

(THE) CONCEPT OF “INFORMATION SOCIETY” AS THE BASIS OF  
EU’S “NEW” MEDIA POLICY: A CRITICAL APPRAISAL

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BABACAN TAŞDEMİR

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Prof. Dr. Meliha Altunışık

I certify that this thesis satisfies all the requirements as a thesis for the degree of Doctor of Philosophy.

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Prof. Dr. Erkan Erdil

This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Doctor of Philosophy.

---

Prof. Dr. A. Raşit Kaya  
Supervisor

**Examining Committee Members**

Prof. Dr. Erkan Erdil (METU-ECON)

Prof. Dr. A. Raşit Kaya (METU-ADM)

Prof. Dr. Gamze Yücesan Özdemir (Ank.Ü. İLEF)

Doç. Dr. Yılmaz Üstüner (METU-ADM)

Doç. Dr. Funda Başaran Özdemir (Ank.Ü. İLEF)



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Name, Last name : Babacan Taşdemir

Signature :

## **ABSTRACT**

### **(THE) CONCEPT OF “INFORMATION SOCIETY” AS THE BASIS OF EU’S “NEW” MEDIA POLICY: A CRITICAL APPRAISAL**

Taşdemir, Babacan

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Supervisor: Prof. Dr. A. Raşit Kaya

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“Information Society” (IS) was targeted as a new social order for Western (Capitalist) countries by many governments and governmental organizations in the mid-1990s. European Union (EU) has become the prominent one among these governmental bodies since it has reiterated its commitment to the concept and enlarged its policies for building a “European Information Society” to all related fields of public policy. Re-regulation of broadcasting media in the EU has become the most recent issue dealt with in the scope of these policies.

This study seeks to understand and explain the policy discourse centered around (the) concept of “IS” and the role it played in the formation of digital media policy of the EU. The study conducts a critical policy analysis with a particular focus on the discourses produced in the ‘governance’ process of new media (AVMS) directive of the EU. Towards this end, the study tries to show the connections between the pre-defined goals of “IS” and vested-

interests organized around different discourse coalitions in the making of AVMS Directive.

The study concludes that denoting an affluent society and privileging ‘technological innovation’ and ‘competition’, (the) concept of “IS” has served as an aphorism to conceal the vested-interests searching for new ways of justifying existing social (Capitalist) order. Accordingly, policies for “IS” integrate with digital media policy in a specific way giving priority to ‘infrastructure’ over the ‘(cultural) content’ and resulting in that even the most basic principles of broadcasting separating advertisement from editorial content is wiped out.

**Key Words:** Information Society, AVMS Directive, European Union, Capitalism, Information and Communication Technologies (ICTs)

# ÖZ

## AB’NİN “YENİ” MEDYA SİYASASININ DAYANAĞI OLARAK “ENFORMASYON TOPLUMU” KAVRAMI: ELEŞTİREL BİR DEĞERLENDİRME

Taşdemir, Babacan

Doktora, Bilim ve Teknoloji Politikası Çalışmaları

Tez Yöneticisi: Prof. Dr. A. Raşit Kaya

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“Enformasyon Toplumu” 1990’ların ortalarında pekçok ulusal hükümet ve uluslararası örgüt tarafından Batılı (Kapitalist) ülkeler için ulaşılması istenen bir toplumsal hedef olarak görüldü. Avrupa Birliği (AB), kavrama bağlılığını defalarca tekrar etmesi ve bir “Avrupa Enformasyon Toplumu” inşa etmek için uygulamaya koyduğu siyasalarını, tüm ilgili kamu siyasası alanlarına genişletmesi nedeniyle, ön plana çıkan yönetsel örgütlerden biri olmuştur. AB’de sayısal medya ortamında yayıncılığın yeniden düzenlenmesi bu siyasalar kapsamında ele alınan en son meseledir ve bu düzenleme derinleşen liberalizasyon ile kamu çıkarının erozyonu arasındaki bağlantıya ilişkin teorik bir tartışma için güncel bir vaka ortaya çıkarmaktadır.

