



Institut für Europäisches Medienrecht
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AVMSD – Common Framework for Ensuring Fundamental Principles within the EU

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Introduction: “Law”, “Enforcement”, “Online”

The Framework of the AVMSD

Exceptions to the Free Flow of Content

Problems and Possibilities in Enforcing Online

The Framework of the AVMSD - Recap



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Fundamental Values

- Human Dignity (although currently not very prominent)
- Prohibition of incitement
- Protection of Minors
- Consumer Protection (e.g. commercial communication)

Procedures ?

Monitoring / Enforcement?

- = national transposition
- but requirement as to what has to be guaranteed

Reminder: starting and fundamental point is country of origin-principle

→ in principle: free flow of information / content

Exceptions in case of deviation from “enforcement-expectation” (cross-border)

→ for areas not coordinated by the Directive

→ Procedure under Art. 3 AVMSD:

→ derogation possible by M.S.

→ idea of dealing with temporary problems of existing providers established elsewhere

→ Procedure under Art. 4 AVMSD:

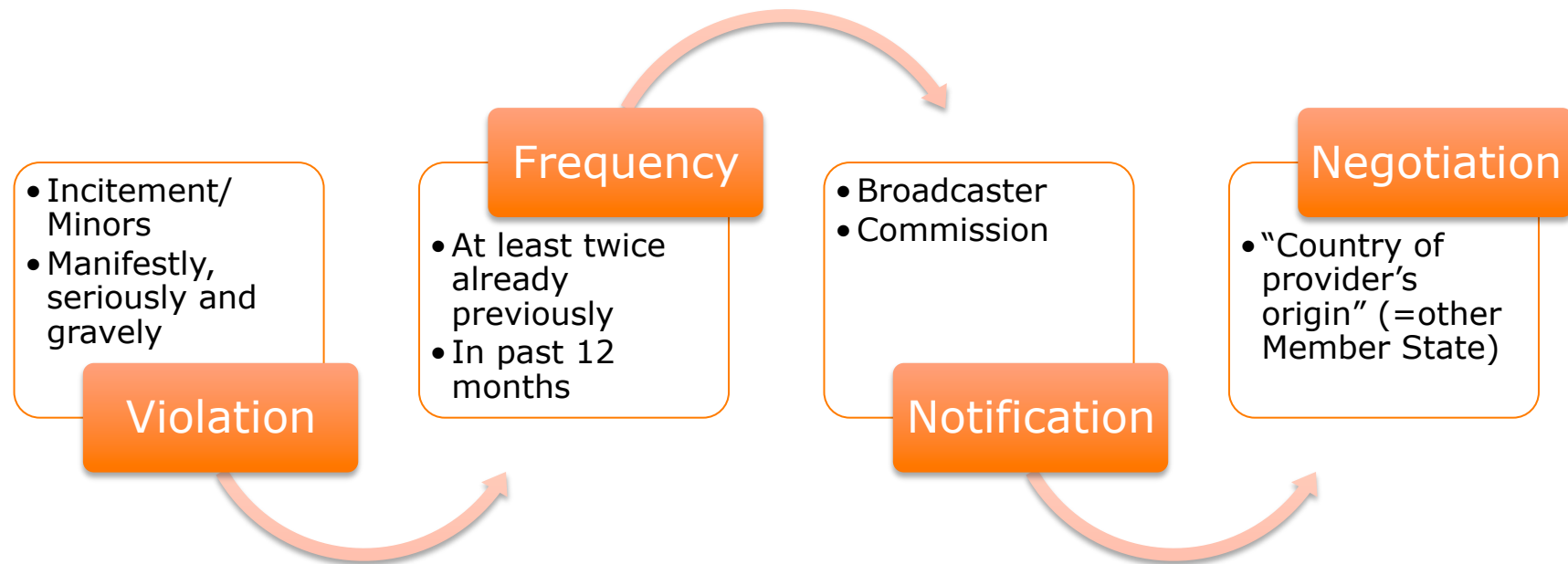
→ “re-nationalisation” in case of circumvention

