Offer goods/services in EU</p>

Scope of key concepts



Audiovisual media service provider

Provider of TV broadcasts
Provider of on-demand AVMS
VSP for user-generated videos/ programmes

AVMSD

Media service provider

Provider of linear TV and radio
On-demand TV services, audio podcasts, press
Provider of VSP or VLOP with editorial “control”

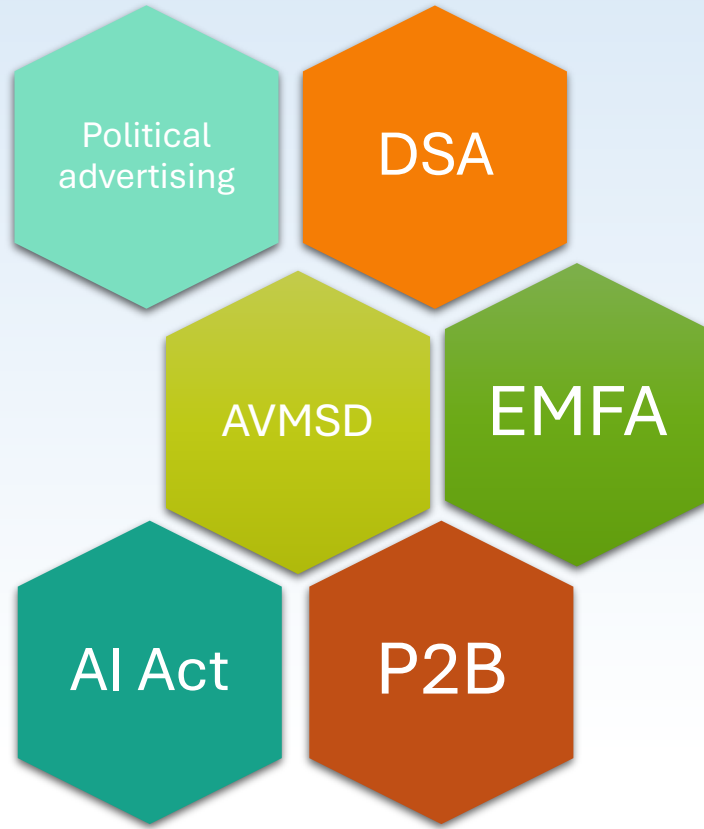
EMFA

Online platform providers

All intermediary services offered in the EU
Online platforms / VLOPs and VLOSEs

DSA

Jurisdiction: a legal mosaic?



Thank you !



Approaching jurisdictional issues in European audiovisual law: trends and tensions

IRIS

A publication
of the European Audiovisual Observatory



A presentation of
the European Audiovisual Observatory

