

## TELECOMS FRAMEWORK

The way electronic communications networks and services are regulated at EU level directly impacts the availability and technical quality of media services.

The review of the European Electronic Communications Code (EECC) offers an opportunity to introduce well-calibrated updates to the regulatory toolkit EU Member States have at their disposal. A key objective is to ensure fair competition and support media pluralism and cultural diversity, by notably providing guarantees for user access to audiovisual media services of general interest via communication networks and services.

Must-carry rules should be updated to cover audiovisual media services (and not linear channels only) and apply on a technologically-neutral basis. *Ex-ante* rules and powers are also crucial to address the accelerated market concentration, especially vertical integration, which is reshaping today's telecom and media sectors.

### Reflect the importance of telecoms rules for media pluralism and cultural diversity in EU legislation

Public Service Media (PSM) organizations invest over 18 billion euros in content per year in Europe. They need to use electronic communication networks and services to deliver audiovisual media programmes which serve the general interest. IP networks in particular are essential to reach audiences in today's converging environment and are a natural home to innovative services.

The telecoms regulatory framework has to date successfully underpinned citizens' access to pluralistic and culturally diverse media content. It is crucial that the EECC continues supporting these policy objectives.

### Maintain and modernize must-carry rules

At present, EU Member States may apply must-carry obligations where needed to ensure that electronic networks carry specific radio and television broadcast channels, in order to meet general interest objectives - in particular the promotion of media pluralism and cultural diversity.

While existing must-carry rules should be preserved, the must carry provision in the EECC should be modernized to enable Member States to apply must-carry obligations on a technologically-neutral basis to all significant providers of closed networks and services. It should also be service-neutral to cover audiovisual media services – including linear, non-linear and complementary services (such as related applications, accessibility services and interactive functionalities), and not only linear broadcast channels.

The application of must-carry rules shall not prejudice the ability of Member States to determine appropriate remuneration, if any, by a legal provision.

### Enforce fair competition and restrict 'gatekeeper power' with *ex-ante* access rules

Market concentration and vertical integration in particular are reshaping today's telecom and audiovisual sectors. This trend increasingly exposes content providers to the 'gatekeeper power' of certain network and service providers as well as intermediaries who control several levels of the media value chain. For example, network providers offering their own audiovisual media content services directly compete with third party content providers which require access to their networks, such as PSM.

Without the relevant safeguards, network providers would be in a position to favour their own commercial offers or impose unreasonable access terms to competing services on their networks. Such a situation would harm citizens' access to diverse media content, including general interest content. To counter this risk, the EECC's

*ex-ante* regulatory regime on access and interconnection issues gives National Regulatory Authorities (NRAs) an essential regulatory toolkit to enforce fair competition in concentrated communications markets and ensure non-discriminatory access for content providers.

It should be clear in the EECC that NRAs may apply *ex-ante* access rules for audiovisual media services and related complementary services. NRAs also need to be able to tailor the measures they take based on a non-exhaustive list of remedies. The promotion of media pluralism should clearly figure amongst the objectives pursued by NRAs when establishing access rules.

### **Ensure radio spectrum policy respects national specificities and needs**

The use of radio spectrum is managed at EU and Member State level, in accordance with national and EU law as well as international agreements. There is no need for substantial changes to the existing institutional framework as it facilitates coordination between Member States and harmonisation of spectrum use across the EU, while taking into account national specificities and needs.

The new EECC should also ensure full alignment with the recent EU Decision on the future use of the UHF band frequencies. Broadcasters require the long-term certainty offered by EU Decision 2017/899 regarding future access to the UHF in order to offer universal and free-to-air Digital Terrestrial Television.

### **Promote interoperable radio reception to accelerate the digital transition**

In order to facilitate the digitalization of radio, the EECC should include provisions aiming to ensure that new radio sets placed on the market in the EU are capable of receiving analogue and digital radio, based on a harmonised European standard defined by a recognised body. Digital and/or analogue reception should also be activated in mobile devices, when available.

The transition towards digital radio is well underway in Europe. However the pace of development significantly varies from one EU Member State to another. The introduction of interoperable radio sets would allow the Member States to manage this transition at their own pace, ensure cross-border portability of devices and enable economies of scale.

### **The following measures are crucial to sustain media pluralism and citizens' access to content of public value on all relevant electronic communication services:**

- **Must-carry obligations need to be preserved and modernised in line with evolving media distribution systems and consumer trends. They should be able to be applied by Member states to both providers of electronic communications networks and services, and for specific audiovisual media services in their entirety, and not only linear broadcast channels (Article 106 §1). The application of must-carry rules shall not prejudice the ability of Member States to determine appropriate remuneration, if any, by a legal provision (Article 106 §2).**
- **It must be clear that National Regulatory Authorities may impose *ex-ante* access obligations in order to ensure that end-users can enjoy all types of audiovisual media services and related complementary services, and not only linear broadcast channels (Article 59 and Annex II Part II).**
- **The recently adopted Decision on the use of the 470-790 MHz frequency band in the Union should remain unaffected by the EECC (Article 45 (3)).**
- **The interoperability of radio sets should be promoted to accelerate the transition towards digital radio. (Article 105).**