

# **From Television without Frontiers to Audiovisual without Borders**

## **The new Audiovisual Media Services Directive**

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# Outline

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# Introduction: Importance and size of the audiovisual market

- 5300 TV channels in Europe
    - Transnational, national, local
  - 105 billion € net revenues
    - 72 billion € TV/broadcasting
    - 33 billion € retail (cinema, DVD)
  - **Distinctiveness of media services:**
    - **High impact of television on public opinion and its social and democratic functions:** information, education, entertainment;
    - **objectives of general interest to be achieved:** cultural diversity, consumer protection, protection of minors, human dignity
- Media are both cultural *and* economic services



# Present Framework: the 1989/ 1997 Television Without Frontiers (TWF) Directive

- **Purpose:**
  - Eliminate the obstacles to the internal market
  - Set high standards, especially on consumer protection (advertising) and protection of minors
- **Means:**
  - Principle of **one country of jurisdiction** only (country of origin) for each broadcaster
  - **Harmonisation** of the applicable laws by setting **minimum standards** (stricter national rules remain possible)



# Need for change

- **Economic changes** due to market fragmentation/ channel explosion
- **Technological changes:**  
Digitisation, Convergence of Internet and TV, PVRs, VOD, mobile TV, IPTV
- **Level playing field:** regulated broadcasters vs. non-regulated media service providers



# Need for change: Timeline of revision

- 2003 1<sup>st</sup> Consultation - Communication
- 2004 Focus groups
- 2005 2<sup>nd</sup> Consultation & Commission Proposal
- 2006 General Approach (Council) and EP First Reading
- May 2007 political agreement between Council and EP at common position stage
- Autumn 2007 formal adoption
- 19/12/2007: Entry into force
- 18/12/2009: End of transposition period



# Modernisation: the Audiovisual Media Services (AVMS) Directive

- Scope: Extension to on-demand media \*
- New: Graduated regulation
- Jurisdiction: Additional safeguard procedure \*
- TV advertising: More flexible rules, Product Placement \*
- New: Encouragements to use soft law instruments

\* Intensive discussions



# Scope: new notions (I)

## **Audiovisual Media services:**

- Services as defined by the Treaty
- Having as principal purpose
- The provision of moving images
- To inform, entertain and educate
- To the general public
- By e-communication networks





# Scope: new notions (II)

## Television broadcasting:

- Linear audiovisual Media Service
- Provided by a Media Service Provider
- **For simultaneous viewing**
- Of programmes
- On the basis of a programme schedule



# Scope: new notions (III)

## On-demand AVMS:

- Non-linear audiovisual Media Service
- Provided by a Media Service Provider
- For viewing of programmes
- **At the moment chosen by the user**
- On the basis of a catalogue of programmes



# Scope: new notions (IV)

## 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)



# Not subject to amended Directive

- Private correspondence
- Non-economic activity
- AV content only ancillary
  - on-line editions of newspapers and magazines
  - car manufacturer
  - travel site
- No editorial activity
  - Platforms for the exchange user generated content



# Graduated regulation: 2 tiers of obligations

- Non linear (pull) services : basic tier
  - Video on demand
  - Catch-up avms
- Linear (push) services : stricter rules, but simplification
  - Television (incl. mobile TV, DVB-H, DMB)
  - (linear) IPTV
  - Live webcasting
- Reasons for differentiation
  - Degree of choice and control of users
  - Impact on society



# Structure : 3 parts

- **Applicable to all services** (Ch. I, II, IIa, VIa, VIb, VII)
  - General Provisions (Definitions, Jurisdiction, Contact Committee, Regulatory bodies, Transposition, Reports)
  - Basic tier of obligations (transparency, disabilities, windows, advertising qualitative rules, sponsoring, product placement)
- **Applicable to non-linear services** (Ch. IIb)
  - Protection of minors
  - Promotion of European works
- **Applicable to linear services** (Ch. IIc, III, IV, V, VI)
  - Events of major importance and short extracts
  - Promotion of European works and independent productions
  - Advertising quantitative rules
  - Protection of minors
  - Right of reply



# Jurisdiction

- Country of origin principle
  - applicable both to linear and non linear audiovisual media services
  - Stricter rules possible for broadcasters under own jurisdiction
- Establishment criteria
  - Main provisions unchanged, except
  - reversal of order of subsidiary criteria re. satellite transmission