→ idea of dealing with permanent problem due to “abusive” use of COO

Derogation under Art. 3 (linear service)



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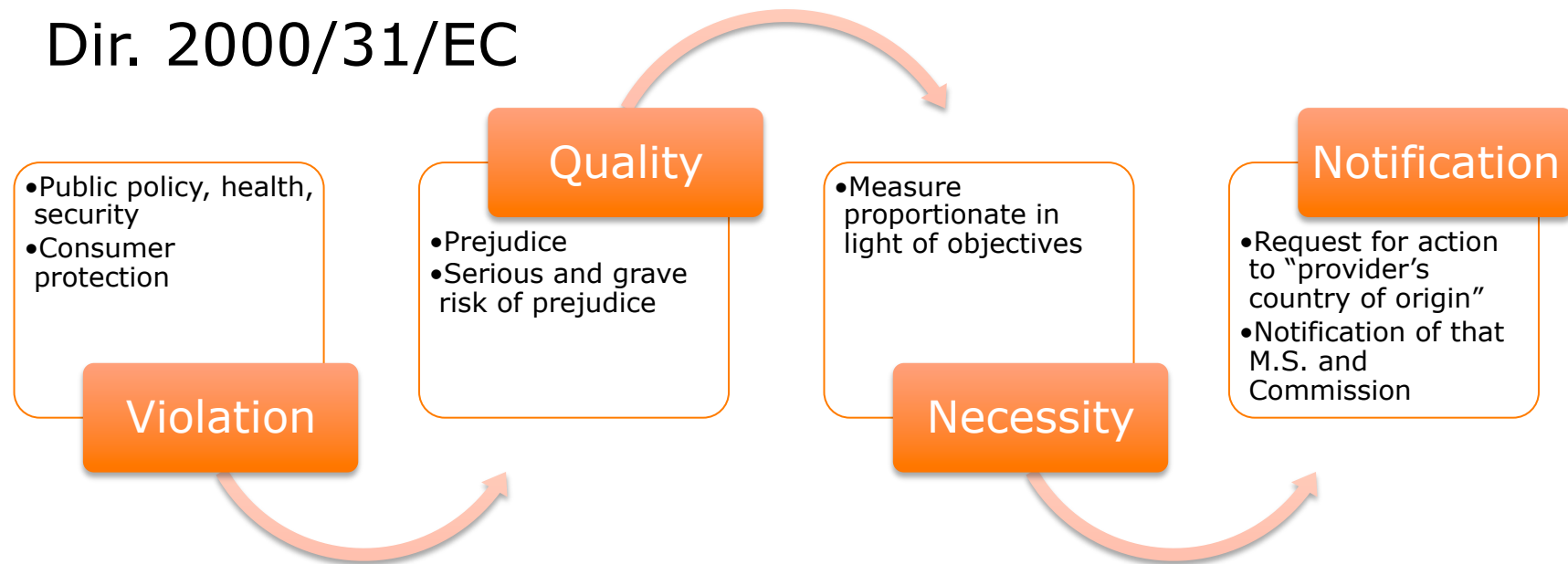
- Followed by a review process to be undertaken by Commission within 2 months on EU law compatibility

Derogation under Art. 3 (non-linear service)



