

AUDIOVISUAL POLICY OF THE EUROPEAN UNION

Introduction

In 2007 there were 5300 transnational, national and local TV channels in the EU. The sector brought 105 billion € net revenues, including 72 billion € from TV/broadcasting and 33 billion € from retail (cinema, DVD). This helps explain why the EU takes considerable interest in the audiovisual sector.

However, during the first 25 years of its existence, the European Community did not develop a comprehensive and integrated media or audiovisual policy. It was only in the 1980s – when satellite television introduced a transnational dimension into television activities and, with demonopolization and the emergence of commercial television, the sector gained in economic importance – that the Community began to create a system of audiovisual policy and regulation. The purpose was to create a genuine European audiovisual area and to implement a strategy for strengthening European audiovisual production industries.

At that time, the European Community did not have any Treaty-based competence in the field of culture or the media. When the 1992 Treaty of European Union was adopted, it included Article 128, the so-called “culture article” (later retained in the same wording as Article 151 in the Treaty of Amsterdam, and then as Article 167 in the Treaty of Lisbon). It contains in paragraph 2 the only mention of the audiovisual media in the Treaty: “Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas (...) artistic and literary creation, including in the audiovisual sector” (emphasis added – KJ). And though, under paragraph 4, the Union is to “take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures”, any harmonisation of the laws and regulations of the Member States in the cultural field is excluded: the European Parliament and the Council may, acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, “adopt incentive measures” and the Council may, on a proposal from the Commission, “adopt recommendations”.

However, already in 1974, the European Court of Justice ruled in the *Italian State v Sacchi* case, that in the absence of a provision to the contrary in the Treaty, the transmission of television signals, including advertisements, and cable television signals had to be treated as the provision of a service.

That opened the door for the European Commission’s (1984: 6) argument that the Treaty applies not only to economic activities but, as a rule, also to “all activities carried out for remuneration, regardless of whether they take place in the economic, social, cultural (including in particular, information, creative or artistic activities and entertainment) sporting or any other sphere”. The 1984 Green Paper on the Establishment of the Common Market for Broadcasting, Especially by Satellite and Cable stated that the competences of the European Community in the field of broadcasting derived from the provisions of the EEC-Treaty aimed at establishing a Common Market. This included the basic principles of freedom of the circulation of goods

(Article 30), services (Articles 59-66), capital and workers (Article 48). The realisation of the common market also implied the application of the principles of free competition (Articles 85 to 93). In this way, the Commission subsumed culture under the economic provisions of the Treaty and especially of Article 59, thus claiming competence to regulate broadcasting questions, even in the absence of an explicit remit. The media have always been considered in the European Community primarily in terms of their contribution to economic growth and competitiveness (European Commission, 1993) .

Years later, Commissioner Viviane Reding, responsible for the Information Society and Media sector, confirmed that this was indeed the EU approach to audiovisual policy:

Under the Treaties, the Community has no independent mandate to shape the area of the media. Rather, the legal bases are "horizontal," in other words they are designed to achieve general objectives of the Community, especially the completion of the internal market [...] the basic idea in the Treaty [is] that the Community is primarily responsible for providing the legal framework needed to achieve full freedom of movement in the internal market. [...]. Community regulation of content is therefore particularly subject to the requirement of proportionality. It must regulate those matters that are necessary for the completion of the internal market, but may not regulate anything else (Reding, 2002: 7).

This approach was further reaffirmed when Commissioner Reding launched a new strategic framework, "i2010 – European Information Society 2010", promoting an open and competitive digital economy and emphasizing information and communication technologies as a driver of inclusion and quality of life. It was to "build towards an integrated approach to information society and audio-visual media policies in the EU" (European Commission, 2005a: 3).

A 32-page inventory for September 2008 of measures and policies affecting the media undertaken by various parts of the European Commission (Media Task Force, 2008), covers the following areas: audiovisual - TV, film/cinema; TV & radio broadcasting; publishing - printed & on-line press, printed & on-line periodicals, books, directories, learned journals, music. These measures and policies are handled by Directorates-General for: Communication; Competition; Development; Education and Culture; Employment; Energy and Transport; Enterprise; Environment; Health and Consumer Affairs; Justice, Freedom and Security; Information Society and Media; Internal Market; Research; Social Affairs - Equal Opportunities; Taxation and Customs Union. Each approaches the media from its own point of view.

