

European Union and media regulation

The lecture discusses the role of EU institutions in pan-European media policy development. It argues that the role of these institutions in pan-European audiovisual policy and in more general in media policy is limited. This is mainly because media policies are not transposed into the legislation of member states; media, similarly to culture, represents an area where the subsidiarity principle applies. The lecture moves on to discuss the Audiovisual Media Services Directive and the types of action that are used within the EU to implement audiovisual policies.

Pan-European media policies have been developed by the Council of Europe and various directorates of the European Commission. The nature of policies and their enforcement varies significantly between the two institutions and they also concentrate on different agendas. This lecture is devoted to policies developed within the European Union and the closing one is on those developed by the Council of Europe.

European Union policies are normally developed and proposed by the European Commission and their enactment involves the European Parliament as well as the European Council. Following in WORD DOC

Decision-making in the European Union

Decision-making at European Union level involves various European institutions, in particular

- the European Commission,
- the European Parliament (EP),
- the Council of the European Union.

In general, it is the European Commission that proposes new legislation, but it is the Council and Parliament that pass the laws. In some cases, the Council can act alone. Other institutions also have roles to play.

The main forms of EU law are directives and regulations. The rules and procedures for EU decision-making are laid down in the treaties. Every proposal for a new European law is based on a specific treaty article, referred to as the 'legal basis' of the proposal. This determines which legislative procedure must be followed. The three main procedures are 'consultation', 'assent' and 'co-decision'.



1. Codecision

This is the procedure now used for most EU law-making. In the codecision procedure, Parliament does not merely give its opinion: it shares legislative power equally with the Council. If Council and Parliament cannot agree on a piece of proposed legislation, it is put before a **conciliation committee**, composed of equal numbers of Council and Parliament representatives. Once this committee has reached an agreement, the text is sent once again to Parliament and the Council so that they can finally adopt it as law. Conciliation is becoming increasingly rare. Most laws passed in co-decision are, in fact, adopted either at the first or second reading as a result of good cooperation between the three institutions.

2. Assent

The assent procedure means that the Council has to obtain the European Parliament's assent before certain very important decisions are taken.

The procedure is the same as in the case of consultation, except that Parliament cannot amend a proposal: it must either accept or reject it. Acceptance ('assent') requires an absolute majority of the vote cast.

The assent procedure is mostly used for agreements with other countries, including the agreements allowing new countries to join the EU.

3. Consultation

The consultation procedure is used in areas such as agriculture, taxation and competition. Based on a proposal from the Commission, the Council consults Parliament, the European Economic and Social Committee and the Committee of the Regions.

Parliament can:

- approve the Commission proposal,
- reject it,
- or ask for amendments.

If Parliament asks for amendments, the Commission will consider all the changes Parliament suggests. If it accepts any of these suggestions it will send the Council an amended proposal.

The Council examines the amended proposal and either adopts it or amends it further. In this procedure, as in all others, if the Council amends a Commission proposal it must do so *unanimously*.

Once legislation is passed, it is transposed into the legal framework of the member states. In comparison, adherence to the measures of the Council of Europe is voluntary and depends from case to case. Conventions require ratification by member states and must be incorporated specifically into the legislature of the individual member states.

European Union media legislation is hence more robust and has a more direct impact on the policies of its twenty seven member states than those of the Council of Europe. Also, Europeanization (in institutional sense as well as in terms of identities/post-national citizenship) is usually discussed in relation to the European Union rather than any other settings. The focus here is on the audiovisual field, a particular, 'bound' set of policies, leaving aside other areas of media policy to make the scope and length of the lecture manageable. Apart from the analysis of key policy documents, I will also refer to interviews with civil servants¹ working for various directorates general of the European Commission. The lecture deals with the underlying principles of and approaches to audiovisual policy as it developed from the late 1980s.

