



# Cable Europe

Brussels, 2 October 2018

***Letter to the Deputy Permanent Representatives ahead of the next COREPER I meeting on the Broadcasting/SatCab Regulation***

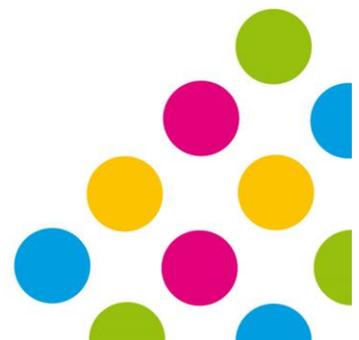
Dear Ambassador,

In view of the ongoing trilogue negotiations on the Broadcasting/ Sat Cab regulation<sup>i</sup>, Cable Europe remains convinced that direct injection is a complex issue that needs further in-depth assessment, and that it is counter-productive to capture a “one-size fits all” solution in a EU instrument (a regulation or a directive).

It is important to reiterate that despite the presidency’s efforts to find a suitable wording for direct injection, these should not replace a formal and neutral impact assessment. Cable Europe has repeatedly recalled the importance of conducting an impact assessment on this very complex matter as part of the inter-institutional agreement on better-law making. This is particularly so, given the impact that EU rules on direct injection could have on more than five thousand cable operators in the EU (the majority of which are very small companies).

We appreciate that the Austrian Presidency is trying to find a workable solution to make progress in the negotiations. However, as we have repeatedly stated, direct injection raises many questions:

- One of the options considered is to distinguish between different types of directly injected channels. In this situation, it will be difficult for cable operators (the majority of which are SMEs) to know if a channel is “simultaneously” transmitted via direct injection from another Member State or if the channel is “only” transmitted via direct injection (‘pure direct injection’). What happens to the legal and financial copyright arrangements negotiated by a cable operator in a pure direct injection context when, at a later stage, the broadcaster decides to transmit the same channel “simultaneously” (for example, by satellite)?



- Similarly, it is unclear what happens where a broadcaster transmits a channel – by pure direct injection (i.e. without the broadcasters themselves also directly transmitting their programmes to the public) - to a large number of distributors in a Member State. What does this mean for the practicalities of “obtaining authorisation” for an act of communication? Different signal distributors will be seeking authorisations. This may work when there is a handful of signal distributors but it is impractical when there are hundreds of signal distributors, many of which small in size.

- Any provision on direct injection should consider the logical relationships between the different actors of the audio-visual value chain. The broadcasters acquire or produce content and have the editorial responsibility for the various TV programmes they convey to signal distributors. They are therefore the best placed to know which content is subject to copyright, i.e. they are sitting on the front row. In case a new provision on direct injection is added to a regulation or a directive, broadcasters should be responsible for obtaining authorisation for this act of communication. Once the authorisation is obtained, they can transmit the content all rights included to the signal distributors based on commercial negotiations related to the audio-visual content.

We hope that Cable Europe’s concerns will be considered by COREPER for the trilogue negotiations.

Yours sincerely,

Cable Europe

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<sup>i</sup> Proposal for a regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programme