

From Television without Frontiers to Audiovisual without Borders: the new Audiovisual Media Services Directive

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From TWF to AVMS Directive: main issues

- AVMS rationale: why did we need it?
- History: how did it come about?
- Substance: what is it about?



AVMS rationale

- eCommunications: regulation to be removed once competition is effective
- Content regulation: balancing economic and public interest objectives:
 - protection of minors/human dignity
 - consumer protection
 - cultural diversity/media pluralism



Need for change

- **Level playing field:** regulated broadcasters vs. non-regulated media service providers
- **Declining advertising revenue**
- **Internal market:** on-demand services subject to 27 or more regulatory regimes



EU regulatory response

- **Main objective:**
Internal market benefits and stable regulatory environment for new services
- **Means:**
Country of origin extended to all audiovisual media services
- **Consequences:**
Minimum harmonisation of basic rules, but more flexible advertising rules



Some history

- 13/12/2005: Commission proposal
- 13/11/2006: Council's general approach
- 13/12/2006: EP's resolution in 1st reading
- 12/2/2007: Berlin informal Council
- 29/3/2007: Amended Commission proposal
- 24/5/2007: Political agreement at the Council
- 15/10/2007: Common position of the Council
- 18/10/2007: COM to EP in favour of CP
- 29/11/2007: EP adopts CP in 2nd reading
- 18/12/2007: Directive published in OJ
- 19/12/2007: Entry into force
- MS to implement AVMS by 19/12/2009



More (pre-)history: obstacles and keys to success

- Difficult economic situation post 11/9
- 2002 Fourth Report on TWF application - modernisation announced
- Long consultation process: 2003 and 2005
 - 2003 Communication - a two step approach: interpretative Communication on advertising (2004) and Focus Groups (9/2004 and 2/2005)
 - Issues papers & Liverpool conference (7&9/2005)
- Realistic proposal; consensus on need to amend (initial UK opposition – isolated)



Bones of contention

- **Scope:** fears of over-regulation, stifling innovation (UK; internet and telecom operators) and restriction on freedom of speech (Budapest declaration) – qualifying notions of “**editorial responsibility**” and “**programme**”
- **Jurisdiction:** fears by some MS of inability to regulate broadcasts targeted at their country (group of 13) – “**circumvention**” procedure
- **Product placement** – from “opt-in” to “opt-out” + transparency



Scope: what is covered?

Audiovisual media services:

- Services as defined by the Treaty
- Under the editorial responsibility of MSP
- Having as principal purpose
- The provision of programmes
- To inform, entertain and educate
- To the general public
- By e-communication networks
- Either linear (schedule) or non-linear (catalogue)



Scope: what is not covered?

- No AV element: radio (but not silent films)
- Not to general public: email or private websites
- Non-economic activities: non-commercial blogs
- AV content only incidental
 - travel sites, car manufacturers sites
 - on-line editions of newspapers and magazines
 - games of chance, online games, search engines
- No editorial responsibility
 - Platforms for exchange user generated content
 - Mere conduit



Scope: who is covered?

Media service provider:

- Has **editorial responsibility**
 - Effective control of the selection and organisation of content
- Determines how **programmes ...**
 - Set of moving images with or without sound
- ... are organised
 - Schedule (linear)
 - Catalogue (non-linear)



How do we regulate?

- Platform neutrality - type of the service not mode of delivery
- Linear (push) services: simplification
 - Television
 - (linear) IPTV
 - Live webcasting
- Non-linear (pull) services: basic tier
 - Video-on-demand
 - Catch-up services
- Reasons for differentiation
 - Degree of choice and control of users
 - Impact on society



Jurisdiction: Safeguards for linear services

- Protection of minors, hate speech
 - No change in procedure - ex-ante Commission control: art. 2a(2) and (3)
- Circumvention of stricter national rules
 - Cooperation procedure
 - Broadcast directed wholly or mostly at another MS
 - Request to comply with rules of public interest
 - Compulsory measures possible if:
 - Cooperation procedure not satisfactory
 - Establishment in order to circumvent stricter rules
 - After positive decision by the Commission (art. 3)



