

Draft Amendments to the Council of Europe's Convention on Transfrontier Television

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Presentation of egta

egta is *the association of television and radio sales houses* (both independent of a channel or in-house) that commercialise the advertising space of both private and public TV channels and radio stations all over Europe.

In October 2008, egta counts 106 member sales houses which operate across 30 European countries. With members in most EU Member States and other European countries such as Russia, Ukraine, Turkey, Croatia, Norway, etc., egta counts members in most countries that are signatories to the Council of Europe's Convention on Transfrontier Television. Altogether, egta members collect over 70% of the European television advertising investments.

egta provides a network for its members based on relationships with over 1000 high-level advertising executives. egta fulfils different support functions for its members in fields of activities as diversified as regulatory issues, audience measurement, sales methods, interactivity, cross-media, etc.

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Introductory comments

egta welcomes the revision of the Council of Europe's Convention on Transfrontier Television in an effort to adjust the current Convention to the profound changes affecting the television sector.

Advertising and sponsorship represent 90% of private broadcasters' income and nearly 30% of that of public broadcasters (European Audiovisual Observatory data)¹. Advertising is thus one of the primary sources of investment in local audiovisual content and is a key determinant of media pluralism and citizen's free access to a variety of television programmes. In this sense, the mission of sales houses, which is to secure the financing of broadcasters, is central to the Council of Europe's objectives of safeguarding media pluralism, diversity of content and the free formation of opinions thanks to media content.

Television sales house operations have been profoundly affected by both market and technological developments. Over the last years, television advertising investments have been experiencing slow growth and these investments already appear to be seriously hit by the early signs of a profound economic recession. If Europe's economic performance affects advertising levels, advertisers also become increasingly selective in their investments. Their will to go "beyond the traditional 30 second spot" has made the headlines while television faces increasing competition from other commercial communication platforms developed thanks to technological evolutions. In this context, television sales houses need to be able to offer new and creative advertising formats and modernising the rules of audiovisual commercial communications is a necessity to that end.

It is in this context that egta welcomed the adoption of a new directive on "Audiovisual Media Services" in 2007 and it is in the same spirit, that egta now calls for a modernisation of the advertising provisions contained in the Convention on Transfrontier Television.

At a time of internationalisation of audiovisual services, it is essential that sales houses and broadcasts which are "transfrontier in character" can operate in a consistent and stable legal environment. For this reason, **egta supports the draft amendments to the Convention and would like to emphasise on the following aspects:**

1. Alignment with the new EU Audiovisual Media Services Directive;
2. The regulation of commercial communications;
3. Support to advertising self-regulatory mechanisms.

¹ Private free-to-air broadcasters are almost entirely financed by means of advertising. On average across the EU, advertising & sponsorship represent 27% of public broadcaster's revenues – *Source: European Audiovisual Observatory.*

1. Alignment with the new EU Audiovisual Media Services Directive

egta shares the reasoning of the Standing Committee that in order to ensure the necessary coherence and to avoid incompatibility between various legal instruments, the terms employed and provisions on issues of common concern should be aligned as much as possible with the new EU directive on Audiovisual Media Services, *AMS directive*. This resonates egta's concern that sales houses operate in a consistent and stable legal environment when commercialising advertising space.

Advertising "deals" are usually wide-ranging and not confined to a specific television broadcast. Therefore, sales houses need consistency in legal regimes because it would be unnecessary burdens for them to be prevented by the Convention from marketing some advertising formats on transfrontier broadcasts, while these same formats could legally be marketed for intra-EU broadcasts. Similarly, EU audiences are accustomed to certain standards in advertising. Transfrontier broadcast coming from outside the EU should respect these same standards that EU citizens expect "at home".

In particular, **egta welcomes the fact that the draft amendments to the Convention take on board most of the positive features of the new directive** and for instance:

- ✎ The extension of the scope of the Convention to all audiovisual media services by means of a technology-neutral approach.
- ✎ The establishment of a two-tier regulation with a first pillar applicable to all audiovisual media services and a second pillar applicable only to television broadcasts of a linear nature.
- ✎ The up-holding of qualitative standards of the content of all types of audiovisual commercial communications such as the protection of minors, the protection of the environment and the respect of human dignity.
- ✎ The recognition of and the legalisation of product placement for both on-demand platforms and television broadcasts.
- ✎ The maintenance of an effective framework for sponsorship and its extension to cover all types of audiovisual media services.
- ✎ The modernisation of television advertising and teleshopping rules, such as the new rules on the insertion of breaks, the hourly limitation to advertising and the establishment of the principle of advertising distinction.

The rationales for adopting such provisions in the EU directive on "Audiovisual Media Services" similarly apply to broadcasts that are "transfrontier in character", i.e. the economic need to establish a level-playing field between different audiovisual media services and to unleash advertising creativity, the acceptance of new advertising formats by viewers, audience fragmentation and the fact that viewers are in greater control in the digital world, etc.

egta thus supports the alignment of the Convention with the new directive on all the above-mentioned items.

2. The regulation of commercial communications

egta takes note that on matters relating to specific policy goals of the Council of Europe, the proposed draft amendments to the Convention sometimes diverge from the AMS directive. egta understands this policy rationale and has no objection to the proposed differences in the field of advertising.