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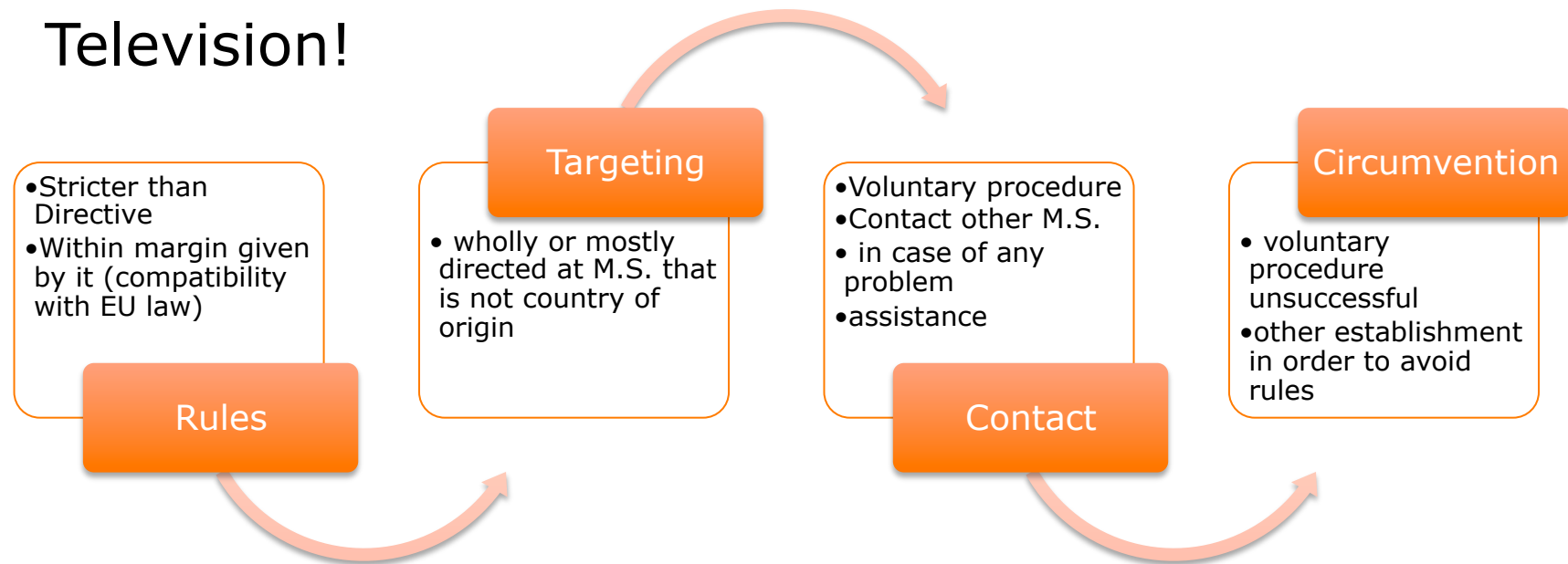
- Urgency mechanism (minus step 4, but ex-post notification)
- Followed by a review process to be undertaken by Commission within shortest possible time on EU law compatibility

Anti-Circumvention measures under Art. 4



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Television!



- Measures chosen must be objectively necessary applied in a non-discriminatory manner proportionate to the objectives
- Previous notification of Commission / M.S. *and* ex-ante compatibility decision within 3 months

Competence of NRA (or other authority)?

Scope of AVMSD in online-context

Established “culture” of supervision

Complexity and duration of procedures

E-Commerce Directive

- AVMSD prevails in conflict (but: Recital 25)
- Notion of limited liability

Duty to Act for M.S.? / Public International Law

Possible layers/addresses of measures

- Creators/user-generators
- Platforms / disseminators
- Consumer (viewer)

Who to target?

- E.g.: using margin when deciding about whether covered by scope of AVMSD
- E.g.: (video sharing) platform or channel „producer“

Transnational Dimension

- Possibility of enforcing across borders (assistance needed)
- Involving platforms in efforts
 - Not uncommon to establish efficient safety measures e.g. in product safety compliance on certain types of platforms
 - Enforcement is not only sanctioning

Under current framework 2 ways

- Act and “test the limits”
- Cooperation amongst NRAs
 - Not necessarily a full harmonization in approach nor delegation to EU level
 - But use of existing fora to create “community standards” (community being the NRAs) defining certain minimum level of action to which all can agree and then activate more speedily

Why should one do so?

- Signal to providers about (at least) EU-wide approach and expectation
- Only trying and starting will make a change



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