

# EU Legal Framework for Services

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# Agenda

— [ The objectives of the EU

— [ The four Freedoms of the Internal Market

— [ Information Society Services

— [ The Services Directive

— [ Regulating audiovisual services in an converging environment

# The objectives of the EU

— [ Common market and an economic and monetary union

— [ High degree of competitiveness

— [ Sustainable economic development

— [ High level of employment and of social protection

— [ Equality between men and women

— [ Improvement of the quality of the environment

— [ Raising the standard of living and quality of life

— [ Economic and social cohesion

— [ High level of consumer protection

# Internal Market

- [ The four freedoms of the treaty

- Goods, services, people and capital

- Restrictions in principle prohibited

- Overriding reasons of general interest may justify restrictions

- e.g prevention of crime, public moral or public order, consumer protection, protection good commercial practices provided that the restrictions are proportionate and non-discriminatory

- The provisions of free movements have direct effect

# Harmonization of laws

— [ Article 3 of the Treaty emphasizes the approximation of the laws of the Member States to the extent required for the functioning of the Common Market.

— [ The mutual recognition principle guarantees free movement of goods and services without the need to harmonize Member States' national legislation. Goods which are lawfully produced in one Member State cannot be banned from sale on the territory of another Member State, even if they are produced to technical or quality specifications different from those applied to its own products. The same applies (in principle) to services. Most often mr-principle is connected to harmonization measures.

# Internal Market - The Treaty

— [ non-discrimination: the restriction may be neither directly or indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established

— [ proportionality: the restriction must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain the objective

# Definition of Service - The Treaty

- [ The Treaty defines services as an economic activity

- Provided for remuneration

- Services shall in particular include

- activities of an industrial character

- activities of a commercial character

- activities of craftsmen

- activities of the professions

- in so far they are not governed by the provisions relating to freedom to movement for goods, capital and persons

# Different types of Services

— [ Non-economic services of public interest

— [ Economic services of public interest

— [ Information society services

— [ Electronic communication services

— [ Audiovisual services

— [ Financial services

— [ Gambling services ect.



# Information Society Services

— [ ISS means any service that is

— normally provided for remuneration

— at a distance

— by electronic means

— at the individual request of the recipient of the service

# Information society services

- [ Internal market rules for ISSs are included in The Electronic Commerce directive (2000)

- [ The country of origin principle

- Legal requirements of ISSs are set by the country of the establishment of the service provider which also alone is responsible for supervising the services provided

- The country of establishment is in the country where the economic activity is practiced for an unlimited period of time (Virtual presence is irrelevant)

# Information Society Services

— [ Only one country of establishment in the ETA area and one legal framework to be applied for cross-border ISSs.

— [ The receiving country can restrict cross-border supply within the ETA area only if the restrictions are based on overriding reasons of public interest (public moral, public order, public health and consumer protection)

— [ In addition the restricting country has to follow certain procedural requirements which causes delays and makes the restricting rather complicated.

# Information Society Services

- [ The country of origin rule is not applied to the choice of law between private contracting parties
- [ It is only applied within the ETA area
- [ E.g gambling services are excluded from the scope of Electronic Commerce Directive
- [ The country of origin rule is also applied to gross-border television broadcasts within the ETA-area.

# The history of the Services Directive

— [ On 2004 the Commission published the Proposition for Services Directive (SD)

— [ It was also called the “Bolkestein” directive after Frits Bolkestein the Internal Market Commissioner at the time

— [ The proposition for SD proved controversial from the very beginning. The critics argued that it was exclusively based on “Internal Market” project and competition policy and that it would merely encourage social and ecological dumping.

100.000 people marching in Brussels against the Bolkestein Directive



# The history of the Services Directive

— [ The proposition was based on the country of origin principle.

— It requires member states not to impose an obligation on the provider to comply with requirements relating to the exercise of a service activity applicable in their territory. It was unclear whether the passage also applied to labour law and collective agreements.