Bu çalışma AB’de “Enformasyon Toplumu” kavramı etrafında kurulan siyasa söylemi ve bunun sayısal medya siyasasının şekillenmesinde oynadığı rolü anlama ve açıklama amacıyla yapılmıştır. Çalışma AB’nin yeni medya direktifinin (GİMH Direktifi) ‘yönetişim’ sürecinde üretilen söylemlere odaklanan bir eleştirel siyasa incelemesi yapmaktadır. Bu amaca yönelik



olarak, “Avrupa Enformasyon Toplumu”na ilişkin önceden tanımlanmış hedefler ile GİMİH Direktifinin yapılışında ortaya çıkan farklı söylem koalisyonları çevresinde örgütlenen çıkar ve çıkar grupları arasındaki bağlantıları gösterilmeye çalışılmaktadır.

Çalışma, “Enformasyon Toplumu” kavramının, müreffeh bir toplumu işaret ederek ve ‘teknolojik yeniliği’ ve ‘rekabeti’ ayrıcalıklı hale getirerek, mevcut toplumsal (Kapitalist) düzeni haklı çıkarmanın yeni yollarını arayan çıkar gruplarını gizleyen bir aforizma olarak işlev gördüğü sonucuna ulaşmaktadır. Buna uygun olarak, “Avrupa Enformasyon Toplumu” için uygulamaya konan siyasalar ile medya siyasası ‘altyapısal’ endişelere, ‘(kültürel) içerik’ ile ilgili kaygılara göre öncelik veren ve editoryal içerik ile reklam arasındaki ayrıma ilişkin en temel yayıncılık ilkelerini bile yok eden bir ‘bütünleşme’ içine girer.

Anahtar Kelimeler: Enformasyon Toplumu, GİMİH Direktifi, Avrupa Birliği, Kapitalizm, Enformasyon ve İletişim Teknolojileri

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## LIST OF ABBREVIATIONS

AA	Advertising Association
ACT	Association of Commercial Televisions
AVMS	Audiovisual Media Services
BEUC	The European Consumers' Organization
BBC	British Broadcasting Corporation
CEPI	European Coordination of Independent Producers
DG-Infso	Directorate General Information Society and Media
EBU	European Broadcasting Union
EC	European Commission
ECJ	European Court of Justice
EEC	European Economic Community
EP	European Parliament
ERT	European Round Table For Industrialists
ESPRIT	European Strategic Programme on Research in Information Technology
EU	European Union
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
HDTV	High Definition Television
IBM	International Business Machines Corporation
ICTs	Information and Communication Technologies
IMF	International Monetary Fund
IS	Information Society
IT	Information Technology
ITTF	Information Technology Task Force
ITU	International Telecommunication Union
NIEO	New International Economic Order
NII	National Information Infrastructure

NWICO	New World Information and Communication Order
RAI	Radiotelevisione Italiana
R&D	Research and Development
RTL	Radio-Tele Luxembourg
ONP	Open Network Provision
OECD	Organization For Economic Co-operation and Development
SEA	The Single European Act
SOGT	Senior Official Group Of Telecommunications
UK	United Kingdom
USA	United States Of America
UNESCO	United Nations Educational, Scientific and Cultural Organization
TVWF	Television Without Frontiers
WFA	World Federation of Advertising



## INTRODUCTION

It has been around thirty years since the Lyotard (1979) heralded the death of all grand narratives. Today, technology and society relationship and the world of modern communications are being reorganized around a grand narrative: “Information Society”. Governments and international organizations have been calling people of the world for adapting to new economic, political and societal conditions which are argued to be created by the advanced information and communication technologies (ICTs). In many policy documents, this societal transformation was called as ‘a revolution based on information’ (European Commission, 1994), and was implied that it could be viewed as the paradigm shift “much as the industrial revolution transformed the then agrarian societies” (OECD, 1997).

Since the early 1990s, the goal of building a new society around (the) concept of “Information Society” has been the main rhetorical justification for a series of neo-liberal policies marking a radical transformation in traditional public policies. New regulatory framework primarily targeted at telecommunication sector and aimed at increasing public investments for advanced information and communication technologies. In doing so, the principal aim of the governments has been to benefit from the economic advantageous of fastly adapting, reforming and remotivating their telecommunication and ICTs sectors in a free market environment in which ‘competition’ and ‘innovation’ became the buzzwords.

