

A PRACTITIONERS GUIDE TO THE REFORM OF THE EU AUDIOVISUAL MEDIA SERVICES DIRECTIVE

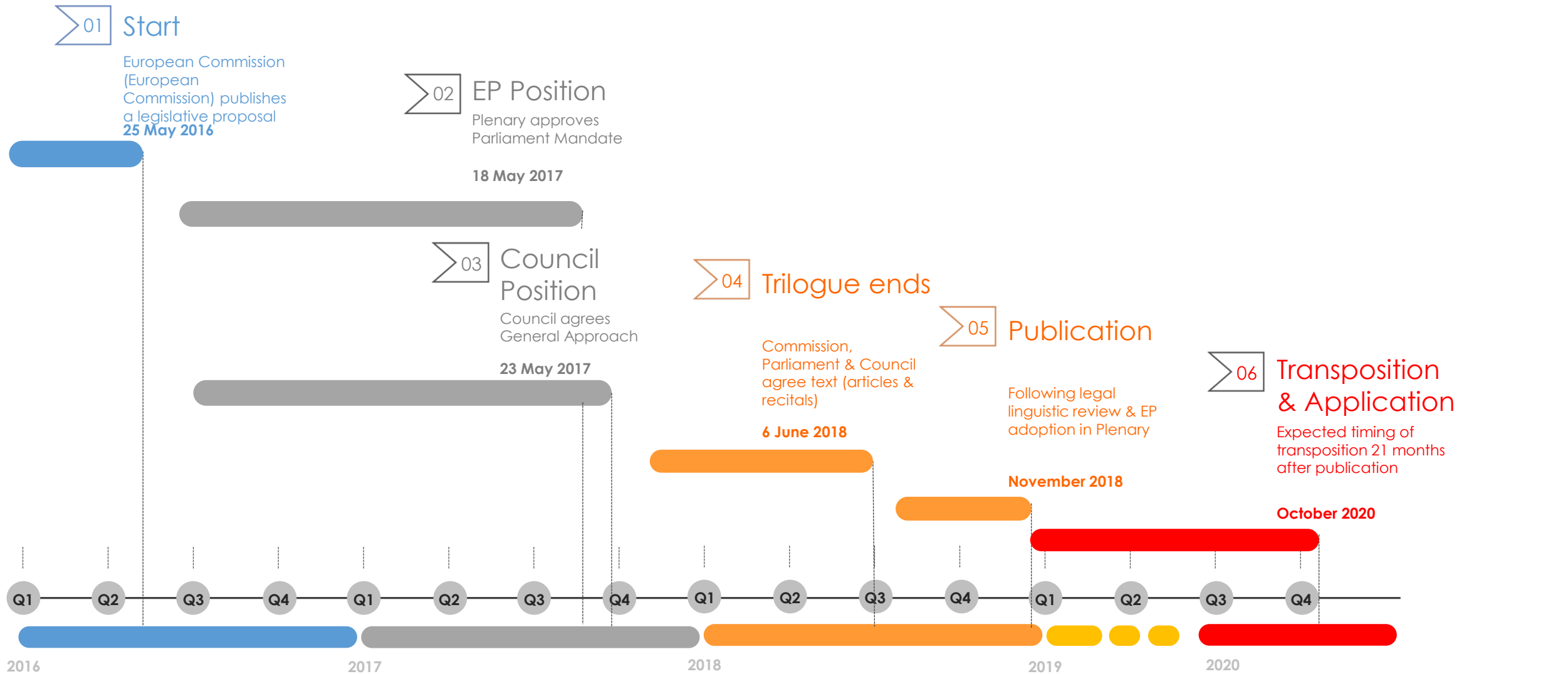
Association of Commercial Television in Europe

June 2018



Association of Commercial
Television in Europe

TIMELINE



HIGHLIGHTS (1/2)



SCOPE

- Enlarged to video sharing platforms (VSPs)
- Social media services added where provision of programmes & user generated videos (UGVs) constitute an "essential functionality" of that service (guidelines to be defined by EU & National regulators)



DEFINITIONS (ART 1)

- Several new definitions, namely:
 - video sharing platform service
 - video sharing platform provider
 - user generated video
 - editorial decision
 - [...]