Here, we will concentrate primarily on audiovisual and more generally media policy as such, though limitations of space prevent a full discussion of the issue.

Because of differences of approach between particular EU institutions, and indeed Member States the EU's audiovisual policy on the one hand drives a process of deregulation, due to the free-market orientation of parts of the European Commission, and on the other hand a process of re-regulation of the sector to serve protectionist or cultural goals (Humphreys, 2005). Also the 1989 Television without Frontiers Directive (TWFD) was a political compromise between economic liberal and culturally protectionist- minded Member States.

Basic Principles and Goals of the EU Audiovisual Policy

In 1999, the European Commission (1999) published a Communication on Principles and Guidelines for the Community's Audiovisual Policy in the Digital Age, which posited five general principles for regulatory action in this area. And so, regulation should be based on clearly defined policy objectives; be the minimum necessary to meet those objectives; further enhance legal certainty in a dynamic market; aim to be technologically neutral, and be enforced as closely as possible to the activities being regulated.

Further principles specified in the Communication were:

- The principle of proportionality: the degree of regulatory intervention should not be more than is necessary to achieve the objective in question;
- Separation of transport and content regulation;
- General interest objectives and the regulatory approach at the European level: the regulatory framework must also guarantee effective protection of society's general interests, such as the freedom of expression and right to reply, protection for authors and their works, pluralism, consumer protection, the protection of minors and of human dignity and the promotion of linguistic and cultural diversity. The basic rationale for this regulation should be the failure of the market, real or potential, to reach these objectives (except in certain cases, such as the protection of minors or copyright, where market forces are not adapted to the achievement of such objectives).
- Recognition of the role of public service broadcasting and the need for transparency in its financing;
- Self-regulation: the operators and the users concerned can contribute to the achievement of public interest objectives through the development of self-regulatory measures within the overall legal framework, obviating the need for detailed regulation.
- Regulatory authorities should be independent of government and operators.

A few years later, the European Commission (2003a: 3) published another Communication on The Future of European Regulatory Audiovisual Policy. It devoted major attention to the need for "new governance for European audiovisual media", referring in particular to the need to update and modernize the TWF Directive. It listed the following areas of audiovisual policy in Community context: competition; media pluralism; copyright; electronic communications networks and services and information society services; accessibility for people with disabilities to television; consumer protection; law applicable to non-contractual obligations; trade policy; promotion of cultural diversity in external relations.

One can distinguish four principal areas of EU activities in the audiovisual policy and regulation field:

- The development of the regulatory framework,
- Support measures designed to promote the development of the audiovisual industry, production and distribution of European content (including e-content and interactive content) and films,

- The development of the Information Society and in this context ensuring universal access to electronic communications networks and services (though not directly part of the audiovisual policy, this area of activities has powerful impact on the audiovisual media);
- External relations, including EU enlargement.

Below, we will discuss these activities in more detail.

Regulatory framework

The goal here is promotion of the single market in broadcasting and cyberspace; protection of competition (and in this context regulating the funding of public service broadcasters); protection of human dignity and of minors against illegal and harmful content in broadcasting and in online services.

The centerpiece of the EU regulatory framework in the audiovisual area has been Council Directive (89/552/EEC) of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (TWFD). It was based on the belief that EU-wide liberalization was required in order to create for European companies the economies of scale and scope associated with a large internal market, boosting the international competitiveness of the European audiovisual industry vis a vis the USA. TWFD was amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997. In December 2007 it was further considerably amended and changed by Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 concerning the provision of audiovisual media services (Audiovisual Media Services Directive - AVMSD), which aims at the realization of an effective single market for the audiovisual media services.

The AVMSD requires every EU Member State, as did TWFD, to impose certain minimum standards on scheduled television services which originate in its jurisdiction. It also requires every Member State to ensure freedom of reception of scheduled television services from other Member States. The objective is a “single market” in television broadcasting services across the EU. Member States are required to allow free reception of services from around the EU. At the same time, EU law guarantees minimum content standards for these services.