# Jurisdiction: Safeguards for linear services (i)

- Generally: Better cooperation of regulators and MS (art. 23b)
  - Ex: UK-Sweden Agreement
- Protection of minors, incitement to hatred
  - No change in the formal procedure in TWFD (ex-ante Commission control : art. 2a, par. 2&3)
- Circumvention of stricter national rules
  - 1<sup>st</sup> step: Cooperation procedure
    - Broadcast directed wholly or mostly at another MS (Origin of revenues, main language, specifically targeted commercial communications, etc.)
    - Request to comply with rules of public interest





# Jurisdiction: Safeguards for linear services (ii)

- 2<sup>nd</sup> step: Circumvention procedure
  - Codification of ECJ case law
  - compulsory measures (e.g. blocking, sale prohibition) 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

- Same provisions as in eCommerce Directive (art. 2a par. 4 to 6)
- Measures necessary for public policy, public health, public security, consumer protection
- Normal procedure :
  - After asking the country of jurisdiction to take measures
  - Ex-ante assessment by the Commission
- Emergency procedure
  - Ex-post control by the Commission



# Commercial Communications: Qualitative Rules

- **Extension to on demand services:**
  - Recognisable
  - No subliminal techniques
  - Respect human dignity
  - Ban: Cigarettes, medicinal products
  - Protection of minors
    - Alcohol \*note additional exception for EEA countries in EFTA Treaty
    - Fatty food – codes of conduct



# Commercial Communications: Product placement (PP)

**UNLESS** a MS decides otherwise,

- **PP is 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 is allowed**
  - in all programmes
  - incl. in children's programmes

**Similar regime for PP as for sponsoring**

- Editorial independence to be safeguarded
- No direct offer
- Ban for tobacco companies, medicinal products and treatments

**In addition :**

- No undue prominence
- specific identification after advertising break



# Commercial communications: Television advertising

- 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;
  - Films for TV, cinematographic works, news programmes, children's programmes: 30 min. rule



# Protection of Minors

- AV media services 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**.
    - May **not be included in any linear programmes**, in particular programmes that involve pornography or gratuitous violence
  - Programmes **which are likely to impair** the physical, mental or moral development of minors
    - May **not be included in broadcasts**, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.
- unchanged for linear services, extended to non-linear



# Promotion of European works and independent productions

- Linear services
  - art. 4&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, prominence in catalogue



# Right to information, short news reports

- Events of major importance for society: Art 3a becomes 3j
- Short news reports (Art 3k)
  - Where exclusive rights have been acquired
  - Broadcaster can choose short extracts or equivalent system of access
  - Only for general news programmes (incl. on-demand 'catch-up' services)
  - Compensation shall not exceed additional costs directly incurred in providing access





# Independent regulators

- MS shall cooperate with each other and the Commission, notably through their competent independent regulatory bodies
- Close cooperation between regulatory bodies is particularly important with regards to the impact broadcasters established in one MS might have on another MS



# Encouragements to use soft law instruments

- Obligation for MS to **encourage co- and self-regulation** at national level. Such regimes must however
  - be broadly accepted, and
  - provide for effective enforcement
- Especially for HFSS food: MS to encourage media service providers
  - to develop **codes of conduct**
  - regarding audiovisual commercial communications
  - of fatty foods
  - directed to children



# Thanks for your attention

## For more information:

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The screenshot shows a Microsoft Internet Explorer browser window displaying the 'Audiovisual and Media Policies' website. The address bar shows 'http://ec.europa.eu/avpolicy/index\_en.htm'. The website header includes the European Commission logo and navigation links such as 'Home | News | Calendar | A-Z | Contact'. The main content area features a 'Welcome to ...' message and a 'HIGHLIGHTS' section titled 'Audiovisual Media Services Directive: Political agreement at common position stage'. Below this, there is a paragraph describing the sector's importance and a list of four types of action: 1. the Regulatory Framework (Television without Frontiers Directive), 2. support mechanisms (MEDIA programme), and 3. other actions (Content Online and Media Literacy) and Media Pluralism. A central graphic depicts a woman, a dog, and a child in a futuristic setting. On the right, there are 'News' and 'Funding' sections with recent updates. The Windows taskbar at the bottom shows the Start button and several open applications like Microsoft Office and Internet Explorer.

