SEENPM

South East European Network
for Professionalization of Media

EU Documents Affecting the Media

C O N T E N T S

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1. ACCESS TO INFORMATION AND TRANSPARENCY

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EU regulations on transparency and access to information: main provisions and effects

The transparency and fair competition issues can be regulated by national legislation of each European Union Member State. Yet national laws and practices have to comply with common EU regulations, required by the Treaty establishing the European Economic Community. The current paper analyzes the main European Commission, European Parliament and European Council regulations aimed at ensuring both transparency of the public funds use in media support and access to public information:

- Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, 25 June 1980
- Commission Directive 2000/52/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, 26 July 2000
- Commission Directive 2005/81/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, 28 November 2005
- Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04)
- Directive 2003/98/EC of the European Parliament and of the Council of 17 November
- 2003 on the re-use of public sector information

1. The requirements

A. Transparency

In general terms, the transparency regulations refer to the financial relations between the public authorities[2] and public undertakings[3], as well as to financial relations within

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[2] The Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings defines "public authorities" as "all public authorities, including the State and regional, local and all other territorial authorities"

[3] The Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings defines "public undertakings" as "any undertaking over which the public authorities may

undertakings. The rules are intended to ensure that these relations are transparent and cover the following aspects:

- the modes of public financing (direct or indirect)
- the types of financing (e.g. operating loss set-offs, provision of capital, non-refundable grants, or loans on privileged terms, compensation for financial burdens imposed by the public authorities)
- the use of public funds
- the availability of information about all relevant financial operations
- the necessity of separate cost and revenue accounts associated with different activities.

More specifically, the directives 80/723/EEC, 2000/52/EC and 2005/81/EC require Member States to ensure that financial relations between public authorities and public undertakings are transparent, so that the following emerge clearly:

(a) public funds made available directly by public authorities to the public undertakings concerned;

(b) public funds made available by public authorities through the intermediary of public undertakings or financial institutions;

(c) the use to which these public funds are actually put[4].

Both public and private companies could benefit from public funds. The Commission regulations[5] aim at ensuring that there is no unjustified discrimination between public and private undertakings in the application of competition rules. In order to have detailed data about the internal financial and organizational structure of public and private undertakings, the Commission regulations[6] require the creation of separate and reliable accounts relating to different activities carried out by the same undertaking.

The Member States must ensure that the following will emerge clearly from these accounts, in particular:

- the costs and revenues associated with different activities
- full details of the methods by which costs and revenues are assigned or allocated to different activities.

Also, Member States must ensure that information concerning these financial relations will be kept and made available to the Commission for five years from the end of the financial year in

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exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it"

[4] The Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings

[5] Commission Directive 2000/52/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings

[6] Commission Directive 2000/52/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings and Commission Directive 2005/81/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings

which the public funds were made available to the public undertakings concerned. However, where the same funds are used during a subsequent financial year, the five-year time limit shall run from the end of that financial year.

B. Access to public information

While pursuing the same general goals as the directives 80/723/EEC, 2000/52/EC and 2005/81/EC, namely to increase transparency and ensure observation of competition rules, the directive 2003/98/EC on the re-use of public-sector information focuses on the establishment of a minimum set of rules and the practical means for re-using[7] existing documents[8] held by public-sector bodies[9]. The latter directive regulates:

- conditions (including practical arrangements facilitating the search) and timeframes for processing requests for re-use of public information
- charging principles
- licensing procedures
- non-discrimination and exclusive arrangement issues.

The specific obligations of the state bodies under this regulation[10] are:

- to process the requests for re-use within a reasonable time; where no time limits are established, state bodies will process the request and deliver the information within 20 working days. When the requests are complex, 20 more days can be used, while the applicant shall be notified about time extensions no later than after 3 weeks since the initial request
- to communicate the reasons for refusal, when a request is refused
- to make sure that the policy on fees/prices charged for the information (where it exists) is transparent; the charge must not exceed the cost of collecting, producing, reproducing and disseminating the information, together with a reasonable return on investment
- ensure that practical arrangements are in place to facilitate the search for documents available for re-use, such as asset lists, accessible preferably online, of main documents, and portal sites that are linked to decentralized asset lists

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[7] According to the directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information - 're-use' means the use by persons or legal entities of documents held by public-sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public-sector bodies purely in pursuit of their public tasks does not constitute re-use

[8] Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information defines 'document' as (a) any content whatever its medium (written on paper or stored in electronic form or as sound, visual or audio-visual recording); (b) any part of such content

[9] According to the directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information 'public-sector body' means the State, regional or local authorities, bodies governed by public law and associations formed by one or several such authorities or one or several such bodies governed by public law

[10] Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information

- to guarantee that non-discrimination rules are applied when the information is used by different actors (both private and public)

- to ensure that contracts or other arrangements between the public-sector bodies holding the documents and third parties do not grant exclusive rights. If exclusive rights are necessary, state bodies will

review every 3 years the reasons allowing for these exclusive right. The exclusive arrangements will be transparent and public.

2. Who is affected and how?

The analyzed documents are compulsory for al EU and EEA countries[11].

The directives 80/723/EEC, 2000/52/EC and 2005/81/EC affect all beneficiaries of public funds in those countries. In theory all media types (print and electronic) can be affected. But in practice the implications are more visible when it comes to the Public Service Broadcasters (PSB). The Commission states explicitly that PSB financing is a form of State aid: "any transfer of State resources to a certain undertaking - also when covering net costs of public service obligations - has to be regarded as State aid".[12] The financing of PSBs is important since it is "a way to ensure the coverage of a number of areas and the satisfaction of needs that private operators would not necessarily fulfill to the optimal extent."[13] Yet Member States will also make sure that financing of PSBs or other businesses entrusted with the operation of services of general economic interest will not affect competition in the relevant markets (e.g. advertising, acquisition and/or sale of programmes).

The Commission allows discretion to Member States to define and organize the funding of public service broadcasting organizations[14], but requires the observation of trading conditions and competition in the Community and the common interest. At the same time "the realization of the remit of that public service shall be taken into account." The definition of the "public remit" or "public service mandate" is also left up to the Member States. However, the definition has to include the Commissions' concepts and values and has to be as precise as possible so that the Commission can monitor how Member States comply with its regulations, while Member states can monitor PSB performance. Although it is not up to the Commission to judge the quality of certain programmes, it is expected that PSBs will provide balanced and varied programming "consistent with the objective of fulfilling the democratic, social and cultural needs of a particular society and guaranteeing pluralism, including cultural and linguistic diversity."[15] The Commission stresses the importance and effectiveness of having a genuinely independently appointed body which is going to supervise the quality standards.

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[11] European Economic Area (EEA) includes the 25 EU Member States, Iceland, Liechtenstein and Norway

[12] Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04). P. 19

[13] Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04)

[14] Directive 2000/52/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings quotes the Treaty establishing the European Community and the interpretative provisions annexed to the Treaty by the Protocol on the system of public broadcasting in the Member States

[15] Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04). P. 33

The directive *2003/98/EC* affects the state, regional or local authorities that hold documents concerning not only the political process but also the legal and administrative process and have the obligation to make them available in order to guarantee the public's right to know, which is a fundamental principle of democracy. Also, it affects persons or legal entities wishing to access public documents for commercial or non-commercial purposes.

3. Effects

If adopted and implemented by states preparing or wishing to join European Union, the analyzed regulations can have a positive impact on media markets by making them more transparent and making media outlets more accountable.

- The transparency in public funding of the media **could reduce and eventually do away with state-owned print media** in the countries where such outlets still exist (e.g. the Republic of Moldova, Serbia). Governments may find themselves in a situation when financing media outlets in a transparent manner is not convenient because the desired propagandistic effects can no longer be achieved. As a result, there will be more chances for pluralism and fair competition on media markets. In the Republic of Moldova, the lack of transparency on media ownership and public funding of the press made it possible for the governing party to maintain control over local newspapers financed by local public authorities. By means of public funding, the governing party controls up to 25 from more than 40 local newspapers. The publications supported by the authorities enjoy privileged conditions on the advertising market, at the expense of independent media outlets. They receive advertising contracts from public bodies as well as from private companies under pressure from the authorities. In 2005, the state media privatization process has started. Moldovan cabinet decided to withdraw as a founder of government-founded national newspapers - the Romanian-language "Moldova Suverana" and the Russian-language "Nezavisimaia Moldova". In practice, the state newspapers have only changed their insignia, thus becoming „independent", but continuing the same editorial policy that serves the government. There is no credible information on whether Government continues to finance those newspapers. But is known that they maintain their offices for a symbolic rent fee in a state building and they pay less than private media to the state owned printing house.

- The transparency in public funding of the media **could create equal condition for all media outlets to receive state advertisement funds from government institutions.** Romania has seen numerous scandals concerning the lack of transparency of public funds spent on state advertisement. These practices, regarded as a powerful tool of controlling media, came to an end in May 2005. Under pressure from civil society, the new Romanian Government proposed regulation, adopted eventually by Parliament, which introduced a new master contract for state advertisement and obliged authorities to make public any contract on state advertisement signed with media organizations.[16] According to the monitoring report conducted by Romanian Center for Independent Journalism, one year since new legislation has been in place, the level of state advertisement dropped dramatically, almost four times. Although there is no clear evidence of the lack of political will to implement the reform, the report finds that the legal reform is not being implemented properly due to the lack of administrative capacities.[17]

- While state aid for public broadcasting is seen as a tool to make quality programmes for every segment of the audience and to avoid "commercialization", it can also have **perverse effects**. Firstly, it **can affect fair competition on the internal media market**. Even when financed by the state, public broadcasters are tempted to enter into market competition. Public-service broadcasters are compromising quality to compete with commercial channels, but, at the same time, many of them depend on governments or political parties. These developments jeopardize broadcasting pluralism and

[16] The regulation was initially elaborated by a working group consisted of Center for Independent Journalism, The Agency for Press Monitoring (Agentia de Monitorizare a Presei), Romania Press Club (Clubul Roman de Presa) and TV industry professionals as well as Government experts

[17] The report "Publicitatea de stat – un an de transparenta", June 26, 2006, http://www.cji.ro/rh/raport.doc

diversity, the new democracies of Central and Eastern Europe being subject to the highest risk.[18] Secondly, state aid for public broadcasters **could damage the free trade between Member States**. This is clearly the position as regards the acquisition and sale of programme rights, which often takes place at an international level. Advertising, too, in the case of public broadcasters who are allowed to sell advertising space, has a cross-border effect, especially for homogeneous linguistic areas across national boundaries.[19]

- The transparency of public funding of the media and equal access to information **could increase the investments in the media sector**. The last Media Sustainability Index published by IREX shows that foreign investments in the media have been growing, bringing infusions of capital and business expertise in several countries from South-eastern Europe which did start the process of negotiating European Union accession.[20]

- The implementation of access to information provisions **can contribute to the opening up of public institutions and reduce the secrecy** around public information in the region. However, considerable efforts to secure access to public information are still needed. In the Republic of Moldova, after six years of existence of the law on access to information, some public institutions have started to be more open, e.g. the Parliament adopted decisions to publish the minutes of the Parliament's plenary sessions and a newly elaborated draft law on the Transparency of Decision-Making is about to be approved. As the Access to Information Directive projects, **it can create conditions for the development of services based on public-sector information** as an important primary material for digital-content products and cross-border cooperation. Wider possibilities of re-using public-sector information should among other things allow European companies to exploit its potential and **contribute to economic growth and job creation**.[21]

- The main **negative effect** in the countries preparing or wishing to join EU could be **the formal, declarative implementation/application of EU regulations** by the governments in the SEE region, not followed up by necessary administrative reforms. The monitoring that the Commission conducts of candidate countries shows that despite the fact that legislation was largely in line with the Community *acquis* and administrative structures were in place, the monitored countries needed to take further measures to increase the administrative capacity of their regulatory authorities and ensure that the legislative framework is implemented effectively and in full transparency.[22] In Moldova, the communist majority in the Parliament felt under pressure from the Council of Europe and opposition to give up the political control of the state owned radio and television. The Parliament has adopted in 2002 a law namely to set it free from the state control. In reality, under the pretext of reformation, the government cleaned national broadcaster of uncomfortable staff, while the editorial policy remains the same. The lack of transparency of the way the newly created PSB is financed allows Moldovan government to keep also financial control over it. The reform at the state radio and TV stations is not over yet. In July 2006, the Parliament adopted in a rush the new Broadcast Code. It stipulates the way the management of the stations and the Broadcasting Coordination Council (BCC) are formed. Despite the encouraging rhetoric, the Parliament practically excluded the civil society from the elaboration of the newly adopted Broadcast Code[23]. Although the Code provide that professional and nongovernmental organizations will

[18] The report *Television Across Europe: Regulation, Policy and Independence*, published by OSI's EU Monitoring and Advocacy Program (EUMAP) and Media Program. The report covers 20 European countries—EU members, candidates, and potential candidates—from U.K. to Turkey, and from Romania to France.
[19] Communication from the Commission on the application of State aid rules to public service broadcasting (2001/C 320/04)
[20] IREX, Report: Media Sustainability Index 2005
[21] Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information
[22] Bulgaria. Commission Report, October 2004. http://europa.eu/scadplus/leg/en/lvb/e20101.htm

[23] Concerns raised in a joint statement by the Association of Independent Press, the Moldovan Journalists' Union, the Press Freedom Committee and the Independent Journalism Center, 14 August, 2006. http://ijc.md/en/

delegate representatives in the BCC, the civil society is concerned that its recommendations will be ignored by the Parliament, which is supposed to vote to approve each candidate.

4. Deadlines

The Member States are supposed to make effective the laws, regulations and administrative provisions necessary to comply with the requirements of the last amendments to *directive 80/723/EEC* by 19 December 2006 at the latest. While the deadline for adjusting the legislation to *directive 2003/98/EC* on the re-use of public-sector information expired on 1 July 2005. The Commission will monitor the application of *directive 2003/98/EC* till 1 July 2008. When adopting the measures required by the Commission directives, Member States have the obligation to refer to the relevant EU documents. The deadlines for the candidate states are subject to negotiation on a case by case basis.

5. What states and the media community/ professionals can do?

All the countries in the region stated the European integration as their main goal. To achieve this goal these countries are supposed to fully implement the *aqui communitaire*, including all the regulations in the media field. So far, the practice shows that only pressures from outside can persuade the authorities in SEE countries to comply with their commitments.

As the regard of the EU regulations analyzed in this paper, **are expected:**

- to show genuine political will and support for nongovernmental organizations which can contribute to the implementation of EU standards in the media field
- to create special working groups, formed by government representatives, opposition, nongovernmental and professionals organizations, to examine the *Commission Directives on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, the Communication from the Commission on the application of State aid rules to public service broadcasting, and the Directive on the re-use of public sector information* and to propose all needed amendments of the national laws
- to coordinate with European Commission legal reforms proposed by working groups
- to establish a clear timetable for the endorsement and implementation of the proposals made by the working groups
- to create all the condition for a proper monitoring by the civil society and European Commission of the implementation of the adopted laws
- to create equal economic conditions for the press: denationalize / privatize the local state press by auction, where it exists; encourage local and international investments in the mass media[24].

The media community and civil society can:

- participate in the working groups established in order to amend national legislation in accordance with EU regulations

[24] The Republic of Moldova is one of the countries where foreign investments in the media din not yet arrive. Among the reasons is uncomely legislation. According to the Moldovan press law, adopted in 1995, foreigners can hold no more than 49% of statutory capital of a periodical publication or a press agency, while they have no right to lead a print media institution.

- monitor the endorsement and implementation of the proposed legal reforms
- work with authorities to train the public servants responsible for implementation of transparency and access to information laws
- improve the cross border cooperation for better exchange of experience in implementation of the EU standards on transparency of public funds in media field and access to public information
- to inform periodically European Commission and request the Commission to exercise pressure on state authorities in order to achieve required legal and administrative reforms and to ensure transparency of the use of public funds and access to public information.[25]

[25] A recent report assessing the implementation by Moldovan authorities of their commitments under the "Moldova – EU Action Plan" shows that broadcast legislation has not improved, media are still divided into "pro- and anti-government" outlets, whereas old technologies continue to be used even by newly-created organizations. The report highlights authorities' influence over the national broadcaster and states that no real transformation has taken place in the former government-owned publications. The authors recommend, among other things, continuing international monitoring of the situation in this field. ("Euromonitor", issue Nr. 3, July 2006, Expert Grup" and the Association for Participatory Democracy (ADEPT), http://www.e-democracy.md/files/euromonitor03.pdf

2. ADVERTISING

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Documents and scope

The regulation of the domain of advertising responds to the concern of the Community for the fair competition and the functionality of the internal market. The Directive states that the development of fair commercial practices within the area without internal frontiers is vital for the promotion of the development of cross-border activities.

The relevant document in this field is :

- Directive 2005/29/EC on Unfair Commercial Practices.

It fights illicit practices such as pressure selling, misleading marketing and unfair advertising; sets out some minimal rules on advertising to children.

http://ec.europa.eu/consumers/cons_int/safe_shop/fair_bus_pract/index_en.html

The Directive approximates the laws of the member states on unfair commercial practices, including unfair advertising, which directly harm consumer's interest and thereby harm the economic interest of the legitimate competitors.

Provisions

The Directive prohibits specifically the **unfair commercial practices**, described as the practices that:

- are contrary to the requirements of the professional diligence[26];
- they materially distort or are likely to materially distort the economic behavior with regard to the product (meaning the buying decisions) of the average consumer.

Though the directive recognizes as admissible "the common and legitimate advertising practice of making exaggerated statements which are not meant to be taken literally" (art. 5, para 3)

[26] The standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity (article 2, h)

The misleading and the aggressive practices are considered to be unfair.

A commercial practice shall be considered "a misleading action" if it contains false information, deceives or is likely to deceive the average consumer, in regard with (among others):

- the existence or nature of the product;
- the main characteristics of the product (availability, risks, executions, composition, accessories, after/sale consumer assistance and complaint handling, etc.)
- the price or the manner in which the price is calculated;
- the need for a service, part, replacement or repair;
- the consumer's right, including the right to replacement or reimbursement.

Also a misleading practice is considered:

- any marketing of a product, including comparative advertisement, which creates confusion with any products, trade marks or trade names;
- non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound.

A practice can be considered misleading omission if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs in order to take an informed decision. The same is true, if the trader hides or provides such information in an unclear, unintelligible, ambiguous or untimely manner.

The Directive sets the minimal material information that has to be compulsory delivered:

- the main characteristics of the product, to en extent appropriate to the medium;
- the geographical address and the identity of the trader;
- the price, inclusive of taxes or, whenever is reasonably, the manner in which the price has been calculated, including additional taxes.
- the arrangements for payment, delivery, performance and the complaint handling policy;

Aggressive commercial practices are defined at those practices that, in their factual context, by harassment, coercion (including the use of physical force) or by undue influence, significantly impair or are likely to impair the average consumer's freedom to choose. Such aggressive practices include:

- the use of threatening or abusive language or behaviors;
- the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgment:
- any onerous or disproportionate non-commercial barriers imposed by a trader when the consumer wishes to exercise rights under the contract;
- any threat to take any action that cannot be legally taken.

The directive "does not exclude" the control, which Member States may encourage, of unfair commercial practices by code owners and recourse to such bodies, if such recourse is in addition to the court or administrative procedure.

The member States are held to ensure that adequate and effective means to combat unfair practices exist and are enforced. The establishment and the level of such measures are to be decided by each State.

Annex 1 of the Directive lists commercial practices which are in all circumstances considered unfair.

Annex 2 of the Directive presents a list of Community law provisions setting out rules for advertising and commercial communication.

Applicability

The Directive is applicable to Member States.

Timeframe

The Member States shall adopt and publish the laws, regulations and administrative provisions necessary with this Directive by 12 June 2007. (as per article 19).

The implementation of such national laws, norms and regulations shall become effective by December 2007.

For a period of seven years from June 2007, Member States shall be able to continue to apply national provisions within the field approximated by the Directive that are more restrictive that the Directive (article 3, para 5).

Effects on the media

The Directive cannot be seen as having a direct and measurable impact on the media content. Still, by regulating the advertising field – the main source of revenue for many media operation – the document affects nonetheless the media industry.

Moreover, as the main asset of the media is credibility, the unfair practices in advertising would reflect negatively on the media hosting the ads. Misleading advertising is likely to affect the media credibility also, hence the interest of editors in fair practices.

The situation is even more acute for broadcast media, as the broadcasters have the responsibility for all the content transmitted by a given radio or TV channel, advertisement included. Thus, it is in the direct interest of the broadcasters to follow the correct implementation of the provisions of this directive, stay in control of the quality of the advertisement that is offered for broadcasting and make the best use of the self-regulatory mechanisms allowed under this document.

What can be done

The civil society can consider to:
- initiate/moderate/debate regarding the fair practices on the media market and the level of compliance with the provisions of this directive;
- promote self-regulation form the part of advertisers, broadcasters and publishers to avoid misleading or aggressive advertising;
- cooperate with the consumers' protection associations to identify cases of unfair commercial practices related to advertising;
- educate the public to identify, react to and report instances of unfair practices;

The states can consider to:

- adopt swift steps for a complete implementation of this directive;
- empower the consumers to report and seek redress in cases of unfair practices;
- empower watch dog organizations (Broadcast council, Office for the consumers' protection) to react in such cases; explanations of their decisions are welcome, as they have an educative effect, not only a punishing one.

3. AUDIOVISUAL

Sašo **BOGDANOVSKI - Macedonia**

Common European audiovisual standards

". . . In a situation of imperfect market competition, special policies are required to ensure that all Europe's voices are heard and all Europe's stories are told, and that Europeans gain economically and culturally from an ever-growing industry."

Carol Tongue, a British member of the European Parliament

1. Introduction of the European model of regulation

In contrast with the "free market" or "market oriented" model of audiovisual and broadcasting policy characteristic for United States of America and on the other hand the model that was formerly known as "Eastern bloc" or "Soviet model", somewhat outdated terms, nowadays practiced in Korea and China, witch is characterized by state direct control of editorial content, the European model of broadcasting policy was developed. Public service broadcasting next to private broadcasting are playing key role in the European model of the dual broadcasting system. European Model of the audiovisual sector and broadcasting has three main attributes "regulated", "social responsibility" and "public service".

This systems of regulation tend to skew broadcast content away from what it would be in a straightforward free-market system towards what is variously referred to as 'quality broadcasting', 'a social responsibility model', or 'public service broadcasting'. Allowing variations from one country to another, a form of organization where there is careful state regulation of the broadcast media. With variations from one country to another, national governments have little direct control over editorial content. They, however, set a legislative framework within which the broadcasters must operate. For example, broadcasters may be required to ensure 'impartiality' in their coverage of current affairs, they may be required to ensure that certain kinds of material are not broadcast when young children are likely to be watching, and so on.

The EC has since its establishment by the Treaty of Rome has been committed to capitalism which supposedly offers the opportunity to develop corporations better able to compete on a global scale. This commitment necessarily conflicts with the 'public service'

tradition of broadcasting which prevailed in most European countries. Amongst other things, the public service concept has as goals the ideals of a multiplicity of voices which represent the views and interests of a broad cross-section of society, diversity in programming, balanced and (more or less) impartial representation of a range of views. One means of achieving that goal is to have either public media or independent media which are subject to state regulation and are required to achieve the programming mix laid down in that legislation.

There has been a tendency on the part of the EC to view the media as just another industry, rather than as a special case, as is the assumption within public service systems. In any case, even if the EC did effectively prevent mergers in the media industry, that would not in itself guarantee media pluralism as such, since there is little practical difference for the consumers between a hundred companies all producing similar material and a single company producing such material.

Study of the legislative brought on the behalf of the European Union, in other words the Acquis27, shows a visible tendency. Besides the different experiences in broadcasting in the member states resulting from different past of the political systems, different level of the economic development, historical and cultural traditions, the member states of the European Union and Council of Europe put an effort to build a structure that is unifying the audiovisual policies.

Let's find the reasons for adoption of the directives or rules, observed through the categories of Technology, Economics and the Politics.

1. Technology

Until recently the limited number of channels available required that the broadcast spectrum be used for public service broadcasting, rather than for the benefit of commercial interests. Rapid changes in communications technology have made this argument largely irrelevant. Cable systems, along with this, are providing a variety of additional channels.

Several direct broadcast satellites offer programs ranging from news and sports to movies and music TV that can be received simultaneously in several countries. Digital television typically allows between eight and 12 channels to occupy the same capacity required by a single analogue channel.

2. Economics

As in the United States, the past few years in Europe have seen an increasing tendency towards deregulation and privatization in various sectors, including broadcasting. Most European countries now have dual systems, with private, commercial channels supplementing or competing with the national public service networks.

The number of private channels now exceeds the number of public-service channels, which usually are financed by viewer license fees, or a combination of license fees and

[27] Acquis communataire

advertising. Only a handful of the new channels introduced in the past decade are public services. By far the majority are privately owned, commercial channels, funded by advertising, subscriptions, or pay-per-view.

As a result of these developments, the number of channels available in the EU nations increased in significantly.

