European Union and Media Regulation

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Pan-European Regulation

The 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

The Council of Europe:
adherence to the measures of the Council of Europe is voluntary and depends from case to case

Focus of Lecture

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 servants We have anonymized the interviewees in this text. 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.

The Subsidiarity Principle

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.

Types of Action in Implementing 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.

The Regulatory Framework

Involves a single major policy initiative, the Audiovisual Media Services Directive adopted in December 2007 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 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.

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.

Other types of action

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 initiative 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, 20.8.2009). External measures involve particularly negotiations within the context of the World Trade Organization, in these the principle of 'cultural exception' continues to be applied.

Underlying Aims

The creation of a single European (audiovisual, digital etc.) market and the increased competitiveness of European audiovisual/digital/content/cultural industries.

Regulating Public Service Broadcasting

Protocol on the System of Public Service Broadcasting in Member States which forms part of the Treaty of Amsterdam (Consolidated Treaty … 1997)

Media Pluralism

The 1992 green paper Pluralism and Media Concentration in the Internal Market: An Assessment of the Need for Commission Action did not find a clear need for concerted Commission action. A similar conclusion was reached in a consultation paper in 2005

Media Pluralism Interventions

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).

Re-examination of EU media policy

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.

Dual Aspects of the Media Sector

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.

Public Interest/Cultural Intervention

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 Murroni 1996), their impact/strength and evolution is charted (e.g. Collins 1994, Schlesinger 1997) as well as their form (e.g. Collins and Murroni 1996)

Power Division

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 Ministers (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 regulation) 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 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.

The MEDIA Programme

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.

State Aid and Public Service Broadcasting

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)

European Parliament and Media Pluralism

Initiatives that aim to introduce harmonized interventions in support of media pluralism

AVMDS

What's new? (Word document)