



Parlamentul României  
Senat

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Bucharest, 26<sup>th</sup> June, 2013

Courtesy translation

**OPINION**

**of the ROMANIAN SENATE, on the**

**GREEN PAPER FROM THE COMMISSION**

**Preparing for a Fully Converged Audiovisual World: Growth, Creation  
and Values**

COM (2013) 231 final

**The Senate of Romania** has analyzed the implications of the on-going transformation of the audiovisual media landscape, characterised by a steady increase in the convergence of media services and the way in which these services are consumed and delivered.

Taking into account the common point of view of our permanent Committee on European Affairs and the Committee on Culture and Media, **the Plenum of the Senate**, during its session of the 26 June 2013, decided:

Art. 1 – At the points 2 and 3 of the Green Paper, *Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values*, the point of view of the Romanian Senate is as follows:

I. At section 2 – *Growth and innovation*, answers to the subsections 2.1. – 2.4. are:

1. At the subparagraph 2.1. – *Market considerations*, the answers to the questions from 1 to 3 are:

*1) What are the factors that enable US companies to establish a successful presence in the fragmented EU market despite language and cultural barriers, while many EU companies struggle? What are the factors hindering EU companies?*

The Senate considers that the major factors that enable US companies to establish a successful presence in the fragmented EU market are:

- a) the widespread use of English as international medium of communication in all areas, along with the commercial character of media products "made in USA";
- b) online demand without territorial restrictions of access;
- c) funds/budgets for audience research, particularly in terms of consumer habits, topics of interest, audience measurement and so on, and funding/ budgets for promotion of these products, tested in advance, and which receive favorable ratings from a representative sample of the target audience.

d) an intensive broadcasting-marketing.

The success of U.S. production was favored by a weak promotion, on a fragmented market, of European works by the audiovisual media services.

The EU aims to preserve traditional values, characterized by linguistic and cultural diversity, which narrow the market.

The Senate considers that an increase in the average education of the European public could stimulate overcoming the influence of the American model.

*2) What are the factors affecting the availability of premium content? Are there currently practices relating to premium content at wholesale level which affect market access and sustainable business operations? If so, what is the impact on consumers? Is there a need for regulatory intervention beyond the application of existing competition rules?*

The Senate considers that the factors affecting the availability of premium content are:

- a) several criteria, such as high production costs and return on investment - profit from invested capital (ROI = "Return on Investment") - given that these investments are backed by a strong and competitive advertising market, and that benefits of an ultra-modern technological support;
- b) the access costs;
- c) access technology;
- d) information on the interface with this technology;
- e) different content of premium packages;
- f) exclusive distribution practices of premium content, the fact that this content belongs to vertically integrated business operations;
- g) the cultural level of the potential consumer.

This phenomenon could lead to „social fragmentation” generated by those who do not have "rights" on the media product. From this perspective, the Senate considers that a regulation is necessary at the European level.

*3) Are there obstacles which require regulatory action on access to platforms ?*

The Senate considers that the access to platforms is limited by a lack of information about the access technologies and about the benefits of these platforms compared to traditional ways of access to content.

2. At the subparagraph 2.2. - *Financing models*, the answers to the questions 4 and 5 are:

*4) Do the current AVMSD requirements provide the best way to promote the creation, distribution, availability and market appeal of European works?*

The Senate considers that AVMSD requirements impose only obligations on transfer or promotion of European works. Also, the Senate believes that the imposition of percentage relationships between European and international program structure could lead to the loss of the meaning in terms of convergence.

*5) How will convergence and changing consumer behaviour influence the current system of content financing? How are different actors in the new value chain contributing to financing?*

According to the Senate, convergence stimulates non-institutional production of content, at individual level, followed by a shift of consumers towards choosing nonlinear content: it gradually eliminates funding sources for linear distributed content and focuses funding on niche content, adapted to the specific individual requirements.