3. Politics

The striving for greater economic and political unity in Europe was a major incentive to adoption of the European Convention on Transfontier Television (Council of Europe, No. 132; along with the Protocol amending the European Convention on Transfontier Television 1.X.1998) and the Directive Television Without Frontiers (TVWF), 89/552/EEC (Amanded by Directive Television Without Frontiers 97/36/EC)

Objectives included are:
- establishing an even closer union among the people of Europe,
- fostering closer relations between the states belonging to the Community,
- ensuring the economic and social progress of its countries by common action to eliminate the barriers which divide Europe.

The EU's founding document, the Treaty of Rome, which established the European Community in 1957, requires that obstacles to freedom of movement of goods and services among Member States be abolished. Broadcasting is considered a service within the meaning of the treaty, and broadcasts across frontiers are one of the ways of pursuing EU objectives.

The intention of the TVWF Directive was to create a common market in broadcasting. Under previous EU rules, any state could block incoming broadcasts, except in border regions where there is unavoidable overspill. Now Member States cannot object to programs from other EU countries being received and retransmitted in their own territory, provided these programs conform to the regulations.

In 2004 the European Council agreed on a draft for a new European Constitution. One major addition to the previous treaties that served as a constitution is the inclusion of culture in the fundamental goals the Union pursues.

Article I-3 stipulates that: "The Union shall respect its rich cultural and linguistic diversity and shall ensure that Europe's cultural heritage is safeguarded and enhanced".

This means that cultural identity is an absolute right and a fundamental goal of the European Union.

2. Documents of the European broadcasting policy

The main standards covered by Directive Television Without Frontiers (TVWF), 89/552/EEC, Amended by Directive Television Without Frontiers 97/36/EC

1. Advertising and sponsorship:

The regulations limit the amount and kind of advertising.
Advertising should be recognizable as such, and prohibit subliminal and "surreptitious" advertising - defined as representing the name or trademark of a supplier of goods or services with the intention of advertising.

Advertising spots should generally not interrupt programs.
Instead, ads should be inserted between programs or, in the case of programs more than 45 minutes long, they may be interrupted once for each complete period of 45 minutes.

No commercial breaks in news and current affairs programs, documentaries or children's programs if the program duration is less than 30 minutes.

The total amount of advertising should not exceed 15 percent of daily transmission time, or more than 20 percent in any given clock hour – in other words, no more than 12 minutes of commercials per hour.

Ads directed at children cannot encourage them to buy a product by exploiting their inexperience or credulity, nor directly encourage them to persuade their parents to buy the product advertised.

Sponsors cannot influence the content and scheduling of programs in a way that will affect the editorial independence of broadcasters.

There is a complete ban on advertising cigarettes or other tobacco products.
Ads for alcoholic beverages cannot be aimed specifically at minors, nor give the impression that drinking leads to enhanced physical performance, or to social or sexual success.

2. Protection of minors:

The Directive further seek to protect the "physical, mental or moral development of minors" through a ban on programs that involve pornography or gratuitous violence at times when children are likely to watch them.

3. Right of reply:

TV broadcasters are required, in terms of both documents, to provide a right of reply, or equivalent remedies, to persons whose reputation and good name have been damaged by an assertion of incorrect facts in a broadcast.

4. Independent producers:

The EU stipulates that Member States should ensure, where practicable, that broadcasters reserve at least 10 percent of their broadcast time for European works created by independent producers.

The intention is to stimulate new sources of TV production, especially the creation of small and medium-sized enterprises, and to offer new opportunities for employment in the cultural field.

5. Important events:

Commercial pressure in TV is increasingly inducing commercial broadcasters to acquire the exclusive rights to transmit events with mass appeal - and this applies in particular to broadcasters of pay-TV.

This results in a danger for the public that the most important sporting and cultural events can no longer be received in the form of a television program that is free to all.

The directive stipulates that each Member State may take measures to ensure that broadcasters do not broadcast on an exclusive basis events which are regarded as being of major importance for society in such a way as to deprive a substantial proportion of the public of the possibility of following such events on free television.

Member States may draw up a list of events that must be broadcast unencrypted (not scrambled) even if pay-TV stations have bought exclusive rights.

These events may be national, such as the Tour de France or Britain's Cup Final, or international, such as the Olympic Games, the European Football Championship or the World Cup.

6. European content:

The regulations require that a majority of the programs broadcast should be of European origin, rather than imports.

Article 4 of the EU Directive and Article 10 of the Council's Convention both require that Member States shall "ensure where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time"

European works are defined as works originating from EU Member States, or other European nations that are members of the Council of Europe.

Productions that are not European works but are jointly produced by Member States and third countries will be treated as European works if the major proportion of the costs is covered by Community co-producers, who also must control production.

Economic Arguments in favor of "quotas":

The European Single Market is the largest and richest in the world, with 454 million consumers -- more than the United States and Japan combined -- and a GNP of more than $5 trillion. At present, however, the market for television producers is fragmented and lacks the economies of scale. It is much cheaper for European nations, especially the smaller ones, to import programs from larger ones than to make their own. A program imported from the United States for showing in European often costs about one-tenth as much as a local production, because most of the American production costs are covered in the huge domestic market. European broadcasters have become huge markets for imported television programs.

Europe runs a large and growing trade deficit in such audiovisual products as TV programs and movies. It is estimated that the EU deficit amounts to about $7 billion a year - dominated by U.S. imports. At the same time, European film exports to the US stands at just one per cent of the total U.S. market.

European producers argue that the money now paid for U.S. imports could be used instead to improve the amount and quality of locally-produced programs. It would also slow the "brain drain" of talented producers and artists to Hollywood.

Cultural arguments in favor of quotas:

The concern is that programs from the United States are invading Europe and threaten to submerge its traditional cultures. Europeans expect that "television will play an important role in developing and nurturing awareness of the rich variety of Europe's common cultural and historical heritage." But most of the films shown in the EU come from one single non-member country - the U.S.A. The creation of a common market for television products is thus one essential step if the dominance of the big American media corporations is to be counterbalanced. Europe's traditional concept of public broadcasting, with its emphasis on information, culture and education, rather than on commercial entertainment, is threatened by U.S. imports.

The concern is that if viewers were to abandon these channels in favor of commercial offerings, there would be political pressure to do away with TV license fees. The public service channels would either have to lower their standards to compete for mass audiences with the commercial services, or dwindle into elitist media with limited support.

Compliance with the content rules

Every two years, Member States are required to provide the European Commission with a report on application of the 50% rule. A recent report from the Commission noted that its objectives had largely been achieved. Overall, the report said, "the television channels' broadcasting of European works and independent productions satisfactorily complies with the rules contained in the Directive, and the aims of the Directive have been generally achieved."

The average of European works broadcast by the major channels varied from about 53% to 82% . Most public service channels are meeting or exceeding the quota. In one respect, however, the regulations have been less successful. They are intended to encourage a wider exchange of programs among European nations.

But although domestic production has increased, the proportion of fiction programs of European origin imported by EU Member States has dropped. Europe's terrestrial TV channels carried a mix of national and U.S. programs, with only 8 per cent of their programs from other European countries.

The European Convention on Transfontier Television, Council of Europe, No. 132; Protocol amending the European Convention on Transfontier Television 1.X.1998

This Convention adopted in 1989 and revised by the Protocol from 09 September 1998, is the most important legal instrument of the Council of Europe in the broadcasting sphere. The Convention is the first European instrument that defines the common principles for transfrontier exchange of television program services. The Convention is directly related to the Directive Television Without Frontiers, as two main documents that are setting the conditions for free exchange of television programmes in Europe. The Convention determinates the common acceptance of the principle that the programmes originating from one of the states, which are in accordance with the Convention, can be broadcast and rebroadcast, on the territory of other states unrestricted by them.

The Convention gives direction of solving the uncertainty regarding the question of jurisdiction. The "country of origin" principle, which ensures that only one EU Member State has jurisdiction over any given media service provider, has been the cornerstone. Audiovisual media service providers need the legal certainty that they do not have to comply with 25 different national laws, but only with the legislation of the country were they are established.

The Convention gives general provisions that the programs must not include immoral or pornographic elements, as well violence and racial hateriot. Concerning the protection of children and minor the Convention gives provision about the obligation of the broadcasters, the programs that may damage the physical, psychological and moral development of the children and minors must not be broadcasted at the time convenient for their reception by minors.

Treaty of Amsterdam, Council of the European Union, Brussels, August 1997

The Treaty results in separate Protocol on the System of Public Broadcasting in the Member States. The Treaty of Amsterdam in taken to be a call of the European Union for strong public broadcasting system in Europe. Significant is the tendency in this document to leave the question of financing in the public broadcasting on the individual potentials of the Member States to extents that will guarantee fulfilling its mission while not interfering with the conditions for the commercial broadcasting and the competitiveness. The Protocol is not setting minimal standards or clear definitions for the obligations of the public broadcasters, but leaves Member States to regulate the responsibility of the public broadcasters for quality channels, that will fulfill the demand for programmes of democratic, social and cultural value for different groups of audience.

The importance of Treaty goes beyond European framework, as one of the first transnational documents that recognize non market orientated practice in the sphere of cultural aspect of the audiovisual media. The main characteristic of the document is that instead of putting accent on the market and trade in the multilateral agreements, national governments may legitimly create policy and promote their cultural institutions, which are straitening the values and realization outside the sphere of trade.

Conclusion

The documents listed above are only a segment of the instruments adopted within the European Union and the Council of Europe regarding the media and broadcasting. The principles incorporated in these instruments are designed to contribute to the independent and pluralist media systems. At the same time, these instruments confirm that self-regulation is necessary in the field of the media. The standards will be with restricted value if they are not supported by the media themselves

3. Republic of Macedonia and the European broadcasting regulation and media policy

The Republic of Macedonia tends toward further positive development in the field of broadcasting and towards the harmonization of its provisions with the legislation of the European Union. Therefore, it has undertaken a commitment to transpose into its national legislation the legal instruments (directives, recommendations etc.) of the European Union and of the Council of Europe that pertain the media, broadcasting as well as production. The Republic of Macedonia is determent to implement different international agreements that it has ratified, among which the European Convention on Transfrontier Television and the Protocol amending the European Convention on Transfrontier Television[28].

In power since May 8, 1997 was Broadcasting Activity Law 29, as act that set the legal framework for the operation of the electronic media in the Republic of Macedonia. The Law has tried to set the basic terms of broadcasting activities, defined as production, transmission, broadcasting and distribution of radio and television programs and other contents intended for general reception in the ether and via cable radio and television networks. The Law has also tried to integrate the principles of freedom of expression, freedom of reception and access to information and the freedom of establishing public information institutions, guaranteed by the Constitution of the Republic of Macedonia from 1991 (Art. 16) an Art. 10 from the European Human Rights

[28] Zakon za ratifikacija na Evropskata konvencija za prekugranicna televizija i Protokolot za izmena na Evropskata konvencija za prekugranicna televizija (Act for the Ratification of the European Convention on Transfontier Television and the Protocol amending the European Convention on Transfrontier Television), Official Gazette of the Republic of Macedonia No.18/03

[29] Official Gazette of the Republic of Macedonia No.20/97; Amended Official Gazette of the Republic of Macedonia 70/2003 see http://62.162.36.2/mtc/_webadmin/uploaded/law_broadcasting_activity.pdf

Convention. The Law has also attempted to implement certain common principles, rules and obligations that originate from directives, recommendations, declarations and resolutions adopted by the Council of Europe and the European Union. Determine for a dual system, public and commercial, the legislator has established the primary objectives so as to enable continuation of the operation of the Public Broadcaster Macedonian Radio and Television30, as well the operation of existing public local radio stations and to introduce the formal constitution of commercial broadcasting companies, or the private broadcasting sector, after carrying out the tender procedures for granting concessions. Established by this Law was also the Broadcasting Council as an independent body, envisioned as an advocate of interests of citizens in the broadcasting activity with competencies related to the planning and distribution of new frequencies for the private sector in the terrestrial broadcasting. In comparison with the European regulatory bodies, the Broadcasting Council of the Republic of Macedonia, with competencies regarding the Broadcasting Activity Law from 1997, may be categorized more as advisory body with full competencies related to the programme monitoring and strong position in proposition making. The greatest inefficiency in the implementation of the provisions of this law was the segment of supervision, because the Broadcasting Council did not had legal competencies to participate in the administrative procedures and sanctions.

After several-years long cooperation between the Government, the Broadcasting Council, the non-governmental sector and the media associations, the Assembly of the Republic of Macedonia adopted the new Broadcasting Law31 on 09.11.2005, to replace the 1998 Broadcasting Law, once amended and changed in 2003, and the Law on Establishing the Public Enterprise Macedonian Radio Television.

After the remarks given in the expertise from the European Commission and the Council of Europe from 20 May 2005 were incorporated, the provisions of the Law were fully coordinated with the audio-visual acquis, especially in regard to the following issues:

Jurisdiction – the provisions are practically identical with those from Article 2(3) of the Directive "Television without Frontiers", i.e. Article 5(2) from the European Convention on Trans-frontier Television;

Advertising and sponsorship – unlike in the previous law, now all directives are wider, more precise, clearer and coordinated with the Directive of and the Convention;

Major events – the previous Law never contained provisions like these, they are a novelty in this law and are fully coordinated with the requirements coming form the Directive and the Convention.

Promotion of European works – the previous Law never contained any provisions like these; following the remarks from the expertise, the new provisions are fully coordinated with the audio-visual acquis;

Protection of juveniles, the public order and the right to reply and correction – the previous law also contained similar provisions, but now they are extended; the law also introduces a rating system and an obligation for audio and visual warning; the provisions for the right to reply and correction have been significantly expanded and clarified.

Coming to the other European standards, I will highlight only the following three questions:

Regulatory body – the new text of the law gives it an even more independent position, because from now on the nominating of the candidates will be done by authorised nominators with full capacity in the decision-making, because all decisions will be made by the body itself. Besides this, competencies for monitoring and pronunciation of sanctions have been also incorporated;

Public broadcasting service – its mission is very clearly defined, the manner of election of the supervisory and regulatory bodies should provide independence;

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[30] Law on Establishing the Public Enterprise Macedonian Radio Television. (Official Gazette of the Republic of Macedonia Nos.: 6/98, 98/2000 and 78/2004)

[31] See http://217.16.71.152/en/Files/08.12.2005-EN-FINAL-Law%20on%20Broadcasting%20Activity.doc for English translated version for more details

Media pluralism and anti-concentration measures – unlike the previous law, which was quite restrictive in regard to the media concentration, a more liberal regime is introduced now, which simultaneously determines measures and thresholds for prevention of concentration that is harmful for the pluralism.

Now I will refer to those requirements in the text of the law, which were previously emphasised as necessary in the expertise from May of 2005.

The first and most serious remark in the expertise referred to the status and the institutional independence of the public service (MRT). The MRT is still determined as public enterprise, however, there are several changes that ought to provide institutional autonomy.

The Article 115, paragraph 4 says that the MRT will use and will independently manage with the property and the funds for work in a manner and under conditions determined with this Law.

Article 116 says that the donations must not influence or violate the editorial independence of the MRT.

Article 121, line 1 determines that the MRT is obliged to guarantee that the programmes that are produced or aired will be protected from any influence coming from the Government, political organisations or centres of economic power.

Still, the text of the Law does not contain any special provisions, which would specify that certain provisions from the Law on public companies are not valid when it comes to the Macedonian Radio and Television.

The second serious remark in the expertise was given in regard to the incorporating of the European Commission's rules for state assistance. Certain improvements have been made in the text, such as:

Determining of special sources of finances (the budget) for the tasks executed by the public service for the needs of the state, i.e. tasks that do not have character of public service;
A provision that MRT should keep separate accountancy has been introduced, but only for the budget;

There is no clear obligation for keeping separate accountancy for the revenues from the public fee and from the commercial sources (advertising, sponsorship, sale of programme;)

There are no specific provisions that would prevent the MRT to reduce the prices for the non-public activities (advertisements, for example), which would undermine the competition. There is a special Law for protection of the competition, whose provisions are applied for all legal entities, MRT included.

In regard to the previous version, improvements have been made in regard to the provisions for urging the distribution and the production of European audio-visual works.

Stricter obligations have been incorporated both for the commercial broadcasters and for the public broadcaster. Now, instead of 20 percent, the commercial broadcasters will be obliged to broadcast at least 51 percent of European audio-visual works, from the total of broadcasted programme in the course of the year.

This percentage is even higher when it comes to the public broadcaster and it is 60 percent of the entire annual programme.

The urging of production of European, i.e. domestic works, will be realised through the obligation of the public service from the entire annual budget meant for production of TV programme, 10 percent to be separated for production from independent producers.

The expertise also contained series of other remarks, and I will highlight only the more important ones:

The definition for "Broadcaster" has been coordinated with the Directive and with the Convention, i.e. it now covers both legal and natural persons.

In the concourse for new licenses that will be announced by the Broadcasting Council, there is also a "reservation" for the frequency that will be used by the applicant and which will be automatically granted by the Agency for electronic communications once he obtains the license. This represents another step toward easing up the licensing procedure and toward securing the one-stop-shop system.

All members of the Council will be put on the same level because they will all be full-time employed. Still, here we ought to bring up one dilemma coming from the Council: there is a threat for the nomination for member of the Council not to attract experts or university professors, who, by default, receive higher salaries in their home institutions. Besides this, it will cause serious burden for the Council's budget.

All provisions for the quotas for "in house" production and for domestic (national) production have been deleted or re-formulated in accordance with the guidelines given in the expertise.

The advertising and teleshopping provisions also include minor improvements, in order to be coordinated with the Directive.

The Macedonian public service will be financed in biggest proportion from the broadcasting fee and in smaller proportion from other mixed sources. The fee is in amount of 72 percent for creation and broadcast of programmes and 4,5 percent for technical-technological development.

There is a major change in regard to the advertising also. No advertisements will be allowed in the period from 17.00 to 21.00 (for television) and from 09.00 to 14.00 for the radio, except when sports events, cultural manifestations and events of major significance determined with a law should be aired.

The programme services that do not have a character of public service (satellite programme, programmes in the languages of the neighboring countries, the Assembly channel) will be financed from the budget.

During the transition period (of six months), the existing system of collecting the broadcasting fee was operational, i.e. together with the electricity bills, and the difference between the funds from the gathered fee was envisaged be compensated from the budget in amount of up to 80 percent of the total amount of the fee. However, this obligation was not completely fulfilled by the Government.

On the other hand, after six months, all activities for calculating, collection and directing started be executed in the MRT.

What is not sufficiently clear is whether this system will function efficiently, to increase the level of payment of the tax which was about 35%, in a situation when the poverty in Macedonia is increasing and huge number of household are not in a position to regularly pay the taxes and duties to the state. For now the figures are showing decreasing of the payment.

Besides this, the provision from the part of the financing which stipulated that "the broadcasting fee is paid by every user of radio or television programmes who possesses radio or TV receiver" is missing. Now it turns out that literally every legal entity, regardless if it possesses receiver or not, ought to pay larger amounts for the fee. For this, several legal entities have already announced lawsuits.

The financing of the Broadcasting Council is foreseen from two sources: from the broadcasting fee and from the compensations for the licenses that are paid by the broadcasters.

For the Council, same as for the MRT and the Macedonian Radio-diffusion, the difference of the uncollected funds from the fee up to 80 percent was supposed to be covered from the budget.

However, the assessments say that having in mind the increased competencies, the Council may be short with funds to execute its function, especially having in mind the fact that all members will be full-time employed, as well as the demand for major investments in new equipment, monitoring etc.

Funds for monitoring of the cable networks have also not been foreseen; these funds would be collected form the compensation (fee) paid by the cable operators.

There is also no provision (although highlighted in the expertise) which would stipulate that if the Council were short on funds, the gap would be covered from the state Budget.

Multicultural background of the Broadcasting Environment in the Republic of Macedonia

By the Law, in reference with several articles more précised are the obligations or/and the possibilities that Public Broadcaster MRT as well the Commercial Radio and Televisions has regarding the broadcasting in the languages of ethnic communities in the Republic of Macedonia.

The porgramme services of MRT regarding Art. 117 has to provide one television programme service and one radio programme service on the language that is spoken at least by 20% of the citizens, that is different from Macedonian Language. Similar provision regulates the radio programees produced and broadcasted by MRT radio services, dedicated for the citizens of the Republic of Macedonia living abroad. Programmes in the languages of the ethnic communities are envisaged by the same article, to be provided also by the Satellite television and satellite radio channel of MRT. Regarding the Commercial Broadcasters, according to Art. 82 "Broadcasters are broadcasting the programmes in Macedonian language, but in the cases when the programmes are dedicated for the community that is not a majority on the language of that community". This was rather cosmetic intervention, regarding the previous Law, because "de facto" possibility of transmitting progammes exclusively in the minority languages existed for a more than a decade in the Republic of Macedonia.

The Law also provides provisions for inclusion of the members of minority communities in the composition of the Broadcasting Council and the Council of MRT. According to Art. 24 that the Council has to be composed including adequate participation of the citizens that are not members of the majority community. This provision is also sustaining in continuity with the previous Law. The new provision is included for the composition of the Council of MRT (Art.127) providing adequate and fair inclusion from members of all ethnic communities living in the Republic of Macedonia. Accordingly the list of appointed Institutions that may give proposal for the candidate members of the Council of MRT among others are the State University of Tetovo, the University of South-East Europe in Tetovo, as well the national institutions of Albanian an Turkish Theater.

The Macedonian Broadcasting Landscape is composed 153 radio stations, from which 30 are public broadcasters and 123 are commercial. Macedonian Television is transmitting its programmes on three terrestrial channels. The second channel of Macedonian Television Broadcasts programes in Albanian language 65 hours per week, 17 hours and thirty minutes per week programmes in Turkish and 1 hour and thirty minutes per week are reserved for each of these languages: Serbian, Roma, Aromanian and Bosnian language. In addition once per month specialized documentary or entertainment programmes in duration of 1 hour are transmitted in all four, last mentioned languages.

Macedonian radio programmes includes at least 56 hours in Albanian, 35 in Turkish and at least 3 hours and 30 minutes in each, Serbian, Roma, Aromanian and Bosnian Language.

Regarding television broadcasting in minority languages, the oldest is the programme that started 1967 in Albanian and the newest is the programme in Bosnian dating form 2002. Regarding radio programmes the oldest are in Albanian and Turkish from 1945 and the newest are in Serbian and Bosnian introduced in 2003.

Among the local public broadcaster programmes in Albanian and Turkish are transmitted on Radio Tetovo, Radio Gostivar and Radio Debar. Radio Struga has programmes in Albanian, Turkish and Aromanian,

Radio Kumanovo in Albanian, Roma and Aromanian, Radio Kicevo in Albanian and Radio Krusevo in Aromanian.

Among the 123 commercial broadcasters, eight are broadcasting on the national level, including five televisions and three radios. From 115 local commercial broadcasters 50 are televisions and 65 are radios. On the national level Television "Alsat-M" was granted concession for transmission in Albanian Language. Among the commercial broadcaster on the local level 16 radio stations and 16 televisions are transmitting its programmes in minority languages.

4. AUDIOVISUAL

Danail DANOV – Bulgaria

Audiovisual, Television without Frontiers

1. European Union requirements

The audiovisual policy of the European Union is regulated by "Television without frontiers" (TVWF) Directive (Council Directive 89/552/EEC**)**, first adopted on 3rd October 1989. The Directive was amended on 23 June 1997, when the European Parliament and the Council passed a new "Television without Frontiers" Directive (Directive 97/36/EC) in order to ensure greater legal certainty as well as to update the provisions of Directive89/552/EEC.
The two basic principles on which the TVWF Directive rests are the free movement of European television programmes within the internal market and the requirement that television channels, where practicable, reserve over half of their broadcasting time for European works ("broadcasting quotas").The TVWF Directive also safeguards certain important public interest objectives, such as **cultural diversity**, the **protection of minors,** the **right of reply** and the **right to information**.

In December 2005 the European Commission presented a proposal for the revision of the TVWF Directive. In the proposed revision the Commission has asked for the inclusion of some of the commercial services on the Internet into the scope of the Directive, and therefore to rename it as the **Audio-Visual Media Services Directive.** The proposed content to be included within the jurisdiction of the Directive concerns mainly **on-demand content** such as shows, movies, serials, sports events and news reports, including the advertising on such programs. It does not concern video clips and animations in news and press websites, nor blogs, video podcasts, picture telephony over the Internet and other non-commercial content, nor radio broadcasting, electronic versions of newspapers and e-mails.

In order to sort out the new spheres in which there is a need for revision of the work of the traditional services or inclusion of new services the **draft proposal** makes a differentiation between **linear** (services which are scheduled and delivered to the user at a time of the broadcaster's choosing) and **non-linear** services (services delivered on demand). It is exactly the obligations for the non-linear services, which are entirely different from television, since they are much more difficult to control, that represent the new area to be covered by the revised Directive.

2. The effects

The main effects incurred by the Directive, which have been extended to the new services in its proposed revision, can be divided into **negative** and **positive content** regulations. The negative content regulation demands that all the audio-visual services should adhere to include the respect for the protection of minors, no incitement to hatred, identification of the media service provider, identification of advertising and other forms of commercial content, no use of surrepetitious advertising, respect of the rules on product placement and sponsoring as well as respect to some restrictions on advertising (e.g. not to advertise alcoholic beverages in programmes for minors).