We need to bear in mind that the role of European Union institutions is very limited in the field of audiovisual policy (and indeed in media policy in more general). Media policies are not transposed into the legislation of member states; media, similarly to culture, represents an area where the subsidiarity principle applies.

It is intended to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made as to whether action at Community level is justified in the light of the possibilities available at national, regional or local level. Specifically, it is the principle whereby the Union does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. It is closely bound up with the principles of proportionality and necessity, which require that any action by the Union should not go beyond what is necessary to achieve the objectives of the Treaty.²

A civil servant working for the European Commission puts it succinctly, European Union media policies are merely 'the tip of the iceberg' as media are 'not an area like competition or electronic communication where there is a fully harmonized European Commission law based on an article of a Treaty or a set of directives. It's not an area where European Commission competences are very strong.' (anonymous 1, personal

communication, May 27, 2009) Indeed, there has only been one major piece of audiovisual legislation in force, the *Audiovisual Media Services Directive* (AVMSD) (an ‘updated’ version of the *Television without Frontiers Directive*). The EU’s audiovisual policy website lists four types of action used within the EU to implement audiovisual policies: 1. regulatory framework, 2. support mechanisms, 3. other actions (promoted with regard to the distribution of audiovisual content on electronic networks) and 4. external measures.³

As already mentioned the **regulatory framework** involves a single major policy initiative, the *Audiovisual Media Services Directive* adopted in December 2007⁴ and transposed by member states by the end of 2009. This directive amends and renames the *Television without Frontiers Directive* (of 3 October 1989) and brings it up-to-date with structural changes and technological developments. The underlying rationale remains the same, namely, to create an effective single market for broadcasting and it also retains the so-called quotas on European production. These quotas have been understood as a ‘concession’ to the public interest approach based on diversity arguments (i.e. the greater variety of producers and contents is a guarantee of pluralism) while overall economic (liberal) concerns prevailed in the directive (see Collins (1994) for a detailed discussion on the role of individual directorates and member states).

One of our interviewees acknowledges that in the media area the dichotomy between culture and the market ‘has always been the debate before [yet it] is only a small part of a much bigger debate that stretches into governance, I think the debate on the future will take on the mantle of being about culture and markets but it's really about how far we accept new paradigms.’ (anonymous 1, personal communication, May 27, 2009) The follow-on issue is, he goes on to argue, whether to ‘intervene in that paradigm in a precise and focused way in order to correct certain market failures and problems that issues of creating demos (or whatever) that new environment is not able to deal with. Or are we saying we'll just look at existing instruments?’ (ibid.) Another interviewee explains that policy interventions often relate to media as markets because policy makers can define markets more easily and precisely than culture. (anonymous 2, personal communication, June 4, 2009)

The EU audiovisual regulatory framework includes two other instruments, two sets of recommendations: one for the protection of minors in an online-environment and the other for European film heritage. These, however, do not have the same status as directives and are ‘normally adopted as a reaction to concerns or problems in the member states. Normally, we’re trying recommendations which do not have the same status as directives but send a strong signal and could lead to a directive if there were significant failures. We’re leaving most of the initiative to the member states.’

(anonymous 1, personal communication, May 27, 2009)

Even a cursory glance at the *Recommendation of the European Parliament and of the Council on Film Heritage and the Competitiveness of Related Industrial Activities* (of 16 November 2005)⁵ reveals that although there is an acknowledgment of the importance of film heritage for European cultural heritage and diversity, the recommendation is primarily concerned with the role of archiving and conservation of films in achieving a competitive advantage and as a job-creating opportunity. The recommendation leaves it up to the member states to introduce measures for conservation and archiving and to define which cinematographic works form part of cultural heritage. The stipulation is more precise in the case of films that receive EU funding, these must be deposited in at least one national archive. The documents related to the recommendation suggest a lengthy process, negotiations on voluntary deposits in archives are due to be completed in mid-2010.