— The critics claimed that this would lead to the incentive for service providers to select the most liberal member state as their place of establishment. Competition between systems would de facto convert European minimum standards to maximum standards without any further political intervention being necessary.

# The history of the Services Directive

— [ Excluded sectors of the proposed SD

— Postal services, electricity, gas, water distribution services but also services relating to public security, protection of public health or the environment.

— [ Posting of workers included to the country of origin rule. The obligation to make the declaration to the authorities also prohibited .

— [ Supervising in the country of establishment.



# The history of the Services Directive

- gambling services (proposition for the SD included transition period for the gambling services)
- audiovisual services and broadcasting
- Labour law not clearly excluded. So the relevant rules on working time, minimum wages, holidays and the right to strike, will be those in force in the country where the service is being provided.

[ Any requirements/restrictions must be based on public policy, public security, public health and the protection of the environment. Restrictions must be non-discriminative and proportionate.

[ Each country must provide a "one-stop-shop" for foreign companies, which will deal with all the formalities - instead of obliging them to deal with different authorities at national, regional and local level.

# The history of the Services Directive

## The outcome

- The SD was finally accepted on December 2006. The Member States must comply with the directive before 28.12.2009.
- The country of origin rule was dropped out from the directive
- Many application areas were left outside of the scope of the directive
  - services of temporary work agencies
  - all healthcare services, social services related to social housing, childcare and support of families and persons provided by state or by charities