The positive content regulation is known also as the "traditional" regulation, such as investment quotas for European and independent production, both for television and for "linear" internet services.

Another area of regulation is the right to information. Thus one of the basic principles of the Directive, to be completed with the adoption of the new proposal, is the right to have general access to major events of public interest. In the draft proposal there is a new provision allowing non-pay TVs access to short extracts from events subject to exclusive broadcasting.

Another important document that regulates the audiovisual policy in Europe is the European Convention on Transfrontier Television, adopted on 5th May 1989. Its text has been amended according to the provisions of the Protocol (ETS No. 171) which entered into force on 1 March 2002. It was signed by the the member States of the Council of Europe and the other states members of the European Cultural Convention. It was worked out in close cooperation with the drafting of the TVWF Directive and represents a common basic standard for the harmonious development of transfrontier television programme services in Europe. It aims at confirming the freedom of reception principle and establishes the principle of non–restriction of the retransmission of programme services conforming to that standard.

The areas in which the Convention establishes common basic standards are as follows:

- protection of certain individual rights
- responsibility of the broadcaster in maintaining programme standards
- advertising
- sponsorship

In this sense it covers the same areas as the Directive and therefore their action is often seen as complementary. Moreover, since the entry into force of the Convention on 1 May 1993, the Standing Committee on Transfrontier Television which was established in June 1993 under Article 20 of the Convention and has been monitoring the implementation of the Convention as well as the economic, technological and political developments which have taken place since 1989, has also followed very closely the revisions of "Television without Frontiers" Directive in the framework of the European Community. All the revisions of the TVWF Directive have been treated by the Committee as one of the major political developments as far as the audio-visual policy in Europe is concerned.

Thus, in order to maintain coherence with Council Directive 89/552/EEC regulating or administering television broadcasting activities in the EU Member States and with the amended Directive 97/36/EC and to guarantee the interests of both States and transfrontier broadcasters, the Committee of Ministers adopted the above mentioned Protocol (ETS No. 171) amending the European Convention on Transfrontier Television.

3. Stakeholders affected by the provisions of the Directive

There are several groups affected by the Directive: on the one hand, these are the *audio-visual services* whose free movement within the internal EU market has been ensured and their distribution and production of European audiovisual programmes is promoted by the quota system which demands broadcasters to ensure a majority position for such works in television channels' programme schedules (Article 4). It also asks the broadcasters to reserve at least 10% of their transmission time or 10% of their programming budget for European works from independent producers (Article 5). The Commission is responsible for ensuring compliance with these two provisions, while the Member States are required to provide it with a report every two years, including a statistical statement on fulfilment of the quotas referred to in Articles 4 and 5.

The broadcasters, together with the *advertisers* and the *producers of goods and services*, are also affected by the provisions on advertising and sponsorship, which concern the duration of advertising. It cannot be longer than 15% maximum of daily transmission time and 20% maximum within a given one-hour period. Programs can be interrupted by advertisements, only if the integrity and the value of the program are respected while isolated advertising spots should remain the exception. If these programs are feature films then the interruption should be made once in each 45 minutes.

Another very important provision concerns the advertisements of cigarettes and tobacco products which are strictly prohibited, a restriction which applies also to the medicinal products available only on prescription. The advertisements of alcoholic beverages should not be aimed at minors and should not promote the image of alcoholic drinks as enhancing social or sexual success.

Another important restriction concerns the sponsorship of television programs which is allowed only in the cases when it does not affect the broadcaster's editorial independence and does not encourage the purchase of the sponsor's products or services. News and current affairs programmes may not be sponsored.

Another group affected by the provisions of the Directive is the group of the viewers/users of audio-visual services whose public interest is ensured by the Directive since it protects the cultural diversity, the right of reply, ensuring at the same time the consumer protection and the protection of minors.

Cultural diversity is protected by the quota system but as the proposal for a revision of the Directive states, “while there is general agreement on the objective of a vibrant European audiovisual production sector reflecting the diversity of our cultures, it is clear that transmission time quotas are not an option in an on-demand world.” That is why, it is obvious that the Directive should contain new provisions for the free circulation of non-linear services in the internal market.

The protection of minors includes the prohibition of children’s programs involving pornography or extreme violence. This ban applies to all other programs which are likely to harm minors, unless they are broadcast at a time when they will not normally be seen by minors or protective technical measures are in place.

The right of reply is ensured by the possibility any person whose legitimate interests have been damaged by an assertion of incorrect facts in a television programme to have the possibility to reply.

The revised Directive from 1997 included teleshopping within its jurisdiction and imposed on it most of the rules relating to television advertising. Windows for teleshopping programs broadcast by a general channel must be of a minimum duration of 15 minutes and be clearly identifiable. The maximum number of windows per day is eight, and their total duration must not exceed three hours per day.

4. Side effects

The draft proposal for a revision presented in December 2005 by the Commission has set as its aim to relax the current rules on advertising. The allowed interruption period is proposed to be decreased to 35 minutes instead of 45. The proposal includes also the deletion of Articles 16 and 17, which refer to the protection of minors and sponsored programs. Thus the restriction envisaged in Article 16 that television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:

(a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;

(b) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;

(c) it shall not exploit the special trust minors place in parents, teachers or other persons;

(d) it shall not unreasonably show minors in dangerous situations, no longer applies and thus can allow for advertisements, which directly encourage children to persuade their seniors to buy the advertised products to be broadcast freely.

Such a relaxation of the restrictions applies to sponsored programs as well. The proposed draft deletes Article 17, which states that sponsored television programs shall meet the following requirements: (a) the content and scheduling of sponsored programs may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programs; (b) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programs; (c) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services. Although the European Broadcasting Union (EBU) contribution to the draft proposal states that there should be a revision of the product placement policy in audiovisual advertising in view of the insufficiency of the e-Commerce Directive (Directive 2000/31/EC), which does not deal with content aspects and allows for many exceptions to the country-of-origin principle, the deletion of the two articles can have some serious side effects. As the EBU contribution suggests, it is very important to support the principle of separation of advertising from editorial content.

Another side effect of the new proposal is the unclear criteria for choosing some program genres such as news, current affairs and children's programs where advertising, sponsoring and product placement policies are stricter than in let's say music and sports programs which

undoubtedly are also watched by children. This makes it necessary to make differentiation between different forms of product placement.

The proposal has also raised concerns regarding the product placement of alcoholic beverages and medicinal products since it does not contain specific restrictions on that. This can allow for the circumvention of the restrictions regarding the television advertising of these products by means of product placement.

As a whole the new proposal can be seen as moving ahead in the attempt to uphold the basic principles of the EU and at the same time trying to cope with the advent of the new technologies in the audio-visual industry.

5. Predictable effects if no intervention is made

The example in member States with respect to advertising and children might show – as also in other fields - the need to enact stricter rules for broadcasters falling under their jurisdiction. On the other hand, it must be pointed out that the broadcast media already consider that they are discriminated in this respect, as they are much more strictly regulated than other forms of distribution.

Another area of debate is the respect for human dignity, which is guaranteed by the Convention but a lot of people consider reality shows such as “Big Brother” violating this right, which should be addressed in the light of Article 7 of the European Convention on Transfrontier Television, that states that television programmes shall respect the dignity of the human being and the fundamental rights of others. To answer to the growing debate the Standing Committee on Transfrontier Television prepared a questionnaire on this subject and sent it to the broadcasting regulatory bodies in 19 member States, chosen because they were countries in which programmes of this sort had already been broadcast or soon would be. The aim of the questionnaire was to find out whether, apart from in France, the broadcasting of reality shows had caused public opinion to react and, in particular, led to any recommendations by the relevant bodies or whether any other official stands have been taken.

After summarizing the different cases, the Committee reached the conclusion that the "Big Brother" programme is, in itself, inoffensive. However, there are many variations on this theme which, in certain cases, seem to have overstepped the limits of what television should be able to offer its audience (See European Convention on Transfrontier Television Standing Committee On Transfrontier Television(T-TT), 30th meeting, 29-30 April 2002, Compilation of responses to the questionnaire on "Big Brother" type programmes, Secretariat memorandum prepared by the Directorate General of Human Rights).

6. Interventions required from the national states

Bulgaria, as one of the two accession countries, has harmonized its Radio and Television Act with the basic principles of TVWF Directive adopting a strategy for the development of the radio and television on 28 September 2005. As the European Commission Comprehensive Monitoring Report for Bulgaria from October 2005 states, Bulgarian legislation is in line with the *acquis* and the country is generally meeting the commitments and requirements arising from the accession negotiations on culture and audiovisual policy and will be in a position to implement the *acquis* by accession.What Bulgaria should do now is to focus on strengthening the administrative and monitoring capacity of a stable regulatory authority, thus completing its preparations to ensure the predictable, transparent and effective implementation of the

regulatory framework required by the Television without Frontiers Directive. Bulgaria has also ratified the European Convention for television without borders.

But although in the licenses of the national TV operators the basic principle for European content has been observed, there is a paradox that the public operator, Bulgarian National Television, has a lower quota set in its license than the two big commercial operators have. The time and place of advertising, although regulated by the law, is another problem area. Although the Directive is explicit in its ban on advertising in the news programs all the televisions circumvent this requirement and broadcast advertisements spots in between the parts of their news programs. The time period of 45 (or 35 in the new proposal) minutes between the advertisement spots is also violated. Another problem is the media concentration in the several big cities, which makes it almost impossible to monitor the regional media in smaller towns.

The case with Romania is the other accession country almost identical. In the 2005 European Commission Comprehensive Monitoring Report for Romania the conclusion for the culture and audiovisual sector is that Romania has aligned its legislation to a large extent with the *acquis* in the field of audiovisual policy by adopting the two remaining modifications to the audiovisual law concerning jurisdiction and freedom of reception. However, the recently adopted Law on Cinematography includes an obligation for all television broadcasters in Romania to reserve a minimum of 5% of broadcasting time for Romanian feature films, which contradicts the principle of non-discrimination on the grounds of nationality. The report states that although Romania is meeting the commitments and requirements arising from accession negotiations in the field of culture, it needs increased efforts to bring the Romanian legislation in the area of audiovisual policy in line with the EU *acquis*. As with Bulgaria, Romania also needs to complete its preparations to ensure predictable, transparent and effective implementation of the regulatory framework.

This is not the case with the other Balkan countries that are either candidate countries as Croatia, Turkey and Macedonia or potential candidate countries as Albania, Serbia, Montenegro, Bosnia and Herzegovina and Kosovo.

The 2005 Progress Report for Croatia sees the progress in the area of audiovisual policy as rather limited. A new Media Law adopted in April 2004 goes some way towards meeting the recommendations of the joint Council of Europe/European Commission/OSCE expert mission of February 2004. Only minor issues are now left open in the legislation, e.g. regarding accessibility to public information and disclosure of journalists' sources. However, no progress has been made in following up the joint expert mission's recommendations for changes to the Law on Electronic Media, which regulates the activities of both private and public broadcasters, and to the Law on Croatian Radio and Television covering the status and activity of the public service broadcaster.

Currently the Law on Electronic Media does not comply with the European Convention on Transfrontier Television and the Television without Frontiers Directive on a number of issues, in particular concerning advertising, "majority rule" of European productions, freedom of reception, and scope for appropriate measures or judicial appeal against decisions of the Council for Electronic Media. Amendments to the Law on Electronic Media as well as the Law on Croatian Radio and Television are also needed to ensure that the procedure for

appointing members of the Council for Electronic Media and the Croatian Radio and Television Council respectively guarantees their independence and that safeguards are created against political interference. A broad civil society role in these oversight bodies should also be ensured. Croatia should continue to reinforce the administrative capacity of the Council for Electronic Media.

In order to safeguard the freedom of the press, Croatia will have to ensure that the legislation on defamation reflects European standards.

As the 2005 Progress Report for Turkey states, there has been limited progress in the audiovisual legislation and its implementation. The Turkish Parliament ratified a constitutional amendment on the Radio and Television Supreme Council (RTÜK), the national regulatory authority, in June 2005. Under this amendment to Article 133 of the Constitution, the Supreme Council's nine executive members are to be selected by political parties in proportion to their seats in Parliament. This marks a change from the previous law according to which two members were nominated by the press councils and by the Higher Education Council (YÖK). The amendment, which was vetoed by the President once, entered into force in June. The Law on the establishment and broadcasting of radio and television channels has been amended accordingly in July. As a result, the political independence of RTÜK which had already been criticised in the past for charges of partisanship, might be weakened. Nine new members proposed by the two main parties have been elected in July. The President also vetoed legislation passed by Parliament in March that would have allowed foreign investors to own more than 25 percent of shares in Turkish media enterprises. Only limited progress is to be reported in the area of broadcasts in languages other than Turkish and dialects used by Turkish citizens in their daily lives. Although an implementing regulation regarding broadcasts in languages and dialects other than Turkish was enacted in January 2004, there has been no licensing of private broadcasters since that decision. The Public Turkish Radio and Television Corporation (TRT) continued its broadcasts in selected mother-tongues since June 2004. TRT's Radio 1 and TV Channel 3 broadcasts in Bosnian, Arabic, Circassian, Kirmanji and Zaza, but those broadcasts remain limited both in terms of duration and scope. For television, their transmission period cannot exceed 45 minutes daily and a total of four hours a week and for radio, an hour a day and five hours a week. In terms of scope, they can only cover news, music and cultural programmes but not, for example, children's programmes. No private broadcaster at national level has applied for broadcasting in languages other than Turkish since the enactment of the 2004 legislation. At local and regional level, eleven private local television and/or radio stations have submitted their applications in order to get the necessary permission to broadcast in languages other than Turkish. But both extensive procedural regulations and RTÜK's insistence that a nation-wide "Profile Study" on the use of local languages in different parts of Turkey should be completed before it would issue any licenses in effect prevented any local broadcasts.

Turkey's level of alignment with the EC audiovisual *acquis* remains limited to some provisions concerning advertisement and the protection of minors. The Regulation Concerning Radio and Television Broadcast in Languages and Dialects used traditionally by Turkish Citizens, a step towards the basic principles enshrined in the *acquis*, still has to be implemented. The Law on the Establishment of Radio and Television broadcast still poses problems in terms of definitions, jurisdiction, freedom of reception, major events, promotion of European and independent works and restrictions on the share of foreign capital and

television enterprises.
In order to safeguard the freedom of the press, Turkey will have to ensure that the legislation on defamation reflects European standards. Despite the creation of a strong regulatory body (RTÜK) ten years ago, there is still no stable, transparent and effective regulatory framework in Turkey: radio and television stations preexisted the regulatory framework and the regulatory authority has not yet been in a position to re-allocate frequencies and review the temporary licenses.

Turkey has made some progress in the area of information society and media since the last report. It has done so notably by liberalising the electronic communications and information technologies sector, by aligning their legislation to the *acquis* and by introducing legislation, although some legal acts and implementing regulations as well as the attribution of infrastructure licences are still lacking. In addition the privatisation process of a majority share of Turk Telekom may give a signal in order to attract more foreign investments. However the real challenge for creating competition in the market lies in applying and enforcing the applicable regulations and legislation. In this regard Turkey needs to increase the effectiveness of its activities. To be able to perform these tasks the Telecommunications Authority needs to be strengthened.

Turkey needs to sign and ratify the Council of Europe Convention on Cybercrime and align its legislation with the *acquis* on electronic commerce and conditional access services. Turkey is partially aligned with the *acquis* in audiovisual policy. Concrete progress in legislation and implementation in the reporting period remained limited. Although broadcast in languages other than Turkish started in 2004, the necessary consolidation of the process is yet to come. Considerable efforts are needed to bring Turkish legislation and implementation in line with the *acquis*. The strengthening of administrative capacity should continue. The independence of the regulatory body should be strengthened as well. Turkey is encouraged to continue with, and effectively implement, its legislative reforms.

The former Yugoslav Republic of Macedonia is a party to the Council of Europe Convention on Transfrontier Television. The 1997 Broadcasting Law does not meet the requirements of the Television without Frontiers Directive, as it contains no provisions concerning the principles of jurisdiction, surreptitious advertising, the transmission of events of major importance and the promotion of European works. However, a new broadcasting law which is broadly in line with the *acquis* has been drafted and submitted to Parliament. The independence of regulatory bodies as well as public broadcasters should be ensured. The procedure for review of decisions of the Broadcasting Council should be brought into line with the *acquis*. Other issues also require attention. In particular, there is a need to ensure that the legislation on defamation, as amended in 2004, reflects European standards. As regards administrative capacity, the independence and powers of the Broadcasting Council need to be reinforced. The independence of the public broadcaster, Macedonian Radio and Television, should be enhanced and the media regulatory bodies strengthened. There is also a need for a strategy on the broadcasting sector.

As regards electronic communications and information technologies, Macedonia is currently not meeting its obligations under the Stabilisation and Association Agreement (SAA). Although the quality of the network and the privatisation of the incumbent would have allowed significant market opening, the country has made little progress on liberalising its market for electronic communications. However, the adoption of a new Law on Electronic

Communications which, *inter alia,* establishes an independent regulatory authority has created new momentum for competition in the market. The Macedonian authorities are now facing new challenges for implementing by-laws. The regulatory authority should be properly empowered and resourced and its independence from political concerns will have to be ensured. Competitive safeguards on significant market power (SMP) operators should be secured as a matter of priority. The country needs to adopt legislation on electronic commerce and conditional access services. In the field of audiovisual policy, a new broadcasting law in line with European standards and the EC audiovisual *acquis* needs to be adopted. Reinforcing the independence, capacity and enforcing powers of the media regulatory bodies is also essential.

Overall, Macedonia will have to make considerable and sustained efforts to align its legislation with the *acquis* on electronic communications, information society services and audiovisual policy and to effectively implement and enforce it in the medium term. The country should take immediate measures to fulfil its SAA obligations as regards electronic communications.

As the 2005 Progress Report for Serbia and Montenegro states in regard to the audiovisual policy no progress has taken place in Serbia which amended its broadcasting law to extend of the deadline for the transformation of the Serbian Radio Television from its present government-controlled role into a public broadcasting service, as well as to postponement of the privatization of broadcasters operated by local governments. In Montenegro the Broadcasting Council has implemented a tender for licenses of the use of the spectrum. It also approved the Rule Book on advertising in electronic media. In Serbia, the lack of implementation of the Telecommunications Law and, as a consequence, the absence of a plan for frequencies that could permit the Broadcasting Council to issue licences or to have some control over the broadcasters, together with the lack of a proper budget hamper the normal functioning of the Broadcasting Council. Serbia amended its Broadcasting Law in August 2005. The amendments, which were widely contested by professional organisations, provide for the extension of the deadline for the transformation of the Serbian Radio Television RTS from its present government-controlled role into a public broadcasting service to March 2006, as well as the postponement of the privatisation of broadcasters operated by local government to July 2007. The amendments also envisage the introduction of an obligatory subscription fee to be levied for Radio Television Serbia.

In Albania, as the 2005 Progress Report claims, there is some progress to report in the field of audiovisual policy. The rejection of the draft law on digital broadcasting was a positive step, since it contained amendments which, if adopted, could have created a monopoly situation. Albania should now take appropriate steps to adopt legislation on digital services and electronic media in line with European standards and start the process of aligning its legislation with the European Convention on Transfrontier Television and the Television without Frontiers Directive. Moreover, Albanian authorities should resume discussions on the draft strategy for the development of television broadcasting and finalise the National Plan for Radio and Television. Albania should also continue to reinforce the administrative capacity of the National Council on Radio and Television so that it can appropriately monitor and solve the problems regarding the collection of broadcasting fees from some private broadcasters, whilst avoiding any discrimination among broadcasters. There is also a need to improve the

implementation of the Freedom of Information Act and to ensure compliance with the Law on Copyright by fighting widespread piracy.

Overall there has been some progress in electronic communications and information technologies, but a lot remains to be done in the respective legislative framework to align it with the EU *acquis* and to ensure its proper and non-discriminatory implementation. Albania should also examine ways of improving privatisation procedures to allow the successful privatisation of Albtelecom.

Concerning the audiovisual policy in Bosnia and Herzegovina, progress can be reported. The European Convention on Transfrontier Television entered into force on 1 June 2005. In August 2004, BHT Public Television, covering the entire country, started broadcasting. Regarding public broadcasting legislation, the adoption of the Law on the public broadcasting system and the progress made towards the adoption of the law on public broadcasting service have been positive developments. The public broadcasting service law needs now to be urgently adopted. The essential point of the public broadcasting legislation is to bring together the three current public broadcasters (the two Entity broadcasters and the nationwide one) into a single legal entity with a single steering board, with the objective of preventing monolingual channels. This should help reduce ethnic divisions and avert undue political use of public TV services. Bosnia and Herzegovina will also need to ensure the timely adoption of public broadcasting legislation at Entity level and accelerate the structural reform of the public broadcasting sector. Proper implementation of the Council of Europe Convention on Trans-Frontier Television and preparation for progressive alignment with the "Television without Frontiers" Directive are also important issues.

In Kosovo the 2005 Progress Report draws the conclusion that substantial progress has been made in audiovisual policy. The Law on the Independent Media Commission was adopted on 21 May. Regarding the development of a strategic plan for minority broadcasting consistent with the European Convention on Minority Rights, a fund was created to support minority media. In December 2004, the Temporary Media Commissioner reached a settlement with the main broadcasters on the sanctions it had imposed on the broadcasting of hate speech messages during the violent events of March 2004. Under the settlement, the 3 broadcasters acknowledge violations of specific principles embodied in the Broadcast Code of Conduct and agree to commit specific amounts of money to the professional training of journalists and editors in areas such as conflict reporting. These commitments are to be seen as a constructive approach to the problem of hate speech in broadcasting, one which will have a positive impact on broadcasting work. However the Law on Access to Information still has to be implemented in the country.

7. Degree of awareness regarding the issue

The audiovisual policy is one of the most important activities concerning the work of the media. Hence the degree of awareness in regard to it is generally high. It is more so since TVWF Directive governs the implementation of the basic rights of people such as the right to information, the rights of children and the right to reply and promotes the cultural diversity within Europe. Therefore, in most of the countries the debates on the implementation of these rights are seen as the cornerstones of building and sustaining democracy. There are a lot of public events such as workshops, round tables, and public discussions organized on the

implementation of the Directive and the Convention as well as governmental measures carried out both in the Member States and the accession countries. It is important, however, to keep the public debate going on, especially in view of the rapid development of the new technologies and the implementation of the process of digitalization in the separate countries, where by and large society seems pretty unaware and debates are closed only within the narrow frameworks of limited in number professionals and specialized institutions.

8. Opportunities faced by the media community/professionals

One of the possible venues for working in this direction is to continue the work of the MEDIA Plus Programme (2001-2005) (3rd generation), which entered into force in January 2001 and aims at strenghtening the competitiveness of the European audiovisual industry with a series of support measures dealing with the training of professionals, the development of production projects and companies, the distribution and promotion of cinematographic works and audiovisual programmes, and the support for cinematographic festivals. Equipped with a budget of 400 million euro MEDIA brings support both before and after production. MEDIA co-finances training initiatives for audiovisual industry professionals, the development of production projects (feature films, television drama, documentaries, animation and new media), as well as the distribution and promotion of European audiovisual works. On 1 January 2006 a New Executive Agency for Media, the "Education, Audiovisual and Culture Executive Agency" has officially taken over the operational management of the MEDIA programme.

A proposal to extend the MEDIA Programmes was approved by the Council of Ministers on 26 April. The budget allocated for MEDIA Training (2001-2006) is 59.4 million euro and that for MEDIA Plus is 453.6 million euro in line with the modifications made by the European Parliament, to take account not only of the additional year but also of the effects of enlargement from 2004.

Another chance is coming from the Commission, currently initiating the design of the new generation of programmes for the audiovisual sector. The Commission presented a proposal for a new Programme at the begining of 2004 that followed on from the MEDIA Plus and MEDIA Training Programmes (which will end in 2006) namely for the years 2007-2013. The consultation took as its starting point the structure of the existing MEDIA Plus and MEDIA Training programmes to facilitate the discussion. The topics of the consultation were the different actions covered by the MEDIA Plus and Training Programmes, including the pilot projects. Two themes of reflection were the subject of additional consultation in the framework of the public hearing, namely the impact of the European Union enlargement on the programmes, focusing on the emerging needs of the sector with the new markets, and SME's access to credit and film financing issues.

The public consultation comprised both the opportunity for all interested parties to make written contributions and a public hearing to be held in Brussels. All interested parties and notably private and public bodies active in the audiovisual industry were invited to participate in the consultation, by means of a written contribution or intervention at the public hearing. The consultation of all stakeholders of the industry was deemed necessary to understand and properly take into account the needs of the sector.

The results of the consultation will be an essential element in the drafting of the legislative proposal for a new programme that the Commission will prepare this year, which will give further opportunities for the professionals in the sector to participate in the on-going process of developing the basic principles of European audiovisual policies.