The most significant change introduced by the new directive is to extend the scope of regulation to make it technology-neutral. It now covers both television and “television-like” audiovisual media services, regardless of the technology used for their delivery. Thus, television broadcasting services distributed exclusively on the Internet, by means of mobile phones, or by any other non-traditional platform will be subject to the same regulatory regime as television broadcasting services on conventional platforms such as satellite, terrestrial or cable. The directive also applies a regime of graduated content regulation: more extensive for linear services and much reduced for non-linear services.

The directive contains three distinct tiers of regulatory requirements which each Member State must apply to the audiovisual media services within its jurisdiction.

First tier

It is set out in Articles 3a to 3g, and applies to all audiovisual media services, both scheduled and on-demand. Articles 3a to 3g require Member States to:

- ensure that service providers under their jurisdiction make certain information available to users, including at least their name, address and contact details, and their regulatory body (Article 3a);
- ensure that services under their jurisdiction do not contain any incitement to hatred on grounds of race, sex, religion or nationality (Article 3b);
- encourage service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability (Article 3c);
- ensure that service providers under their jurisdiction do not transmit films outside periods agreed with rights holders (Article 3d);
- ensure certain minimum standards in relation to advertising content (Article 3e);
- ensure that sponsorship of programmes and services meets certain requirements (Article 3f); and prohibit product placement, subject to certain defined exceptions which Member States can choose whether or not to adopt (Article 3g).

Second tier

It applies to on-demand services only. It is set out in Articles 3h and 3i. These articles require Member States to:

- ensure that services whose content might be harmful to minors are made available only in ways that ensure that minors will not normally hear or see them (Article 3h); and
- ensure that on-demand services promote the production of and access to European (including home-produced) work, where practicable and by appropriate means (Article 3i).

Third tier

It applies mainly to scheduled television broadcasting. It is set out in Articles 3j and 3k and from Articles 4 through to 23. These Articles repeat the requirements which the TVWF Directive made in respect of:

- public access to major sports and other events on free television (Article 3j);
- quotas of European and independently-produced work in television broadcasting (Articles 4 and 5);
- protection of minors in television broadcasting (Article 22); and
- a right of reply to television broadcasts, or an equivalent remedy (Article 23).

This tier also includes significant relaxation in the rules on the amount of advertising which may be shown on television and changes to the rules on when advertising breaks can be included in programmes (Articles 10 to 20): while the 12 min. limit of advertising per hour remains, the daily limit has been lifted. Insertion rules have been simplified. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or tele-shopping once for

each scheduled period of at least thirty minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes.

The directive now also allows broadcasters to take short extracts of other broadcasters' exclusive coverage of events for the purpose of including them in news reports in television broadcasting and allowing limited subsequent use in on-demand services (Article 3k).

Jurisdiction rules were the subject of heated debates during the revision process. In effect, AVMSD retains the "country of origin" principle, but changes the rules determining which Member State has jurisdiction over satellite television channels established outside the EU which can be received within the EU (now the location of the satellite uplink takes precedence over the fact which country the broadcaster received satellite capacity from – Article 2.4). It also enhances existing procedures under which a Member State can raise concerns about television broadcasts received from a broadcaster established in another Member State which do not comply with the first Member State's own domestic rules that are stricter or more detailed than those in the directive (Articles 3.2 to 3.5). In addition it provides for cooperation among Member States and their regulatory authorities in relation to broadcasters established in one country, but directing media services to another.

Another area of the regulatory framework concerns the EU's competition policy is based on articles of the Treaty dealing with antitrust issues (Articles 81 & 82), Article 86 on services of general interest and State Aid review (Article 87) and Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

As regards the Merger Regulation, relatively high thresholds of combined and individual turnover must be reached to trigger the Union's intervention. The European Commission approves (or otherwise) media mergers and acquisitions. It also makes its influence felt through a number of significant informal decisions, such as when it suggested that the British satellite broadcasting company BSkyB be excluded from British Digital Broadcasting (BDB) when the UK regulator, the ITC, was issuing digital terrestrial broadcasting franchises in 1997. Important decisions have been made about the acquisition and sale of rights to key kinds of programming, such as sports programmes, DG Competition's concern here being to ensure fair access to such content.