The second type of action in the implementation of audiovisual policy involves **support mechanisms**. The most significant of these is the MEDIA programme, set up with the aim of improving the competitiveness of the European audiovisual sector. The programme co-finances training for industry professionals; development of production projects; distribution of cinematographic works and audiovisual programmes; promotion of cinematographic works and audiovisual programmes as well as support for film festivals and for promotion in non-EU countries. The first MEDIA programme was set up in 1991 with funding provided till 2013.⁶

The fact that this is an industry programme rather than a cultural one has been confirmed in an interview. Although the programme has cultural elements (such as the objective to enhance respect for and promotion of linguistic and cultural diversity

in Europe) and cultural diversity has itself become a policy objective, our interviewee stresses that the programme does not support production and that it was set up to restructure the European market, to strengthen small European companies and build up networks. (anonymous 3, personal communication, May 27, 2009) The impact of the programme on increasing the competitiveness of the European media industry has been evaluated positively.⁷ According to the same interviewee the programme has enjoyed the support of member states (it is overseen by a committee that includes their representatives).

The third and fourth types of action used in the implementation of EU audiovisual policies involve the **distribution of audiovisual content on electronic networks** and **external measures**. These are, however, only of marginal interest for our argument. The creation of a European digital single market is the aim of the *Creative Content Online* initiative⁸ and the Commission has also considered the possibility of pan-European policy on media literacy (*Commission Recommendation on Media Literacy in the Digital Environment for a More Competitive Audiovisual and Content Industry and an Inclusive Knowledge Society*, 20.8.2009⁹). External measures involve particularly negotiations within the context of the World Trade Organization, in these the principle of ‘cultural exception’ continues to be applied.

Hence, EU audiovisual policy documents lead us to two underlying aims: the creation of a single European (audiovisual, digital etc.) market and the increased competitiveness of European audiovisual/digital/content/cultural industries. A Commission civil servant explains that EU audiovisual policy addresses issues related to globalization (global networks, markets etc.) as well as technological developments (ICTs) that ‘undermine the scope of the nation state to achieve autarchy in the sense of complete self-sufficiency and complete control over things. We may be being blamed for the wider forces that we are perhaps reflecting in some of our regulation.’ (anonymous 1, personal communication, May 27, 2009) It is perhaps not too early to insinuate that EU audiovisual policy is most strongly influence by economic concerns, diversity/cultural considerations tend to be limited not only in terms of their strength but also – more importantly from our point of view – in their conceptualization. They tend to focus on diverse national cultures within the union (as contained/defined inside the individual member states) hence leaving no space for a commitment to

diversity/cultural expressions of those living in the European Union but falling outside/transgressing the national cultures of the individual member states.

Any reference to public service broadcasting (PSB) is missing from the official EU audiovisual policy website. Some of what follows has already been mentioned at the opening lecture on PSB. PSB is in the jurisdiction of individual member states. This arrangement has been reinforced in the *Protocol on the System of Public Service Broadcasting in Member States* which forms part of the *Treaty of Amsterdam* (Consolidated Treaty ... 1997). The protocol acknowledges that the public service broadcasting system is ‘directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism.’¹⁰ Each member state is responsible for conferring, defining and organizing the public service remit and securing funding for it, however, such funding should not ‘affect trading conditions and competition in the Community to an extent which would be contrary to the common interest.’ (ibid.)

Apart from the EU’s audiovisual policy website, valuable insights into policies that have an impact on audiovisual media can be gained from documents compiled by the European Commission’s MediaTask Force. The task force acts as a sounding board for all policy affecting media and it compiles an inventory of measures affecting the media that covers all initiatives and all directorates general of the Commission.¹¹ We have included the policy documents in the inventory (dated January 2009) in our analysis and found an ongoing discussion on the introduction of harmonized EU policy in the area of media pluralism.