ESTABLISHMENT (ART 2)

- Slightly stricter definition of editorial decision
- New obligation on Member States to provide an up to date list of AVMS providers under their jurisdiction
- Commission to create central EU database
- Optional consulting role for ERGA (European Regulators Group for AV) regarding jurisdiction disputes between Member States



DEROGATION (ART 3)

- New grounds for derogation procedure application in cases of serious and grave risk to public security including national security & defence
- Urgency procedure modified



CIRCUMVENTION (ART 4)

- Extension of Member State power to trigger circumvention procedure based on reasonable cause rather than current requirement to prove intention of circumvention by provider



COMMERCIAL COMMS (ART 9-11, 19-20, 22-23)

- Greater flexibility on quantitative limits, from 12' per hour to two window system
- Liberalisation of self and cross-promotional announcements
- New rules to protect broadcasters' signal integrity

HIGHLIGHTS (2/2)



PROMOTION OF EU WORKS (ART 13)

- Higher quotas for on demand services
- Obligatory prominence of European works
- Member States given option to impose financial obligations on audiovisual media service providers targeting their national audiences
- Exemptions for certain types of providers to apply



VIDEO SHARING PLATFORMS (ART 28A)

- Scope enlarged to VSPs & social media services added (in certain cases)
- Some layer of regulation (linked to Article 9.1. – qualitative commercial communications)
- Member States may impose measures that are stricter or more detailed on video sharing platforms.



ACCESSIBILITY (ART 7) and PROMINENCE (ART 7A)

- Provisions have been enlarged, however without hard targets or strict deadlines
- (7A): Member States may take measures to ensure the appropriate prominence of audiovisual media service of general interest



SIGNAL INTEGRITY (ART 7B)

- Member States may take appropriate and proportionate measures to ensure audiovisual media services are not overlaid for commercial purposes or modified without the explicit consent of the service provider



SELF & CO-REGULATION (ART 4A)

- Member States encouraged to use co-regulation and foster self-regulation through codes of conduct adopted at national level in the fields coordinated by the Directive
- New concept of “union codes” to be developed jointly by industry representatives, consumer organisations and facilitated by the European Commission



LISTED EVENTS (ART 14)

- No change

ESTABLISHMENT



HIGHLIGHTS

- Slightly stricter definition of editorial decision
- New obligation on Member States to provide an up to date list of AVMS providers under their jurisdiction
- Commission to create central EU database
- Optional consulting role for ERGA regarding jurisdiction disputes between Member States

JURISDICTION | EDITORIAL DECISIONS | ARBITRAGE

Jurisdiction

- New law links the determining factor for jurisdiction, which is still significant part of the workforce, with “programme related” audiovisual media service activities

Editorial decision

- New definition of editorial decision added: a decision taken on a regular basis AND NOW linked to “day-to-day operations” of the AVMS

Member State arbitration

- Member State to bring matter to the European Commission's attention without undue delay

ERGA Role

- European Commission may also refer matter to the European Regulators Group for AV media services (ERGA) to provide an opinion on the matter within 15 working days from submission of the Commission's request



Legal Reference

Recitals: p.7, Article: p.34



Association of Commercial
Television in Europe EEIG

DEROGATION



HIGHLIGHTS

- New grounds for derogation procedure application in cases of serious and grave risk to public security including national security & defence
- Urgency procedure modified

DEROGATION PROCEDURE ENLARGED

- Additionally to new grounds for the derogation procedure, Member States now have 3 months instead of 2 to send a notification of the measures taken
- European Commission to request an opinion from ERGA before taking a final so as to ensure compatibility with Union law
- New provisions allow for the European Commission to go back (within 1 month) to the allegedly infringing Member State if further information required



Legal Reference

Recitals: p.7, Article: p.36-38



Association of Commercial
Television in Europe EEIG

CIRCUMVENTION



HIGHLIGHTS

- Extension of Member State power to trigger circumvention procedure based on reasonable cause rather than current requirement to prove intention of circumvention by provider

