

Revision of TVWF Directive

Topic Paper 6 (Media Plurality: What Should the Role of the European Union Be?)

ARD and ZDF endorse the Commission's stance that preserving and promoting plurality within the media is of critical importance to the democratic process both within individual member nations and for the European Union as a whole. As the use of digital grows alongside traditional broadcasting channels, transmission capacity will continue to rise. Technological advances will allow new telecommunications networks and networks not yet capable of broadcast (e.g. telephone and wireless networks) to also be used for distributing media offerings. However, neither a multiplicity of products nor a multiplicity of available distribution channels translate automatically into increased heterogeneity from a qualitative standpoint. On the contrary, digitalisation poses specific threats to a diversity of opinion. The non-standardized technical parameters set by network operators for set-top boxes such as CA systems and APIs in particular allow the potential for discrimination, and may also be used to promote individual media interests or even to distribute and market broadcast media products. Electronic programming guides also hold considerable latent risks. Thus new and greater challenges are being encountered in the digital age in efforts to protect media plurality.

The Commission correctly points out that the EC does not have immanent authority to regulate media concentration in Europe, but that instead individual member countries enjoy limited regulatory autonomy in this regard.

In recent years, media corporations have been increasingly active on a transnational level.

ARD and ZDF see it as imperative that steps be taken to better ensure the preservation of media plurality.

This is especially so given that existing competition laws in themselves are not fully adequate for reining in media concentration due to a lack of relevant European regulations governing it. Furthermore, economic competition is not the equivalent of media competition (see also recital 10. of the Access Directive; RL 2002/19/EC dated 7 March 2002 on access to electronic communications networks and associated facilities (Access Directive), Official Journal of the European Communities, L 108/7 dated 24 April 2002,).

According to Art. II-71 (2) of the European Constitution, "the freedom of the media and its plurality" must be upheld.

ARD and ZDF appeal to European institutions to pursue the objective of ensuring plurality at all times, both with new regulatory efforts and in the interpretation and application of existing provisions.

The fact must be considered in this context—as established by the Commission in topic paper 6—that public-sector broadcasters are of decisive importance to the safeguarding of media plurality.

It is thus welcome that Art. 31 of the Directive 2002/22/EC on universal services, users' rights relating to electronic communication networks and services (Universal Service Directive), Official Journal of the European Communities L 108/51, dated 24 April 2002) grants member states the ability to subject operators of electronic communications networks used for the public dissemination of radio and television broadcast services to reasonable broadcast obligations under certain circumstances. From the viewpoint of public service broadcasting, the must-carry clause pursuant to Art. 31 of the Universal

Service Directive should extend to new communications networks (such as mobile portals) whenever necessary to the mission of public-service providers in light of the increasing digitalization of distribution channels and of the phenomenon of media convergence. Digital innovations may make it necessary to ensure the dissemination of public service programming by means of must-carry rules, even if there may not yet be a substantial number of consumers utilizing such networks. The increasing variety of digital cable and DVB-T programming will result in smaller consumer groups for any particular program and therefore in smaller market segments; this may not be permitted however to lead to public service programming being unavailable in certain areas. Increasing transmission capacity through digitalisation can also result in a decrease in the relative value of providing individual programming slots as compared to the analogue world. New digital technologies (16:9, HDTV, Dolby Surround, etc.) increase the amount of capacity required for individual programmes that are to be disseminated with these features. Thus in this respect as well, a digitalized world requires that existing must-carry rules have the necessary flexibility to be adaptable to new technological challenges and developments.

In view of the risks posed to the diversity of opinion due to potential discrimination and barriers to access, it is critical that the access directive should provide national regulatory bodies the ability to issue access obligations on a fair, appropriate, equitable and non-discriminatory basis, as well as the ability to impose additional requirements upon corporations having considerable influence in the market, particularly with respect to APIs and EPGs. The way in which EPG is configured can determine whether recipients are at all in a position to become aware of the availability and utility of certain services or offerings. The proposal is advanced of critically reviewing the relatively liberal definition of market influence heretofore applied from the standpoint of upholding diversity of opinion in connection with any revision of the package of regulations governing electronic communications, especially where matters of public interest are concerned.

The goal of interoperability is specifically emphasized in Art. 18 para 1 a of the Directive 2002/21/EC dated 7 March 2002 on a common regulatory framework for electronic services (Framework Directive) Official Journal of the European Communities L 108/33 ,dated 24 April 2002). This directive provides that member states are to promote the use of an open API by providers of interactive digital television services. Only MHP technology currently offers a manufacturer-independent and freely accessible open standard. Manufacturers of digital receiver devices can also integrate MHP software without problem into their product lines. For these reasons a Europe-wide agreement on this standard would be most welcome. The Commission should pronounce a recommendation in this regard while continuing to support with all resources at its disposal the establishment of a pan-European MHP standard.

In topic paper 6 the Commission correctly observes the key importance of public-sector broadcasting in assuring the public's unimpeded future access to information, offers and services. In the digital media landscape and in light of steadily increasing media concentration internationally, public-sector broadcasting—both traditional radio and new media—is able to ensure a broadly varied balance of information. Not only legal and financial but technological preconditions as well must be in place for public sector broadcasters to be able to effectively fulfil their charge. It is thus of crucial import that public sector broadcasters continue to have the necessary amount of transmission capacity, and in particular the terrestrial frequencies, to fulfil this broadcasting mission. Terrestrial transmission via DVB-T is public-sector broadcasters' only direct avenue of access to viewers of any real significance that is independent of any third parties.

The preamble of the Amsterdam Treaty emphasizes the importance of public-sector broadcasting for ensuring diversity. This importance is steadily increasing in view particularly of the risks to media pluralism outlined that are encountered in today's digitalized world.

In the view of ARD and ZDF, the Protocol on the system of public broadcasting in the member states annexed to the Amsterdam Treaty must be applied, pursuant to which broadcasting is defined and its mission outlined as being technology-neutral, open to innovations and dynamic, the digital age notwithstanding, and in fact with direct reference to it, i.e. to new communications services and distribution channels.

Due regard must furthermore be given to the special importance of public-sector broadcasting for media diversity in the application of other EC legislation such as in the area of social subsidies.