

Provisional agreement on the revision of 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 January 2009, 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 to its members based on a cooperation with over 1000 high-level advertising executives. egta supports its members in various fields as diversified as regulatory issues, audience measurement, sales methods, interactivity, cross-media, etc.

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egta's comments on the Provisional agreement

The following comments are based on and complement egta's previous response to the Council of Europe's public consultation on the draft amendments to the European Convention on Transfrontier Television, as submitted last October 2008.

egta welcomes the high level of compliance of the Provisional agreement, reached by the Standing Committee, with the Audiovisual Media Service directive. As expressed in egta's previous contribution, it is of crucial importance for sales houses to operate in a consistent and stable legal environment when commercialising advertising space, whether it be for regular broadcasts or those that are transfrontier "in character". In particular, egta welcomes the fact that the Provisional agreement takes on board most of the positive features of the new directive, such as the extension of its scope to cover all audiovisual media services by means of a technology-neutral approach and the establishment of a two-tier regulation, the first being applicable to all audiovisual media services and the second being applicable only to television broadcasts.

egta takes note of the fact that some of its comments, as expressed in its previous contribution, were not endorsed by the Standing Committee. In particular egta regrets that the Provisional agreement does not reflect our initial suggestion to remove any limitation to the use of isolated spots (article 17, paragraph 4 of the Provisional agreement). Similarly, egta regrets that the Standing Committee has not followed egta's proposal for a clearer and simplified drafting of paragraphs 1 and 2 of article 15a on product placement (art.19 of the Provisional agreement).

Regarding these two points egta however appreciates, as a second preferred option that the Standing Committee suggests to entirely align its wording with those of the Audiovisual Media Service directive.

Following its previous comments, egta would like to take this occasion to elaborate on two aspects concerning **advertising self-regulation**:

1. Provision on codes of conduct on advertising for certain types of food and drinks targeted at minors

egta welcomes the new wording of article 15 paragraph 6 (art.18, paragraph 6 of the Provisional agreement). The redrafted paragraph takes into account the concern expressed by egta in its previous contribution, that media service providers cannot realistically 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. For this reason, the encouragement to develop specific codes of conducts should not be placed specifically on audiovisual media service providers and the new wording perfectly reflects this reality.

At the same time, egta would like to make it clear that media service providers don't clear themselves from the responsibility of preventing irresponsibility in commercial communications targeted at children. In fact egta's sales houses are already developing proper responses to this challenge within the framework of national self-regulatory systems and in cooperation with advertisers and agencies.

2. Support to advertising self-regulation mechanisms

egta welcomes the inclusion in the Provisional agreement of the recognition and encouragement to make use of self-regulatory mechanisms in the fields covered by the Convention (article 4, paragraph 2).

As expressed in its previous contribution, egta believes that self-regulation instruments can play an important role with regards to policing the content message of audiovisual commercial communication. Already existing in many countries across Europe (in some of them for several decades), advertising self-regulation offers consumers a quick, uncomplicated and cost-free means of having their advertising-related complaints addressed. In the field of broadcast media in particular, self-regulation provides for an effective system with adequate means of enforcement.

Nevertheless, egta believes that inappropriate definitions of both self- and co-regulation could prove counter-effective to the Convention's purpose by undermining the operations of the already-existing advertising self-regulatory organisations at national level. Definitions focusing too much on "operational" criteria could create hurdles to some organisations, which, despite their recognised effectiveness, do not necessarily meet all these criteria. A definition of self-regulation is indeed very difficult to establish due to the various structures of self-regulation, which derive from the various legal traditions of Member States. As a spill-over effect, a definition of co-regulation should not focus too much on the form taken by the cooperation between State authorities and the self-regulatory organisations.

egta thus strongly encourages the Council of Europe to envisage general definitions of both self- and co- regulation, that focus on overall concepts which are themselves largely shared between the advertising industry and European decision-makers. egta would like to suggest the following wordings:

On the concept of self-regulation:

"Self regulation constitutes a type of voluntary initiative, which enables the economic operators or associations to adopt common guidelines amongst themselves and for themselves. Member States should, in accordance with their different legal traditions, recognise the effective role which effective self-regulation can play as a complement to the legislation and judicial and/or administrative mechanisms in place and its useful contribution to the achievement of the objectives of this Convention."

On the concept of co-regulation:

"Co-regulation gives, in its minimal form, a "legal link" between self-regulation and the national legislator in accordance with the legal traditions of the Member States. The generic term "co-regulation" covers regulatory instruments which are based on cooperation between State bodies and self-regulating bodies, and vary widely in terms of their designations and structures at national level. The actual form which such instruments take reflects the specific tradition of media regulation in the individual Member States."

This definition allows for State bodies to entrust self-regulatory bodies with the task of guaranteeing the achievement of the regulatory objective. In every case the systems are founded on a State legal framework which lays down instructions as to content, organisation and procedures.

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In conclusion, egta would like to emphasise that, in the context of the comments illustrated above, it is largely satisfied with the Provisional agreement on the amendments proposed to the European Convention on Transfrontier Television.

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