NEW APPROACH TO CIRCUMVENTION

- The new law will make it easier for the Member State to trigger the circumvention procedure, as new evidence provided will no longer need to prove the media service provider's intention to circumvent
- Member States only need to have circumvention reasonably established
- European Commission will also have to request an opinion by European Regulators Group for Audiovisual Media Services (ERGA)
- New provisions allow for the European Commission to go back (within 1 month) to the allegedly infringing Member State if further information required



Legal Reference

Recitals: p.8, Article p.39-41



Association of Commercial
Television in Europe EEIG

COMMERCIAL COMMS (1/2)



HIGHLIGHTS

- Greater flexibility on quantitative limits, from 12' per hour to two window system
- Liberalisation of self and cross-promotional announcements
- New rules to protect broadcasters' signal integrity

QUALITATIVE COMMERCIAL COMMUNICATIONS | SPONSORSHIP

Qualitative commercial communications (Art 9)

- All forms of AV commercial communications now prohibited for electronic cigarettes and refill containers
- Alcohol provisions applicable to on-demand services, excluding sponsorship and product placement
- Member States encouraged to use co-regulation and foster self-regulation through codes of conduct on HFSS (high fat, sugar, salt) products
- Codes shall aim to effectively reduce exposure of "children" rather than "minors" (broader scope)
- Fostering self-regulation is encouraged through a new concept of "Union codes of conduct" referred to in newly added Art 4a on self-regulation

Sponsorship (Art 10)

- New prohibition of sponsorship by electronic cigarettes and refill containers manufacturers
- Member States allowed to prohibit sponsorship of children's programmes altogether whereas before a simple sponsorship logo was the prescribed approach



Legal Reference

Recitals: p.13, 20, Article(s): p.48-51



Association of Commercial
Television in Europe EEIG

COMMERCIAL COMMS (2/2)



HIGHLIGHTS

- Greater flexibility on quantitative limits, from 12' per hour to two windows
- Liberalisation of self and cross promotional announcements
- New article on signal integrity

PRODUCT PLACEMENT | SPOTS | INTERRUPTION RULES | QUANTITATIVE LIMITS | PROMOTION

Product placement (Art 11)

- Product placement allowed in all programmes excluding news and current affairs, consumer affairs, religious and children's programmes
- Banned products list expanded only with electronic cigarettes and refill containers

Isolated spots (Art 19.1) & Interruption rules (Art 20.2)

- No change. Teleshopping ban in children's programmes added.

Quantitative limits (Art 23.1)

- From 20% hourly limit to a two window system. Advertising and teleshopping spots not to exceed 20% of respective windows. First window 6.00 -18.00 and second 18.00 – 00.00. No limit between 00.00 and 6.00.

Self and Cross-promotion (Art 23.2)

- Not counted towards advertising time: promotion of own VOD services, sponsorship announcements, product placements and neutral spots e.g. black spots between advertising/teleshopping spots and editorial content



Legal Reference

Recitals: p.15, 16, Article(s): p.51, 52, 59, 61



Association of Commercial
Television in Europe EEIG

PROMOTION OF EU WORKS (1/2)¹⁰



HIGHLIGHTS

- Higher quotas for on demand services
- Obligatory prominence of European works

QUOTAS | PROMINENCE

Quotas (Art 13.1)

- Stricter: 30% of video on-demand services catalogues will need to be dedicated to European works

Prominence (Art 13.1)

- Video on-demand services need to ensure prominence of European works in video on-demand catalogues
- Several suggestions on prominence put forward: labelling in metadata of AV content that qualifies as a European work, dedicated section for European works in the catalogue, use of European works in campaigns and/or use of banners and similar tools



Legal Reference

Recitals: p.17, Article(s): p.52



Association of Commercial
Television in Europe EEIG

PROMOTION OF EU WORKS (2/2)¹¹



HIGHLIGHTS

- Member States given option to impose financial obligations on audiovisual media service providers targeting their national audiences
- Exemptions for certain types of providers to apply

LEVIES

Levies (Art 13.2)