Nonetheless, egta would like to comment on **the proposed definitions of “audiovisual commercial communications” (article 2 j) and “television advertising” (article 2 k)** that offer a wider scope than the definition of the AMS directive. The addition to both definitions of *“images designed to advance a cause or idea or to bring about some other effect desired by the advertiser or the broadcaster”* largely broadens the definitions provided in the AMS directive. In the case of the definition of television advertising, it is however not a novelty, as the same definition is already set in the current Convention. The proposed definition of audiovisual commercial communication does not pose any problems to egta. With regards to the definition of television advertising, it is only acceptable as long as this type of television advertising remains excluded from the hourly limit to advertising, as suggested in article 12 paragraph 2 point iv. This extension to both concepts of audiovisual commercial communications and television advertising would otherwise place a heavy burden on sales houses and broadcasters.

With regards to differences to the AMS directive, egta regrets that the proposed draft amendments to the Convention do not include changes on some specific points whose added-value in the AMS directive are already questioned.

egta believes that the proposed provision on **the exceptional character of isolated spots (article 14, paragraph 4)** which would allow their greater use in sport events transmissions, offers too limited an improvement. Therefore egta argues that this provision could be removed altogether not least because its drafting leaves the word “exceptional” open to a multitude of interpretations. This provision has thus very little added-value with extremely restrictive effects in some countries yet little implications in others. In addition, many sales houses operating outside the European Union do not encounter such a constraint in their national legislations leaving them more difficulties when marketing broad advertising deals if it were maintained in the Convention. Lastly, such a provision makes very little sense for broadcasts that are “transfrontier in character” considering that most of them are characterised by a specific and “more dynamic” programming schedule, which is well suited for single spot sequences. Therefore egta believes that the paragraph 4 of article 14 should be removed from the Convention, which would not cause any problem of consistency with the AMS directive.

Similarly, egta regrets **the overly-complex drafting of the paragraphs 1 and 2 of article 15a on product placement**. The proposed draft is a template of the AMS directive and, as such, of a political compromise that overly complicates things. The general prohibition of product placement coupled with its admissibility in certain circumstances could easily be simplified for matters of legal clarity. egta thus suggests to replace paragraphs 1 and the first sentence of paragraph 2 by the following wording:

“Product placement shall only be admissible, unless parties decide otherwise, in: ...”

3. Support to advertising self-regulatory mechanisms

egta welcomes the inclusion in the Convention of recognition and **encouragement to make use of self-regulatory mechanisms** in the fields covered by the Convention, as proposed in article 5, paragraph 1 bis.

In the area of advertising, self-regulation took shape long ago in many European countries and matured over the years so that its added-value is now recognised by decision-makers and numerous stakeholders. In addition to standards developed and agreed by the three parts of the industry, *i.e. advertisers, agencies and media*, self-regulation in the field of advertising is characterised by the existence of independent bodies, self-regulatory organisations, responsible for drafting and providing interpretations of the code, as well as for ensuring compliance with the code itself. Enforcement is made possible thanks to an independent complaint committee or jury that is tasked to handle complaints. Statistics are largely made available about compliance of advertising with ad-hoc standards and codes.

egta and its member sales houses are actively involved in these self-regulatory bodies at national level to make sure that all advertising broadcast is *“legal, decent, honest and truthful”*. egta welcomes the draft Convention’s recognition that advertising self-regulation can play an important role with regards to the content message of audiovisual commercial communications.

egta would like to stress two important points on this issue:

Firstly, egta would like to highlight that such recognition of advertising self-regulation should not be endangered by overly detailed **definitions of self-regulation** that could call into question the operations of the existing and accepted advertising self-regulatory organisations at national level. Due to the rich tapestry of legal regimes across Europe, advertising self-regulatory organisations have various characteristics across countries and so defining self-regulation in a procedural way is no easy task as illustrated by the inappropriate definition provided in the recital 36 of the AMS directive. The text submitted to consultation does not present definitions of self-regulation or co-regulation but egta would like to urge the Council of Europe to be particularly careful should such definitions be envisaged. egta, in cooperation with its self-regulatory partners, will be happy to provide further information if needed.

Secondly, egta would like to comment on the provision provided in article 15 paragraph 6 regarding **encouragement to audiovisual media service providers to develop codes of conduct on advertising for certain types of foods and drinks** targeted at minors. As active players of advertising self-regulation, egta and its member sales houses support this self-regulatory approach and share the ultimate objective to prevent irresponsibility in commercial communications targeted to children for what is often called food high in fat, salt or sugar. In fact, broadcast sales houses are already developing proper responses to this challenge in the framework of national self-regulatory systems and in cooperation with advertisers and agencies. Realistically audiovisual media service providers cannot develop specific codes of conducts on such matters without the full backing and endorsement of the other self-regulatory partners, *i.e. advertisers, agencies and other media*. Therefore, egta calls on a redrafting of this provision to better reflect the collective responsibility of the advertising industry and to allow for a proper assessment of self-regulatory progress in this area.

egta suggests the following wording:

*"Parties shall encourage **the development of self-regulatory** codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children's programming, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt sodium and sugars, excessive intakes of which in the overall diet are not recommended."*

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In conclusion, egta would like to emphasise that it is largely satisfied with the draft amendments to the Convention on Transfrontier Television which, it feels, could guarantee a fairly consistent and stable legal environment for sales houses to operate within. **It is however essential that the new Convention remains based on a properly functioning country of origin principle, which is central to the added-value of any international regulation in the area of transfrontier broadcasting activities.**

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