Other EU competition decisions have concerned digital alliances between commercial players. Thus, in 1994 and again in 1998, DGIV blocked bids to produce a digital TV alliance by the leading German companies, Bertelsmann, the Kirch group and Deutsche Telekom AG. These commercial interests wanted to establish a digital joint venture called MSG to deliver pay television and other interactive services such as video-on-demand through a proprietorial conditional access system. However, the Commission vetoed the alliance on the grounds that it would pose a threat to an open market in Germany for pay-TV and other future digital communication services.

Generally, though, the European Commission's approach to mergers and joint ventures has been favourable to companies looking to strengthen the audiovisual market by expanding. The aim was to promote "European champions", such as the RTL group (Bertelsmann), Telefonica, and Vivendi. The Commission's policy has been to promote pan-European market mergers rather than individual market concentrations.

This relates directly to another issue that has been, and continues to be, discussed in the EU, namely the issue of media ownership and pluralism. The policy of promoting the emergence of “European champions” (and “national champions” within particular Member States) may in reality contradict the principle of media pluralism, enshrined, for example, in the Charter of Fundamental Rights (Article 11.2).

This debate began with the publication of a Green Paper on pluralism and media concentration in the internal market (European Commission, 1992). Further discussions on the subject proved fruitless because there was not sufficient political will to adopt any binding decisions its adoption (Kaitatzi-Whitlock, 1996; Michalis, 1999; Doyle, 1997). The question of whether the EU had the legal competence to promote media pluralism was also raised, but in reality further concentration of European media markets was perceived positively as making the industry more competitive.

The EC Merger Regulation states in Art. 21.4 that “Member States may take appropriate measures to protect legitimate interests”, such as “plurality of the media”. Media pluralism is thus a matter for Member States. Nevertheless, the issue has resurfaced, due to a number of European Parliament resolutions concerned with media concentration and its effect on the democratic debate and the media in general. The European Commission (2007a) has published a staff document on media pluralism in the Member States of the European Union, highlighting the importance of ensuring citizens' access to a variety of information sources, opinion, voices etc. in order to form their opinion without the undue influence of one dominant opinion-forming power, and preventing a situation where because some viewpoints are represented while others are marginalized, abuse of political power can occur through the lobbying of powerful interest groups – whether these are political, commercial or other.

However, no legislative or regulatory action in favour of media pluralism at the EU level is proposed. The Commission has commissioned a study to identify concrete indicators necessary to measure media pluralism in the Member States. This would give citizens and all interested parties a tool to assess more objectively media pluralism in the Member States, and, where needed, to initiate action at the national level to promote it.

The issue of the EU approach to public service broadcasting (PSB) ties in directly with its competition policy and with the media pluralism issue. However, despite a different approach taken by the European Parliament (see The Future of Public Service Television in a Multi-channel Digital Age, 1996), the European Commission approaches the matter almost exclusively in terms of the potential distortion of competition on the audiovisual market by public service broadcasters receiving State aid, in the form of public funding (either licence fee revenue, or budgetary allocations, or both). In terms of the Treaty, PSB is a service of general economic interest (SGEI). Public funding for PSB comes inter alia under Article 87 of the Treaty which bans “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States”, because such aid is “incompatible with the common market”.

Commercial broadcasters have lodged with the European Commission a considerable number of complaints against various forms of State aid to public service broadcasters. They and their political supporters argue that in the multi-channel era public-service broadcasting should be confined to areas of clear market failure, as niche broadcasters providing only content that the market fails to deliver.

In order to resolve this issue, Protocol No. 32 on the System of Public Broadcasting in the Member States was attached to the 1997 Amsterdam Treaty. It recognizes the system of public broadcasting in the Member States as “directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”. According to the Protocol, Member States are free to organize PSB as they see fit, determine and confer the public service on it, and determine what sources of financing should be open to PSB broadcasters, as long as this does not distort competition.

Later, the European Commission (2001) issued a Communication on the application of State aid rules to public service broadcasting. It accepts explicitly that Member States can accept a wide remit for PSB and are free to choose the means of financing public service broadcasting, but the Commission has to verify, under Article 86(2) that the derogation from the normal application of the competition rules for the performance of the service of general economic interest does not affect competition in the common market in a disproportionate manner. This requires:

- a clear and precise definition of the public service remit
- and a clear and appropriate separation between public service activities and non-public service activities, where the latter exist.