5.eCOMMUNICATION

Duško MIHAILOVIC, Montenegro

EU regulatory framework for the electronic communications sector

The EU regulatory framework for electronic communications consists of a series of legal texts and associated measures that apply throughout the 25 EU Member States. The framework provides a set of rules aimed at deregulation, technology neutral and sufficiently flexible to deal with fast changing markets in the electronic communications sector.

This framework consists of several directives that are its main instruments:

Framework Directive setting out the main principles, objectives and procedures for an EU regulatory policy regarding the provision of electronic communications services and networks;

Access and Interconnection Directive stipulating procedures and principles for imposing pro-competitive obligations regarding access to and inter-connection of networks on operators with significant market power;

Authorization Directive introducing a system of general authorization, instead of individual or class licenses, to facilitate entry in the market and reduce administrative burdens on operators;

Universal Service Directive requiring a minimum level of availability and affordability of basic electronic communications services and guaranteeing a set of basic rights for users and consumers of electronic communications services;

Privacy and Electronic Communications Directive setting out rules for the protection of privacy and of personal data processed in relation to communications over public communication networks;

Radio Spectrum Decision establishes principles and procedures for the development and implementation of an internal and external EU radio spectrum policy;

And EU Commission **Competition Directive** consolidating the legal measures based on Article 86 of the Treaty that has liberalized the telecommunications sector over the years.

Who is affected?

Services or networks that transmit communications electronically, whether it is wireless or fixed, carrying data or voice, Internet based or circuit switched, broadcasting or personal communication are all covered by this set of EU rules that became applicable on 25 July 2003.

Regulatory framework applies to all transmission infrastructures, irrespective of the types of services carried over them (so-called 'horizontal' approach). The new framework will therefore cover all electronic communications networks, associated facilities and electronic communications services, including those used to carry broadcasting content such as cable television networks, terrestrial broadcasting networks, and satellite broadcasting networks.

Regulation of content broadcast over electronic communications networks (e.g. radio and television programs or TV bouquets) remains outside the scope of this framework.

EU regulatory framework for eCommunications takes account of the links between transmission and content regulation. These links concentrate on the following areas: authorization of networks and services, allocation and assignment of radio spectrum; must-carry; access to networks and associated facilities, including access to application program interfaces (API) and electronic program guides (EPG) for interactive digital television.

Effects

Regulation now refers to "electronic communications" – not "telecommunications". The same principles now apply regardless of which kind of existing or potentially new technology is involved.

This "technological neutrality" is essential to provide the necessary flexibility to deal with emerging technologies and their convergence in fields such as media, internet and mobile communications.

The EU regulatory framework aims to promote competition, to reinforce the single market and to safeguard consumer interests in the electronic communications sector.

New information and communications technologies (ICT) are vital for the health of the European economy, and accordingly for Accessing countries. The adoption of new ICT increases productivity throughout the economy, generates new consumer services and creates jobs.

Digitalization now allows many kinds of content to be delivered over different networks. The Internet has become a global infrastructure for a range of electronic communications services.

Information and communications technologies are converging, opening up myriad possibilities for new industries and services.

The EU regulatory framework tackles this technological convergence and extends and adapts the benefits of liberalization to electronic communications in general.

The difficulty is that Europe's telecommunications industry originated in state-run monopolies, leaving a legacy of imperfect competitive conditions. Continued regulation is therefore essential for as long as these former, and in most cases in Accessing countries, present monopolists have market power, to ensure a level playing field for new market entrants.

Another reason why this sector should be regulated from the EU level is that market forces alone may lead to the exclusion of some social groups from essential public services. The new regulatory system therefore recognizes a universal service obligation to ensure basic services at affordable prices to all in cases where the market alone does not provide.

The framework builds upon general concepts of **competition law**, as applied to normally functioning markets. Regulation is seen as essentially a temporary phenomenon, required to make the transition from the monopolistic telecommunications industry to a fully functioning market system.

To develop in the short term, new market entrants need regulatory support to gain access to the networks of incumbent operators and to provide the benefits to end users which the market would offer if it were effectively competitive.

However, as the sector evolves, operators will increasingly build their own infrastructures and compete more effectively. As normal market conditions develop, regulation can be rolled back, and competition law, as applied to industry in general, will replace sector-specific intervention.

Implications for broadcasting

Hereafter is an overview of key provisions of particular importance or specific to the broadcasting sector: authorization of networks and services and allocation and assignment of radio spectrum; must-carry obligations; access to networks and associated facilities.

Authorization of electronic communications networks and services and rights of use for radio frequencies

The authorization of electronic communications networks and services, including networks used for radio and television broadcasting, as well as the allocation and assignment of spectrum used for the provision of transmission services for broadcasting, are covered by the regulatory framework.

The networks and services used for the transmission of radio and television broadcast content, such as satellite broadcasting networks, terrestrial broadcasting networks or cable television

networks, will be subject to the general authorization regime provided in the Authorization Directive.

The provision of e-communications networks – defined in the Framework Directive as "**the establishment, operation, control or making available of such a network**"- or the provision of e-communications services can no longer be subject to an individual license.

Where an individual license currently includes both an authorization to provide an electronic communications network or service and an authorization to provide broadcast content to the public, the former authorization will need to be separated from the individual license.

An undertaking providing electronic communications networks or services, that also provides broadcast content may face additional conditions relating to content stemming from national or European broadcasting legislation insofar as these conditions are attached to the provision of broadcast content, and not of electronic services or networks.

The Framework Directive and the Authorization Directive set out the regime for the use of radio frequencies for electronic communications networks and services, including for broadcasting purposes.

As a general rule, the allocation and assignment of radio frequencies must be based on objective, transparent, non-discriminatory and proportionate criteria.

The Authorization Directive provides for more details as regards the assignment procedures and criteria. The granting of individual "rights of use" of radio frequencies, i.e. assignment, must be done according to "open, non-discriminatory and transparent procedures" but is "without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law.

While rights of use would generally be granted to providers of electronic communications networks or services, they can also be granted to broadcasters not themselves operating electronic communications networks or electronic communications services. In particular, Member States may grant directly to broadcasters, in charge of a public service remit, the rights of use of radio frequencies necessary to achieve such a remit. Authorization Directive clarifies that: "directive does not prejudice whether radio frequencies are assigned directly to providers of electronic communication networks or services or to entities that use these networks or services. Such entities may be radio or television broadcast content providers (…). The responsibility for compliance with the conditions attached to the rights to use a radio frequency and the relevant conditions attached to the general authorization should in any case lie with the undertaking to which the right of use for the radio frequency has been granted".

When the granting of the rights of use for radio frequencies needs to be limited, Member States, in accordance with Authorization Directive, shall grant such rights on the basis of selection criteria which must be objective, transparent, nondiscriminatory and proportionate

The Authorization Directive explicitly provides for the possibility for Member States to attach

conditions to the rights of use of radio frequencies. These conditions include in particular: "designation of service or type of network or technology for which the rights of use for the frequency have been granted, including, where applicable, the exclusive use of a frequency for the transmission of specific content or specific audiovisual services".

Must-carry and the Universal Service Directive

The Universal Service Directive sets out the rights that users have in respect of electronic communications services, in particular in respect of universal service. It includes a provision on so-called "must-carry" rules bearing on certain network operators.

Must-carry rules seek to ensure that certain radio and television broadcast channels and services are made universally available to users. Universal Service Directive aims at ensuring that these obligations shall be "reasonable". They "shall only be imposed where they are necessary to meet clearly defined general interest objectives, and shall be proportionate and transparent".

Must-carry obligations may include the transmission of services specifically designed to enable appropriate access by disabled users.

As regards the networks, must-carry obligations may only be placed on "electronic communications networks used for the distribution of radio or television broadcasts to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts".

Currently the vast majority of households uses a traditional "broadcast" platform for reception of broadcast channels and services, and is expected to continue to do so for some time to come. The use of other networks (e.g. 3G mobile networks or fixed telecommunications networks using DSL technologies) for broadcasting purposes is so far very limited, and extension of must-carry rules to such networks would be disproportionate at the present stage of technological and market development. Extension of these obligations to other networks would only be legitimate if a significant number of end-users were to use such networks as their principal means to receive radio and television broadcasts.

Access to networks and associated facilities

The Access Directive establishes a framework for access and interconnection agreements across the European Union. It foresees that access obligations can be imposed on operators that have significant market power (SMP). It should be noted that the Access Directive also applies where a third party requires access to a network traditionally used for broadcasting purposes in order to distribute electronic communications services as opposed to broadcast content.

The Access Directive establishes a general access regime based on the assumption that negotiations between market players should be undertaken on a commercial basis first. When competition is not effective on specific markets, access remedies can be imposed on operators that have been designated as having significant market power on a specific market following a

market analysis by national regulatory authorities.

Certain procedures could be used, for instance, to impose obligations on operators, designated as having significant market power in a particular market, to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level or would not be in the end-user's interest.

Specific provisions for conditional access systems (CAS) to digital radio and TV broadcasts

As regards conditional access issues, the key measures on conditional access systems contained in Directive have been carried over into the Access Directive

The main provisions of this specific regime are:

– As regards conditional access, CAS operators are required to provide services to other broadcasters on "fair, reasonable and non-discriminatory" terms, and to license their intellectual property rights to manufacturers on the same basis.

– Moreover, cost-effective transcontrol between CAS providers and other local network operators has to be possible, so that for example cable operators can directly manage CAS services offered to their own customers.

Compared to the general access regime, the CAS regime applies to all service providers, and not only to those with significant market power.

Notwithstanding the above-mentioned provisions, Member States may permit their national regulatory authority, to roll back these obligations following a market analysis in accordance with Framework Directive. It may determine whether to maintain, amend or withdraw the conditions applied to non-SMP operators subject to the consultation and transparency mechanism.

Before removing the obligations, however, the regulator must ensure that there would be no adverse effects of such amendment or withdrawal on accessibility for end-users to radio and TV broadcasts and broadcasting channels and services specified in accordance with Universal Service Directive; the NRA must also conclude that the prospects for effective competition in the markets for retail digital television and radio broadcasting services and conditional access systems and other associated facilities are not unduly compromised or diminished.

Deadlines

First deadline for transposing directives into the national legislation for existing EU countries was July 2003.

As of May 2004 this also included the 10 new member countries, which needed to implement the whole set of rules from the first day of accession.

Accessing countries, without a doubt, should do it from the first day of accession too.

Interventions

Directives must be incorporated into the national legislation of Member States before they can be implemented.

Once the rules are implemented, the next challenge is to ensure a harmonized and consistent regulatory landscape in the EU electronic communications sector. This is achieved primarily through the so-called ' notification and consultation mechanism' which gives the European Commission power to oversee, and in certain cases veto, national regulatory measures proposed by the Member States' regulatory authorities. The ultimate goal is to achieve through co-operation at a European level an Internal Market with competitive trans-European electronic communications networks and services.

The European Commission is actively engaged in verifying the transposition of the EU regulatory framework into national legal rules. It was, actually, taking action when there were delays or when transposition was incomplete or incorrect.

Nine months after the July 2003 deadline for transposing some of the principal regulatory directives, a number of Member States had still not submitted national legislation for transposition. The Commission therefore began proceedings in the European Court of Justice against six Member States for not fully implementing the new rules. Other court actions are undertaken as necessary to ensure complete and correct transposition and also effective application of the regulatory rules at national level. The decision to inaugurate legal proceedings sent a clear signal that the Commission intends to ensure the full implementation of these reforms without delay. Such delays at a critical time for the electronic communications industry slow investment and rob businesses and consumers of the benefits of reform in this key sector.

Commission also established the Implementation team. Its mission is to contribute to the timely and consistent implementation of the regulatory framework for electronic communications by monitoring implementation in the Member States and Accession countries, bringing infringement proceedings, providing the secretariat for the Communication Committee set up under the Framework Directive, ensuring bilateral contacts with Member States' ministries, regulatory authorities and market players in the countries referred to above and reporting on implementation to the European Parliament and Council.

Media role

Since, awareness regarding EU eCommunications regulatory framework and importance of its implementation in national legislation in Montenegro is not on a respectable level neither among authorities nor media community and wider public, media should play significant role in raising it. Of course, imposed question is how media community could play this role if it is uninformed? Hopefully, at least broadcasters will show more interest in these issues in the future because they are directly affected by this framework. Another hope is that they will, when they start to tackle this problem, realize importance and whole scope of this set of regulations that affects every single end-user in the country. If they don’t we will have long term negative effects of the lack of timely and coordinated action plans for adoption and

implementation of new legislature, which will on another hand extend existing monopoly in communications sector which lies in a hands of one sole company.

6. EQUAL OPPORTUNITIES

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DOCUMENTS AND SCOPE

Non-discrimination, employment and gender equality are the three main areas tackled by the European Union legislation on equal opportunities. Those areas are regulated by the following directives and documents:

I. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
II. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Additional legislation guaranteeing the equal treatment in employment and occupation is the legislation connected to the free movement of workers. It includes:

1. Regulation 1612/68 of 15.10.1968 on freedom of movement for workers within the Community (OJ No L 257, 19.10.1968)
2. Directive 68/360/EEC of 15.10.1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ No L 257, 19.10.1968)
3. Directive 64/221/EEC of 25.02.1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ No 56, 4.04.1964)
4. Regulation (EEC) 1251/70 of 29.06.1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ No L 142, 30.6.1970)

5. Directive 2004/38/EC of 29.04.2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ No L 158, 30.04.2004)
6. Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ No L 209, 25.07.1998).

III. Gender equality legislation, which includes:

1. Directive 2006/54/Ec of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
2. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.
3. Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.
4. Council Directive 98/52/EC of 13 July 1998 on the extension of Directive 97/80/EC on the burden of proof in cases of discrimination based on sex to the United Kingdom of Great Britain and Northern Ireland.
5. Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex.
6. Council Directive 97/75/EC of 15 December 1997 amending and extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.
7. Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes.
8. Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.
9. Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).
10. Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.
11. Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes.
12. Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.
13. Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions: Council Directive 75/117/EEC of 10

February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

There are also some additional legal acts in this area that include:

1. Communication from the Commission of 17 July 1996 'A code of practice on the implementation of equal pay for work of equal value for women and men' (COM (96) 336):.
2. Council declaration of 19 December 1991 on the implementation of the Commission Recommendation on the protection of the dignity of women and men at work.
3. Commission Recommendation of 27 November 1991 on the protection of the dignity of women and men at work, including the code of practice to combat sexual harassment (92/131/EEC).
4. Council Resolution of 29 May 1990 on the protection of the dignity of women and men at work.
5. Commission Recommendation of 24 November 1987 on vocational training for women (87/567/EEC).
6. Council Recommendation of 13 December 1984 on the promotion of positive action for women

IV. We can view as an additional field of legislation the attempts of the EU to mainstream disability issues into relevant Community policies and develop concrete actions in crucial areas to enhance the integration of people with disabilities such as the recently adopted strategy.

The most important legislation here is:

1. Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Situation of disabled people in the enlarged European Union: the European Action Plan 2006-2007.
2. COM (2005) 486 final of 13 October 2005 Communication from the Commission to the European Parliament , the European Economic and Social Committee and the Committee of the Regions . On the implementation, results and overall assessment of the European Year of People with Disabilities 2003.
3. COM(2003) 650 final of 30 October 2003 Equal opportunities for people with disabilities: A European Action Plan.
4. COUNCIL RESOLUTION of 15 July 2003 on promoting the employment and social integration of people with disabilities (2003/C 175/01).
5. COUNCIL RESOLUTION on 6 May 2003 on accessibility of cultural infrastructure and cultural activities for people with disabilities (2003/C 134/05).
6. COUNCIL RESOLUTION of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training (2003/C 134/04).
7. COUNCIL RESOLUTION on 6 February 2003 ‘eAccessibility’ — improving the access of people with disabilities to the knowledge based society (2003/C 39/03).
8. Council Decision (2001/903/EC) of 3 December 2001on the European Year of People with Disabilities 2003.
9. COM (2001) 271 final of 29 May 2001 Proposal for a council decision On the European Year of People with Disabilities 2003.

10. Council Directive 2000/78/EC of 27 November 2000. Council Directive establishing a general framework for equal treatment in employment and occupation.
11. Council decision (2000/750/EC) of 27 November 2000 Council Decision establishing a Community action program to combat discrimination (2001 to 2006).
12. COM(2000) 284 final of 12 May 2000 Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the regions - Towards a Barrier Free Europe for People with Disabilities
13. Council Resolution (1999/C 186/02) of 17 June 1999 Council Resolution on equal employment opportunities for people with disabilities.
14. Council Recommendation (98/376/EC) of 4 June 1998 Council Recommendation on a parking card for people with disabilities
15. Resolution of the Council of 20 December 1996 Resolution of the council and of the representatives of the governments of the member states meeting within the council of 20 December 1996 on equality of opportunity for people with disabilities.
16. COM (96)406 final of 30 July 1996 Communication of the Commission on equality of opportunity for people with disabilities.
17. Resolution of the Council of 31 May 1990 Resolution of the Council and the Ministers for Education meeting within the Council concerning integration of children and young people with disabilities into ordinary systems of education.

V. The Framework Strategy for Non-discrimination and Equal opportunities for all deserves a special mention, as it has been set out by the Commission following on from the Green Paper on equality and non-discrimination in an enlarged Europe. It is concerned with the positive and active promotion of non-discrimination and equal opportunities for all. One of the main objectives of this strategy is to ensure effective legal protection against discrimination across the EU through the full transposition by all Member States of the Community legislation in this field. It also encourages the adoption of additional measures such as the dissemination of information, awareness-raising, the sharing of experiences, training and access to justice. The document which defines the main aspects of the Strategy is the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 1 June 2005 - "Non-Discrimination and Equal Opportunities for All - A Framework Strategy" [COM(2005)224 - Not published in the Official Journal].

Related legislation in this area is:

1. Commission Decision of 20 January 2006 establishing a high-level advisory group on social integration of ethnic minorities and their full participation in the labor market [2006/33/EC - Official Journal L 21 of 25/01/2006
2. Decision No 771/2006/EC of the European Parliament and of the Council of 17 May 2006 establishing the European Year of Equal Opportunities for All (2007) -- towards a just society [Official Journal L 146 of 31/05/2006]
3. Green Paper on Equality and Non-Discrimination in an Enlarged EU, adopted by the Commission on 28 May 2004 [COM (2004) 379 final].

Special attention deserves the fact that with a view to ensuring a more positive approach to equality, the European Parliament and the Council have declared 2007 the "European Year of

Equal Opportunities for All ". This Year will centre on four top-priority objectives: rights, recognition, representation and respect. 2007 will be linked with the year 2008, which will be devoted to intercultural dialogue.
The Commission is also proposing to organize a summit on equality, which would be held annually and involve ministers, heads of national organisations dealing with equality, presidents of European NGOs, European social partners and representatives from international organisations. The first Equality Summit will take place in 2007 together with the conference marking the opening of the European Year of Equal Opportunities for All. Moreover, the Commission is particularly keen to work with employers in order to encourage and support non-discrimination in the workplace.

The concept of discrimination
Before we go on with the general provisions this legislation gives, we have to discuss the concept of discrimination, which has a long history in EU law and policy. The principle of non-discrimination is a general principle of EU law. It is also expressly mentioned in a number of distinct contexts in the Treaties.

The EU Charter of Fundamental Rights was solemnly proclaimed in December 2000 and is as of yet not legally binding. It forms part of the new Constitutional Treaty, and, if this Treaty is ratified by all 25 Member States, it will become binding. The process of ratification is going on across the EU at present. Article 21(1) of the Charter states:

> Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Further, Article 13 of the EC Treaty states:

> Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

This is not a direct prohibition, but rather an empowering provision, which enables the EU to take action against all forms of discrimination. Prior to these developments, there was extensive EU legislation and case law on the prohibition of discrimination on grounds of nationality and gender.
The EU has, pursuant to Article 13, put in place a strategy to combat discrimination known as the Community Action Programme 2001-2006 (Decision 2000/750/EC). The programme has three principal objectives:

- to assist in analysing and evaluating the extent and nature of discrimination in the EU and the effectiveness of measures to combat it;
- to help to build the capacity of the actors in the Member States of the EU and at European level who are active in the fight against discrimination;
- to promote and disseminate to practitioners and opinion-formers the values and practices underlying the fights against discrimination.

The PROGRESS Programme 2007-2013 will bring together a number of existing European programmes under one heading, including the anti-discrimination programme. The nature of the existing programmes will be largely unchanged.

The two anti-discrimination Directives prohibit both direct and indirect discrimination. Direct discrimination occurs, if one person is treated less favourably than another one is, has been or would be treated in a comparable situation, on any of the grounds on which discrimination is prohibited.
The problem in establishing that direct discrimination has taken place is that it is not always easy to identify the "correct comparator". You need to find someone whose situation you can compare to the situation of the person who claims to be a victim of discrimination. Only if these are in the same or similar situations can the comparison take place. Sometimes it will be impossible to identify an available actual comparator, and a case can then be made for a hypothetical comparator. This should build on the treatment of a real person without the relevant characteristics (e.g. someone from a mainstream religion as opposed from a minority religion) in slightly different circumstances.

However, once it has been established that two people in the same or similar situation have been treated differently, it would be hard to show that this difference was permissible. The Directives provide for certain narrowly and precisely drawn exceptions. These include genuine occupational requirements, positive action and reasonable accommodation for disabled persons and specified exceptions for age discrimination.
For example, if an employer denies a worker a pay rise because of the worker's sexual orientation, and another worker in the same situation is given the pay rise, it is likely that this would constitute discrimination in violation of Employment Framework Directive (2000/78/EC). However, if a worker is denied a pay rise due to his age, this might be permissible under Article 6, which allows States to provide that differences of treatment on grounds of age shall not constitute discrimination if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. Such differences may, according to the Directive, include the fixing of minimum conditions of age, professional experience or seniority in service for access to employment.

The Directives also prohibit indirect discrimination. Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons belonging to a protected group at a particular disadvantage compared with other persons. This is so unless the provision, criterion or practice in question is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
As with direct discrimination, identifying correct comparators can be difficult. An example which has in the past often been given as a possible instance of indirect discrimination based on sex (which is not covered by the Directives but by other provisions of EU law) is that of a substantial difference in pay between full-time and part-time workers, where the part-time workers are exclusively or predominantly female. Another example can be an apparently neutral provision in a company's internal rules requesting a particular dress code if this dress code leads to the exclusion of a person or a group of persons.

The permitted legal justifications must be applied rigorously. For example, justification may in some cases be valid when an employer demands high standards of literacy and fluency in the national language. If the job in question involves tasks where these skills are absolutely necessary, e.g. for a language teacher or professor of literature, the employer is likely to be justified in demanding them. However, if the job involves manual labour, such a requirement is unlikely to be justifiable. The Directives also provide that harassment is a form of discrimination. Harassment is defined as unwanted conduct related to the grounds on which discrimination is prohibited with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment intended or not. As is clear, the definition of harassment includes a wide range of unwanted conduct. When making an assessment of whether harassment has taken place, a comparator does not need to be identified.

The Directives further state that an instruction to discriminate should be considered as a form of discrimination and is prohibited.
Finally, the Directives include victimisation under the list of prohibited acts. The Member States need to put in place measures that are necessary to protect individuals from any adverse treatment (such as dismissal) as a reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment. It is important that not only the person who has been discriminated against is protected, but also those who provide evidence as part of a discrimination complaint, or are involved in some other way in the complaint.

PROVISIONS

The provisions of the Directives guaranteeing equal opportunities to all European citizens will be discussed according to the areas covered by these Directives.

The first area is the field of racial equality and the fight against racism and xenophobia.
The lack of an explicit legal basis in the Treaties until 1999 prevented the Union from developing a genuine policy to combat racism and xenophobia. However, after 1986, following an extensive survey carried out in the Member States on the situation regarding racism, an initial report was adopted by the European Parliament, while a joint declaration was adopted by the Council, the European Parliament and the Commission. A number of measures were also taken within the framework of social policy, with 1997 being declared the European Year against Racism. Furthermore, a joint action was adopted by the Council in 1996 to combat racism and xenophobia. It defines undesirable conduct and the measures to be taken by the courts in response to it. This led to the setting up in Vienna in June 1997 of the European Monitoring Centre on Racism and Xenophobia, whose task is to study the extent and development of these phenomena, to analyse their causes and to disseminate examples of good practice. A cooperation agreement between the Monitoring Centre and the Council of Europe was concluded on 21 December 1998. The Monitoring Centre opened on 6 April 2000, as provided for in the Council Regulation. On 25 March 1998 an action plan against racism was presented by the Commission in order to consolidate the results of 1997 and prepare for the entry into force of the Amsterdam Treaty. This action plan is based on four components:

- legislative initiatives to be taken on the basis of Article 13 of the EC Treaty;
- integrating the fight against racism into Community policies and programmes;
- developing and exchanging new models in the fight against racism;
- strengthening information and communication work.