Media pluralism has been on the agenda of individual member states since the establishment of private broadcasting and it has been largely understood as an issue of ownership and markets/competition.¹² National measures (including those that support public service broadcasting), EU competition law as well as measures introduced in the *Television without Frontiers Directive* aimed to deal with the issue, often addressing it in terms of ownership and concentration or non-monopolistic production (measures to support independent producers).

You already know that competition policy plays a significant role in regulating media and that media industries have specific economic characteristics. Media markets are prone to market failure, they are characterized by economies of scale and scope.

The 1992 green paper *Pluralism and Media Concentration in the Internal Market: An Assessment of the Need for Commission Action*¹³ did not find a clear need for concerted Commission action. A similar conclusion was reached in a consultation paper in 2005¹⁴, namely that it is difficult to propose any harmonization of rules between the member states and also that the member states consider media pluralism and its safeguarding a task for themselves.

However, the EU regulatory framework includes two types of intervention related to media pluralism: access remedies (these limit the market power of those who control access to networks or associated facilities) and safeguards to guarantee basic users' interests that would not be guaranteed by market forces (e.g. interoperability of consumer digital TV, frequencies granted in case of scarcity) (ibid.). It is important to consider whether the goal of such interventions is to ensure the functioning of the internal market or whether there are other justifications (such as social and cultural understandings of diversity and pluralism) at stake. It has been argued that European audiovisual policy is restricted (if not completely misconceived) in its approach to pluralism.¹⁵ La Porte et al. (2007), for example, point out that EU audiovisual policy addresses only external aspects of pluralism (advocating the premise that non-monopolistic provision of content involving a multiplicity of channels and producers guarantees diversity). In contrast, there is a need for measures that support internal pluralism which takes into account the contents themselves. A cultural approach to both forms of pluralism would potentially guarantee that different types of social sensitivity are addressed and accessed through media contents. (ibid.)

More actual outcomes are expected from a new consultation process on media pluralism in member states that commenced in 2007 with the European Parliament inviting the Commission to propose measures for media pluralism at the European level.¹⁶ A commission staff working document linked to the consultation argues that European competition law cannot replace national media concentration controls and measures to ensure media pluralism, however, member states can apply additional

measures.¹⁷ The process continued with the commission of an ‘*Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach* [that will] develop a monitoring tool for assessing the level of media pluralism in the EU Member States and identifying threats to such pluralism based on a set of indicators, covering pertinent legal, economic and socio-cultural considerations’.¹⁸ The process should culminate in a Commission Communication on media pluralism (planned for the end of 2009 but delayed).

This latest consultation process is thus far the strongest indication of a possible media pluralism policy that would include the ‘difficult to define’ areas of culture and social cohesion/diversity. Overall, as we have suggested, the scope of EU activity in the field of audiovisual media is rather limited with large areas of regulation left in the hands of the member states either directly or implicitly (e.g. state aid for public service broadcasting). The audiovisual policy documents do not indicate significant future changes in this arrangement (public service broadcasting and its definition for state aid purposes will clearly remain in the hands of member states, the introduction of legislation on media pluralism is not imminent). We return to the implications of this nation-centred approach in latter parts of this chapter.

European Union audiovisual policies have been the subject of extensive academic debate. We discuss the components of this debate in relation to the three areas that we outlined in relation to EU media policy: the audiovisual regulatory framework, public service broadcasting and media pluralism. In terms of overall tendencies, Humphreys (2008) argues that media policy remains primarily a national policy competence, however, EU has acquired considerable regulatory influence since the 1980s mainly due to the need for a collective response to globalization and new technologies. Sarikakis (2007) outlines three factors in the re-examination of EU media and cultural policy: (a) globalization of communication systems, (b) transnational flows of people and (c) integration of markets and political will.