Separation of accounts between these two spheres is normally already required at national level to ensure transparency and accountability when using public funds. A separation of accounts, if a PSB organization engages in non-public service activities (such as advertising), is necessary to allow the Commission to carry out its proportionality test.

The judgment of the European Court of Justice in Case C-280/00 (Altmark) is highly relevant here, in that the the Court ruled that financial support which merely represents compensation for public service obligations imposed by the Member States does not have the characteristics of State aid, if:

- the recipient undertaking actually has public service obligations to discharge and those obligations are clearly defined;
- the parameters on the basis of which the compensation is calculated are established in advance in an objective and transparent manner;
- the compensation does not exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit, and
- where the undertaking is not chosen in a public procurement procedure, the level of compensation is determined by a comparison with an analysis of the costs which a typical undertaking would incur (taking into account the receipts and a reasonable profit from discharging the obligations).

This last criterion (the so called "private investor test") is challenged by public service broadcasters which claim that no commercial broadcaster is comparable to a PSB one and no “typical” commercial broadcaster has the obligations and resulting costs of a public service broadcaster.

Recently, in the case of *SIC v Commission* (T-442/03), the European Court of Justice ECJ took a different view than commercial broadcasters, stating: “the power of the Member States to

define broadcasting SGEIs in such a way as to include broadcasting a wide range of programming [“full spectrum programming”], whilst authorising the operator in charge of that SGEI to carry on commercial activities, such as the sale of advertising space, cannot be disputed”. Also the need for PSB to use new technologies and new platforms has been accepted by EU institutions.

We should also mention here the 1998 Council Recommendation on the Protection of Minors and Human Dignity, replaced in 2006 by Recommendation of the European Parliament and of the Council on the Protection of Minors and Human Dignity and on the Right of Reply in Relation to the Competitiveness of the European Audiovisual and On-Line Information Services Industry.

The 2006 recommendation calls on Member States take the necessary measures to, among other things, ensure the protection of minors and human dignity in all audiovisual and on-line information services by: action to enable minors to make responsible use of audiovisual and on-line information services; action to facilitate access to quality content and services for minors, including through the provision of means of access in educational establishments and public places; promotion of media literacy; encouraging the audiovisual and on-line information services industry, without infringing freedom of expression or of the press, to avoid all discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, in all audiovisual and on-line information services, and to combat such discrimination; promoting measures to combat all illegal activities harmful to minors on the Internet and make the Internet a much more secure medium.

This is one of the reasons the European Union is promoting media literacy (European Commission, 2007b) and such programmes as SAFER INTERNET PLUS.

Support measures to promote the development of the audiovisual industry, production and distribution of European content

The AVMS Directive retains the provisions of TWFD in Articles 4 and 5, stipulating that the Member States should ensure, wherever possible, that broadcasters reserve a majority of their broadcasting time to European works (except for news, sport, game shows, advertising and teletext). 10 % of broadcasting time or production budget must be reserved, wherever possible, to independent European productions. These and other provisions of the directive ensure investment into European and independent productions and their availability to European audiences.

Apart from these quotas, a succession of MEDIA programmes have provided support schemes for the European film and television programme industry with the aim of making this industry more competitive and more capable of meeting the needs of an ever increasing number of television stations.

In 2006, the European Parliament and Council established a new incarnation of the MEDIA programme, MEDIA 2007, with a budget of 755 million euro for the years 2007-2013, to be spent primarily on development and distribution of European audiovisual works.

Another area of this effort is digital and online content. In 2000, the Council established a multiannual Community programme to stimulate the development and use of European digital content on the global networks and to promote linguistic diversity in the information society,

earmarking 100 mln euro for the purpose. In 2002, there was a Council Resolution on interactive media content in Europe, inviting Member States to promote such content. In 2005, Decision 456/2005/EC of the European Parliament and of the Council established a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable (the “eContentplus” programme) for the years 2005 to 2008, allocating 149 million euro for the purpose.

A number of activities have been oriented to promoting creative content distributed online (European Commission (2008a, 2008b), such as audiovisual media online (film, television, music and radio), games online, online publishing, educational content as well as user-generated content. This has included a High Level Group on Digital Rights Management, the the European Charter for the Development and the Take-up of Film Online and the Digital Libraries Initiative. This last project aims make available online Europe's cultural diversity in books, music, paintings, photographs, and films via one portal. Digitisation of cultural works can give Europeans access to material from museums, libraries and archives abroad. The Commission itself will provide some € 120 million in 2009-2010 for improving online access to Europe's cultural heritage.