- Member States may impose levies on on-demand or/and linear services established outside their jurisdiction when these target their national audiences
- This can only be required where a Member State requires the same financial contribution from providers under their jurisdiction
- AVMS providers required to contribute to film funding schemes in a targeted country should be able to benefit in the same way as domestic players from the aid available under film funding schemes
- Where a financial obligation is imposed on a broadcaster, Member States shall consider direct contributions made to production and rights in European works held by the broadcaster
- Obligatory exemptions for low turnover/low audience providers in relation to quotas and levies
- Member State discretion on exempting thematic and specific nature providers from quotas and levies obligations



Legal Reference

Recitals: p.18, 19, Article(s): p.53



Association of Commercial
Television in Europe EEIG

VIDEO SHARING PLATFORMS



HIGHLIGHTS

- Scope enlarged to VSPs & social media services added (in certain cases)
- Some layer of regulation (linked to Article 9.1. – qualitative commercial communications)
- Member States may impose measures that are stricter or more detailed on video sharing platforms.

NEW PROVISIONS APPLYING TO VSPs

- VSPs to protect minors from programmes, UGC and commercial communications that may impair their physical, mental or moral development
- When commercial communications ARE marketed, sold or arranged by VSP providers, Member States need to ensure that VSP providers under their jurisdiction comply with the requirements set out in Article 9(1). Where NOT marketed, sold or arranged by VSP providers, Member States ensure that VSP providers under their jurisdiction take appropriate measures to comply
- On HFSS commercial communications on VSPs, Member States should encourage the use of co-regulation and self-regulation
- Measures to apply on VSPs to be practicable and proportionate, taking into account the size of the VSP and the nature of the service provided
- Measures should not lead to any ex-ante control measures or upload-filtering of content
- Personal data of minors collected/generated by VSPs cannot be processed for commercial purposes e.g. direct marketing, profiling, behaviourally targeted advertising



Legal Reference

Recitals: 5, 6, 19, 20-22, 25, Article(s): p.29, 30, 64-68



Association of Commercial
Television in Europe EEIG

ACCESSIBILITY SERVICES



HIGHLIGHTS

- Provisions have been enlarged, however without hard targets or strict deadlines

TOWARDS MORE ACCESSIBILITY

- So far accessible services needed to be only “gradually accessible”. Still Member States without hard targets will need to ensure “without undue delay”, that services provided by media service providers under their jurisdiction are made “continuously and progressively” more accessible to people with disabilities through “proportionate measures”
- Member States to ensure that AVMS providers report on a regular basis to national regulatory authorities on implementation of required measures
- AVMS providers encouraged to develop accessibility action plans
- Emergency information, public communications and announcements in natural disaster situations to be provided in a manner accessible to persons with disabilities



Legal Reference

Recitals: p.11, 12, Article(s): p.46



Association of Commercial
Television in Europe EEIG

SIGNAL INTEGRITY



HIGHLIGHTS

- Member States may take appropriate and proportionate measures to ensure audiovisual media service providers are not overlaid for commercial purposes or modified without the explicit consent of audiovisual media service providers

A NEW PROVISION TO PROTECT BROADCASTERS' SIGNAL

Exact wording in the new Directive is as follows:

- Member States shall take appropriate and proportionate measures to ensure that audiovisual media services provided by media service providers are not overlaid for commercial purposes or modified without the explicit consent of those providers
- In this context Member States shall specify the regulatory details including exceptions notably in relation to safeguarding the legitimate interests of users whilst taking into account the legitimate interests of the media service providers that originally provided the audiovisual media services

Not included in the above provisions: control elements such as volume bars, search functions, navigation menus, lists of channels, warning information, public interest information, subtitles or commercial communications overlays provided by the AV media service provider.



Legal Reference

Recitals (s): p.14, Article(s): p.47



Association of Commercial
Television in Europe EEIG

SELF & CO-REGULATION



HIGHLIGHTS

- Member States encouraged to use co-regulation and foster self-regulation through codes of conduct adopted at national level in the fields coordinated by the Directive
- New concept of “union codes” to be developed jointly by industry representatives, consumer organisations and facilitated by the European Commission

NEW SELF-REGULATION MEASURES

- New article encourages Member States to use co and self-regulation through codes of conduct adopted at national level. These should be broadly accepted by the main stakeholders, have clearly set objectives, provide for transparent and independent monitoring and provide for effective enforcement and proportionate sanctions.
- In case of self-regulation, the European Commission together with Member States will have a possibility to facilitate “Union codes of conducts” which shall be without prejudice to the national codes of conduct.
- Union codes will be drawn up by media service providers, VSP providers in cooperation with others sectors as well as consumer organisations
- European Commission will also make these Codes publicly available



Legal Reference

Recitals: p.8, 9, Article(s): p.42, 43



Association of Commercial
Television in Europe EEIG

INFORMATION SOURCES (1/2)

ACT
ABOUT US

ACT represents the interests of leading commercial broadcasters in Europe.