The dual aspects of the media sector i.e. its economic, industrial and technological importance on the one hand and the democratic, social and cultural roles associated with the media are – at least to some extent – reflected in audiovisual regulation. The competing economic and cultural justifications and goals have been extensively

discussed in academic literature (see e.g. Humphreys 2008, Cuilenberg and McQuail 2003, Hirsch and Petersen 2007, Collins 1994, Schlesinger 1997 etc.). The scholars vary in their assessment of the impact of economic or public interest interventions in audiovisual policy, there is, however, a general consensus on the prevalence of economic goals. Humphreys (2008), for example, argues that social and cultural goals are taken seriously though there is a bias towards economic benefits.¹⁹

The public interest or cultural intervention that is most frequently analyzed concerns the quotas on European works introduced in the Television Without Frontiers Directive (and still in force in the current Audiovisual Media Services Directive). Among the issues discussed we find whether or not the quotas are actually in the public interest (e.g. Collins and Murrioni 1996), their impact/strength and evolution is charted (e.g. Collins 1994, Schlesinger 1997) as well as their form (e.g. Collins and Murrioni 1996). The Television Without Frontiers Directive stipulates that broadcasters should reserve the majority proportion of their broadcasting time for European works, however, this proportion is to be achieved progressively and on the basis of suitable criteria. The updated Audiovisual Media Services Directive also relies on possible cultural and social interventions but again it 'left large scope for a variety of national implementation practices'. (Humphreys 2008:163, see also Wheeler 2007)

A detailed understanding of the role of the various European Union institutions and member states in the negotiation and implementation of specific audiovisual policies (see e.g. Collins 1994) is marginal to our argument. However, it is important to remember that while the Commission has strong powers of direct intervention in relation to the internal market and competition (these competences are set out in the Treaties), cultural and social measures are negotiated by national governments in the Council of Ministers²⁰ (see also Humphreys 2008). In general terms hence we can argue that pan-EU efforts concentrate on the creation of a single audiovisual market (based largely on economic integration, often bypassing public interest regulation²¹) and pluralism and diversity issues (understood in cultural/social terms) are taken up by member states that tend to interpret them in terms of diversity within narrowly defined national cultures (i.e. ignoring transnational migrants, non-nationals etc.).

The European Union's MEDIA programme has received mixed evaluation from academics. Its impact on the competitiveness of the European film industry is questioned by some, Henning and Alpar (2005), for example, argue that while support for the European film industry is fully justified, 'the "small-company" approach seems to be the wrong one. Aside from the lack of structuring effects of this approach, small production companies will rarely produce internationally competitive films.' (p. 248) From our perspective it is more pertinent that although the programme includes transnational elements, it supports audiovisual co-productions 'rather traditionally construed between parties from the member states' (Humphreys 2008: 159) and does not cover areas of social/cultural intervention in audiovisual media. A similar point is raised by deSmaele (2009) when she argues that co-production patterns (supported by the European Union's MEDIA programme as well as Council of Europe's Eurimages) reproduce geographical, cultural and linguistic proximities and suggest few favoured countries with high production capabilities and favoured distribution of west European productions.

Competition has been a key context in EU audiovisual policy. Competition policy is the area in which European Union institutions have direct authority (Humphreys 2008) and public service broadcasting – as already noted – is not exempt from this.²² Harrison and Woods (2001) discuss the interplay between European Commission and member state competences,

if a measure is considered not to be state aid in the first place, then the organization of the aid and the policy underlying the aid do not come under review of the Commission and the Member States thus have the freedom to organize and fund PSB within their jurisdiction as they see fit. ... By contrast, where a measure is found to be aid, the measure (and any amendments to it) are subject to Commission review on a case by case basis. (2001: 492)

A number of authors point out that the underlying principles of competition policy and its application (not only in the case of public service broadcasting) relate to economic interest (see e.g. Harrison and Woods 2001, Bardoel and Vochteloo 2008). Harrison and Woods argue that despite the provisions of the *Protocol* and the seeming considerable degree of latitude and freedom exercised in this area by member states, they 'are still constrained by other EC policies. It is here that the interplay between audiovisual policy (and its absence of legal safeguards) and EC competition policy