# Audiovisual services

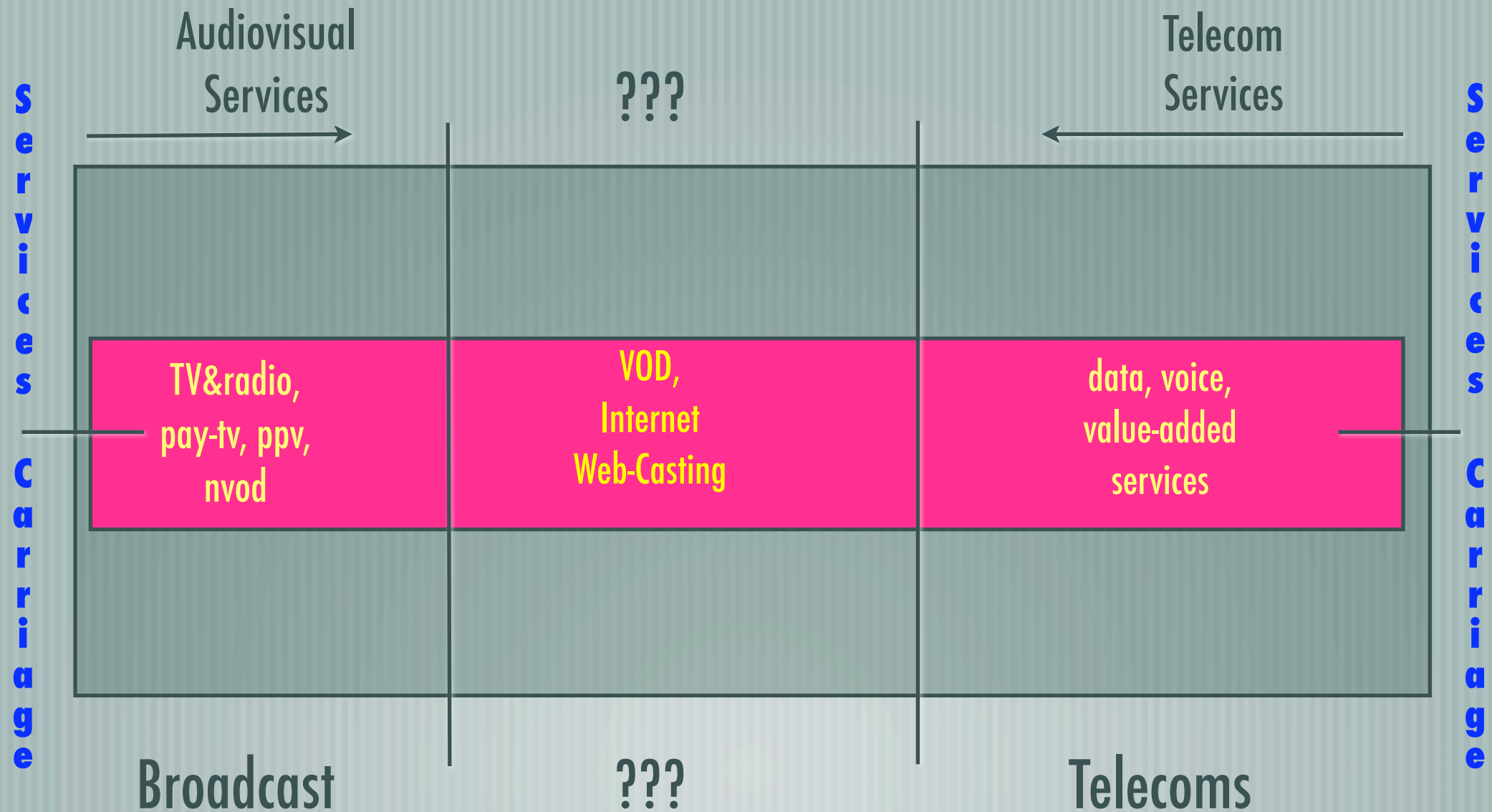
## Analogue

- 1 Network = 1 service
- Limited content delivery/channel scarcity
- High social impact of mass broadcasting
- No/low user control and interactivity