Various partners are associated with the envisaged measures, notably national and local authorities, NGOs, management and labour, the media, and sports organisations.
At the Tampere summit on 15 and 16 October 1999, the European Council called for the fight against racism and xenophobia to be stepped up, on the basis of the 1998 action plan (points 18 and 19 of the conclusions). The Member States were encouraged to draw up national plans to combat racism. The European Council would also like to see a more vigorous integration policy for third-country nationals residing in the territory of the Union. This means, on the one hand, offering them rights and duties comparable to those of European citizens and, on the other, combating discrimination, racism and xenophobia.
The Commission has already financed, in the context of training and exchange programmes in the field of judicial and police cooperation (such as OISIN and Grotius), projects designed to prevent and fight racism. In certain cases, for example, the police forces have received training to familiarise them with the problems associated with ethnic minorities.
More recently, a proposal for a Council framework decision was presented with a view to ensuring that racism and xenophobia are punishable in all Member States by effective, proportionate and dissuasive penal sanctions.
Furthermore, at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (held in Durban from 31 August to 7 September 2001), the Commission presented a communication as a contribution to the debate at international level [COM(2001) 291 final - not published in the Official Journal].

The second area is employment and occupation. These are key elements in guaranteeing equal opportunities for all. They contribute strongly to the full participation of citizens in economic, cultural and social life, and to realizing their potential. For nearly 50 years, the European Member States have worked towards achieving a high level of employment and social protection, increased standards in living and quality of life, economic and social cohesion and solidarity. They have also endeavored to create an area of freedom, security and justice. Discrimination can seriously undermine these achievements, and damage social integration in the labor force and at large.
That is why the purpose of the Employment Framework Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment (Article 1). From the outset, the EEC Treaty contained provisions prohibiting nationality discrimination and guaranteeing the free movement of workers within the European Union. These provisions have been strengthened by the Treaty of Amsterdam (Articles 12 and 39). The European Court of Justice has interpreted these provisions in a great number of cases.

An important aspect of combating discrimination in this area is the legislation adopted to ensure the free movement of workers within the EU. Every citizen of the EU has the right to

work and live in another Member State without being discriminated against on grounds of nationality.
Free movement of persons is one of the fundamental freedoms guaranteed by Community law. It is perhaps the most important right under Community law for individuals, and an essential element of European citizenship.
For workers, this freedom has existed since the foundation of the European Community in 1957. It is laid down in article 39 of the EC Treaty and it entails:

1. The right to look for a job in another Member State
2. The right to work in another Member State
3. The right to reside there for that purpose
4. The right to remain there
5. The right to equal treatment in respect of access to employment, working conditions and all other advantages which could help to facilitate the worker's integration in the host Member State

The concept and implications of this freedom have been interpreted and developed by the case-law of the European Court of Justice, including the concept of worker itself. A detailed information on the case-law can be found in the Communication from the Commission: "Free movement of workers - achieving the full benefits and potential" (COM(2002)694).
Community rules on free movement of workers also apply to Member States of the European Economic Area (Iceland, Liechtenstein and Norway).
The right to free movement of workers is complemented by a system for the co-ordination of social security schemes and by a system to ensure the mutual recognition of diplomas
Article 39 applies to the so-called migrant workers, i.e. nationals of one Member State who leave their country of origin and go to work to another Member State. It does not apply to persons who have never left their country of origin, but it covers nationals of a Member State when returning into that Member State after having exercised their right to free movement.
It applies to workers and not to self-employed persons, students, retired or non-active persons. The latter are covered by other provisions of Community law.

The European Court of Justice has interpreted the concept of worker as covering a person who (i) undertakes genuine and effective work (ii) under the direction of someone else (iii) for which he is paid.
Following the case-law of the European Court of Justice, article 39 also applies to professional sportsmen.
Certain rights are extended to family members of the worker. They have, in particular, the right to live with the worker in the host Member State and the right to equal treatment as regards for example education and social advantages. Some members of the family have also the right to work there.
There are several limitations to the exercise of this right. These are:

1. Limitations on public security, public policy and public health grounds
2. Limitations as to employment in the public service of the host Member State.

The right to free movement of workers from, to and between the Member States that joined the EU on 1 May 2004 (Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia) and on 1 January 2007 (Bulgaria, Romania) may be restricted

during a transitional period of maximum seven years after accession, based on the transitional arrangements set out in the Accession Treaties.
For the first two years following the accession of Bulgaria and Romania, access of Bulgarian and Romanian workers to the labor markets of the EU-25 Member States will depend on the national law and policy of those States, as well as the bilateral agreements they may have with Bulgaria and Romania. Some Member States have indicated that they intend to fully open their labor markets to Bulgarian and Romanian workers. Other EU-25 Member States intend to allow more restrictive access which means in practical terms that you are likely to need a work permit during the period the EU-25 Member States apply national measures.

At the end of the first two years following accession, the Commission will draft a report, on the basis of which the Council will review the functioning of the transitional arrangements. In addition, each of the EU-25 Member States must make a formal notification to the Commission whether they intend to continue with national law measures for a maximum of three more years (in which case you will still need a work permit) or whether they will apply the Community law regime of full free movement of workers (meaning that you can go and work freely there).

In principle, five years after the accession, the transitional arrangements should end. There is, however, a possibility for an EU-25 Member State to ask the Commission for authorization to continue to apply national measures for a further two years but only if it experiences serious disturbances on its labor market (or the threat thereof). The transitional arrangements cannot extend beyond an absolute maximum of seven years. Once national law restrictions are ended and free movement of workers applies, the EU-25 Member States are not allowed to require a work permit as a condition of access to the labour market. However, they may still issue work permits to Bulgarian and Romanian workers, provided these are only for monitoring and statistical purposes. If an EU-25 Member State has stopped applying national measures and full free movement of workers under Community law applies, it can ask to be authorized to re-impose restrictions, if it undergoes serious problems on its labor market, or there is a threat of this. The Commission must decide what sort of restrictions can be imposed, and for how long. Any Member State can then ask the Council to annul or amend the Commission’s decisions, and this must be agreed by a qualified majority. Although "safeguard clauses" have featured in every accession Treaty, they have never been invoked.

Discrimination on grounds of nationality is forbidden. In terms of access to jobs, the Member States must give workers from Bulgaria and Romania priority over workers from third countries. Some jobs in the public sector can be restricted to nationals of the host Member State. The EU-25 Member States cannot make access to their labor markets by workers from Bulgaria and Romania more restrictive than it was at the date of signature of the accession Treaty, 25 April 2005. So if one of the EU-25 Member States has a quota of workers from Bulgaria or Romania which is set out in a bilateral agreement dating from 2005 or earlier, then it cannot go below that quota.

A new study on the main issues of Cross-Border Mobility of Public Sector Workers has been carried out by the Human Resources Working Group (HRWG) under the Austrian Presidency. The study deals with the main legal specificities of cross-border mobility and focuses on

nationality condition, recognition of professional experience and seniority as well as other legal aspects of cross-border mobility of public sector workers. It deals also with other aspects of cross-border mobility of public sector workers which can facilitate mobility e.g. exchange programs or secondment.
Part of the European Union's strategy for more and better jobs and for ensuring that no one is denied access to them is the initiative EQUAL. Funded by the European Social Fund, this initiative is testing since 2001 new ways of tackling discrimination and inequality experienced by those in work and those looking for a job.

EQUAL co-finances activities in all EU Member States. The EU contribution to EQUAL of 3.274 billion EUR is matched by national funding. EQUAL differs from the European Social Fund mainstream programs in its function as a laboratory (principle of innovation) and in its emphasis on active co-operation between Member States. Two calls for proposals for EQUAL projects in the Member States have taken place so far, the first one in 2001, the second one in 2004. Responsibility for the implementation of the Community Initiative programs in the Member States lies with the national authorities.

The third area is equality between men and women. The principle of equal treatment of men and women has been enshrined in the EC Treaties since the establishment of the European Economic Community in 1957. It has been implemented in a number of fields by EU legislation over the past 30 years, and developed in extensive case law by the European Court of Justice. The Commission monitors the application of this legislation and, where appropriate, proposes new legislation.

The objective of the proposal for a European Parliament and Council Directive on the implementation of the principle of equal opportunities and equal treatment of men and women is to simplify, modernise and improve the Community law in the area of equal treatment between men and women by putting together in a single text provisions of Directives linked by their subject in order to make Community legislation clearer and more effective for the benefit of all citizens. This proposal for a Directive is also grounded in the general context of the new legal and political environment which aims to make the Union more open, understandable and relevant to daily life.
Equal treatment for men and women is a fundamental principle of the European Union. From the beginning the provisions of primary legislation set out in the Treaty of Rome stated this and since then, subsequent amendments have reinforced it, thus making it integral to the European Union's social policy.

The principle of equal treatment has developed from an isolated provision on equal pay in the Treaty of Rome, to a very important and far reaching acquis in the area of equality- a feature that sets Europe to the fore internationally. Article 2 EC recognises equality between men and women as a fundamental principle and one of the objectives and tasks of the Community. Moreover, under Article 3(2) EC a specific mission is conferred on the Community i.e. to mainstream equality between men and women in all its activities.
The Amsterdam Treaty increased significantly the primary law and the European Union's ability to take action in the area of equal opportunities and equal treatment between men and women by giving to the Community legislator specific legal bases (articles 13, 137, 141 EC). These Treaty developments constitute an explicit embodiment of the Court's statement that the

elimination of discrimination based on sex forms part of fundamental rights. The Court has stressed that Article 141 (as it had previously in the case of ex-Article 119 of the EC Treaty) forms part of the social objectives of the Community, which is not merely an Economic Union but is at the same time intended, by common action, to ensure social progress and seek constant improvements in living and working conditions. The Court has concluded that the economic aim pursued by Article 141 EC is secondary to the social aim pursued by the same provision, which constitutes the expression of a fundamental right.

The Charter of fundamental rights of the European Union, signed in Nice on the 7th December 2000, also recognises in Article 23 equality between men and women as a fundamental principle. Significant progress has also been accomplished in terms of secondary legislation. The existing Directives have laid the legal ground for radical changes in national legislation, attitudes and practices, while the Court by its caselaw has helped to clarify and further develop the interpretation and scope of the principle of equal treatment.

From a first Directive (75/117/EEC) on equal pay which was adopted on the basis of ex-Article 100 in 1975, and which further implemented and applied ex-Article 119 of the EC Treaty, the scope of equal treatment has been extended in order to cover other areas of social policy. In 1976 a second Directive, dealing with equal treatment relating to access to employment, vocational training, promotion and working conditions (Directive 76/207/EEC), was adopted on the basis of ex-Article 235 EC. In 1979, a third Directive (79/7/EEC), relating to the progressive implementation of the principle of equal treatment in matters of social security (statutory schemes), was adopted on the basis of ex-Article 235 EC. In 1986 two further Directives were adopted, one on the basis of ex-Articles 100 and 235 of the EC Treaty in relation to occupational social security schemes (86/378/EEC) and the other, on the basis of ex-Article 235 of the EC Treaty, on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (86/613/EEC).

The successive modifications of the Treaty permitted the adoption of Directives with new legal bases and under other procedures emphasising, inter alia, the role the social partners can play in the area of equality, namely Directives on the protection of pregnancy and maternity (92/85/EEC) adopted on the basis of ex-Article 118A of the EC Treaty and on parental leave (96/34/EC). Directive 96/34/EC was the first Directive adopted following the first agreement of social partners at Community level after the Maastricht Treaty under Agreement on social policy, annexed to the Protocol (No 14) on social policy, annexed to the Treaty establishing the European Community, and in particular Article 4 (2) thereof.
Following a series of important judgements of the Court of Justice, it was felt necessary to adopt the post Barber Directive 96/97/EC, amending Directive 86/378/EEC, in order to ensure conformity between Directive 86/378 and ex-Article 119 (new Article 141), as interpreted by the Court in the Barber and subsequent judgements.

Caselaw of the Court and the need for effectiveness of Community law prompted the Council, on the basis of a Commission proposal, to adopt Directive 97/80/EC on the burden of proof under the Agreement on social policy, annexed to the Protocol (No 14) on social policy,

annexed to the Treaty establishing the European Community, and in particular Article 2 (2) thereof.

Based on different legal bases the existing Directives (with their amendments) provide a strong legislative environment. There is no doubt, however, that they need to be updated and simplified in order to guarantee greater clarity and certainty across an enlarged Union and in order to be more readable.

The recent modification of Directive 76/207/EEC by Directive 2002/73/EC, adopted under the specific legal base of Article 141(3) EC which was introduced by the Amsterdam Treaty, also demonstrated that the legislator agreed that there is a real need to update the existing Directives (some of which are more than twenty years old). Directive 2002/73/EC takes into account the new developments in the Treaty (the legal means to implement the principle of equal treatment and work towards achieving equality between men and women was considerably enhanced after the Treaty of Amsterdam), the caselaw of the Court (which developed considerably the principle of equal treatment) and the adoption of other similar legislation (Directives 2000/43/EC and 2000/78/EC based on Article 13 EC).

In this context the legislation on equal treatment between men and women has been identified as a priority policy area for simplification, modernization and improvement [2]. The general aim of simplifying and improving the legislative framework is particularly relevant in the cases of equal treatment legislation as individual men and women are directly affected by it and need to have their individual rights clearly set out.

One of the most important of the **additional areas** of legislation in regard to guaranteeing equal opportunities within the EU is the European Union Disability Strategy. The goal of these strategies is to create a society open and accessible to all. It has four main focuses:

- Cooperation between the Commission and the Member States
- Full Participation of People with Disabilities
- Mainstreaming Disability in Policy Formulation
- Cooperation between the Commission and the Member States

Most of the practical work of making a society accessible can best be achieved in the Member States. The subsidiarity principle applies - what can be achieved better at national level shall be done at national level. But even where the Member States are the principal actors the Commission may play a part by aiming to:

1. Strengthen cooperation with and between the Member States in the disability field
2. Promote the collection, exchange and development of comparable information and statistics and good practice
3. Raise awareness of disability issues

Take account of disability issues in all policy making and legislative work of the Commission
Changing attitudes towards people with disabilities in the area of employment is a key issue. Disability aspects are included in the National Action Plans on Employment and in the National Action Plans against Poverty and Social Exclusion. Some words of interest are statistics, indicators, and accessibility.

In deciding on an EU Anti-discrimination directive in November 2000 the Member States undertook (if they have not already done so) to prohibit discrimination of people with disabilities and others on the labor market and in the workplace and in vocational training. Reasonable accommodation - fitting - of the workplaces to the needs of people who have disabilities is one of major changes in this legislation.

The European Council in Nice (7-9 December 2000) welcomed the joint proclamation, by the Council, the European Parliament and the Commission, of the Charter of Fundamental Rights, combining in a single text the civil, political, economic, social and societal rights hitherto laid down in a variety of international, European or national sources. The European Council would like to see the Charter disseminated as widely as possible amongst the Union's citizens. When the Commission creates or changes a policy it aims to consider the needs and rights of people with disabilities. The Commission pays particular attention to disability aspects in its socio-economic policies, programs and projects.

The Commission considers that people with disabilities should be involved in the planning, monitoring and evaluation of changes in policies, practices, programs. The Commission is committed to involving the Social Partners in efforts to integrate people with disabilities into the labor market.

Another example is the EQUAL initiative (2000-2006) where social partners and other key players including representatives of groups who are discriminated in relation to the labor market are involved in developing and testing out new ideas on job creation.

An important element in combating discrimination is the Community Action Program - PROGRESS
Legislative measures alone will not be enough to combat discrimination effectively within society. Experience shows that legislation must be backed up by concrete actions. This is why, following the European directives on racial equality and equal treatment in employment, the EU Council launched an action program designed to help make European anti-discrimination policy a reality. This five-year program ended on 31 December 2006.
For the new 2007-2013 programming period, the Commission decided to pursue further its efforts in this direction, proposing the creation of a new integrated program to be known as PROGRESS (Program for Employment and Social Solidarity). The program was approved by the European Parliament and Council in November 2006. PROGRESS combines four former Community Action Programs, including that relating to non-discrimination. This theme is now included in one of the new program’s five sections. Section 4, entitled "Anti-discrimination and diversity", thus aims to support the effective implementation of the principle of non-discrimination and to promote its mainstreaming in all EU policies by:
a) Improving the understanding of the situation in the field of discrimination, in particular through analysis, studies and the compiling of statistics and indicators where relevant, as well as by assessing the impact and effectiveness of existing legislation, policies and practices;
b) Supporting the implementation of EU anti-discrimination legislation through reinforced monitoring, organizing seminars for practitioners and creating networks of specialized bodies engaged in combating discrimination;

c) Raising awareness, disseminating information and promoting the debate on the major challenges and policy issues at stake in the discrimination issue and in mainstreaming antidiscrimination in all EU policies, as well as among the social partners, NGOs and other stakeholders;
d) Developing the capacity of the principal networks at European level to promote and develop even more the Community strategies and political objectives in the field of the fight against discrimination.

APPLICABILITY

Bulgaria has currently adopted a Strategy for social protection and social inclusion. At the foundations of the Bulgarian system for social protection and social inclusion is the provision of equal opportunities for all to use the benefits of economic growth. The main elements of this system, contributing for meeting the aims for better and wider social protection include the following: guaranteed rights; guaranteed access to make use of these rights; solidarity and social responsibility of the society; differentiated and individual approach to each individual; guaranteed resources; clearly defined responsibilities. One of the key principles is the provision of equal opportunities for all. To this end, without limiting the principle of equality, specific rights and measures are planed to improve and bring to an equal ground the opportunities of various groups for full-scale participation in public life and the usage of its resources and wealth. Among them are people with disabilities, children, young people, elderly people, etc.

A cornerstone in this attempt is the adoption in 2003 of the Bulgarian Law against Discrimination welcomed by minority groups in Bulgaria. In recent years the ensuring of equal opportunities for men and women emerged as a field requiring specific measures to be proposed. The conduction of a policy for gender equality is a key component in the state policy for equal opportunities for all. The forthcoming adoption of the draft Law on Equal Opportunities for Women and Men will further promote the processes of achieving real gender equality. The state statistics will add indicators organized by gender for monitoring and assessment of policies. The conduction of a social assessment on the initiatives for reduction of poverty among groups excluded from the development initiatives will be further facilitated by the introduction of an assessment on the gender impact on development initiatives promoting social inclusion. The integration of the assessment on the gender impact within the social assessment will lead to a choice of adequate initiatives for social inclusion of the vulnerable groups. The poverty has different impacts on men and women. These consequences increase the vulnerability of men and women also as a result of other structural differences (age, ethnic belonging, disability, etc.) Therefore the assessment of the gender impact will improve the purposefulness of social inclusion policies concerning the various target groups. The introduction of gender budgeting as a means to improve the access of men and women to the resources of the society will also contribute to the acquisition of real gender equality.

The efforts aimed at establishing a sustainable and efficient system for social protection and social inclusion pose a real challenge to Bulgaria. The Bulgarian social model is still in a process of further development so that it is brought in line with the European legislation,

policies and social practices. In this respect certain measures were adopted for the following purposes: to ground the systems of social security and protection of the population on objective principles, criteria and regulators; to establish regulators of work incomes that are appropriate for the open market economy; to improve the pension model; to address the demographic problems by a purposeful demographic policy; to improve the access of citizens to rights, resources, goods and services guaranteed by law; to eliminate any discrimination; to create equal opportunities for all, including gender equality.

The policy for social protection and social inclusion in Bulgaria is considered to be an inseparable part of the general state policy. In the different areas of this policy specific strategies, programs and measures have been put in place (exp.: in the field of employment, education and vocational training, housing, transport, health care and access to health services, deinstitutionalization, child protection, integration of vulnerable ethnic minorities, etc.). Each one of them has a contribution for the achievement of the purposes for better social protection of citizens and social inclusion of vulnerable groups in the society. The multidimensional character of social protection and social inclusion called for the adoption of a new strategic approach combining the resources and means of various policy domains. This approach found application in the National Strategy for Fight against Poverty and Social Exclusion 2003-2006 and the annual action plans, the National Employment Strategy 2010 and the annual action plans on employment. The integration of all policies concerning the issues of social protection and social inclusion, allow for better recognition of the comprehensiveness of the problems when planning the priorities, the measures, the necessary resources, the distribution of responsibilities, etc. The unification of means from various policy domains to achieve the common goals leads to improved monitoring and assessment of the conducted policies, which lays the foundation of planning and improvement of the measures in the field of social protection and fight against poverty and social exclusion.

The new strategic approach was reinforced by the Joint Memorandum on Social Inclusion of the Republic of Bulgaria, signed on 3 February 2005. Setting the accents in the field of social inclusion, the Memorandum mobilizes the resources and the policy instruments of the state institutions, the social partners and the non-governmental organizations. The joint development, implementation and monitoring of the policies by all interested parties is also an element in the new model of social policy. The challenges set out in the Memorandum clearly show the multidimensional character of the policy for social protection and social inclusion and the necessity to mobilize all the interested parties for its implementation. They are as follows: developing an inclusive labor market and promoting employment as a right and opportunity for all; tackling educational disadvantages; housing; ensuring equal access to high-quality health services and improving their delivery and forms of provision; access to social protection; improving social service delivery and securing equal access to high-quality social services for all, and in particular for people with disabilities and the mentally handicapped; promoting access to transport for all; regenerating areas of multiple deprivations; ensuring social and educational integration of vulnerable ethnic minorities.

In the last few years Bulgaria achieved progress on the problems of poverty and social exclusion by means of applying the newly adopted model of social policy, namely the linkage of the social policy with the rest of state policies, which contributed for a transition from

passive to active social protection with the purpose to create human, physical and social capital, including also the active involvement of the vulnerable groups into the efforts to increase their personal social welfare; focusing on causes, instead of consequences, for the negative tendencies in the society, particularly the poverty and the social exclusion, etc. This strategic approach has laid in the foundation of the state policy in the field of social protection and social inclusion and shall be further applied with the purpose to achieve the main priorities as identified in the present report and laid down in the national policy for improvement of the quality of life of the Bulgarian citizens, by means of providing employment, incomes for decent living, social security and care and social integration.

The introduced new model of program budgeting aims also at better integration of policies in dependence from the purposes as set-out in the general policy. The introduction of this approach has led to more effective distribution of available budget resources and more efficient spending. The key advantage of this approach, compared to the conventional one, is the opportunity to reflex clearly the policy intentions of the government into the structure of the budget. In the budget structure these intentions assume the form of concrete elements, i.e. these are the programs. By means of program budgeting it is clearly visible the link between the active labor market policy, the policy for improvement of the living standard and the incomes of the population, including the policy on social assistance. The programs are identified in line with the strategic objectives of the government. The budgeting documents drawn by means of this approach can be further assessed on whether they have achieved the desired objectives and results, additionally to whether the spending has been advisable and in conformity with the law.

The interrelation among the policies for social inclusion, pensions, health and long term care and the policy for economic growth and more and better jobs shall be taken into account not only when programming the state budget and funds available, but also in all the policy programs and plans that are adopted. Inevitably these domains and their goals are interrelated and the progress in each separate policy field shall reflect on the others. The achievement of higher economic growth, the decrease of the unemployment rate in the country, the establishment of new and sustainable jobs and the increase in the level of education and qualification of human resources cannot be achieved without modernization and improvement of the systems for social protection and social inclusion, which contribute for the achievement of these goals. In the context of the overall policy of Bulgaria towards achievement of the goals set out in the Lisbon Strategy, a purposeful policy for social protection and social inclusion is even more clearly visible as one of the motive forces of the economic growth. Through it, it is facilitated the inclusion in the labor market of more people from vulnerable groups by means of providing employment, social security, qualification, education and training reflecting the specifics of different disadvantaged groups. Ensuring access to health care and extension of the scope of health care services shall inevitably reflect on the general health status of citizens increasing their employability, hence the period of participation in the labor market, the labor quality and productivity. In relation to the demographic challenges facing Bulgaria it is more highly indispensable to create conditions for longer working life of the labor force, which is the main motor of the national economic development. One of the purposes of the reform in the pension system is to meet this challenge by creating incentives for personal initiative and responsibility, increasing the employment rate among elderly

people, establishment of conditions for a balanced development between the different pillars of the pension system, decrease in the serious demographic burden on the employed people and the establishment of legal and economic incentives to extend the working life.

The economic transition Bulgaria is undergoing has affected the whole population, but with greater strength the more vulnerable groups in the society. The effects of the economic growth are meant to benefit the whole of the society. In relation to this the policies aimed at increasing the level of labor productivity, creation of more jobs, while taking into account the actual needs of the labor market, the introduction of new and modern technologies, the reforms in the field of education and public services, etc., contribute to the policy for social protection and social inclusion.

For the purposes of better governance of the policy for social protection and social inclusion a comprehensive and coordinated approach of governance is being applied. Its key elements include: transparency at the process of decision making and involvement of all the interested parties, including the individuals to whom these policies are targeted, in policies development, consultation, implementation and monitoring; concordance of the actions of various institutions engaged with the implementation of measures; coordination of the activities; execution of permanent control on the process of implementation; information for citizens; interrelation between the activities of the central state authorities and the local authorities, etc. The consultation with interested parties is defined as obligatory under the actual Bulgarian legislation. To this end a number of consultative bodies are established, without the consultancy of which the adoption of certain documents is impossible, for example the National Council for Tripartite Cooperation, the National Council for Integration of People with Disabilities, the National Council for Cooperation on Ethnic and Demographic Issues, etc. A key importance in the consultation process is attributed to the participation of the National Association of Municipalities in the Republic of Bulgaria. The approach followed in Bulgaria allows for all the interested parties (social partners, non-governmental organizations, representing the interests of various vulnerable groups in the society, local authorities, etc.) to take part not only in the process of consultation and control on the implementation of polices, but also in the process of their formulation.