The employment of (the) concept of “Information Society” by EU authorities as the basis of a series of new communications policies best epitomizes such a political transformation since the EU as a supranational organization has reiterated its commitment to the concept in its policies more than any other national governments or international organizations. Besides, it has been a salient insistence in EU’s principal policy initiatives that the strategy for building a

“European Information Society” would not be limited to liberalization of infrastructure of electronic communications (telecommunication and ICTs) but would be comprehensive in order to adapt ‘societal dimension’ in a socioeconomic milieu being reshaped by digital communication technologies. Therefore, examination of EU policies gives us a valuable opportunity to assess the discourse of “Information Society” as it is put into practice by policies aiming at economic and societal transformation at the same time.

However, principal policy documents issued by the European authorities in the mid-1990s failed to balance societal and cultural concerns with economic and infrastructure-related prospects. Being aware of this fact it was stated in a Commission Communication that “It is clear that the word ‘Society’ is at least as important as the word ‘Information’” (European Commission, 1999a). Accordingly, European Union have enlarged its policies for “Information Society” towards societal dimension primarily focusing on people’s adaptation to new technological circumstances and provision of services and content over new communications infrastructure. As a last phase of this expansion, media policy was moved into “Information Society portfolio” in the early years of 2000s (Harcourt, 2005).

This expansion in the scope of policy was principally justified by EU authorities pointing out ‘convergence’ trend between technologies and sectors. It was argued that ‘convergence’ made it an obligation to reform old regulatory regimes which had been designed to comply with analog technological context. Nevertheless, no matter what was the rhetorical cover of including culture and content-related issues into the scope of policies for “European Information Society”, economic concerns about communications’ infrastructure underlying the “Information Society Project” remained decisive, however. Viviane Reding, then Commissioner for Information Society and Media DG of the European Commission, underlined this fact in her speech entitled “Business Without Frontiers: Europe’s New Broadcasting Landscape” (Reding, 2004). She said, “We

cannot continue to view to ICT policy as being separate from other policies, such as media policy...simply investing in computers and modern communications is not enough. Encouraging broadband access is intimately connected to the availability of premium content: sport, music, films, games.” In accordance with this approach, under Commission’s i2010 initiative, EU revised its TVWF (Television Without Frontiers) Directive resulting in a AVMS (Audiovisual Media Services) Directive.

However, academic studies about the AVMS Directive failed to indicate this link between “Information Society Project” and new media regulation (Burri, 2007; Haug, 2008; Woods, 2008; Geach, 2008; Pekman, 2009). A notable exception to this is a recently published article by Mansell (2011) which emphasizes a vital fact that a particular vision of “European Information Society” bringing ‘technological innovation’ and ‘competition’ to the front has served as a backdrop to new media regulation. Mansell concludes that ‘audiovisual media policy has become interchangeable with policies for enhancing free market system in which private firms compete with each other, eventually resulting in further commodification of information’.

Although our study broadly confirms such a conclusion, Mansell’s work does not examine the historical background of the new media policy formation. Hence, it fell short to indicate the continuities and ruptures in EU’s new media policy as it converges with “Information Society Project”. Besides, it does not discuss the vested-interests<sup>1</sup> behind the process. Our study, however, elaborates on policy formation process with a special focus on the discourse that resulted in the new media directive and proved that such integration with “Information Society Policy” was not a smooth process for EU authorities. European Commission had to proceed a long and comprehensive “governance” process in which it has developed new arguments, built a new set of policy concepts and legitimated the

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<sup>1</sup>The term ‘vested-interest(s)’ is used to mean, on the one hand, a special concern or stake in protecting and promoting an arrangement or one’s private benefit, and on the other hand, those groups that seek to control the social system or an activity for their own benefits.

whole policy action despite all the counter views voiced up by some vested-interests (including, consumer protection organizations, labour unions and art worker associations).

Examining this policy process, we could see on the one hand that new media regulation of the EU represents continuity with the ongoing liberalisation since early 1980s: The traditional television broadcasting was decided to be subject to less strict rules and measures for cultural protection got relaxed. On the other hand, it was also a point of rupture with the past in the sense that the new regulatory regime for digital media has swept up even the most basic principle that separates programme content and advertising from each other. New advertising techniques, particularly “product placement”, were allowed to take place during programmes. Besides online-media was separated from traditional media by making online-services subject to ‘minimum set of rules’ in particularly terms of cultural protection and diversity.