3. At the subparagraph 2.3., *Interoperability of connected TV*, the answer to the question 6 is:

*6) Is there a need for EU action to overcome actual or potential fragmentation and ensure interoperability across borders? Is there a need to develop new or updated standards in the market?*

The Senate believes that, on long term, at EU level, in order to bringing forward the current fragmentation and to ensure cross-border interoperability, the adoption of common measures applicable to equipment in Member States is necessary. On short term, however, the Senate considers that it is necessary to update current standards in broadcasting sectors, IT and telecommunications, an operation that will ensure, on the one hand, a more efficient cross-border interoperability and, on the other hand, the transition to a common regulatory system.

4. At the subparagraph 2.4. - *Infrastructure and spectrum*, the answers to the questions 7 from 9 are:

*7) How relevant are differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) in terms of consumer experience and of public interest obligations?*

In Romania, audiovisual program retransmission services can be provided by using multiple technology platforms, like:

- a) electronic communications networks using digital DTH platform (satellite, as a "direct-to home");
- b) electronic communications networks using coaxial cable as a support / HFC;
- c) the use of IP-based platforms, IPTV and WebTV - involving a certain quality of service for broadband Internet access ( the connection stability and a certain minimum width tape);
- d) analog, terrestrial broadcasting.

DTT technology will be completed by 1 January 2015.

The Senate considers that the differences between individual platforms delivering content (e.g. terrestrial and satellite broadcasting, wired broadband including cable, mobile broadband) are relevant for the consumers in the next perspective:

- a) availability of the service - it depends on the coverage of the network, namely its ability to provide the service (capacity depends on network technology and on the medium used by the transmission, reception signals respectively); the number of channels that can be transmitted simultaneously depends on network;
- b) availability of reception terminal equipment , respective their price;
- c) the quality of the signal received by the consumer.

The obligations of supplying public services must be related to the network capacity, capacity that depends on the technological platform used to provide the content.

The Senate considers that it must emphasized the increased rate of the penetration of electronic communications mobile broadband, which shows an increase in consumer interest in such services, given the increasing availability and variety of end-user terminals (smartphone), which become more efficient. These technological developments will cause changes in the consumption of TV services, in the content provided and viewed by customers, the consumers choosing where, when and the content that they will watch.

8) *What frequency allocation and sharing models can facilitate development opportunities for broadcasting, mobile broadband and other applications (such as programme-making equipment) carried in the same frequency bands?*

The Senate considers that the development opportunities for broadcasting, mobile broadband access and other applications are closely related to the optimal use of the spectrum. This implies:

- a) the frequency allocation blocks with optimal size necessary to accommodate the efficient technologies (in Romania size was set at 2 \* 5MHz pair);
- b) restricting the number of frequency blocks, operation that can be held by an undertaking in favor bands (below 1 GHz);
- c) introducing the possibility of trading frequency blocks (within certain limits, necessary to avoid hoarding the spectrum; hoarding the spectrum leads to limit new entry, respectively to limit the possibility of providing competitive rivals);
- d) respecting the principle of technological neutrality (within limits determined by the characteristics of the technology used to avoid interference) and the principle of service neutrality (each operator is free to choose the services he provide through the use of spectrum allocated. Anyway, limits regarding this principle are actually determined by the availability and the cost of the equipment necessary to provide the service in the frequency bands).

9) *What specific research needs with regard to spectrum have to be addressed to facilitate such development?*

The Senate believes that the support should be provided in two ways:

- a) better coding signals for more efficient use of the radio frequencies;
- b) conducting a study in the European Union to identify those radio spectrum, below 1 GHz, likely to be released for subsequent introduction of broadband. In this context, we appreciate the utility of the studies on the joint use of several frequency bands for radio applications.

II. At the section 3 – *Values*, answers to the subsections 3.1. – 3.5. are:

1. At the subparagraph 3.1. – *Regulatory framework*, the answers to the questions 10 from 14 are:

10) *Given convergence between media, is there evidence of market distortion caused by the regulatory differentiation between linear and non-linear services? If yes, what would be the best way to tackle these distortions while protecting the values underpinning the EU regulatory framework for audiovisual media services?*

The Senate considers that, from the information it holds, there are no market distortions caused by the regulatory differentiation between linear and non-linear services. Furthermore, it should be noted that Romanian non-linear services are at the beginning, in terms of development. Therefore, it is very difficult to anticipate possible distortions that may affect the market because of the regulations.