EFFECTS ON THE MEDIA

In the current society of ‘mind-media’ control, the media is possibly the most powerful tool of all in ensuring general awareness and influencing public opinion. Working with the media is therefore a key to effectively combating inequality in society. The media can be an effective tool in organizing campaigns for raising public awareness and for broadcasting and disseminating relevant information. There have been several media campaigns against discrimination in Bulgaria focused mainly on social inclusion of the Roma and people with disabilities, as well as on combating poverty and trafficking of women. Apart of the various NGOs fostering those campaigns a special mention deserves the role of the media. Both print press and electronic media have strongly grasped campaigns ideas not only by focusing the public attention on the respective issues but also by actively participating in all key activities – advocacy, lobbying, promoting ideas and promoting leading experience. Along with that Bulgarian media have voluntarily included plenty of the antidiscrimination ideas in their professional code. Thus, in the Ethical Code of the Bulgarian Journalists, adopted on

November 26 2005 and signed by all key stakeholders (above 80) section 2.5 pledges allegiance to the protection of people against any form of discrimination:

> 2.5 Discrimination
> 2.5.1 We respect everyone's right to live in safety and security, and we shall avoid publishing material that incites or encourages hatred, violence or any form of discrimination.
> 2.5.2 We shall not refer to a person's race, color, religion, ethnic background, sexual orientation, mental or physical condition, unless it is of importance to the meaning of the story.

This, however, is not a legally binding document and there have been lots of violations of the civil rights of people and many instances of 'hate speech' against minorities. Given the fact that for the last three years there has been advent of nationalism and populism imbedded in the platform of Parliamentary represented political party called ATTACK, it is hardly a surprise that prejudice, stereotypes and negative attitudes find their way in the public discourse, especially when it comes to Roma. Particular newspapers as well as electronic media outlets would often use pejorative names, deriving from the word **Gypsy**, to address representatives of the Roma community. Examples of such rhetoric are often encountered and remain unsanctioned even though the Law on Radio and Television (RTL), adopted in late November 1998 contain clear antidiscrimination provisions. Thus for instance according to RTL Article 17 explicitly reads that:

> (1) Radio and television broadcasters shall be accountable for the content of the program services provided by them for broadcasting.
> (2) Radio and television broadcasters shall be obligated not to suffer the creation or provision for broadcasting of any broadcasts in violation of the principles of Article 10 herein, and any broadcasts inciting to national, political, ethnic, religious or racial intolerance, extolling or condoning brutality or violence, or likely to impair the physical, mental and moral development of infants and minors.

By the same token Article 76 of the same law claims that:

> (2) (Supplemented, SG No. 79/2000) It shall be inadmissible to broadcast advertising based on national, political, ethnic, religious, racial, sexual or any other form of discrimination.
> (3) Advertising addressed to or using children shall avoid anything likely to impair their physical, mental and moral development.

Furthermore, public service broadcasting has obliged operators to allocate about 5 per cent of the production to promotion of diversity and pluralism and about 2 per cent for programs in support of the integration of underprivileged groups and groups at risk. Big commercial operators with national coverage have even gone further willingly extending those quotas using the practice to stick to "not less than 2 per cent of their program content" when it comes to vulnerable groups. Though in terms with the EU standards and requirements, however, such a representation seems not capable of stimulating and promoting enough public interest and tolerance and obviously needs to be reconsidered.

Another problem is the guaranteeing of equal opportunities for men and women in journalism and discrimination against minority journalists. If for the equal opportunities Bulgaria shows a striking example with nearly 80 per cent of women dominated media, as well as with about 50 per cent of the managers of the central press and national broadcasters being women, when it comes to minority journalists situation seems drastically different. Roma journalists all over the country would hardly exceed several dozens, and hence coverage of Roma issues lingers between melodramatics, sensationalism and biased reporting.

RECOMMENDATIONS

Existent legislation to fight discrimination and to provide equal opportunities is relevant and adequate. Legal measures alone, however, are not enough for the provision of a fair and conducive to real equal opportunities social environment. Hence, the following recommendations:

- Regular update of all existing directives and their corresponding transposition on national level
- Nation-wide campaigns including all stakeholders, authorities on all levels, civic sector and the media to raise the public awareness on the problems of the Roma and the people with disabilities, especially those who live in specialized institutions.
- Regular action plans and higher state budget allocations for the vulnerable groups.
- More severe sanctions envisaged for inciting hate including fines or/ and revocation of licenses for media
- More severe sanctions to employers for industrial discrimination including revocation of licenses to practice particular profession
- Introduction of rules in professional codes related to sexual harassment and political correctness
- Practical implementation of anticorruption laws especially with regard to the adoption of EU funds directed for equal opportunities and antidiscrimination.

6. INTELLECTUAL PROPERTY RIGHTS

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Relevant documents and scope

The intellectual property rights are dealt with by several documents adopted by the EU institutions. They are important for the common market, as they are seen as a basic pre-requisite for the free and fair competition. For the purpose of this paper, we examined the following documents:

- **Directive 96/9/EC** of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

It concerns, among other things, the protection of the news agencies' products.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML

- **Directive 2004/48/EC** of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (Text with EEA relevance).

This Directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.

http://eur-lex

*lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R(01):EN:HTM*L

- Council **Directive 93/83/EEC** of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0083:EN:HTML

- **Directive 2001/29/EC** on the harmonization of certain aspects of copyright and related rights in the information society.

The objectives of the Directive are to adapt legislation on copyright and related rights to reflect technological developments and to transpose into Community law the main international obligations.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML

This set of directives are based on the philosophy of a striving, developing market. As Directive 2004/48/EC puts it, "the protection of intellectual property is an essential element for the success of the internal market. The protection of intellectual property is important not only for promoting innovation and creativity, but also for developing employment and improving competitiveness."

At international level, all Member States, as well as the Community itself (as regards matters within its competence), are bound by the Agreement on trade-related aspects of intellectual property (the TRIPS Agreement), approved, as part of the multilateral negotiations of the Uruguay Round, by Council Decision 94/800/EC(3) and concluded in the framework of the World Trade Organization. Despite this agreement, the models and degrees of implementation of the respect of intellectual property rights vary from state to state and the Community judged that such disparities impeded the development of the internal market.

The objective of these documents is to **approximate the** legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the internal market.

1.1. Provisions

Directive 2004/48/EC (the most recent) states that since copyright exists from the creation of a work and does not require formal registration, "it is appropriate to adopt the rule laid down in Article 15 of the Berne Convention, which establishes the presumption whereby the **author of a literary or artistic work is regarded as such if his/her name appears on the work**. A similar presumption should be applied to the owners of related rights since it is often the holder of a related right, such as a phonogram producer, who will seek to defend rights and engage in fighting acts of piracy."
Directive 93/83/EEC states (article 1, para 5) that "**the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors**. Member States may provide for others to be considered as co-authors.

Directive 2004/48/EC requires the Member states to provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be **fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.**

The persons entitled to apply for the application of the measures, procedures and remedies are:
(a) the holders of intellectual property rights,
(b) all other persons authorized to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law;
(c) intellectual property collective rights-management bodies which are regularly recognized as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law;
(d) professional defense bodies which are regularly recognized as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.
The directive provides for rules on how to judge on cases on infringements of intellectual property rights and makes a clear distinction between the personal use and the "commercial scale" infringements.

In case that, by judging the merits of a case, the judicial authorities decided that an infringement of the rights occurred, the Member States shall ensure that the competent judicial authorities may order, at the request of the applicant, without prejudice to any damages due to the rightholder by reason of the infringement, and without compensation of any sort, that appropriate measures be taken with regard to goods that they have found to be infringing an intellectual property right and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of those goods. Such measures shall include:
(a) recall from the channels of commerce;
(b) definitive removal from the channels of commerce;
or
(c) destruction.

Member States may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in this section, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in this section, if that person acted unintentionally and without negligence, if execution of the measures in question would cause him/her disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Damages shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the rightholder by the infringement. Alternatively, in appropriate cases, the damages may be set as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorization to use the intellectual property right in question.

In addition to these measures and remedies, Member States shall encourage the development by trade or professional associations or organizations of codes of conduct at

Community level, aimed at contributing towards the enforcement of the intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture. In the same time, the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct should be equally encouraged.

Directive 2001/29/EC stems form the same approach to the functional internal market, underlining that systems should be in place not to allow the unfair competition to distort the market. It also takes into account the development of the informational society in Europe and, as a consequence, the development of an internal market for new products and services.

The directive regulates the right of the author to communicate his/her work to the public "by wire and wireless means". Therefore it covers three fundamental rights:

- reproduction rights – allowing the right of the concerned person to prohibit direct and indirect, temporary or permanent reproduction by any means and in any form, in whole or in part. It covers the authors, the performers, the phonogram producers, the producers of the first fixations of films and broadcasting organizations.
- Right of communication to the public – the exclusive right to authorize or prohibit the making available to the public of the works, in such a way that the members of the public may access them from a place and at a time individually chosen by them. It covers the performers, the phonogram producers, the producers of the first fixations of film and broadcasting organizations.
- Distribution rights – the exclusive right of the authors to authorize or prohibit any form of distribution to the public by sale or otherwise.

The directive allows for the Member States to provide for **exceptions or limitations** for the reproduction rights, in some cases, including among others:

- reproduction on papers via photographic techniques, except for the sheet music (ex: one can take pictures of a monument, or building or statue even if it is protected by copyright)
- reproduction by a natural person for private use and for ends that are neither directly nor indirectly commercial;
- publicly accessible libraries;
- illustration for teaching or scientific research;
- the benefit of people with disabilities;
- reproduction by press, communication to the public or making available of articles on current economic, political or religious topics or of broadcast works, in cases where such use is not expressly reserved, as long as the source, including the author's name is indicated (article 5, para 3.c);
- quotations for criticism or review (article 5, para 3. D);
- use for political speeches, purposes related to the national security, religious celebrations, advertising public exhibitions;
- use for the purpose of caricature, parody and pastiche (article 5, para 3 k);

Apart from the obligations related to the rights of the authors, the Member States have also obligations related to the protection of technological measures and the rights-management information. In a nutshell, the states shall provide for legal protection against the circumvention of any effective technological measures (holograms, encrypted or coded content). Manufacture, import, distribution, sale, rental, advertisement for sale or rental or possession for commercial purposes of devices, products or components that may enable the circumvention shall be prohibited.

The directive also states that the member States have to adopt sanctions and remedies against the infringements of the rights. The sanctions have to be effective, proportionate and dissuasive.

Directive 93/83/EEC aims at coordinating certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission. It is based on the same argument of the functional internal market, a fair and undistorted competition on this market. It defines the terms of :

- communication by satellite – the act of introducing, under the control and responsibility of the broadcast organization, the programme-carrying signal intended for reception by the public into un interrupted chain of communication leading to the satellite and down towards the earth;
- Cable retransmission / simultaneous unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial transmission from another member State, by wire or over the air, including that by satellite, of television or radio programs intended for reception by the public.

The member States shall provide an exclusive right for the author to authorize the communication to the public by satellite and ensure that that such authorization may be acquired only by agreement. The agreement can be reached with the author or the right-holder, or with a collecting society.

For the cable retransmission, the Member States shall ensure that when programs form other Member States are retransmitted, the applicable copyright and related rights are applicable. The right of the author to authorize or refuse retransmission can be exercised only through a collecting society.

1.3 Addressability

The Directives are applicable to the Member States. Given the fact that the deadline for their implementation passed, it is expected that all the new members and candidates abide by this standards at the time of their admission in EU.

1.4 Timeframe

Directive 2001/29/EEC sets a 50 year period for the rights of the phonogram producers. The rights will expire 50 years after the first lawful publication.

The deadline for complying with this directive was set for 22 December 2002.

Directive 2004/48/EC had the implementation deadline imposed for April 2006.

Directive 93/83/EEC had to be implemented by the Member States by January 1995.

1.5 Effects on the media

The copyright issue is crucial for the media, especially for the broadcast field. The directives are quite specific in their wording and requirements regarding the right for satellite communication and cable retransmission. Implementing these requirements brings more predictability on the market and increases fair competition. The unlawful transmission of the artistic works (especially movies and music) is still quite frequent in the SEE region, which creates misbalances on the market, to the detriment of the honest organizations, who understand to pay the due compensations of the copyrights.
This is why the authorities should act vigorously for an equal treatment of all the media organizations in terms of law enforcement. This action may be impeded by the lack of proper monitoring, especially in the provinces.
The importance of the copyright legislation is increased by the fact that many journalists are paid based on their copyright – a legalistic form of tax evasion, consensually adopted by employers and employees for avoiding high labor taxation. Such practices create serious complications when it comes to define who is the right-holder, if the information as such is protected by the copyright or not, if the information collected by a journalist by using the equipment of a media organization is lawfully owned by the first of the latter.
The same problems arise when it comes to programs like "Press review", the news briefs distributed online that summarize the day's press or the "quoting" of materials from print to online and vice versa.

1.6 What can be done

The media and the civil society should consider:

- launching debates regarding the nature, the scope and the details of the copyright issue in the media;
- launching debates regarding the position of freelancers and their labor relations with the newsrooms;
- negotiate employment contracts that avoid uncertainty and abuse against journalists;
- promote good practices and self-regulation in respect with the copyrights issues;
- cooperate with the state bodies in fighting piracy;

The states should consider:

- adopt, modernize and consistently enforce legislation harmonized with the EU standards;
- empower enforcement agencies, inclusively by training of their officers;
- build the institutional capacities of the broadcast councils or similar institutions to secure a consistent and equal respect for the copyrights provisions;
- prosecute vigorously but discriminately the infringements;

7. INTERNET : Safer Internet Plus Programme

Ioana AVADANI, Romania

The most relevant recent document adopted by the European institutions affecting the Internet development is the **Decision No 854/2005/EC** of the European Parliament and of the Council of 11 May 2005 establishing a multiannual Community Programme on promoting safer use of the Internet and new online technologies (aka Safer Internet Plus Programmme).
The document is available at:
http://europa.eu.int/information_society/activities/sip/programme/decision/index_en.htm

3.1. Scope of the document

The *Safer Internet plus* programme aims to promote safer use of the Internet and new online technologies, particularly for children, and to fight against illegal content and content unwanted by the end-user. The 4-year programme (2005–08) will have a budget of € 45 million. It continues a similar programme launched in 1999[32] and prolonged by two years in 2003[33].

3.2. Provisions

The program is based on the finding that the Internet penetration and the use of new technologies (such as mobile phones) are growing considerably. In parallel, dangers and abuses continue to exist and new dangers and abuses are likely to appear. Therefore, in order to negotiate a balance between the need to encourage the exploitation of the new opportunities offered by the technologies and the need to provide a safer climate for the users, continuous action is needed and new measures are called for.

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[32] Decision no 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a multi annual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks

[33] Decision no 1151/2003/EC of the European Parliament and of the Council of 16 June 2003 amending Decision no 276/1999/EC adopting a multi annual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks

One important note is that given the cross-border nature of the Internet as a medium, the measures taken by the national states are not sufficient for an effective protection of the users, therefore there is a clear need for coordinated actions at Community level.

Such regulations and measures are to be focused on two areas: the content which is potential harmful to children or unwanted by the end-user and the illegal content, in particular child pornography and racist material.

The Safer Internet Plus Programme has four main components:
a. fighting against illegal content
b. tackling unwanted and harmful content;
c. promoting a safer environment
d. awareness-raising

In order to **fight the illegal content**, the Member States and candidate countries are required to establish hotlines networks that will enable the members of the public to report illegal content when they meet it. Such networks pass the report to the ISP, the police or the body in charge of action against such content. They are not part of the law enforcement system, as they do not investigate offences nor arrest nor prosecute offenders. Still they can act as centers of expertise providing guidance to ISPs as to what may be illegal content. Such networks should be quickly and effectively connected to the existing European network. Even more, links between this European network and similar networks in third countries (where illegal content is hosted and produced) are encouraged, in order to create a common approach and know-how transfer. These networks shall be under obligation to make the clear distinction between their activities and those of the state authorities and will inform their users of alternative ways of reporting illegal content.

In order to **tackle unwanted and harmful content**, the users – or the responsible adults, when the users are minors – may need technical tools that will enable them to make their own decision on how to deal with such content. The programme makes available supplementary funds for increasing the information regarding the performance and effectiveness of filtering software and services.

Other possible answer is given by the rating systems and quality labels that help the users to select the content that they want to receive. Further efforts will be put in adapting rating systems and quality labels to take account of convergence communications, audiovisual media and information technology. An important role is played by the self-regulatory initiatives to back up the reliability of self-labeling, as well as the services for assessing the accuracy of self-rating.

The programme encourages the Member States to take account of safe use by children from the very early stages, when developing new technologies and not to wait until they are in the position to face the consequences. The safety of the end-user is a criterion that should be considered altogether with technical and commercial considerations.

In order to **promote a safer environment**, there is need for a fully functioning system of self-regulation aimed at limiting the flow of unwanted, harmful and illegal content. Self-regulation involves a number of components:

- consultation and appropriate representation of the parties concerned,
- codes of conduct
- national bodies facilitating cooperation at Community level;
- national evaluation of self-regulation frameworks[34].

The programme emphasize the role that the Safer Internet Forum, developed in 2004, under the previous programmes, should play as a focal point for discussion at expert level. The Forum will act as a catalytic agent for all the actions in the plan.

In terms of **awareness-raising**, actions should address a large number of categories of illegal, unwanted and potential harmful content. Such actions have to be run in conjunction with related issues such as consumer protection, data protection, as well as information and network protection (against viruses and/or spam). The focus will be on the wide distribution of the relevant information, using a multitude of channels, including media campaigns, distribution of information in schools and Internet cafes. In order to be supported by the programme, the promoters of such activities shall demonstrate that they enjoy the support of public authorities. This component of the programme is considered to be the most important and up to half of the programme's budget (47 to 51%) will be dedicated to it.

3.3 Addressability

The program is open to legal entities established in the Member States (art. 2, para 1). Equally, it is open to legal entities established in the candidate countries in accordance with bilateral agreements in existence or to be concluded with those countries.

Participation in the programme may be opened to legal entities based in third countries or to international organizations, but without the financial support by the Community.

3.4 Timeframe

The program covers the period 2005 to 2008. The first report on the implementation of activities was due in mid-2006. Subsequent reports are due in 2007 and 2009.

3.5 Effects on media

This decision affects the media on more than one account.

Firstly, the programme is very close to the idea of **content regulation**, that should be carefully considered by all the media people. While "illegal content" is a pretty clear concept, the one of " potential harmful" is quite interpretable and may lead to censorship.

[34] See the indicative guidelines for the implementation, at national level, of a self-regulation framework for the protection of minors and human dignity in online audiovisual and information services in recommendation 98/560/EC.

Secondly, the programme focuses on self-regulation, self-labeling and self-definition of ratings. This requires a concerted action of the media people from all the countries interested - irrespective of the fact that they are already EU members or not yet. The trans-frontiers nature of the Internet makes this pan-European cooperation extremely relevant.

Thirdly, the programme refers to a know-how transfer from broadcast – where ratings and self-labeling are a fact of life. This inter-media transfer of experience may prove very valuable and it may be made easy by the fact that many broadcasters are also involved in Internet operations too.

Fourthly, the programme refers to media as possible key-players in the dissemination of the information as part of the awareness-raising activities. The mass media are mentioned on several occasions in the programme and their role as "nodes" of the networks is recognized. This opens not only an opportunity for the media operations to be on the front wave of such programs in their respective countries, but also a good funding opportunity, as the awareness-raising component is the most relevant, budget-wise.

3.5 What can be done

The media and the civil society organizations may consider:

- to get informed as soon as possible regarding the concrete terms of the Safer Internet Plus Programme and act accordingly;
- largely disseminate the information so that as many journalists are informed and aware;
- start self-regulation initiatives, taking advantage of the emphasis that the programme puts on such demarches;
- connect with the Safer Internet Forum and be actively participate;
- elaborate projects in accordance with the suggestions of the programme.

The states may consider:

- to get informed as soon as possible regarding the concrete terms of the Safer Internet Programme and act accordingly;
- largely disseminate the information so that as many journalists are informed and aware;
- to initiate – or to respond positively when approached – partnerships with the other interested parties for establishing common action plans under the programme;
- to promote public policies consistent with the programme (Internet literacy classes in schools, support for research in Internet safety, technologies and procedures/wise).

9. Internet: New Audiovisual Media Services without Frontiers Directive

Duško Mihailović, Montenegro

Relevant EU documents

New Audiovisual Media Services without frontiers Directive (passed on May 24 2007)

- Since the present Television without frontiers directive was first adopted in 1989 and then amended in 1997 there have been many changes:

The convergence of technologies and services - traditional TV, internet TV, TV on mobile phones and other mobile devices, etc.; the expansion of fixed broadband, digital TV and 3G networks; the increase in pay-per-view TV, and the arrival of new delivery services such as video on demand (VOD) and peer-to-peer exchanges of audiovisual content; the blending of traditional and on-demand services; changing viewer habits where more and more people want audiovisual content to follow their time schedule and not the other way around; and new advertising methods, such as search-related ads on the internet or SMS ads on mobile phones.

These all point to a clear need for regulation to keep pace with rapid technological and market developments if Europe's audiovisual sector is to remain competitive.

i2010 Policy

European Commission's strategic policy framework laying out broad policy guidelines for the information society and the media in the years up to 2010. It promotes an open and competitive digital economy, research into information and communication technologies, as well as their application to improve social inclusion, public services and quality of life

Goals and Implementation

New Audiovisual Media Services without frontiers Directive

After a legislative process of 18 months, a political agreement has been reached on 24 May 2007 on the new Audiovisual Media Services without frontiers Directive.

Both the European Parliament and Council agreed on the main aims of the Commission original proposal to modernise the rules governing the audiovisual services industry.

It will offer a comprehensive legal framework that covers all audiovisual media services, less detailed and more flexible regulation and modernised rules on TV advertising to better finance audiovisual content. The Directive should enter into force by the end of 2007.

As stated on the European Commission website, modernisation is an obvious need since the audiovisual industry is undergoing a second major revolution, driven by:

The convergence of technologies and services: traditional (linear) TV, Internet TV, TV on mobile phones and other mobile devices, etc.;

Expansion of fixed broadband, digital TV and 3G networks;

Increase in per-per-view;

Innovations in non-linear service delivery such as video on demand (VOD);
Peer-to-peer exchanges of audiovisual content;
Interwoven linear and non-linear services;
Changing viewer habits: more and more people want the audiovisual content following their time schedule and not the other way around;
New advertising methods, such as search-related ads on the internet or SMS ads on mobile phones.
The aim of the new AVMS Directive is to provide a modern pro-competitive framework for Europe's providers of TV and TV-like services by, for example, giving more flexibility for financing audiovisual content by new forms of commercial communications.

It will also create a level playing field for all companies that offer on-demand audiovisual media services to profit from Europe's internal market, irrespective of the technology used to deliver their services while continuing to ensure a high level of consumer (i.e.viewer) protection.

i2010
The first objective of i2010 is to establish a Single European Information Space offering affordable and secure high-bandwidth communications, rich and diverse content and digital services. Action in this area combines regulatory and other instruments at the Commission's disposal to create a modern, market-oriented regulatory framework for the digital economy.
i2010 identifies digital convergence as the main driver of change and aims at ensuring that the EU will fully benefit from the opportunities and prospects for strengthening the Single Market. i2010 sees four challenges for convergence: speed, rich and diverse multilingual content, interoperability and security.
It calls for a consistent framework for information society and media services to promote investment and competition, while preserving public interest objectives and ensuring the protection of consumer interests.
The broad range of industries involved in convergence at the various levels includes IT (hardware and software), consumer electronics, electronic communications, broadcasting and content providers including media, and large internet companies.
These industries have different backgrounds, but they are finding themselves competing in new markets as a result of common platforms, networks and services with similar functionalities.
Convergence is bringing about industrial changes both at the horizontal level, whereby traditionally separated industries compete with each other, and at the vertical level, whereby new partnerships emerge bringing about the need for new business models and sometimes trends towards vertical integration.
Convergence is blurring the boundaries between markets and strengthens vertical links.
Communication services, delivery devices and media content are increasingly interrelated: economic distortions in one sector may easily spill over to another sector.

For example, lack of competition at the access level can reduce demand for complementary products upstream such as computers and content. Similarly, non-availability of content resulting from an inappropriate regime for copyright licensing may result in lower demand for broadband services.

Because of such spill-overs, it is essential for the EU to get the right regulatory framework both for services and for content, taking this changing environment into account.

Effects on the media

The European Council has passed a law which extends the laws governing television broadcasters to companies providing video content online regardless of how it is transmitted.

The Audiovisual Media Services Without Frontiers Directive broadens broadcast rules introduced in 1997 to encompass content on the internet, mobile phones and other devices, video on demand, and peer-to-peer networks. But it does not cover non-commercial content.