The development of the Information Society, ensuring universal access to electronic communications networks and services

EU policies in this field proceed from an analysis of the process of convergence (European Commission, 1997) and its technological, market and media consequences. They seek to drive that process in order to achieve benefits serving the achievement of the EU's goals. Hence, for example, strategies like the “eEurope 2005: An information society for all” Action Plan (European Commission, 2002), or that devoted to accelerating the digital switch-over, so as to promote the digital conversion of television in Member States (European Commission, 2003b; 2005b). Part of this process is the spectrum policy, designed in part to use the “digital dividend” (frequencies released after the digital switchover) to meet the fast growing demand for wireless communications services, e.g. by promoting broadband applications in overcoming the "digital divide", providing additional terrestrial broadcasting services and boosting the growth of mobile multimedia (European Commission, 2007c).

A major step towards consolidating the internal market in a converging environment, by removing obstacles to the provision of communications networks and services at the European level, has been the adoption in 2002 of the “telecom package”. This comprised directives¹ which add up to a coherent regulatory framework applying to all transmission infrastructures, irrespective of the types of services carried over them (the so-called 'horizontal' approach). The new framework covers all electronic communications networks, associated facilities and

¹ Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, ("Framework Directive"); Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services, ("Authorisation Directive"); Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities ("Access Directive"); Directive 2002/22/EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services ("Universal Service Directive").

electronic communications services, including those used to carry broadcasting content such as cable television networks, terrestrial broadcasting networks, and satellite broadcasting networks.

The general goal here was liberalization: telecoms licences were replaced by general authorisations for transmission and single licences for both transmission and content provision are no longer possible. Member States remain free to require certain content to be transmitted on certain frequencies, but transmission service must be assigned according to open, transparent procedures. "Must carry" provision remain and may be extended to achieve defined public interest objectives. Access issues - CASs, EPGs, APIs - are to be regulated on the basis of fair, reasonable, non-discriminatory access. The underlying idea behind the package is to regulate only where necessary, and to roll back regulation once competition becomes effective in a market. The aim is to focus regulation where it is needed, usually by controlling bottlenecks due to significant market power of individual operators.

In September the European Parliament adopted the European Commission's proposals to reform the 2002 package. The EU Telecoms Reform aims to create a Single EU Telecoms Market with improved rights for consumers and businesses by reinforcing competition and investment and boosting the take-up of cross-border services and wireless high-speed broadband for all. This involves establishing a European telecoms regulator, designed to deal with the remaining business obstacles and consumer problems in the single market. The reform is described as bringing the following benefits: more transparency and better information for consumers; "Broadband for all"; switching telephone service providers in 1 day without changing the number; better data protection: mandatory notification of security breaches; better access for users with disabilities; securing basic "Net Freedoms".

The EU's strategic framework, "i2010 – European Information Society 2010", promotes an open and competitive digital economy and emphasising ICT as a driver of inclusion and quality of life (European Commission, 2005a).

The strategy is pursuing three priorities of information society and media policies:

1. The completion of a Single European Information Space which promotes an open and competitive internal market for information society and media, offers affordable and secure high bandwidth communications, rich and diverse content and digital services. This requires tackling four main challenges posed by digital convergence:
 - a. speed: faster broadband in Europe services to deliver rich content such as high definition video;
 - b. rich content: increased legal and economic certainty to encourage new services and on-line content;
 - c. interoperability: enhancing devices and platforms that "talk to one another" and services that are portable from platform to platform;
 - d. security: making internet safer from fraudsters, harmful content and technology failures to increase trust amongst investors and consumers.
2. strengthening Innovation and Investment in ICT research to promote growth and more and better jobs;
3. achieving an Inclusive European Information Society that promotes growth and jobs in a manner that is consistent with sustainable development and that prioritises better public services and quality of life.

Mention must also be made of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, designed in part to make sure that content creators and providers can profit from the use of their content. The Directive has harmonised the right of reproduction, the right of communication to the public, the right of making available to the public and the distribution right. The basic principle underlying the harmonisation effort was to provide the rightholders with a high level of protection. It adapted the exclusive rights to the online environment.

