# European Parliament: Directive on copyright and online transmissions of broadcasting organisations and retransmissions of television and radio programmes

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On 28 March 2019, the European Parliament voted to adopt a Directive on the exercise of copyright and related rights applicable to certain online transmissions by broadcasting organisations and retransmissions of television and radio programmes. The Directive was first proposed as a Regulation by the European Commission in 2016 (see IRIS 2016-9/4 and IRIS 2018-1/10). However, in December 2018, the Council and European Parliament announced that an agreement had been reached and that the "originally proposed Regulation will have to be redrafted so that it takes the form of a Directive" (see IRIS 2019-2/4).

The stated purpose of the Directive under the new Article 1 is to lay down rules to enhance cross-border access to a greater number of television and radio programmes by facilitating the clearance of rights for the provision of online services that are ancillary to the broadcast of certain types of television and radio programmes and for the retransmission of television and radio programmes. The Directive also lays down rules for the transmission of television and radio programmes through "direct injection" (Article 8), which is a process increasingly used by broadcasters to transmit their programmes to the public. Instead of transmitting their programmes directly to the public over the air or by wire, broadcasters send their programmes to distributors, which transmit them to the public.

One of the main provisions aimed at addressing the difficulties associated with copyright clearance is Article 3, which sets out the country-of-origin principle. It provides that rights required to make certain programmes available on broadcasters' online services (for instance, their simulcasting or catch-up services) are to be cleared only for the broadcaster's country of principal establishment (instead of all Member States in which the broadcaster wishes to make its programmes available). Notably, Article 3 applies to all radio programmes, but only to television programmes that are: (i) news and current affairs programmes, or (ii) fully financed own productions of the broadcasting organisation. Article 3 also explicitly states that it "shall not apply to the broadcasts of sports events and works and other protected subject matter included in them". Furthermore, Article 3(3) provides that the country-of-origin principle shall pertain without prejudice to the contractual freedom of the

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rightsholders and broadcasting organisations to agree, in compliance with Union law, to limit the exploitation of such rights.

Moreover, Article 4 and 5 concern the retransmission of television and radio programmes and extend the system of mandatory collective management, which is currently applicable to cable retransmissions only, to retransmission services provided through other means (such as Internet Protocol television (IPTV), and satellite, digital terrestrial or online technologies. The Commission states that this system allows retransmission operators to clear the necessary rights in a simpler manner - they need to clear the relevant rights with broadcasters whose channels they retransmit and with collective management organisations - i.e. organisations that represent a multitude of rightsholders, and not with several individual right holders on a one-to-one basis (e.g. a music composer or an audiovisual performer).

Finally, Article 8 concerns the transmission of programmes through direct injection, and clarifies that when broadcasters transmit their programme-carrying signals by direct injection exclusively to distributors, and the latter transmit these to the public, there is an “act of communication to the public”, in which both the broadcaster and the distributors participate, and for which they need to obtain authorisation from rightsholders. According to the Commission, this new provision will help to ensure that rightsholders are adequately remunerated when their works are used in programmes transmitted through direct injection.

The Parliament’s text will now have to be formally endorsed by the Council of the European Union. Following publication in the Official Journal of the EU, member states will have two years to transpose the Directive into national legislation.

*Position of the European Parliament adopted at first reading on 28 March 2019 with a view to the adoption of Directive (EU) 2019/... of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC, 28 March 2019*

http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2019-0322

*European Commission, “Commission welcomes European Parliament's vote on new rules facilitating access to online TV and radio content across borders”, 28 March 2019*

http://europa.eu/rapid/press-release_STATEMENT-19-1888_en.htm

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*Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, COM(2016) 594 final, 14 September 2016*

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0594

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