The ACT team is the voice of television in European policy-making; advocating for policies that support the broadcasting sector's ongoing contribution to Europe's economy, society and cultures.

Learn more about us on www.acte.be

USEFUL CONTACTS & REFERENCES

KEY CONTACTS

ACT Team

- Grégoire Polad, Director General, gp@acte.be
- Masa Lampret, Communications and EU Affairs Manager, ml@acte.be
- Agnieszka Horak, Director of Legal and Public Affairs, ah@acte.be

European Commission

- <https://ec.europa.eu/digital-single-market/en/audiovisual-media-services-directive-avmsd>

ERGA - European Regulators Group for Audiovisual Media Services

- <http://erga-online.eu/>

EPRA - European platform of regulatory authorities

- <https://www.epra.org/>

European Audiovisual Observatory

- <https://www.obs.coe.int>

Academy of European Law

- Mark.Cole@uni.lu

KEY DOCUMENTS

European Commission

- PROPOSAL: European Commission [Proposal](#)
- IMPACT ASSESSMENT: European Commission [Impact Assessment](#)
- FINAL TEXT: outcome of trilogue negotiations [Consolidated text](#)

Studies

- ACT PORTAL: All documents AVMSD related for ACT Members - [click here](#)

Association of Commercial Television in Europe EEIG

INFORMATION SOURCES (2/2)

ACT
ABOUT US

ACT represents the interests of leading commercial broadcasters in Europe.

The ACT team is the voice of television in European policy-making; advocating for policies that support the broadcasting sector's ongoing contribution to Europe's economy, society and cultures.

Learn more about us on www.acte.be

KEY PLAYERS IN PARLIAMENT DISCUSSION

COMMITTEE	CULT	JURI	IMCO	LIBE	ENVI
ROLE	Lead	Opinion	Opinion	Opinion	Opinion
(co)Rapporteurs / Opinion makers	P. Kammerevert (S&D, DE) & S. Verheyen (EPP, DE)	D. Buda (EPP, RO)	E. McClarkin (ECR, UK)	A.Mlinar (ALDE, AT)	H. Dorfmann (EPP, IT)
Shadow	A. Lewer (ECR, UK)	A. Dzhambazki (ECR, BG)	A. Hedh (S&D, SE)	T. Ungureanu (EPP, RO)	D. Sarbu (S&D, RO)
Shadow	Y. Toom (ALDE, EE)	J. M. Cavada (ALDE, FR)	M. Lokkegaard (ALDE, DK)	E. Pavel (S&D, RO)	F. Ries (ALDE, BE)
Shadow	I. Adinolfi (EFDD, IT)	M. Delvaux (S&D, LU)	D. de JONG (GUE, NL)	C. Ernst (GUE, DE)	M. Auken (Greens, DK)
Shadow	C. Maltese (GUE, IT)	M. Andersson (Greens, SE)	J. Reda (Greens, DE)		
Shadow	D. Bilde (ENF, FR)				

RTL
GROUP

TF1
sky
itv
MEDIASET
CANAL+
GRUPE

tv
ENTV
E
nordic
multimedia group

ATRESMEDIA
S
scripps networks
CONNECTIVE

SBS
AMC NETWORKS
INTERNATIONAL

MEDIALAAN
BONNIER
Broadcasting

Digiturk
MEDIASET
españa.

CVE
VIACOM
INTERNATIONAL
MEDIA NETWORKS

A+E
NETWORKS

NBCUniversal
s a n o m a
ANTENNA
GROUP

FOX
NETWORKS GROUP

bein SPORTS
Lagardère
ACTIVE

Discovery
ACT

Association of Commercial
Television in Europe EEIG