As a result, digital media regulation in “European Information Society” has turned out an explicit rejection of evolved traditions of public-interest in media policy, and substituted it with a *technological model of economic growth* which only concerns *consumers*, as suggested by Venturelli (2001). “European Information Society” as a macro policy discourse has provided the framework and legitimation to such a policy in which the sovereignty of ‘the market logic’ is characterized by ‘fascination’ (Kaya, 2000) in a fastly changing technological environment in the sense that public reasoning about technological development and its implications was contaminated by shortening time of intervals between invention and innovation, and ‘market fluctuations’ as a sociopsychological effect of ‘contemporary model capital accumulation’ which can also be implied by ‘globalization’. As a matter of fact, such a market-oriented view of “IS” which has been adopted into new media regulation, has played a role of ‘fascination’ to paralyze counter voices, to alleviate frictions among the members of private sector and to keep the ideology behind new media policy process intact.

To articulate this thesis, our study adopts a critical policy analysis with a particular focus on the discourse produced within the formation of new media directive in the EU.<sup>2</sup> Because in order to demystify the particular conceptualization of (the) concept of “IS” in policy practice, we need a policy analysis approach which would not fall into the traps of positivist-empiricist methodology. However, classical policy analysis does not give us such a chance for it is extremely ‘behaviorist’ and hence, insufficient in detecting the incorporation of an ‘idea’ into a concrete policy project<sup>3</sup>. The traditional analysis largely focuses on the actions of the actors and conceptualizes the policy decisions as conclusions of ‘value-neutral’ approaches (Ham and Hill 1984). However, policies should be seen as ‘a web of decisions’<sup>4</sup> (Hill, 2005) rather than separate decisions. And policy analyses should take ‘rhetoric of governments’ as well as ‘activities of governments’ into consideration (Dye 1976:21 cited in Ham and Hill 1984: 15). So, it is clear that the study is in need of some alternative ways to empiricist approaches in public policy studies to combine ‘discourse’ as a central unit.

Fischer (2003) and Lejano (2006) seem to provide such an opportunity for this aim by proposing a *discursive turn* in policy studies. The discursive approach as a critical approach is rooted in the critical, postempiricist and postmodern theories in the humanities and social sciences. Its distinguishing characteristic is to put a

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<sup>2</sup> Policy, in its simplest meaning, refers to government’s actions and inactions. ‘Policy discourse’, on the other hand can be defined as the communicative interactions among political actors that translate problems into policy issues (Fischer, 2003: 30).

<sup>3</sup> Lejano (2006: 19) states that today’s dominant policy model sees the policy situations as “rational decisions involving goal-maximizing choices, whether the goal is to increase utility or some other objective function”. And its history can be traced from the Enlightenment to modern utilitarian theories of game and decision. Utilitarian view of human essence is at the core of the theory: a rational individual with an unending purpose of self-satisfaction. Society, according to this view, is the mere collection of individuals.

<sup>4</sup> First, policy refers to a decision network in producing action. Second, it is not a single decision, but a series of decisions. Third, it may change, transform over time through incremental adjustments. Fourth, a policy may and generally is in an arena of policies in which many other policies are being adopted. Fifth, policy analysis requires paying attention to nondecisions.

strong emphasis on social meanings and values (Fischer, 2003: viii). It is not to say that classical approaches did totally exclude the values, meanings, ideas and rhetoric from the politics and policy analysis. But, Fischer (2003) points out that the role of ideas are perceived as a resources the actors possess in the policy process by traditional approaches. The ideas are not central parts of policy design. Here, overtly or covertly, the ideas are concerned as *a priori* possessions of the policy actors. So, the policy process is something in which actors contribute just with their mere actions or inactions. From this perspective, ideas are identified with ‘information’ possessed by actors. This ‘information’ is like an ‘asset’ which can be measured; the more you have ‘information’ the more you get the advantage in the policy process.<sup>5</sup>

In addition, discursive analysis as a qualitative approach, recognizes the shaping effect of words and language in the policy process. The ideas, language, words and rhetoric used are regarded as internal to the social process. Thus, especially when combined with the concept of *power*, policy discourse becomes a beneficial research object for the analysis. Only through this way, it is seen and understood that policy is not just a policy, but a language or a vocabulary designed and promoted within the process being filtered by power relations. This seems a quite appropriate solution. However, this solution should not reject the whole empirical research. Rather, such an approach helps us reach more refined understanding of the constructed social and political reality. In other words, while the discursive approach negates empiricist obsession with mere regularities and apparent causality, it opens the way for us to intrude in more textured and sophisticated understanding of the ideological dimension of policy promotion.