11) *Is there a need to adapt the definition of AVMS providers and / or the scope of the AVMSD, in order to make those currently outside subject to part or all of the obligations of the AVMSD or are there other ways to protect values? In which areas could emphasis be given to self/co-regulation?*

The Senate considers that it is necessary to adapt the scope of AVMSD in order to extend some of these obligations on those who are currently outside their incidence, as these provisions are not applicable to media services from outside the EU and are not transmitted through a satellite located in an EU Member State or those that are transmitted over the Internet in countries outside the EU but which are for the EU.

12) *What would be the impact of a change of the audiovisual regulatory approach on the country of origin principle and therefore on the single market?*

The Senate considers that the country of origin principle shall ensure stability for the content provided by the producer or speaker. In cases of violation of laws or regulations of the countries media receivers, they provide an anti-circumvention proceeding in two steps already provided by AVMSD.

In conclusion, the Senate considers that additional regulations are necessary to protect both the consumer and the development of the European mass-media. The impact will be primarily related to finance, perhaps by standardization that will decrease some receipts.

13) *Does increased convergence in the audio-visual landscape test the relationship between the provisions of the AVMSD and the E-Commerce Directive in new ways and in which areas? Could you provide practical examples of that?*

The access to the linear services, which are not covered by the E-Commerce Directive, is made by using e-commerce in an increasingly way, and it's made in terms of their access to it, as well as the duplication of some content elements of linear services in the trade electronically sector.

In this respect, the Senate considers that regarding to the linear services which will be included in the area of electronic services, the two Directives should be reviewed.

14) *What initiatives at European level could contribute to improve the level of media literacy across Europe?*

Programs undertaken by the European Commission under the section "Media literacy" are very useful but a common policy for promoting national -European-universal cultural values is necessary.

2. At the subparagraph 3.2. – *Media freedom and pluralism*, the answers to the questions 15 and 16 are:

15) *Should the possibility of pre-defining choice through filtering mechanisms, including in search facilities, be subject to public intervention at EU level?*

The Senate considers that the ability to change the individual choice by customizing the results should be the expression of an individual option. The possibility to perform a selection for commercial or other type of objectives, foreigner of the consumer choice, should be limited.

16) *What should be the scope of existing regulation on access (art. 6 Access Directive) and universal service (art. 31 Universal Service Directive) in view of increasing convergence of linear and non-linear services on common platforms? In a convergent broadcast/broadband environment, are there specific needs to ensure the accessibility and the convenience to find and enjoy 'general interest content'?*

The Senate considers that the objectives of the mentioned regulations should be extended to non-linear audiovisual services in broadband communications, depending on the specificity. Accessibility of the "general content of interest" should be guaranteed in the broadband, too.

3. At the subparagraph 3.3. – *Commercial communications*, the answers to the questions 17 from 19 are:

17) *Will the current rules of the AVMSD regarding commercial communications still be appropriate when a converged experience progressively becomes reality? Could you provide some concrete example?*

The Senate considers that the convergence leads to a greater availability of the non-linear sector that is similar to that of television, and it will require the review of the relaxed standards of the nonlinear sector, along with a realistic evaluation of the possibility to control and to adapt the rules to these possibilities.

18) *What regulatory instruments would be most appropriate to address the rapidly changing advertising techniques? Is there more scope for self/co-regulation?*

The Senate considers that the most efficient regulatory instruments is self-regulation of the market, and refers to what the consumer is willing to "give up" in exchange for watching the program. The discussion is important for the premium content Pay-per-View where the consumer pays not to see any form of advertising.

19) *Who should have the final say whether or not to accept commercial overlays or other novel techniques on screen?*

The Senate considers that the decision should remain with broadcasters, who are responsible for the content of broadcast and who must also receive funding through the advertising on its support.

