

The UK role in EU policy-making. Alison Harcourt, University of Exeter. UK in a Changing Europe project.

The UK has exerted substantial input into the formulation of EU communications policies to date with a noticeable pro-market approach, which has often countered more protectionist measures from other key Member States. This UK discourse was noticeable from early on beginning its input to the formulation of the 1989 [Television Without Frontiers Directive](#) (TWF) and its [1997 revision](#). The UK successfully lobbied for a redefinition of the country of origin principle to a company's place of operation in the revision of the 1997 TWF Directive. This arose out of a discrepancy over the definition of the EC's 'country of origin' principle. The country of origin principle, which originated in the 1979 [Cassis de Dijon case](#), determines where a company is regulated. Based on this principle, a service provided in one country, but received in another, must be regulated in the country where it originates. TWF was one of the first Directives into which the principle was integrated along with the, [SatCab](#), [E-commerce](#) and banking and insurance Directives. Prior to 1997, the UK viewed 'origin' as the location of the company operating satellite channels. However, the European Union viewed 'origin' as referring to the [physical origin of signals](#), namely, the country where satellite transmitters were located determined regulatory jurisdiction. Many satellite packages were broadcast from the Luxembourg registered satellite, Astra, even though companies were located in different Member States. This meant that Luxembourg was originally considered to be the regulatory base for companies such as BSkyB under European law.

A change to the definition of the country of origin was promoted by an [alliance between UK government representatives](#) and the UK's Satellite and Cable Broadcasters' Group (SCBG). This new definition sat well with the European Commission's agenda that favoured a one-stop-shop for regulation of satellite broadcasting in Europe. Article 2 of the 1997 *Television Without Frontiers Act* was amended to include Paragraph 3 (a) which stated that a Member State has jurisdiction over a broadcaster if:

- (a) "the broadcaster has its head office in that Member State and the editorial decisions about programme schedules are taken in that Member State;
- (b) if a broadcaster has its head office in one Member State but editorial decisions on programme schedules are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the television broadcasting activity operates; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in each of those Member States, the broadcaster shall be deemed to be established in the Member State where it has its head office; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in neither of those Member States, the broadcaster shall be deemed to be established in the Member State where it first began broadcasting in accordance with the system of law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;
- (c) if a broadcaster has its head office in a Member State but decisions on programme schedules are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a

significant part of the workforce involved in the pursuit of the television broadcasting activity operates in that Member State”.

TVWF was replaced by the Audio-visual Media Services Directive (AVMSD) in 2010. There was no change to the country of origin definition. During the proposal stage, the UK supported the loosening of advertising rules including the [introduction of product placement](#). However, it opposed other proposals such as extending existing restrictions on broadcasting, e.g. the right of reply, from traditional broadcast television to 'non-linear' audio-visual services (including the internet). The inclusion of Right of Reply in Article 23 (1) of the 1997 Directive for linear services was [not supported by the UK](#) but strongly supported by most Member States. This set precedence for the UK's objection to extend TWF provisions to new services under AVMSD an exemption which achieved under AVMSD. Another key lobbying success for the UK was to restrict on-demand services in cases of protection of minors, the protection of public health, public security, and consumer protection where the UK supported a higher level of regulation. Generally, the UK has had a higher level of consumer protection for linear cross-border services. For example, the [UK mandates subtitling, signing or audio description for linear cross-border services](#) which has high take-up across Europe.

When [AVMSD was agreed in 2010](#), it extended the country of origin principle to 'non-linear audio-visual media services' such as on-demand downloading of films and other programming via satellite, broadband and the internet. Under Article 4 of the AVMSD, any disputes must seek a “mutually satisfactory solution”. This incorporated the UK's approach for a one-stop-shop for complaints. OFCOM subsequently issued [guidelines for dealing with complaints](#) from other EU Member States for groups located in the UK. However, since the Directive's implementation, the UK has experienced [different interpretations of AVMSD](#) namely Articles 56 and 57 (economic service), Article 1(1) (editorial responsibility) and Recital 25 (effective control) than other member states, which has consequences for the [Directive's current revision](#).

The UK has maintained a strong voice in related policy areas. For example, the UK has long opted for retention of subsidiarity for media markets under which Member States can implement additional measures. Under subsidiarity, Member States can apply lowered thresholds and public-interest tests in national competition decisions on media mergers and acquisitions under Article 21 (4) of the EU Merger Regulation. The UK is the only EU Member State to have enacted this rule to date. When the European Commission approved News Corporation's bid to takeover BSkyB in December 2010, the then Business Secretary, Vince Cable, initiated further scrutiny by OFCOM under grounds of 'media plurality'¹. The EU has sometimes suggested the removal of this rule so that decisions on media markets are made exclusively at the European level. In its review of AVMSD, the European Commission is [interpreting subsidiarity](#) in a slightly different way in relation to reception of cross-border services.

A number of other UK-led initiatives have been adopted at the European level such as the introduction of a Public Value test for public service broadcasting, market-led

¹ The takeover was abandoned in July 2011.

solutions for broadband delivery and spectrum-trading. The UK-led introduction of a Public Value test for public service broadcasting was adopted by the European Commission in a [2009 Communication](#). The [EU has promoted](#) OFCOM's model of [spectrum sharing](#) (rather than licensing and trading) and the utilisation of white spaces resulting in more efficient spectrum management avoiding the pitfalls the US has faced (e.g. financial compensation for frequency loss). Via the EU, the UK also has access to the EU's salient role in spectrum policy agreements at international levels (ITU, WRC) and EU (CEPT) coordination bodies along with EU Directives and standards cooperation (GSM, DVB-T) which is important for both traditional and new service markets (i.e. via the internet and mobile communications). The UK has a salient voice within self-regulatory fora coordinated by the European Commission such as the Body of European Regulators of Electronic Communications ([BEREC](#)) and the European Regulators Group for Audio-visual Media Services ([ERGA](#)). The UK's approach based on market liberalisation and self-regulation, has long been influential in EU communications regulation.