(notably state aid rules) may have serious consequences for public service broadcasting.’ (2001: 485)

There appears to be a consensus on these consequences as a number of scholars suggest that European Commission decisions on state aid for public service broadcasting mostly favoured the public service broadcasters in question (e.g. Humphreys 2008, Ward 2003) or at least that ‘the Commission – in its state aid analysis – strives for a balanced ecology between the level-playing-field objectives entrenched in the internal market project on the one hand and the social, cultural and democratic values of broadcasting, that are recognised in the Amsterdam Protocol, on the other.’ (Donders 2008) In some cases the Commission doubted the definition provided by member states with regard to public service broadcasting, yet, it did not restrict member states’ ‘definitional liberties’. (Donders and Pauwels 2008: 307)

The Commission set up a public consultation process on state aid for public service broadcasting in 2008, Bardoel and Vochteloo (2008) argue that apart from two official reasons (the ongoing digitalization and convergence of media markets and consolidation of Commission’s case practice to increase legal certainty), the continuous stream of complaints was another – albeit officially not recognized – reason. The last issue, as already mentioned, also surfaced in an interview we conducted with a European Commission civil servant. The process culminated in the publication of the *Communication from the Commission on the application of state aid rules to public service broadcasting*²³ (2 July 2009) which repeatedly stresses the need for member states to provide a precise definition of the public service mandate as well as a clear identification of activities covered by the public service remit. The communication also makes it clear that member states are to supervise the fulfilment of qualitative standards set out in the public service remit and that when diversifying public broadcasting services, the member states have to define what qualifies as a ‘significant new service’ and assess their impact on the market.

Some academics acknowledge the role of the European Parliament²⁴ (and in rare cases also of the European Economic and Social Committee) in initiatives that aim to introduce harmonized interventions in support of media pluralism (and that also in cases when pluralism is understood broader than media ownership, see e.g. Harcourt

2005, Humphreys 2008, Sarikakis 2005) However, as e.g. Kaitatzi-Whitlock (1996) and Sarikakis (2005) point out these interventions have had a very limited impact as the European Union's policy making procedures might not be most supportive in such cases.²⁵ Hence although the directorate general of competition exercises powers that go beyond those of member states and there are attempts at harmonizing EU pluralism policy (whether based on ownership/market criteria or public interest), we should remember that member states play a key role in setting up and implementing pluralism policies and their goals tend to be rather limited, Humphreys (2008), for example, reminds us that the underlying aim of national media pluralism policies is to assure that national and subnational media markets remain attractive for media investors.²⁶

The most important European Union initiative in the audiovisual field has been Directive 89/552/EEC "Television without Frontiers"¹ of 3 October 1989. This directive is not specifically tailored for public service broadcasting nonetheless it is the clearest manifestation of goals and values as well as mechanisms for their achievement in the audiovisual field and importantly it is a cornerstone of audiovisual regulation in all member states.

"Television without Frontiers"²

The implementation of the "Television without Frontiers" Directive [further Directive] was preceded by a "Green Paper on the Establishment of the Common Market for Broadcasting, especially by Satellite and Cable" [further Green Paper] of 1984. Richard Collins (1994)³ traces the context in which the Green Paper as well as the Directive itself were drafted. He points out that throughout the process the balance between the liberal and the interventionist approach shifted, the final content of the Directive

contains more provisions which support "interventionist" objectives than liberal objectives, none of the interventionist provisions are of such fundamental importance as Article 2 which has the effect of abolishing the Member States'

¹ The full name of the directive is Directive 89/552/EEC on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities. However, the directive became known as "Television without Frontiers".

² My analysis of this document is based on the Directive 89/552/EEC as well as on Directive 97/36/EC of 30 June 1997 which amends the original Directive. Main changes occurred in the articles concerning the broadcasting of major events, the articles of most concern to this paper that deal with European programmes have not undergone significant changes.

