European Commission reaffirms country-of-origin principle

IRIS 2026-7:1/7

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In a recent decision, the European Commission confirmed the country-of-origin principle, according to which media service providers are subject exclusively to the law and jurisdiction of their member state of establishment, irrespective of the fact that their programmes are transmitted and viewed in other member states. This decision followed a request by the Hungarian media regulatory authority (*Nemzeti Média és Hírközlési Hatóság* – NMHH) to apply its own rules against the Luxembourg-based media service provider CLT-UFA SA. The request, pursuant to Article 4(4) of the Audiovisual Media Services Directive 2010/13/EU, concerned both a linear and a video-on-demand service aimed primarily at a Hungarian audience. The Commission concluded that the measures notified by the NMHH were incompatible with EU law.

The NMHH indicated that it had launched an anti-circumvention procedure in January 2026, after receiving 26 complaints concerning programmes broadcast between 2022 and 2023. In its notification to the Commission, the NMHH notably argued that CLT-UFA had established itself in Luxembourg in order to circumvent the allegedly stricter Hungarian rules concerning the protection of human dignity, minors and protection from incitement to hatred, highlighting its allegedly stricter and more active sanctioning policy in these matters than Luxembourg’s. Through this procedure, it intended to impose financial penalties on CLT-UFA totaling HUF 1 050 000 (calculated to approximately EUR 2 650 by the NMHH in their notification), to be paid to the NMHH. It also intended to require CLT-UFA to display a notice regarding the infringements on its TV channels, admitting the breach of Hungarian law.

In an Opinion from March 2026, the European Board for Media Services considered that the NMHH had not demonstrated the existence of stricter rules of general interest in the fields coordinated by the directive. The opinion concludes that, since there were no stricter rules in the fields coordinated by the Directive that were susceptible to being circumvented, it was not necessary to further investigate the problem of providing evidence of establishment to circumvent the allegedly stricter rules. The board therefore deemed that Hungary’s request to adopt anti-circumvention measures was not substantiated and did not satisfy the conditions set out in Article 4 of Directive 2010/13/EU.

In its decision, the Commission observes that the use of anti-circumvention procedures requires the fulfilment of the following conditions, cumulatively:

1. the adoption of stricter rules of general public interest in the fields coordinated by Directive 2010/13/EU;

2. the direction of a broadcast, wholly or mostly, towards the territory of the notifying Member State;

3. the absence of a mutually satisfactory solution following sincere cooperation;

4. respect for the rights of defence of the media service provider;

5. the establishment of the media service provider in order to circumvent stricter rules in the notifying Member State.

However, in the Commission’s view, although the Hungarian rules relating to the protection of minors and protection of human dignity and the protection against incitement to hatred could be considered as more specific, they cannot be considered as stricter.

Furthermore, with regard to the establishment of CLT-UFA in Luxembourg to circumvent stricter rules in Hungary, the NMHH stresses that Hungary is enforcing its rules more actively and imposing higher fines, thereby diminishing regulatory risks. The NMHH also highlights the suspicious timing of the transfer of RTL’s TV channel licences, which would coincide with the enforcement of relevant Hungarian provisions. Finally, it posits that the burden of proof may be satisfied through "logical deduction". However, the Commission emphasised the fundamental nature of freedom of establishment in the EU internal market. In the Commission’s view, no direct connection between the adoption of the relevant Hungarian provisions and the transfer of licences to Luxembourg had been demonstrated. In addition, the Commission considers that the member state invoking the application of Article 4(4) of Directive 2010/13/EU must prove that circumvention, and reaffirms that, although the subjective intent of the broadcaster does not need to be proven, the obligation to provide objective evidence of circumvention remains a cornerstone of the procedure. Article 4 of Directive 2010/13/EU should be read in conjunction with recital 11 of Directive (EU) 2018/1808. In light of this, the Commission concluded that the NMHH’s claim was not sufficiently substantiated, and relied primarily on arguments of mere assumption.

Considering that the conditions were not fully met, the Commission could not assert that the measures proposed by the NMHH were objectively necessary, non-discriminatory and proportionate in accordance with the requirements of Article 4(3) of Directive 2010/13/EU. The Commission therefore concluded that the measures notified to the Commission by Hungary pursuant to Article 4(4), point (a), of Directive 2010/13/EU were incompatible with Union law.

Commission Decision C(2026)3122 on the incompatibility of the measures notified by the Hungarian authorities pursuant to Article 4(5) of 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)

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