

ACT POSITION ON THE DRAFT DIRECTIVE ESTABLISHING A NEW EUROPEAN ELECTRONIC COMMUNICATIONS CODE – MUST CARRY

I. Introduction

The Association of Commercial Television in Europe represents the interests of leading commercial broadcasters in 37 European countries. The ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms. At ACT we believe that the healthy and sustainable commercial broadcasting sector has an important role to play in the European economy, society and culture.

Commercial television broadcasters are indeed a key contributor to the development of a high-quality and innovative digital platform and economy, contributing to the benefit for all European citizens. Europe's commercial television sector entertains and informs over 500 million citizens, and no other media has reached this number so far.

Our businesses were early adopters of digital technology and we help power the European digital economy. Central to the lives of Europe's citizens, our TV channels reach over 200 million European households in 28 EU member states and beyond. More specifically, our online TV services are available in over 150 million European homes connected to the internet, and are central to Europe's broadband story. Europe's commercial TV's path to digitalization already started 10 years ago, and we are now distributing TV according to our customers' preferences, whether that is digital terrestrial, digital satellite, cable or online. Moreover, we operate more diverse digital business models than the global technology sector to deliver unparalleled customer choice, varying from free-to-air advertising models to subscription on demand.

II. Must-carry rules

On 14 September 2016 the European Commission published a [Proposal](#) for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code.

The ACT agrees with the EC's approach on must-carry rules and does not see a need to adapt or change these at EU level. ACT members believe that issues of findability and prominence may however assume greater relevance in the future. If so, and notwithstanding the need to discuss whether the issue is better dealt with at national or EU level, there is a significant issue around how to avoid new distortions of competition. Much of the debate here assumes that publicly-funded broadcasters should benefit from a privileged access to, and prominence on, platforms. This raises issues of definition and of equal treatment. A more equitable, transparent and future-proof approach would be to leave this to the discretion of Member States, who may well decide that a commercially-funded news service is worthy of greater 'findability' than a publicly-financed entertainment channel. Smaller Member States may also take the view that services with a high proportion of content in their language is deserving of greater prominence ... but, again, this will not be an issue in all EU markets and as such should be left to Member State/NRA discretion rather than harmonised in EU legislation.

III. Suggested amendments

Text proposed by the Commission	Suggested amendments
<p>Article 106 – paragraph 1</p> <p>1. Member States may impose reasonable ‘must carry’ obligations, for the transmission of specified radio and television broadcast channels and related complementary services, particularly accessibility services to enable appropriate access for disabled end-users and data supporting connected TV services and electronic programme guides, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcast channels. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.</p>	<p>Article 106 – paragraph 1</p> <p>1. Member States may impose reasonable ‘must carry’ obligations, for the transmission of specified radio and television broadcast channels and related complementary services, particularly accessibility services to enable access for end-users with disabilities and data supporting and enabling end-user access to connected TV services and electronic programme guides, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcast channels. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.</p>
<p>Recital 269</p> <p>Member States should be able to lay down proportionate obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Union law and should be proportionate and transparent. ‘Must carry’ obligations may be applied to specified radio and television broadcast channels and complementary services supplied by a specified media service provider. Obligations imposed by Member States should be reasonable, that is they should be proportionate and transparent in the light of clearly defined general interest objectives. Member States should provide an objective justification for the ‘must carry’</p>	<p>Recital 269</p> <p>Member States should be able to lay down proportionate obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Union law and should be proportionate and transparent. ‘Must carry’ obligations may be applied to specified radio and television broadcast channels and complementary services, supplied by a specified media service provider, without discrimination based on the nature of their funding. Obligations imposed by Member States should be reasonable, that is they should be proportionate and transparent in the light of clearly defined general interest objectives, in</p>

obligations that they impose in their national law so as to ensure that such obligations are transparent, proportionate and clearly defined. The obligations should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. Obligations should be subject to periodic review at least every five years in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. Obligations could, where appropriate, entail a provision for proportionate remuneration.

particular media pluralism and cultural diversity. Member States should provide an objective justification for the ‘must carry’ obligations that they impose in their national law so as to ensure that such obligations are transparent, proportionate and clearly defined. The obligations should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. Obligations should be subject to periodic review at least every five years in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. Obligations could, where appropriate, entail a provision for proportionate remuneration.