³ In this respect see especially pp. 53-63.

sovereignty over their national television systems. Moreover the interventionist provisions in the Directive (such as the European content quota) are generally weak. ... Indeed, the Directive has been described as a “victory for commercial forces and those who favoured anti-protectionist policies” (1994: 69).

The wording of the Directive was significantly influenced by the adherence to “transmission (or emission) theory” according to which broadcasters only need to acquire rights for the country from which their broadcasting originates as opposed to “communication theory” according to which broadcasters are obliged to purchase rights for all the countries in which the broadcasts are received.⁴ This, however, bears no significance for my analysis as neither of the approaches relates directly to questions of public interest/public sphere.

Collins (1994: 69) summarises the objectives of the Directive in the following points:⁵

creating a common market in television broadcasts and programme supply; promoting independent production and distribution enterprises, and in particular by small and medium sized enterprises; stimulating the audio-visual sector in countries with a low production capacity and/or in a restricted language area; establishing minimum standards for television advertising and sponsorship, prohibiting the advertising of certain products, including tobacco, and regulating the advertising of alcohol on television; establishing a European content quota and enabling the Member States to establish specific language regulations and quotas) and protection for the cinema exhibition sector; establishing a right to reply; protecting minors from undesirable programming, especially violent or pornographic programming.

It is thus clear from this brief characterization that the primary objectives are strictly connected with the economic goal of creating a common market with undistorted competition. There is, nonetheless, a reference in the wording of the Directive to ensuring “fair competition without prejudice to the public interest role to be discharged by the television broadcasting services”.

It has already been made clear that the major and strongest justification for the Directive stemmed from economic (or liberal) concerns while the justification based on diversity (or the interventionist approach) was relatively weak. The most important

⁴ For a more detailed discussion see Collins 1994: 58-59.

⁵ The actual chapter headings are as follows: Chapter 1 Definitions; Chapter 2 General Provisions; Chapter 3 Promotion of distribution and production of television programmes; Chapter 4 Television advertising and sponsorship; Chapter 5 Protection of minors; Chapter 6 Right of reply; Chapter 7 Final provisions.

interventionist achievement was the introduction of the so-called quotas on European production, as Article 4 (1) of the Directive stipulates:

Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sport events, games, advertising and teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

The significance (or rather insignificance) of the quota is also reflected in the fact that the Commission's report⁶ on the application of the Directive does not make a reference to the quotas. The communication value that can be identified in the Directive is freedom (of reception) and crucially economic freedom in communication (the Directive stresses the freedom of movement and trade and the prevention of dominant position). Interventions in this freedom are justified in the Directive in specific cases and that based on public interest and protection of minors. The amended Directive has a new Article (3a) ensuring the rights of public to follow events of major importance for society:

Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television.

In the case of the Directive the regulation is clearly justified on economic grounds, the perceived benefits of competition are not dealt with. The mechanisms used for achieving its objectives are mainly behavioural, regulation of content is applied in exceptional cases (such as the quotas on European works, restrictions on advertising).

Thus in general European Union audiovisual policy appears to be driven by economic interest, justifications based on the notion of effective communication (as

⁶ Third Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the Application of Directive 89/552/EEC "Television without Frontiers" of 15 January 2001, <http://europa.eu.int/comm/avpolicy/regul/twf/applica/ap-int-e.htm>

outlined by Feintuck), diversity and public service are infrequent and vague and is characterized by a trend away from citizen-oriented regulation towards consumer-oriented. Although there are programmes within the framework of the European Union (namely MEDIA) that aim at increasing the competitiveness of the European media industries, pro-active regulatory measures tend to be lacking.

¹ We have anonymized the interviewees in this text.

² http://europa.eu/scadplus/glossary/subsidiarity_en.htm [10 February 2009] The rules for the application of the subsidiarity principle were introduced in a declaration in December 1992 issued by the Edinburgh European Council. A protocol to the Treaty of Amsterdam (1997) outlines the application of the principles of subsidiarity and proportionality.

