

European Film Agency Directors (EFADs) letter on the “SatCab” Proposal



Recommendations for the Trilogues

Brussels, 12 April 2018

Dear Madam, Dear Sir,

As the European Parliament (EP) and the Council of the European Union have adopted their positions and are now engaged in inter-institutional negotiations on the so-called “SatCab” draft regulation, **the European Film Agency Directors (EFADs) would like to thank both the EP and the Council for their efforts in safeguarding territorial exclusivity.** As underlined repeatedly by the EFADs, the **Country of origin Principle (CoO) principle for licensing would make it more difficult to finance films, series, documentaries and in particular European co-productions.**

At this stage, the EP and the Council have already preserved territorial exclusivity in the context of the Portability Regulation, which entered into force on 1st April. We support this regulation, which provides major benefits to consumers while respecting the principle of territorial exclusivity. This principle was also safeguarded in the context of the [Geo-blocking regulation](#), adopted in 2018.

Now that the two EU co-legislators expressed in several instances that eroding or eliminating territorial exclusivity would have a negative impact on the sustainability of the audiovisual sector and cultural diversity in Europe, **the EFADs ask the European Commission to fully take into account the positions of the two sources of democratic legitimacy in the EU by recognizing the interlink of the SatCab regulation with a potential adverse outcome in the Pay TV competition case.** Indeed, we continue to believe that the Regulation should not be seen in isolation but considered in the context of DG Competition’s investigation into cross-border access to Pay-TV content ([Case AT.40023](#)), which could concretely **prevent the enforcement of territorial exclusivity.**

Recommendations for the Trilogue

While we recognize and thank both the EP and the Council for their efforts, **we clearly stand behind the European Parliament's position**, which has provided that i) the **application of the Country of Origin is an exception** ii) **limited to news and current affairs** iii) **that only covers certain ancillary services**.

1. The Country of Origin Principle and its interaction with competition law

- The European Parliament was right to ensure that the Country of Origin principle should NOT apply as a general rule but as a clear exception. Given the interaction between copyright law and competition law (and in particular the Pay-TV competition case), the general application of the CoO principle, as in the Council's position, would weaken the principle of territoriality given the potential for competition law to take precedence over copyright law.
- **We therefore strongly support the EP's position that limits the application of the CoO principle to only news and current affairs.**

2. Scope of the Country of Origin Principle

- In line with the European Parliament's position, **we support the limited application of the Country of Origin Principle to 'news and current affairs' programme.**
- In contrast, we consider that the concepts and the scope of "*fully financed and controlled*" programmes, as per the Council's General Approach, are unclear concepts that would lead to diverging and problematic interpretations at national level. **The most recent proposals, aiming at defining "productions that are fully controlled by a broadcasting organisation" (recital 9b) are particularly problematic because it would be sufficient for the broadcaster to own the rights only "for the purpose of exploitation in their ancillary online services" for the Country of Origin to apply.** Such a wording would actually widen the scope of application of the Country of Origin principle to a broader category of works. We oppose such a language that would further increase the disparity between different market partners with unequal bargaining power. Last but not least, as national public funds, we also believe that the financing should not cover "*different sources, including national public funds*".

3. Definition of ancillary services

- The Council adopted an amendment to the definition of ancillary services which includes services that are "bundled with or provided separately from a broadcast service," (Article 1(a)). We oppose this amendment that extends the application of the Country of Origin principle beyond ancillary services that have a clear subordinate relationship to the broadcaster. The Council's amendment would cover services that have a significant market value and therefore deprive rightsholders from the freedom to licence those online services.
- We support the **definition of ancillary services** (as initially proposed by the European Commission and adopted by the EP) **and oppose the Council's extension.**

Conclusion

In conclusion, **the EFADs urge the three institutions to support the European Parliament position and therefore preserve the principle of territorial exclusivity.** We also call on the European Commission to take into account the positions of the European Parliament and the Council in the context of the ongoing Pay-TV competition case, which could weaken contractual freedom and threaten territorial exclusivity. **In contrast, we believe that other solutions can efficiently promote more circulation and access to European works.** That is why we support a [future-proof Audiovisual Media Services Directive](#) and [an ambitious MEDIA Programme](#), so that European citizens can access more European audiovisual works on all media, everywhere in Europe.

We hope that you will be able to take into consideration the comments above and we remain at your disposal for any questions you might have.

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