The directive has relaxed rules for advertisers, but still insists that product placements are signposted. It includes provisions for disabled access, protection for minors, and rights for people to access "extracts" of important events without having to pay for them. It prohibits programmes that incite religious or racial hatred.

Like the 1997 directive, the new rules apply the country of origin principle to avoid trying to shoe-horn Europe's different countries' cultural sensibilities into a single set of rules. So a media publisher will still be held to the broadcast and censorship rules of its own country. It can then sell its content anywhere in the EU without having to tweak the content each time.

Announcing the directive, EC Commissioner for Information Society and Media Viviane Reding, said: "It is the duty of legislators to adapt the 'rules of the game' to such profound market and technological developments [as the internet], ensuring the preservation of fundamental values in a media which deeply influences our lives."

The directive would make the industry more competitive, she said. It was expected to come into force by the end of the year, and member states had until 2009 to ratify it into national law.

The changes would extend regulation to cover a broad range of new and emerging audiovisual media services including Internet broadcasts.

On the other hand, an alliance of broadcasting, telecoms, technology, new media and advertising bodies led by UK IT industry body Intellect and the Broadband Stakeholder Group (BSG) claims the changes will be damaging for players in the emerging online broadcasting market.

The alliance claims there is already enough existing legislation and self-regulation and that the changes to the directive will deter new and existing new media players from the market and divert investment and innovation away from the EU.

Antony Walker, chief executive of the BSG, said in a statement: "This directive is likely to confuse businesses, overwhelm regulators and let down consumers. The proposed scope is too broad and the definitions used too vague.

"The result could be an all-encompassing regulatory framework that takes five years to implement, undermines existing safeguards and proves largely unenforceable."

His comments echo those made by the UK broadcasting minister James Purnell who said that "There is no benefit to the consumer that justifies this move. This increased scope could mean significant regulation of the Internet and stifle the growth of new media services. That would raise prices for consumers and deprive them of potential new services."

Conclusion

While Information & Communication Technologies (ICTs) can reinforce social inclusion, offering new opportunities for many people currently excluded from today's society, we must

make them accessible to everyone if we are to avoid creating a new divide between the "digital haves" and "have nots".
Information and communication technologies (ICTs) are central to modern life. They are increasingly used at work, in day-to-day relationships, to access everything from public services to culture and entertainment, and for community and political participation.
Unfortunately not everybody fully benefits. Anything from 30-50% of all Europeans still gain few or none of the ICT-related benefits described on this website. The main reasons are lack of access to equipment or networks, the limited accessibility of user-friendly technologies, price, motivation, limited skills and different generational attitudes to advanced technologies.
The most excluded groups are therefore the elderly, the unemployed and those with a low level of education. In addition, only 3% of public web sites fully comply with web accessibility standards, creating additional hurdles for the 15% of the EU population with disabilities.
If we are not to create more social divisions, rather than use ICTs to bridge the ones we already have, we need to build an information society for all - an e-inclusive society. Action is needed at all levels of government - from local to European - and across the private sector, with particular emphasis on promoting equal digital opportunities, avoiding new forms of exclusion, ensuring all parts of Europe can enjoy high-speed internet access and making ICTs accessible to everyone.
While the digital revolution is influencing more and more aspects of our lives, its reach is still uneven - fewer than 50% of EU households access the internet, while broadband internet access, critical to getting the most out of advanced online services, is still difficult to find in many remote regions. Ensuring the Information Society benefits all Europeans, therefore, is still an important social goal for Europe
The Internet also offers enormous possibilities to European companies, particularly SMEs, which can for the first time realistically grow inside Europe's single market through the use of eBusiness technologies. There is still a lot of work to do - while 64% of EU businesses have a website, only a minority is using it to offer innovative services to their business partners.
While the internet is both a driving source of innovation and an important tool to combat social exclusion, finally, it is also an important economic sector in its own right: in 2006, for example, the software and IT services markets were worth 11% and 20% respectively of the total ICT market by value.
"Over 50% of global e-mail traffic is estimated to be spam"
Along with its benefits, however, the Internet also brings new challenges, such as the illegal copying of digital content, cybercrime, spam and the invasion of privacy.
Action on European and even global level is necessary to meet these challenges.
In view of the technological evolutions already taking place there are many ways for convergence to develop. While the technological possibilities are the most predictable, the current situation in the market for content, services and related products is unstable.
The ultimate outcome depends on the experience that convergence offers to the consumer: ease of access to content, quality of communication tools, possibility to create and share user-generated content.

There are several points of departure one can take in assessing the development.
Among them are a general societal and globalisation view, a view from the

more technical and network development side, a view from the business and economy side and a more user-experience or citizen-oriented view.
All scenario aspects listed below explore primarily different models as one might see from the user viewpoint.
None of them must be taken as the most likely one by itself, but elements and development trends from these scenarios are likely to persist in one form or another.
The future is wireless. The mobile devices slowly improves its storage capacity and battery life, facilitates Internet access and takes over its competitors becoming a prime media device for downloading, streaming, storing and playing all kinds of media.
This is facilitated by the faculty to use secured solutions for mobile payments for content and services. The use of mobile for payments progressively expands to the purchase of goods and services online, as well as in “real-life”.

10. **MARKET RULES**

Angela SIRBU, Moldova

Market rules protection

1. **Documents and scope**

Legal protection of the common market rules, including the services provided by electronic media, is the preoccupation of a number of Commission, European Parliament and European Council regulations. For the purpose of this report we will analyze the most relevant documents:

• **Directive 2003/6/EC** of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0006:EN:HTML
• **Directive 2002/38/EC** of 7 May 2002 amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_128/l_12820020515en00410044.pdf
• **SIXTH Directive of 17 May 1977** on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (77/388/EEC) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31977L0388:EN:HTML
• **Directive 98/ 84/ EC** of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access. http://europa.eu.int/eur-lex/pri/en/oj/dat/1998/l_320/l_32019981128en00540057.pdf

The purpose of the above mentioned documents is to protect market integrity and to ensure smooth functioning of the markets by completing Community legal framework, which varies

from one Member State to another, leaving economic actors often uncertain over concepts, definitions and enforcement, as it is stated for instance in the Directive 2003/6/EC.

More precisely, examined directives are dealing with:

- market abuses and market manipulation issues,[35]
- taxation matter (ways to minimize distortion of competition and in particular the non-imposition or double imposition of value added tax within the Community)[36],
- piracy problem (legal protection of all services whose remuneration relies on conditional access and measures against illicit devices which give unauthorized access to protected services.)[37]

2. **Provisions**

Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation

The Directive points out that in some Member States there is no legislation addressing the issues of price manipulation and the dissemination of misleading information. Market manipulation prevent transparency, which is a prerequisite for trading for all economic actors in integrated financial markets. The regulations become crutial especially since the "new financial and technical developments enhance the incentives, means and opportunities for market abuse: through new products, new technologies, increasing cross-border activities and the Internet."[38] The definition of what constitutes market abuse is a general one. Market abuse may arise in circumstances where investors have been unreasonably disadvantaged, directly or indirectly, by others who:

[35] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation.
[36] Directive 2002/38/EC of 7 May 2002 amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services & SIXTH Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes
[37] Directive 98/ 84/ EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access.
[38] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation. P (10).

- have used information which is not publicly available (insider dealing);
- have distorted the price-setting mechanism of financial instruments;
- have disseminated false or misleading information.

This type of conduct can undermine the general principle that all investors must be placed on an equal footing. [39]

The purpose of the Directive is to fill in the legal gaps and to ensure the integrity of financial markets within the Community and to enhance investor's confidence in those markets. The document is intended to prevent market abuse (consisting of insider dealing[40] and market manipulation) which can undermine public confidence and therefore damage the smooth functioning of the markets.

The Directive sets the rules for possessing and disclosing the "inside information"[41] by both natural and legal persons, including media. It encourage economic actors to contribute to market integrity by various means such as checks conducted by independent auditors, transparent transactions, including publication of those transactions as a source of information for investors etc.

According to this Directive, "market manipulation" includes also the dissemination by media of false information. It forbids acts described as "dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading". In respect of journalists, the Directive says, when they act in their professional capacity such dissemination of information is to be assessed taking into account the rules governing their profession, unless those persons

[39] http://europa.eu/scadplus/leg/en/lvb/l24035.htm

[40] Directive 2003/6/EC, p (17): As regards insider dealing, account should be taken of cases where inside information originates not from a profession or function but from criminal activities, the preparation or execution of which could have a significant effect on the prices of one or more financial instruments or on price formation in the regulated market as such.

[41] Directive 2003/6/EC, art.1 (1) **inside information** shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

derive, directly or indirectly, an advantage or profits from the dissemination of the information in question.[42]

In other words, when a journalist is doing its duty to inform the public, the dissemination of false or misleading information has to be judged differently.

Among other things, this Directive requires from Member States:

- to prohibit any person who possesses inside information from using that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates. The prohibition aplies to a number of persons, including those having access to the information through the exercise of his employment, profession or duties;

- to prohibit natural or legal persons from disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;

- to ensure that issuers, for an appropriate period, post on their Internet sites all inside information that they are required to disclose publicly;

- to ensure that market operators adopt structural provisions aimed at preventing and detecting market manipulation practices.

This Directive also requires Member States to designate a single competent administrative authority to ensure that the provisions of this Directive are applied and, if necessary, impose sanctions.

Both criminal and administrative measures and sanctions can be taken by the Member States against the persons responsible for violation of this Directive's provisions. Member States shall ensure that these measures are effective, proportionate and dissuasive and that an appeal

[42] Directive 2003/6/EC, art. 1, p.2 (c)

may be brought before a court against the decisions taken by the designated competent authority.

According to the Eur-Lex, official EU Law portal, after October 2004, the date Directive entered into force, 23 out of 25 old Member States reported having national provisions concerning Directive 2003/6/EC. But the fact that there is a reference to national implementing measures does not necessarily mean that these measures are either comprehensive or in conformity.[43]

Directives 2002/38/EC and 77/388/EEC are aimed to create rules in order to avoid double taxation, non-taxation or the distortion of competition in the Member States. It describes who, when, where and how has to be taxed. Directive 2002/38/EC is more recent and has the purpose to amend the directive 77/388/EEC by introducing precise, more adequate rules for taxing (VAT) radio and television broadcasting services and electronically supplied services[44].

The amendments are aimed to ensure, in particular, that such services "where effected for consideration and consumed by customers established in the Community are taxed in the Community and are not taxed if consumed outside the Community".[45]

On the other hand, it provides that "radio and television broadcasting services and electronically supplied services provided from third countries to persons established in the Community or from the Community to recipients established in third countries should be taxed at the place of the recipient of the services."[46]

[43] Eur-Lex, official EU Law portal http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:72003L0006:EN:NOT#FIELD_BE
[44] Which are, according to directive 77/388/EEC: Website supply, web-hosting, distance maintenance of programmes and equipment; supply of software and updating thereof; supply of images, text and information, and making databases available; supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events; supply of distance teaching
[45] Directive 77/388/EEC, (2)
[46] Directive 77/388/EEC, (3)

Broadcasters and operators providing electronically supplied services from third countries will enter special schemes in order to comply with fiscal obligations of the Community. The scheme allows them to be identified in a single Member State.

Identified taxable person is required, among other things:

- to state when his activity as a taxable person commences, changes or ceases. Member States shall allow the taxable person to make such statements by electronic means, and may also require that electronic means are used (Art. 2);
- to submit a return[47] by a deadline to be determined by Member States. That deadline may not be more than two months later than the end of each tax period. The tax period shall be fixed by each Member State at one month, two months or a quarter. Member States may, however, set different periods provided that they do not exceed one year (Art. 2);
- to keep records of the transactions in sufficient detail to enable the tax administration of the Member State to determine that the value added tax return is correct. These records shall be maintained for a period of 10 years from the end of the year when the transaction was carried out (Art. 1).

The recapitulative statement shall be drawn up for each calendar quarter within a period and in accordance with procedures to be determined by the Member States, which shall take the measures necessary to ensure that the provisions concerning administrative cooperation in the field of indirect taxation are in any event complied with. Member States shall allow the taxable person to make such statements by electronic means.

Member States shall take the necessary measures to ensure that persons considered to be liable to pay the tax shall comply with the obligations relating to declaration and payment. States may impose other obligations which they deem necessary for the correct levying and collection of the tax and for the prevention of fraud.

[47] According to directive 77/388/EEC "value added tax return" means the statement containing the information necessary to establish the amount of tax that has become chargeable in each Member State.

Directive 98/ 84/ EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access.

While pursuing the same general goals as the *directives 2003/6/EC & 2002/38/EC*, namely to protect the market from abuses and ensure equal and fair competition, this Directive focuses on fighting piracy. Using the language of the directive, it fights "illicit devices"[48] which give unauthorized access to "protected services" such as:

- television broadcasting,
- radio broadcasting, meaning any transmission by wire or over the air, including by satellite, of radio programmes intended for reception by the public,
- information society services.[49]

The directive makes sure that fundamental right of citizens to receive and impart information regardless of frontiers, as specified in the Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the rights of broadcasters to receive remuneration for their services that are based on "conditional access"[50] are equally protected. It recognizes that fees are important for the broadcasters to survive and be economically viable.

The rule differs when it comes to public broadcasters. According to this directive public broadcasters can be accessed without an authorization: "a number of broadcasting services, recognized as being of public interest, are not based on conditional access".[51]

Member states have to take measures to ensure that consumers are protected from receiving misleading information. Activities prohibited on the territory of member states include:

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[48] According to the Directive 98/ 84/ EC, art.2 (e) **illicit device** shall mean any equipment or software designed or adapted to give access to a protected service in an intelligible form without the authorization of the service provider;
[49] Directive 98/ 84/ EC, art.2 (a).
[50] According to the Directive 98/ 84/ EC, art.2 (b) **conditional access** means any technical measure and/or arrangement whereby access to the protected service in an intelligible form is made conditional upon prior individual authorization
[51] Directive 98/ 84/ EC, p (9)

(a) the manufacture, import, distribution, sale, rental or possession for commercial purposes of illicit devices;
(b) the installation, maintenance or replacement for commercial purposes of an illicit device;
(c) the use of commercial communications to promote illicit devices.[52]

Among other things, the directive prescribes that sanctions against piracy have to be proportionate to the potential impact of the illegal activity.

3. **Applicability/Timeframe (**to whom the documents are applicable, deadline)

All the abovementioned Directives are addressed exclusively to the Member States. Still the **Directive 2003/6/EC** hints at non-member states when it comes to the relations between broadcasters from Community and those from the third countries. Broadcasters from third countries are obliged to obey with the Community regulations in order to be able to work in the Community. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 July 2003. Article 1 of this directive was valid for a period of three years starting from 1 July 2003. Starting 30 June 2006 the Council, was going to adopt measures on an appropriate electronic mechanism on a non-discriminatory basis for charging, declaring, collecting and allocating tax revenue on electronically supplied services or, if considered necessary for practical reasons, extend the above mentioned dead line.

In order to avoid confusion among economic actors, **Directive 2003/6/EC** sugests creation in each Member State of a single competent authority responsible for supervising compliance with the provisions adopted based on this Directive. Such an authority should be of an administrative nature guaranteeing its independence of economic actors and avoiding conflicts of interest. In accordance with national law, Member States should ensure appropriate financing of the competent authority. That authority should have adequate arrangements for consultation concerning possible changes in national legislation such as a consultative committee composed of representatives of issuers, financial services providers and

[52] Directive 98/ 84/ EC, art. 4

consumers, so as to be fully informed of their views and concerns.[53] The dead line to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive was settled for 12 October 2004.

Directive 98/ 84/ EC entered into force on 28 May 2000. Still the implementation of this Directive's provisions is going to be monitored on the regular basis. It anticipates that not later than three years after the adoption and every two years thereafter, the Commission shall present a report to the European Parliament, the Council and the Economic and Social Committee concerning the implementation of this Directive accompanied, where appropriate, by proposals, for adapting it in light of technical and economic developments.

4. **Effects on the media**

The above examined Directives have explicit provisions concerning media which make them important for the industry. If properly implemented, these documents may have positive effects on the media markets by making them more transparent, accountable and viable.

Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation targets media professionalism and editorial freedom issues, encouraging media (both print and electronic) to be more accurate while reporting on economic and financial issues in order to avoid misleading the public and potential investors.

In broader sense, this directive stands for transparent markets, free from economic crimes and attractive for investors, including investors interested in media enterprises.

Media self-regulation practices are crucial for achieving better coverage of financial and economic issues. Directive recognizes the role of media and states that cases when journalists are involved have to be judged taking into account the nature of profession, which is to inform the public. While implementing this Directive it is important to ensure that "judges" or bodies

[53] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation. P (36).

appointed to solve potential cases don't underestimate the importance of journalists and don't take measures to restrict their activity.

Directives 2002/38/EC, **98/ 84/ EC and 98/ 84/ EC** are particularly important for the broadcasting sector. Enforcement of these provisions may improve economic viability of radio and TV broadcasters by protecting them from piracy and unfair competition generated by operators from third countries.

In its report from the April 2003 the Commission shows that implementation of the Directive has not yet been fully achieved within the Union, that enforcement at national level has to be consolidated and that joint efforts are instrumental in fighting piracy effectively. It argues that "only if pirates do not find safe havens in Europe will it be possible to combat piracy". Therefore, the Commission says it will continue its co-operation with other European countries and relevant international organizations in an effort to create a coherent pan-European legal framework against the piracy of electronic pay services. [54]

5. **Recommendations**

The media and the civil society can:

- design and implement efficient ways to spread out the information about EU directives provisions (ex. print out and distribute to all media organizations cards with the address of the web site where the reports/other relevant information about EU regulations on media are posted etc.);
- encourage and help media to design and enforce self-regulation mechanisms to avoid spreading misleading information;
- encourage cooperation between media and business in order to guarantee transparency of transactions and making the markets more attractive for investors;

[54] Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the implementation of Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, and consisting of, conditional access (It covers the period from adoption of the Directive in November 1998 through to the end of 2002) http://ec.europa.eu/internal_market/media/docs/elecpay/com-2003-198_en.pdf

- organize debates that bring together media and business professionals;
- monitor and report about the way directives are put into practice.

The states may consider:

- take measures to effectively implement the directives in practice;
- consulting relevant actors when drafting adjustments in the national legislation to comply with the provisions of the examined directives. In this context, Directive 2003/6/EC requires Member States to consult all market participants concerning possible changes in national legislation. The mechansm can include "consultative committees within each competent authority, the membership of which should reflect as far as possible the diversity of market participants, be they issuers, providers of financial services or consumers"[55];
- to ensure proper mecanisms for reporting on abuses and progress made in the directives' implementation.

[55] Directive 2003/6/EC, art. 11

11. **RACISM**

Sašo Bogdanovski, Macedonia

"Anti-xenophobia and anti-racist legislation and policy of the European Union"

"Xenophobia, you should be more afraid of someone exactly like you"
Loesje - Dutch Fictional character

The Context

Xenophobia consists of the creation and propagation of an image of the community in which there is no room for "others", whose influence on the cultural ethos, usually is seen as destructive to given culture. Xenophobia is very close with the concept of ethnocentrism, which can be described as worldview based on dichotomic division into "us" and "them". "Us" represents an idealized group and "them" undervalued group, source of threat and evil. This division is makes the basis for social life and criterion for evaluating the surrounding world. Usually this kind of attitude leads to defensive isolation and conflict.
Definitions of racism range from biological determination to cultural essentialism and social pathology. Apart from the so called "scientific racism of the nineteenth century" that focuses on natural hierarchy and can still be found in much academic writing, the most common form is so called "popular" racism based on prejudice and stereotypes targeted at groups who are either physically or culturally different. The most pervasive and damaging form of racism is "institutionalized" or "structural" racism. This can be found in various most hidden forms. An important and complex is the interconnectedness between racism and economic interests. The definition of racism should include notion of power relations and cover also cases where the skin color (or religion, or culture) can play minor role, despite its strong stigmatic effect. There is often an extraordinary pervasiveness of unconscious racism ignored by the legal systems. Racism is not only a matter of individual prejudice and everyday practice, but it is a phenomenon that is deeply embedded in language and perception.
On the European political scene there has been a noticeable rise in radical right-wing populism since the 1980s. At the beginning of twenty-first century, populist movements constitute a part of European political scene. Let me give few examples, like growing popularity of People's Party of Switzerland, Austrian Freedom Party and its leader Jörg Haider, National Front in France, founded by Jean – Marie Le Pen, or Northern League and Forza Italia in Italy. They attach great importance to national values, the sense of national identity and at the same time adopt hostile attitude towards the "others". Populist parties advance a bi-polar vision of the world, with a wise and worthy nation at one end and the political elites bringing the country to ruin at the other, where important role is played by

theories of conspiracies. The fears evoked by integration processes and globalization offer a suitable opportunity to populist politicians. They support continuing state control, as well as return to religious values and the national tradition. They are characterized with the attention towards the state, which is expected to restore the cohesion of previous traditional values and to provide protection against the fear of the disappearance of traditional values among universal values.

According to Hans-Georg Betz[56], radical right-wing parties are first in their rejection of individual and social equality and political projects that seek to achieve it, then in their opposition to the social integration of marginalized groups, and in their appeal to xenophobia, if not overt racism and anti-Semitism. They are populist in their unscrupulous use and instrumentalization of diffuse public sentiments of anxiety and disenchantment and their appeal to the common man and his allegedly superior common sense. The same observation is shared by another analyst, Cas Mudde[57] who writes that nationalism, exclusion and strong state constitute are the main features of right-wing extremism. The populist policy of Euro-scepticism is associated with the parties representing this trend. The actual situation in Europe may be described as: although they have not attracted the majority of electorate in particular countries, they are capable of causing confusion in international relations.

The unification of Europe involves not only economic and political integration, but also the coexistence of European nations. The process of integration is accompanied by growing awareness of ethnic differences, different traditions and unique cultural identities of European nations. Europe moving towards unity must adopt some models to counteract the negative phenomena outlined above. On one hand there various solutions may be found proposed, from administrative prohibition and provisions of the penal code to social exclusion, but on the other hand such proposals are not approved by many groups within the society. According to the predominant view, the most effective measure is moral protest: consistent condemnation of all racist acts and xenophobia. Design and enforcement of effective mechanisms and instruments against racial discrimination, racism, xenophobia and related forms of intolerance presuppose interdisciplinary analysis, encompassing aspects of international politics and international law, as well as analysis of policies preventing racial discrimination from historical perspective. Local experiences and public opinion are more or less affected by global tendencies, and although there are many factors specific for each country, racism takes universal forms and the response to it should therefore be universal.

Legal Framework and Instruments

The source for the legal framework and instruments against xenophobia and racism as well related matters lays upon the European Convention for the Protection of Human Rights and Fundamental Freedoms closely related and inspired by Universal Declaration on Human Rights. The crucial provision that further defines the policy of EU may be considered Article 6 of the Treaty of the European Union stating that: "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms… as general principles of Community law." The Treaty of Amsterdam, signed on 2 October 1997, ratified by all the countries of the European Union and finally came into force on 1 May 1999, includes an antidiscrimination clause, inserted in the

[56] H.-G. Betz, Radical *Right-Wing Populism in Western Europe* (New York: Houndmills, Macmillan, 1994)
[57] C. Mudde, *The Ideology of the Extreme Right* (Manchester-New York, 2000)

First Pillar (Community area), which enables the European institutions to take measures in order to combat discrimination based on certain criteria. Article 13 of the Treaty of Amsterdam reads as follows: "Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Commission, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation." Such an anti-discrimination clause did not previously exist in the treaties, so Article 13 gives the European institutions a significant opportunity to take "appropriate action" in order to combat certain types of discrimination. Within the framework of the fight against racism, xenophobia and anti-Semitism (to which we restrict ourselves), this means that Member States can propose and adopt binding measures in order to combat all forms of discrimination based on racial or ethnic origin, religion or belief. Significant development providing opportunities for enhanced action in the field of racism and discrimination was the adoption by the Committee of Ministers of the Council of Europe of Protocol No. 12 to the European Convention on Human Rights, from June 2000.

The most relevant legal instruments and mechanisms that set the framework of antiracist and antidiscrimination matters in the member countries of EU, as well the EU accession countries are the Race Equality Directive (2000/43/EC) accompanied by the Employment Equality Directive (2000/78/EC).

In 2005, the Commission adopted the Communication Non-discrimination and equal opportunities for all - a framework strategy. The framework strategy follows up the Commission's Green Paper "Equality and non-discrimination for all in an enlarged EU". The Communication was accompanied by the Proposal for a Decision of the European Parliament and the Council on the European Year of Equal Opportunities for All (2007) Towards a Just Society COM(2005) 225 final - 2005/0107 (COD). The European Year 2007 is the centre piece of a framework strategy designed to ensure that discrimination is effectively tackled, diversity is celebrated and equal opportunities for all are promoted. The strategy is set out in a Communication adopted by the European Commission in June 2005. The strategy also looks at what more the European Union can do to tackle discrimination and promote equality, beyond legal protection of people's rights to equal treatment. Parliament approved the Commission's Proposal for a Year of Equal Opportunities for All (2007)[58].