Jurisdiction: Safeguards for non-linear services

- Measures necessary for public policy, public health, public security, consumer protection (art. 2(4)-(6) - emulates E-commerce Directive)
- Procedure :
 - Request to MS to take measures
 - Ex-ante assessment by the Commission
- Emergency procedure
 - Ex-post control by the Commission



Commercial communications: qualitative rules (all AVMS)

- **Extension to on-demand services:**
 - Recognizable
 - No subliminal techniques
 - Respect human dignity
 - Ban: Cigarettes, medicinal products
 - Protection of minors
 - Alcohol
 - Unhealthy food – codes of conduct



Product placement (all AVMS)

- **UNLESS a MS decides otherwise, PP prohibited but admissible** in:
 - cinematographic works, films and series, sport, light entertainment
 - but not in children's programmes
- **Provision of goods or services for free allowed**, also in children's programmes
- **Similar regime for PP as for sponsoring**
 - Editorial independence
 - No direct offer
 - Ban for tobacco, medicines and treatments
- **In addition:**
 - No undue prominence
 - Specific identification after advertising break



Television advertising: linear services

- Stricter rules for TV advertising remain but are made more flexible
- Deletion of daily limit
- 12 min. limit/hour remains
- Simplification of insertion rules:
 - Margin of discretion for broadcasters;
 - TV and cinema films, news and children's programmes: 30 min. rule



Protection of minors: linear services

Article 22 unchanged:

- no programmes **which might seriously impair** the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence
- this extends to programmes **which are likely to impair** the physical, mental or moral development of minors, **except** where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors will not normally hear or see such broadcasts.



Protection of minors: non-linear services

- Member States shall take appropriate measures to ensure that on-demand services provided by media service providers under their jurisdiction which might **seriously** impair the physical, mental or moral development of minors **are only made available in such a way** that ensures that minors will not normally hear or see such on-demand services (new art. 3h)



Promotion of European and independent works

- Linear services
 - art. 4 and 5 unchanged
- Non-linear services: art. 3i
 - On-demand AVMS shall promote, where practicable and by appropriate means, production of and access to European works
 - Examples: financial contribution to production or rights acquisition, share/prominence in catalogue

Right to information: linear services

- Events of major importance for society unchanged: art. 3a becomes 3j
- Short news reports (art. 3k)
 - Where no broadcaster has acquired the rights in the MS concerned
 - MS shall ensure that broadcaster can choose short extracts or equivalent system
 - Only for general news programmes (also on-demand “catch-up” services)
 - Compensation shall not exceed additional costs directly incurred in providing access



From TWF to AVMS: conclusions

- Main objective unchanged: internal market (+ platform neutrality)
- Tool: country of origin coupled with minimum harmonisation
- Extension of scope with basic tier of obligations for non-linear services
- Modernisation for linear services



Content is King ... and Intelligent Regulation is Queen

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http://ec.europa.eu/avpolicy/index_en.htm



The screenshot shows a Microsoft Internet Explorer browser window displaying the European Commission's website for Audiovisual and Media Policies. The page features a blue header with the European Union flag and the text 'Audiovisual and Media Policies'. Below the header, there is a navigation menu with links to 'Media Task Force', 'Regulatory Framework', 'Other Actions', 'MEDIA Programme', 'Media Literacy', 'External Policy', and 'Info Centre'. The main content area is titled 'Audiovisual and Media Policies' and includes a 'HIGHLIGHTS' section with the text: 'Audiovisual Media Services Directive: Political agreement at common position stage'. Below this, there is a paragraph about the audiovisual sector's economic and cultural importance, followed by a list of four types of action used to implement audiovisual and media policies. The list includes: 1. the Regulatory Framework: the Television without Frontiers Directive; 2. support mechanisms (MEDIA programme); and 3. Other actions regarding the distribution of audiovisual content. A large graphic with the letters 'AV' and a film strip is visible in the background. On the right side, there is a 'News' section with several bullet points and a 'Funding' section with one bullet point. The browser's address bar shows the URL 'http://ec.europa.eu/avpolicy/index_en.htm'. The taskbar at the bottom shows the Start button and several open applications, including Microsoft ActiveSync, Microsoft Office, Internet Explorer, and Microsoft PowerPoint.

