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
- 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
- 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