4. At the subparagraph 3.4. – *Protection of minors*, the answers to the questions 20 from 25 are :

20) *Are the current rules of the AVMSD appropriate to address the challenges of protecting minors in a converging media world?*

The Senate considers that, unfortunately, the current AVMSD did not succeed to protect children even from the linear content addressed directly to them through the animated cartoon movie channels, as a confirmation of this fact being the aggressive subjects or, in any case, non-educative subjects from some of these channels, as well as aggressive advertising for some products and services of low value, advertising that results in a pressure from the children to the adults. These problems should be solved before debating the issue of mass-media convergence.

*21) Although being increasingly available on devices and platforms used to access content, take-up of parental control tools appears limited so far. Which mechanisms would be desirable to make parents aware of such tools?*

The Senate considers that it should not be neglected that the next generations are more and more familiar with the new technology, so in many cases the children have much better skills than their parents in using the new technologies. Social media campaigns for promoting the instruments of parental control could be useful to define the way these instruments could be used easily and efficiently.

*22) What measures would be appropriate for the effective age verification of users of online audiovisual content?*

The Senate considers that, unfortunately, currently the age cannot be verified without the identification of the person. And, overlooking the minor's protection matter, the person identification could lead to much greater concerns than the problem which it is trying to solve.

Still, „an identity card for the internet” could be envisaged, which will only contain information concerning the age and which could be used, with a personal access code, as an access license for certain type of material. Moreover, there is the possibility to examine the age of the user, through secure and specialized Skype protocol soft.

*23) Should the AVMSD be modified to address, in particular, content rating, content classification and parental control across transmission channels?*

The Senate considers that it is necessary a variety, but also an improvement for the channels' content quality for children and young people (including cartoons) re-broadcasted in Romania through operators of audiovisual media services.

*24) Should users be better informed and empowered as to where and how they can comment or complain concerning different types of content? Are current complaints handling mechanisms appropriate?*

The petitions concerning the content of the broadcasted programs through linear services are, in this moment, operated by the National Audiovisual Council of Romania. The Senate considers that it would be useful to create a formal mechanism, through which the broadcaster would be compelled to answer to a petition submitted by a customer for a watched material, when this material has an impact for the harmonious evolution of minors.

*25) Are the means by which complaints are handled (funding, regulatory or other means) appropriate to provide adequate feedback following reports about harmful or illegal content, in particular involving children? What should be the respective roles/responsibilities of public authorities, NGO's and providers of products and services in making sure that adequate feed-back is properly delivered to people reporting harmful or illegal content and complaints?*

The Senate considers that the balance concerning the protection of minors from accessing unsuitable materials for them, through audiovisual media services, should be directed, on one hand, towards a greater responsibility for both the producing and distribution companies, because, from the moment the minors get access to these insufficiently well cryptic unlinear programs, their long exposure, uninterrupted by other programs, can lead to real and serious negative effects for the minors'

evolution, and, on the other hand, any measures taken for post-access sanction cannot repair the harm already done to the minors.

5. At the subparagraph 3.5. – *Accessibility for persons with disabilities*, the answers to the questions 26 and 27 are:

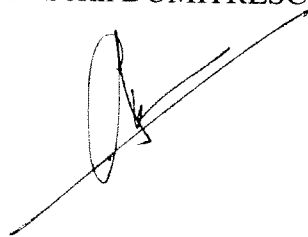
26) *Do you think that additional standardisation efforts are needed in this field?*

The Senate considers that, any type of information/service from public space, offered by the EU or the national institutions, needs standard access for the persons with visual or hearing disabilities. The standard access could be comprised among the broadcasting obligations, imposed by the member states to the suppliers of audiovisual services. If the standards do not exist, these should be created.

27) *What incentives could be offered to encourage investment in innovative services for people with disabilities?*

The Senate supports non-reimbursable cofinancing in research/development for the evolution of these services, and also fiscal deductions given by the state. On the other hand, the active implication of organizations for the persons with seeing and hearing disabilities could decrease the costs for adapting the audiovisual programs to the needs of these members.

p. President  
Cristian – Sorin DUMITRESCU

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