The European Commission (2008c) has also published a Green Paper on copyright in the Knowledge Society, to foster a debate on how knowledge for research, science and education can best be disseminated in the online environment. The Green Paper aims to set out a number of issues connected with the role of copyright in the "knowledge economy".

The external dimension of the Community's audiovisual policy

The enlargement process, including work with candidate and accession countries to assist them in adopting the EU acquis in the audiovisual area, is one of the main areas of activity here. The accession process requires candidate countries to transpose the EU regulatory framework into their legal system and incorporate EU audiovisual policy goals into their own media policy (cf. Jõesaar, forthcoming; Ognyanova, forthcoming).

MEDIA 2007, Euromed Audiovisual II or the EU-ACP support programme for cinema and the audiovisual industry all involve elements of cooperation with third countries. In order to expand it, the European Parliament launched preparatory action "MEDIA International" in 2007, aimed at strengthening cooperation between the audiovisual industries of EU Member States and those of third countries (Information Society and Media Directorate-General, 2008). It also aims to encourage the two-way flow of cinematographic works. In the context of the very small presence of European films on markets as big as those in Asia and Latin America and difficulties that films from these countries often have in gaining access to European cinemas, this preparatory action has a dual purpose.

A major segment of external action is defence of European cultural interests in the context of the World Trade Organization, especially as concerns implementation of the General Agreement on Trade in Services (GATS) is the first ever set of multilateral, legally-enforceable rules covering international trade in services and aiming at its liberalization and extending most-favoured-nation treatment, market access and national treatment to all parties to the Agreement which have accepted commitments in these areas.

The EU's policy is to combine liberalisation of trade and economic integration with preserving cultural objectives and public interest policy.

This is why the American insistence within the WTO and elsewhere on the removal of trade barriers such as national film quotas and subsidies (based on the American neo-classical view of market economics and their relationship with cultural products in which foreign markets should be freed from national protectionism) has met with such resistance from EU countries.

Ultimately, no EU Member State has made any commitment to liberalise market access or guarantee equal treatment between foreign and domestic companies ("national treatment") in

the audiovisual field. The European states secured broad exemptions from the "most-favoured-nation" (MFN) principle that countries allowing some foreign competitors into a sector should give equal opportunities to all WTO members.

The European Commission (2003c) supported work within UNESCO towards the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. EU Culture Ministers meeting in Thessaloniki in May 2003 debated on a possible international instrument on cultural diversity, with the following conclusions:

Europe as a continent of culture can neither accept the threat of cultural homogeneity, nor the threat of the clash of civilisations. The European answer to all this is to insist on safeguarding and promoting cultural diversity ... The basic international forum for cultural policies cannot be the WTO.

REFERENCES

- Doyle, Gilian (1997) From "Pluralism" to "Ownership": Europe's emergent policy on Media Concentrations navigates the doldrums. The Journal of Information, Law and Technology 1997 (3). http://elj.warwick.ac.uk/jilt/commsreg/97_3doyl/.
- European Commission (1984) Television Without Frontiers. Green Paper on the Establishment of the Common Market For Broadcasting, Especially by Satellite and Cable, COM(84) 300 final. Brussels: European Community.
- European Commission (1992) Pluralism and Media Concentration in the Internal Market. An assessment of the need for Community Action. Green Paper. COM(92)480 final. Brussels: European Union.
- European Commission (1993) White Paper on growth, competitiveness, and employment - The challenges and ways forward into the 21st century. COM(93) 700 final. Brussels: European Union.
- European Commission (1997) Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation. Towards an Information Society Approach. COM(97)623. Brussels: European Union.
- European Commission (1998) Audiovisual Policy of the European Union. Brussels: European Union.
- European Commission (1999) Principles and Guidelines for the Community's Audiovisual Policy in the Digital Age. COM(1999) 657 final. Brussels: European Union.
- European Commission (2001) Communication on the application of State aid rules to public service broadcasting. Official Journal of the European Communities, C 320: 5-11. Brussels: European Union.
- European Commission (2002) eEurope 2005: An information society for all. An Action Plan to be presented in view of the Sevilla European Council. COM(2002) 263 final. Brussels: European Union
- European Commission (2003a) The Future of European Regulatory Audiovisual Policy, COM(2003) 784 final, Brussels: European Union.