³ http://ec.europa.eu/avpolicy/index_en.htm [05 February 2009]

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007L0065:EN:NOT> [10 March 2010]

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005H0865:EN:NOT> [06 March 2010]

⁶ http://ec.europa.eu/information_society/media/index_en.htm [10 January 2009] The programme is financed from the budget of the European Commission.

⁷ See http://ec.europa.eu/information_society/media/overview/evaluation/reports/index_en.htm [5 February 2009]

⁸ The public consultation finished in January 2010, see

http://ec.europa.eu/avpolicy/other_actions/content_online/index_en.htm [10 January 2010]

⁹ http://ec.europa.eu/avpolicy/media_literacy/docs/recom/c_2009_6464_en.pdf [05 September 2009]

¹⁰ <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0109010012> [12 January 2009]

¹¹ http://ec.europa.eu/information_society/media_taskforce/index_en.htm [30 January 2009]

¹² In comparison, the agenda of the Council of Europe is much broader, it includes freedom of expression, the role of public service broadcasters, establishment of code of conduct during election campaigns, editorial independence, cooperation between regulatory authorities, linguistic diversity etc. Also, its stance on media concentration is not restricted to economic issues, for example, *Resolution No. 1: Media Economic and Political and Cultural Pluralism* of 1991 (one of the outcomes of the 3rd European Ministerial Conference on Mass Media Policy) expresses the conviction that 'the issue of media concentrations should not only be regulated on the basis of economic criteria but should be dealt with primarily from the perspective of measures designed to safeguard political and cultural pluralism' (*Texts* 1998:21).

¹³ http://aei.pitt.edu/1156/01/pluralism_gp_COM_92_480.pdf [3 March 2009]

¹⁴ 'Issues Paper for the Liverpool Audiovisual Conference'

http://ec.europa.eu/avpolicy/docs/reg/modernisation/issue_papers/ispa_mediaplur_en.pdf [20 February 2009]

¹⁵ It would be a mistake to argue that there are no discussions on the cultural/social etc. aspects of pluralism in European institutions. See e.g. a working document on the globalisation of media and its impact on cultural diversity prepared for the Scientific and Technological Options Assessment Panel (La Porte Alfaro and Sabado 2001).

¹⁶ There is scepticism regarding the possibility of harmonized legislation on media ownership due to practical as well as political obstacles, see e.g. Doyle 2007.

¹⁷ *Media Pluralism in the Member States of the European Union* (2007),

http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/media_pluralism_swp_en.pdf [12 January 2009]

¹⁸ http://ec.europa.eu/information_society/media_taskforce/pluralism/study/index_en.htm [10 January 2010]

¹⁹ Some writers refer to ‘negative integration’ that results from the overarching emphasis on economic competition (in this context see Harcourt 2005).

²⁰ The role of the European Parliament in the policy making process is generally overlooked in academic explorations. A notable exception in this respect is Katharine Sarikakis’ analysis (2005) into the role of the EP in introducing cultural issues into the European Union’s agenda.

²¹ See e.g. Harcourt 2005.

²² Harrison and Woods discuss conceptual problems with the application of state aid rules to public service broadcasting. They raise the question of its appropriateness, ‘arguably, such an approach undermines the Member States’ freedom to provide public services as they see fit. . . . Another problem is that state aid rules apply only in respect of economic operators. Many public service broadcasters broadcast free-to-air and theoretically such a broadcaster should have reference to considerations other than profit when determining its programming schedule.’ (2001: 490)

²³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:257:0001:0014:EN:PDF> [10 July 2009]

²⁴ Writers on the role of the European Parliament in promoting public interest interventions in media policy (in agenda setting and policy development) also stress that its role has evolved particularly with an increase in its powers following the 1992 Maastricht Treaty.

²⁵ E.g. in contrast with the Council of Europe.

²⁶ See also Schlesinger (1997).