The European Parliament's other key contribution to anti-discrimination policymaking at EU level was its non-legislative resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe[59].

On 27 April 2005, the Commission adopted a mechanism to systematically screen all legislative proposals for their compatibility with the Charter on Fundamental Rights of the European Union[60].

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[58] EP legislative resolution on the proposal for a decision of the European Parliament and the Council on the European Year of Equal Opportunities for All (2007) - Towards a Just Society COM(2005)0225 – C6-0178/2005 – 2005/0107(COD)

[59] EP resolution T6-0228/2005, adopted on 8 June 2005

[60] Communication from the Commission on "Compliance with the Charter of Fundamental Rights in Commission legislative proposals. Methodology for systematic and rigorous monitoring", of 27.4.2005, COM(2005)172

In 2005, the fight against discrimination and in particular against racism and xenophobia were priorities within the youth sector at European level. The Commission and the Member States thus responded to a Declaration of Youth Ministers from 28 May 2004 about the role of young people in combating racism and intolerance. Declaration of the Council and of the Representatives of the Governments of the Member States meeting within the Council on Racism and Intolerance in relation to Young People of 28 May 2004, 9405/04, JEUN 39.

Concerning electronic media, I would like to underline the provisions of two main legal documents for the Broadcasting in the European Union: "Transfrontier Television Convention" and Television Without Frontiers (TWF) Directive.

Apart from Article 10 of the European Convention on Human Rights and Fundamental Freedoms, reference is to be made to Article 7, paragraph 1 of the Council of Europe's Transfrontier Television Convention which states that: "All items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others. In particular, they shall not…. give undue prominence to violence or be likely to incite to racial hatred."
Article 22a of the Television Without Frontiers (TWF) Directive requires EU Member States to ensure that broadcasts do not contain any incitement to hatred on the grounds of race, sex, religion or nationality: "Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality."
On the basis of EU Council Regulation No. 1035/97 of June 1997, European Centre for Monitoring Racism and Xenophobia (EUMC) was established in Vienna. In the Regulation it is stated that EUMC shall be concerned with the extent, development, causes and effects of the phenomena of racism and xenophobia. The EUMC has an overall aim to provide European Parliament, the European Commission and the Member States with reliable and comparable data and statistics on racism, xenophobia and anti-Semitism.

The Council Regulation establishing the European Union Agency for Fundamental Rights (FRA) came into effect on 1 March 2007. With this date, FRA became the legal successor of the EUMC. FRA was established to provide assistance and expertise to the European Union and its Member States, when they are implementing Community law, on fundamental rights matters. The aim is to support them to respect fully fundamental rights when they take measures or formulate courses of action. FRA was established through Council Regulation (EC) No 168/2007 of 15 February 2007. From 1 March 2007, FRA became operational in the field of racism and xenophobia as covered by the previous mandate of the EUMC. With regard to other areas of fundamental rights, it will gradually build up knowledge and expertise required under its mandate and future work programmes. FRA is expected to be fully operational in 2008, when a Multi-annual Framework is in place and its governing structures have been set-up.

Race Equality Directive

On 29 June 2000, the Council of European Union adopted Directive 2000/43/EC, "Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin" ("Race Equality Directive" or "Race Directive")[61] .
There is a note that this Directive was a product of ten-year campaign by Starting Line Group, a broad network of non-governmental organizations coordinated by the Migration Policy Group and presents Europe with an historic opportunity to make contribution to the struggle for racial equality.
The member states of the European Union, after the adoption of the Directive were given a period, within three years to confirm their legislation to implementation of the Directive principles. The Directive is part of the acquis communautaire[62], the corpus of law which all states wishing to join the EU must adopt. Therefore, each EU candidate country will have to enact legislation and educate its judges, prosecutors and other public officials about these legal standards.
The transposition process of the two anti-discrimination Directives is completed or underway, with draft legislation introduced in Parliament in the majority of EU Member States. However, the European Court of Justice ruled in 2005 that Finland, Luxembourg, Germany and Austria failed to adopt all the laws, regulations and administrative provisions necessary to comply with the Racial Equality Directive before the date for transposition expired on 19 July 2003. The European Court of Justice also ruled that Luxembourg failed to transpose the Employment Equality Directive by the required date. (The EU 10 had a later transposition deadline than the EU 15.) In some Member States, problems concerning the transposition process could be detected and political debates observed which indicate a fundamental disagreement concerning the transposition of the Directives. In the Czech Republic and Germany, the upper house of the Parliament rejected the proposed bill transposing the Directives. In Luxembourg, the Conseil d'Etat made public a critical opinion on the proposed bill transposing the directives. In Latvia and Malta the main legislation to transpose one or both Directives is still only available in draft form awaiting parliamentary adoption. In Estonia and Poland no major legislative activity concerning the transposition of the Directives was noticeable.
Among the most significant features of the Directive we may highlight the following:
(1) The range of discrimination includes both "direct" and "indirect" discrimination within the scope of prohibited actions. Indirect discrimination occurrence is defined "where an apparently neutral provision, criterion or practice would put person of racial or ethnic origin at a particular disadvantage compared with other persons unless that provision criterion or practice is objectively justified by legitimate aim and means of achieving that aim are appropriate and necessary".

[61] The term race has a strong biological connotation, as mentioned in the Directive preamble: "The European Union rejects theories which attempt to determine the existence of separate human races. The use of term racial origin in this Directive does not imply an acceptance of such theories
[62] Explicitly stated in the endnote (2) Directive "is part of acquis communautaire", subsequently "…adoption of the Community acquis in the area of equality is a sine qua non for accessions since it is a question of human rights…"

By including "indirect" discrimination, the Directive reaches a broad swath of discriminatory polices and actions which, though not motivated by overt and readily provable racial hatred, may cause disadvantage for the members of racial or ethnic minority groups.
Harassment, incitement and victimization are kind of behavior prohibited by the Directive. Harassment occurs "when an unwanted conduct related to racial or ethnic origin takes place with purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment".
(2) The Directive applies to "both the public and private actors, and sectors, including public bodies". Emphasizing the private parties the Directive is clarifying this question witch is not really clearly applied by the European Convention on Human Rights. The "state action" hurdle which has hampered anti-discrimination law enforcement in this context is eliminated.
(3) The Directive respects the specific context in each European country and leaves open the possibility for each state to adopt "specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin." These measures make it possible for the governments to employ a range of devices to achieve more adequate representation of underrepresented minority groups. These could include employment efforts targeted to minority groups, as well hiring codes and educational admission criteria which make clear that diversity at the workspace is in itself a desired goal. The European Court of Justice has approved an affirmative action policy providing that, where two applicants are equally qualified, historically underrepresented applicants should be given preference, unless reasons specific to another applicant tilt the balance[63]. This kind of policy is known as "affirmative action" or "positive action" policy.
(4) The Directive makes practically realistic for many victims to prove the discrimination they have suffered in two principle ways, minimizing the burden of proof. First, the Directive shifts the burden of persuasion in civil cases by requiring that, once a prima facie case of discrimination has been established, "it shall be for respondent to prove that there has been no breach of principle of equal treatment". Second, the Directive provides that indirect discrimination may be "established by any means, including on the basis of statistical evidence". As a practical matter, statistic evidence may often be the best or only way of proving indirect discrimination.
(5) The Directive opens the way to establishment of effective enforcement bodies capable of taking legal action to secure equal treatment. It is required form the states to design a body capable of "proving independent assistance to victims of discrimination in pursing their complaints." Regarding this, the European Commission against Racism and Intolerance (ECRI), a Council of Europe body, has adopted "ECRI general policy recommendation No.2: Specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level. The recommendation has no legally binding force, but member states must consider it in a good faith. The document provides seven fundamental principles which are likely to become a point of reference for the bodies set up under the Directive. The principles are related to the establishment, execution of powers of specialized bodies in the field of equal treatment and non-discrimination.

[63] Roma Rights, Newsletter of ERRC, No. 1, 2001, Access to Justice, p.68

Available Resources on Combat against Racism and Xenophobia

European Monitoring Centre on Racism and Xenophobia EUMC and European Union Agency for Fundamental Rights FRA

The European Monitoring Centre on Racism and Xenophobia (EUMC) and European Union Agency for Fundamental Rights (FRA), described above, under the heading: "Legal Framework and Instruments", was established in 1997 by the European Union as "an independent body to contribute to combat racism, xenophobia and anti-semitism throughout Europe". It has set up the Racism and Xenophobia Information Network (RAXEN) to provide data on the extent of racism and also to highlight examples of "good practice" in combating it. FRA continues the activities of the EUMC. Monitoring racism, xenophobia and anti-Semitism remains core business for FRA. FRA's founding Regulation establishes that the Agency's Multi-annual Framework must always include the combat against racism, xenophobia and related intolerance.
Many of the EUMC's publications are available online (some in PDF format) and there is a useful section of other relevant links. The site is in English[64].

World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance 2001

United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance took place 31st August- 7th September 2001 in South Africa. It covered all aspects of racism including: migration and the trafficking of women, the rights of indigenous peoples, ethnic cleansing, genocide, slavery, gender and racial discrimination and the protection of the rights of ethnic minority groups. Controversy arose when a number of representatives, including the Rev. Jesse Jackson requested compensation from the West for African Slavery.

The official website[65] of the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance provides background information on the purpose of the conference, a brief history of previous UN meetings on this theme and access to the text of a selection of UN conventions and treaties relating to the elimination of all forms of racial inequality. Other features of the site are access to the meeting agendas, press statements, preparatory committee documents, declarations and resolutions from the meeting.

Institute for Jewish Policy Research London

Institute for Jewish Policy Research London maintaines a site on "Antisemitism and Xenophobia Today"[66]. It provides access to a collection of news stories, articles and research updates on matters relating to antisemitism and racism in Britain and Europe today. This includes coverage of racism in sport, the activities of extreme right and neo-nazi, fascist political parties (including the BNP- British National Party)and race hate crimes. The site also includes some country reports which provide an overview of the situation in specific EU nations.

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[64] http://eumc.eu.int/&handle=sosig1017930692-26949
[65] http://www.un.org/WCAR/&handle=sosig999770633-14725
[66] http://www.axt.org.uk/&handle=sosig1079521492-74

Minorities of Europe

Minorities of Europe (MoE) was established in 1995 and has member organisations in a number of European countries. It was established as a result of the Council of Europe's campaign against racism, anti-semitism, xenophobia and intolerance across the continent of Europe. The campaign, entitled "All different - All Equal", reflected widespread concerns about the rising levels of racism and xenophobia, and the debilitating sense of isolation endured by many minority groups, not only within their own societies but also with similarly situated groups and communities in other countries."

The site of MoE[67] includes details of partners and their work in various European countries.

Majority Attitudes Towards Migrants and Minorities in Europe: Key findings from the Eurobarometer and the European Social Survey

This site[68] provides access to the text of a report published in March 2005 by European Monitoring Centre on Racism and Xenophobia (EUMC). It presents the findings of a major analysis of data taken from 2003 Eurobarometer Survey and the 2003 European Social Survey on attitudes towards minorities and migrants in different European countries. The researchers also compared the findings of the 2003 Eurobarometer with results of earlier Eurobarometer Surveys. It includes measures of resistance to a multicultural society, opposition to civil and legal rights for migrants and refugees, support for repatriation. The papers are in several files in PDF format.

ERaM Programme: Ethicity, Racism and the Media

The ERaM (Ethnicity, Racism and the Media) Programme is located at the University of Bradford Department of Social and Economic Studies. Their official site[69] supports three mailing lists for the discussion and dissemination of any and all news, information, research and policy statements concerning issues of ethnicity, racism and the media. Academics, media professionals and other interested parties are invited to subscribe to the lists, with details for joining available from the site. The website also has a list of related links to the Internet.

Football Against Racism in Europe (FARE)

Football Against Racism in Europe (FARE)[70] was formed in February 1999 in Vienna by a network of organisations from 13 European countries. The FARE network "dedicated itself to fight racism and xenophobia in football across Europe" and "through co-ordinated action and common effort, at local and national level, we will bring together all those interested in combating discrimination in football."

Arab Media Watch

Arab Media Watch is a non-profit UK based organisation which monitors coverage of the Arab world and Islam in UK based print and broadcast media. This includes newspaper and TV coverage of current affairs, documentaries and other programmes. It seeks to expose

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[67] http://www.moe-online.com/&handle=sosig1025021466-29258

[68] http://www.eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content***catid=3fb38ad3e22bb***contentid=42369ad95426f&handle=sosig1111150129-22742

[69] http://www.brad.ac.uk/research/eram/eram.html&handle=sosigSOSIG648

[70] http://www.farenet.org/&handle=sosig1080073964-29655

examples of stereotyping, racial discrimination and xenophobia in the media. The website[71] provides information on the aims of the organisation and its current activities. The site also includes numerous articles and reports on media coverage. Topics include: Palestine and the Arab Israeli conflict, Islam and weapons of mass destruction, the Iraq war, Islamophobia. User should note that it is necessary to register to access some articles on the site.

Bellagio Consultation

This site[72] provides information on the preparatory consultation leading up to the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance 2001. It contains a resume of the Bellagio consultation meeting which has been prepared by the International Human Rights Group. Key themes include globalisation, the rights of ethnic minority groups, immigration, ethnic conflict, racism and the elimination of all forms of racial discrimination. Users should note that the paper is in PDF format and therefore requires access to an Adobe Acrobat Reader for use.

Centre of Study for Immigration and Ethnic Minorities (CEDIME)

The Centre of Study for Immigration and Ethnic Minorities (CEDIME) is located in the Department of Sociology at the Universitat Autonoma de Barcelona. Its central aim is to "conduct research into interior migrations, migratory flows, racism and xenophobia, migrants' labor conditions and integration policy in Spain and Catalonia." The website[73] contains information on the research and services of the Centre.

CEREN - Centre for Research on Ethnic Relations and Nationalism

CEREN is a research body based in Finland which is seeking to promote research and collaboration between researchers on issues relating to the study of the relationship between nationalism, nation building and ethnicity, particularly in relation to Finland. Its website[74] provides information on the purpose of the body, its current activities and ongoing research in this field. It includes the text of its newsletters from 1999 onwards. Areas covered include: ethnicity, integration, migration, xenophobia and racism against ethnic groups in the region.

Center for Research in International Migration and Ethnic Relations - (CEIFO)

CEIFO is a research unit which was established in 1983 at the University of Stockholm to examine all aspects of international migration, nationality, ethnicity and xenophobia from a cross-cultural perspective. Its website[75] available in English outlines the purpose of the Center and its current research projects. It also provides abstracts of its recent publications and links to information about forthcoming events, such as conferences in the field.

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[71] http://www.arabmediawatch.com/&handle=sosig1081175835-3695
[72] http://www.hrlawgroup.org/resources/content/BellagioEnglish.pdf&handle=sosig999854274-22187
[73] http://selene.uab.es/cedime/&handle=sosig1077557137-657
[74] http://sockom.helsinki.fi/ceren/English/&handle=sosig955551201-27572
[75] http://www.ceifo.su.se&handle=sosig879347466-6637

12. TERRORISM

Ioana AVADANI, Romania

Counter-terrorism

At the European level, there are three main documents aimed at fighting terrorism:

- COUNCIL FRAMEWORK DECISION on combating terrorism 2002/475/JHA [76]
- Council Framework Decision on the European arrest warrant and the surrender procedures between the Member States COM(2001) 522 final[77]
- Memo of the European Commission "Action by the European Union following the attacks on 11 September" (Memo/01/327) [78]

The adoption of these document were prompted by the terrorist attacks against US on September 11 and bear all the tension of that moment. It is noteworthy the speed at which the EU reaction came.
The Memo 01/237 summarizes all the measures adopted by the EU in response to the September 11 attacks. It was adopted on October 15, a little over one month after the attacks, which, by EU standards, is a quick regulatory reaction. A plan of Action to respond to terrorism had been adopted by the European Council on September 21st 2001 and the Memo embodies the European Commission commitment to pursue the anti-terrorist measures.

The EU anti-terrorist actions aimed at several key areas for the member state to cooperate:

- a **common definition of terrorism**
- **harmonized extradition procedures**, to ease the prosecution and trial of those accused of terrorist acts and organized crime
- actions to **dry up the sources of terrorist funding**, by freezing the assets of organizations and individuals suspected of having links to the attacks of 11 September
- tightening up laws against **money laundering**; whereas the current directive only applies to the proceeds of drug-related crime, a proposed extension would make it

[76] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0475:EN:HTML

[77] http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/ce332/ce33220011127en03050319.pdf

[78]http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/01/327&format=HTML&aged=0&language=FR&guiLanguage=en

mandatory for Member States to combat laundering of the proceeds of any type of crime;
- introduction of the new **Civil Protection Mechanism**, which reinforces EU cooperation in this field, and which is coordinated by the Commission.
- **transport safety**, including measures covering classification of weapons, technical training for crew, checking and monitoring of hold luggage, protection of cockpit access and quality control of security measures applied by Member States.

At the diplomatic level, the European Union voiced its solidarity with the USA and recognized the legitimacy of the US military riposte. But the memo writes specifically:

"The European Union adamantly rejects any equation of terrorism with the Arab and Muslim world."

The COUNCIL FRAMEWORK DECISION on combating terrorism COM (2001) 521 aims at harmonizing the legislation across the EU territory, starting form the reality of different approaches at the national level regarding the criminal prosecution of acts of terrorism, doubled by the cross-border nature of the effects of such acts. The framework decision is expressly intended to establish "minimum rules relating to the constituent elements of criminal acts and to penalties for natural and legal persons who have committed or are liable for terrorist offences".

Such rules shall be applied to acts committed with the aim of :

- seriously intimidating a population, or

- unduly compelling a Government or international organisation to perform or abstain from performing any act, or

- seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation,

The list of "terrorist acts" include (according to Article 1(1) of the document):

a) attacks upon a person's life which may cause death;

(b) attacks upon the physical integrity of a person;

(c) kidnapping or hostage taking;

(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;

(e) seizure of aircraft, ships or other means of public or goods transport;

(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;

(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;

(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;

(i) threatening to commit any of the acts listed in (a) to (h).

Also, each member state is called to take the necessary measures to ensure that terrorist-linked offences include the following acts:

(a) aggravated theft with a view to committing one of the acts listed in Article 1(1);

(b) extortion with a view to the perpetration of one of the acts listed in Article 1(1);

(c) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(1)(a) to (h)

Inciting or aiding or abetting an offence referred to in the aforementioned articles shall be made also punishable. This provision is particularly important for the media, as "instigation" may easily be related to the public communication.

While such acts might already be covered by the national criminal laws, they should be deemed as "terrorists" and punishable as such if they are intentionally committed with the aim of intimidating the countries, their institutions or people and seriously altering or destroying the political, economic, or social structures of a country.

The EU document also sets limits for the penalties to be imposed for various acts, in order for the penalties to be proportionate, effective and dissuasive. Therefore, the documents creates the obligation for the member states to impose given penalties, using the formula "maximum penalties of no less than" ... The range of the maximum penalties goes from eight years to fifteen years in prison, depending of the crime committed.

The documents defines the "aggravating circumstances" for terrorist acts. They shall apply if such an act
(a) is committed with particular ruthlessness; or
(b) affects a large number of persons or is of a particular serious and persistent nature; or
(c) is committed against Heads of State, Government Ministers, any other internationally protected person, elected members of parliamentary chambers, members of regional or local governments, judges, magistrates, judicial or prison civil servants and police forces.

Alternatively, a person accused of terrorist conduct shall benefit of mitigating circumstances if they
(a) renounces terrorist activity, and
(b) provides the administrative or judicial authorities with information helping them to:
(i) prevent or mitigate the effects of the offence,
(ii) identify or bring to justice the other offenders,

(iii) find evidence, or
(iv) prevent further terrorist offences.

The cited document also introduces the liability of the legal persons for terrorist acts committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person. It also defines the sanctions that can be imposed to legal persons found guilty of terrorism, Such sanctions can include:

(a) exclusion from entitlement to public benefits or aid,
(b) temporary or permanent disqualification from the practice of commercial activities,
(c) placing under judicial supervision,
(d) a judicial winding-up order,
(e) temporary or permanent closure of establishment which have been used for committing the offence.

When it comes to the jurisdiction, the national states are given the liberty to decide whether or not and how they apply it to terrorist acts. A state may claim jurisdiction over a terrorist case if :

(a) the offence is committed in whole or in part in its territory. Each Member State may extend its jurisdiction if the offence is committed in the territory of a Member State;

(b) the offence is committed on board a vessel flying its flag or an aircraft registered there;

(c) the offender is one of its nationals or residents;

(d) the offence is committed for the benefit of a legal person established in its territory;

(e) the offence is committed against the institutions or people of the Member State in question or against an institution of the European Union or a body set up in accordance with the Treaty establishing the European Community or the Treaty on European Union and based in that Member State.

The member states that refuse to extradite their own citizens to third countries are required to assume jurisdiction on any terrorist act defined as per the current decision.

The framework decision also established obligations for the member states regarding the cross-border cooperation and the exchange of information, as well as provisions regarding the assistance to victims. Thus, each member state shall provide that investigations into or prosecution of terrorist offences over which it has jurisdiction shall not be dependent on the report or accusation made by a victim of the offence.

Member States were held to take the necessary measures to comply with this Framework Decision by 31 December 2002.

The Council Framework Decision on the European arrest warrant and the surrender

procedures between the Member States COM(2001) 522 final deals with the procedures related to extradition among member states of individuals accused and condemned for terrorist acts. An European arrest warrant is executed for final judgments in criminal proceedings, and judgments in absentia, which involve deprivation of liberty or a detention order of at least four months in the issuing Member State, as well as for other enforceable judicial decisions in criminal proceedings which involve deprivation of liberty and relate to an offence, which is punishable by deprivation of liberty or a detention order for a maximum period of at least twelve months in the issuing Member State.

Such a warrant shall include:
(a) the identity of the requested person,
(b) the issuing judicial authority,
(c) whether there is a final judgment or any other enforceable judicial decision, within the scope of Article 2,
(d) whether the European arrest warrant results from a judgment in absentia, and if so, a statement as to the right to lodge an opposition and on the applicable procedure in conformity with the second subparagraph of Article 35(1),
(e) the nature and legal classification of the offence,
(f) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person,
(g) the penalty, if there is a final judgment, or else, the prescribed scale of penalty,
(h) if possible, other consequences of the offence,
(i) whether the requested person has already been arrested for the same offence, and let free, or released after some pre-trial detention under condition of return, or whether the person has escaped from prison.

The rest of the document describes the procedure of operating the arrest and the extradition, the rights of the requested person, the surrender terms, the grounds for non-execution and how to handle multiple requests. It is important to note that all these provisions underline the principle according to which the person involved should be treated by the state where his chances for social reinsertion are bigger.

IMPACT ON THE MEDIA SECTOR

These documents have no direct impact on the editorial content – apart form the provision in the Framework Decision on terrorism regarding the incitement to terrorist acts. As the states have the liberty to define the terrorist acts, it is important how the "incitement" is defined by the national legislation, as to respect the freedom of speech while effectively combating terrorism.

The development of the Internet and its increased penetration forced the European Union to take into account the technological advancement and to amend the regulation in order to include Internet-based criminality.
On November 5th 2007, the Commission announced its intentions to amend the current set of EU rules against terrorism to take into account the potential risks related to abuse of the Internet. The amendments enlarge the list of acts currently considered terrorism-related

offences, adding "public provocation to commit a terrorist offence", "recruitment" and "training for terrorism".

The new document creates a pre-emptive dimension to the EU anti-terrorist protection. “For an act to be punishable, it shall not be necessary that a terrorist offence be actually committed”, writes document drafted by the services of Vice President Franco Frattini, the EU commissioner in charge of freedom, security and justice, cited by Euractiv.[79] “The document defines the Web as <<one of the principal boosters of the processes of radicalisation and recruitment>>. Called a <<virtual training camp>>, the Internet is considered to be the perfect place for dissemination of terrorist propaganda, thus being the ideal <<complement to off-line indoctrination and training>>”[80].

The document cites "an increased use of existing mechanisms under the directive on electronic commerce and the directive on data retention", but makes clear that “there will be no new obligations on telecommunication service providers or operators”.

It is important for the media community to properly grasp the definitions and concepts included in the EU documents, so that they can properly contribute to the fight against terrorism and counter the hate speech and propaganda. A correct handling of these notions will allow the journalists to report accurately on possible terrorist cases and do not allow the states to misinterpret or abuse such cases for reasons of ignorance, incompetence or to serve internal hidden agendas.

All the same, such a correct interpretation of the EU documents will allow the media community to react whenever the state would attempt at imposing disproportionate measures that would restrict the freedom of speech, invoking emotionally sensitive issues such as “the fight against terrorism”.

Last but not least, the media community should understand properly the distinction so clearly made by the EU between terrorism and the whole Muslim world. Diversity reporting, sensitive to the religious and social traditions and conduct, inclusive and well documented shall contribute to a greater harmonization and European inclusion and would prevent the media from being turned into hate speech instruments.

[79] http://www.euractiv.com/en/infosociety/internet-targeted-new-eu-anti-terror-rules/article-168085
[80] Id. 4