- European Commission (2003b) Communication on the transition from analogue to digital broadcasting (from digital 'switchover' to analogue 'switch-off'). COM(2003) 541 final. Brussels: European Union
- European Commission (2003c) Towards an international instrument on cultural diversity. COM(2003)520 final. Brussels: European Union
- European Commission (2005a) i2010 – A European Information Society for growth and employment. COM(2005) 229 final. Brussels: European Union European Commission (2005b)
- European Commission (2005b) Communication on accelerating the transition from analogue to digital broadcasting. COM(2005) 204 final. Brussels: European Union.
- European Commission (2006) Seventh communication on the application of Articles 4 and 5 of Directive 89/552/EEC "Television without Frontiers", as amended by Directive 97/36/EC, for the period 2003-2004. COM(2006) 459 final. Brussels: European Union.
- European Commission (2007a) Media pluralism in the Member States of the European Union. Commission Staff Working Document. SEC(2007) 32. Brussels: European Union
- European Commission (2007b) A European approach to media literacy in the digital environment COM(2007) 833 final. Brussels: European Union.
- European Commission (2007c) Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover. COM(2007) 700 final. Brussels: European Union
- European Commission (2008a) Creative Content Online in the Single Market. COM(2007) 836 final. Brussels: European Union.
- European Commission (2008b) Commission Staff Working Document accompanying the Communication on Creative Content Online in the Single Market. SEC(2007) 1710. Brussels: European Union.
- European Commission (2008c) Green Paper on Copyright in the Knowledge Economy. COM(2008) 466/3. Brussels: European Union
- Harcourt, A.J. (1998) EU media ownership regulation: conflict over the definition of alternatives. Journal of Common Market Studies. September.
- Harrison, J., L. Woods (2007) European Broadcasting Law and Policy. Cambridge: Cambridge University Press.
- Humphreys, P. (2005) The EU and Audiovisual Regulation: An Agency for De-regulation or Re-regulation - A Research Agenda. Paper presented during the 3rd conference of the European Consortium for Political Research, Budapest, <http://regulation.upf.edu/ecpr-05-papers/phumphreys.pdf>
- Information Society and Media Directorate-General (2008) 2008 Work Programme Implementation of the Preparatory Action "MEDIA International". http://ec.europa.eu/information_society/media/docs/pa/pdf/wp2008en.pdf
- Jõesaar, Andres (forthcoming) Formation of Estonian Broadcasting Landscape 1992-2007: Experience of the Transition State. Impact of the EU legislation on the Estonian television broadcasting since mid 90's. Central European Journal of Communication, No. 2
- Kaitatzi-Whitlock, Sophia (1996) Pluralism and Media Concentration in Europe. Media Policy as Industrial Policy. European Journal of Communication, 11(4): 453-483.
- KEA European Affairs, CERNA (2007) Study on the Impact of the Conditional Access Directive. Study prepared on behalf of the European Commission Directorate General for

- Internal Market & Services, http://ec.europa.eu/internal_market/media/docs/elecpay/study_en.pdf
- Media Task Force (2008) Inventory of Measures Affecting the Media. Brussels: European Commission, http://ec.europa.eu/information_society/media_taskforce/doc/grid_inventory.pdf
- Michalis, Maria (1999) European Union Broadcasting and Telecoms: Towards a Convergent Regulatory Regime? European Journal of Communication. 14(2): 147-171.
- Ognyanova, Nelly (forthcoming) Bulgarian Media Policy and Law: How Much Europeanization. Central European Journal of Communication, No. 2.
- Reding, Viviane (2002) The challenges facing a future European regulatory system for media and communications. Speech/02/490. Medientage, Munich, 17 October. (http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=SPEECH/02/490|RAPID&lg=EN)
- Report by the Think-Tank on the Audiovisual Policy of the European Union (1994). Luxembourg: Office for Official Publications of the European Communities.
- The Future of Public Service Television in a Multi-channel Digital Age (1996) Committee on Culture, Youth, Education and the Media, European Parliament, <http://www.poptel.org.uk/carole-tongue/index2.html>