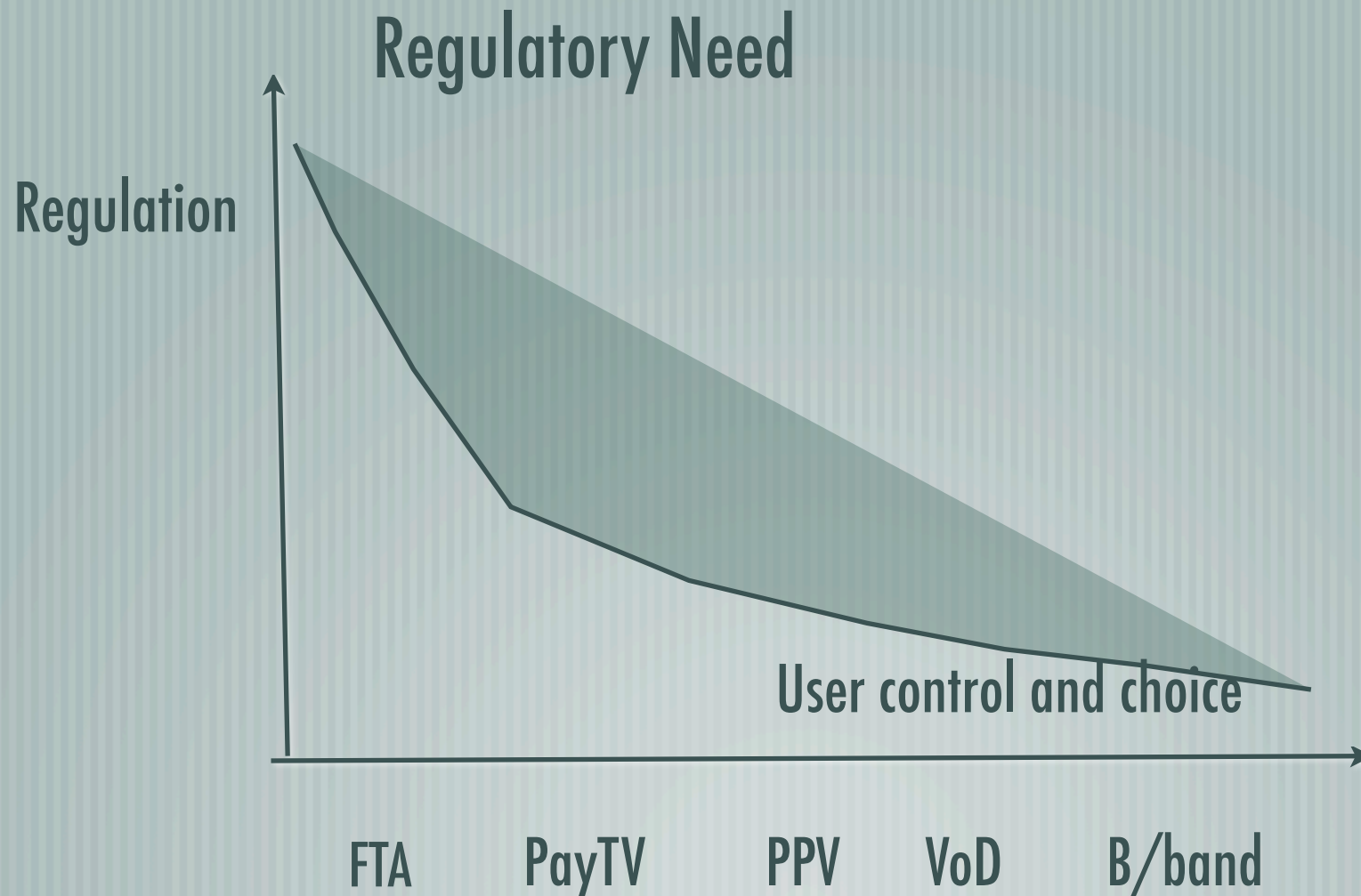
## Digital

- 1 Network = many services
- Abundant delivery capacity/channel proliferation
- Wide choice of content providers
- Higher user control, full interactivity

# Audiovisual - Convergence



# Content Regulation



# The transmission/content Interface

- [ Separate regulatory approaches for transmission and content

- [ Electronic communications - the concept

- Network = any system sending signals

- Service = transmission and routing signals

- [ Excludes services providing, or exercising editorial control over, content

# Regulatory principles for transmission and content

— [ Transmission: regulation to be removed once competition is effective

— [ Content: balancing economic and public interest objectives

— protection of minors and human dignity

— consumer protection

— cultural diversity/media pluralism

# AVMSD Directive 2007/65/EC

— [ Accepted 19.12.2007. Member States must comply by 19.12.2009

— [ Country of origin principle

— [ Freedom of expression - EU Charter of Fundamental Rights and European Convention on Human Rights

— [ AVMS Directive - Freedom of reception and no restrictions to retransmission

— [ Restrictions only in case of serious violations of fundamental values



# Definition of audiovisual media services

- [ Services as defined by the Treaty
- [ Principal purpose of which is delivery of moving images with/without sound
- [ To the general public by electronic networks
- [ Not covered
  - Private correspondence
  - non-economic activities
  - AV content only ancillary

# Linear and non-linear av-services

— [ Services regulated according to the type of service: linear (push) and non-linear (pull, on-demand)

— [ Network operators acting as AV-media content providers subject to same rules as traditional content providers

# Basic regulation for all AV services

— [ Basic light touch regulation for all AV services

— Identification of responsible editor

— Protection of minors/human dignity

— Cultural diversity

— Identification and basic qualitative rules for commercial communication

# Regulation for linear AV services

— [ The regulation remains almost unchanged

— Promotion (quotas) of European works

— Events of major importance (such as Olympic Games or Football World Cup) are not allowed to be broadcasted only by pay-channels

— Advertising, teleshopping, sponsoring, product placement

# Regulation of linear AV services

## — [ Advertising

- Placement and duration of advertising spots
- No advertising for tobacco products
- Restrictions for alcohol advertising
- Advertising of medical products under prescription prohibited