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<sup>5</sup> Fischer points to the fact that the interest of the political power for the policy analyses eligible to produce quick solutions was a real opportunity for the social scientists to get a significant role in policy designs (Fischer 2003:6) and of course, to get ‘accreditation’ or to get a chance to prove themselves before the ultimate power. The task was clear: A quick action, rather than a long-term analysis, was expected by the government.

Deciphering the framing discourses is not the only purpose of the discursive approach as well. Rather, the discursive approach seeks to determine the relationship between the political forces and discourse embedded in the policy formation process and texts. ‘Political action’ is the bridging term: “...political action is constituted by discourses, from hegemonic discourses embedded in the existing institutions (for example, theories and practices of liberal capitalism) to the oppositional efforts of other groups attempting to create new discourses (for example, environmentalism).” (Fischer, 2003: 45).

This refers to a fact that a policy formation is mediated or shaped by competing discourses/discourse coalitions. Discursive approach, naturally, does not assume that ‘competing discourses’ become operationalized on their own. The social forces active in the political arena are the agents of the separate versions of the ‘policy discourse’. These social forces generally compose ‘discourse coalitions’ which is another beneficial concept, used by Fisher in order to refer to the vested-interests gathering around specific storylines: “coalitions are based on the shared usage of a set of storylines” (2003:107). Discursive approach needs analytical tools such as ‘discourse coalitions’, because the discursive analyst asks who is promoting a specific ‘discourse’ and who are the losers and winners of that policy formation process. This kind of analysis is, in a sense, merging context with the text.

In order to operationalize this analysis, the study will focus on:

A. The identification of the characteristics of (the) concept of “IS” and identification the vested-interests behind the promotion of the employment of the concept in the EU policies for communications.

B. The identification of dominant discourse produced in the formation of specific policy subject. In our case, it is Audiovisual Media Services Directive (at policy level) with the vested-interests behind the dominant discourse. This level of analysis has two-legs: First we showed the historical development of the

‘Information Society and Media Policies of the EU’ by referencing the key concepts and ideas in the related policy actions and texts. Then, we analysed the whole policy formation process of AVMS Directive in detail. All the steps in the road map of the directive are dealt with including Commission’s Communications, Independent Studies, Focus Group Reports, Conference Papers, Position Papers, Parliament Reports etc. How and when key concepts, themes and arguments are incorporated into the directive are tried to be shown. All the participators in the process are identified. Vested-interests/discourse coalitions are identified and categorized. The central ideas and main themes of position papers of the participators are shown. Some key partners’ position papers which typically represent their discourse coalitions are analysed in detail.

This analysis is backed by a three-month field research conducted in Brussels in autumn 2011. At Brussels we had a very detailed research at Commissions Library for the original papers not available on online databases or other written sources. Besides we conducted a series of semi-structured interviews with officials from EC’s DG Information Society and Media and European Parliament, representatives from influential associations of private media and communication companies, representatives from consumer protection organizations, and academicians and researchers from universities and research institutions based in Brussels. However, many of the officials from the Commission and Parliament did not let us to use or record the interviews we had for some private reasons. That is why it would be impossible many times to directly refer to these interviews. Even so, these field research and interviews held during the research both confirmed our main theses in many cases and gave us some valuable insights about the nature of politics in Brussels. Perspectives of member states as to the new media regulation and how member states of EU have implemented the directive so far are not in the scope of this study. Rather, the Brussels dimension, and legislative process till the ratification of the directive at the Council of Ministers and the Parliament are focused on.



The study consists of two parts and six chapters. Chapter I of Part I deals with the historical context in which “neo-liberal turn” took place and “Information Society” was targeted as a new social order in order to serve as an ideological guideline and as a policy tool in re-regulation of communications sector in Capitalist societies. Chapter II outlines the transformation of EU from a mere community for economic cooperation to a broader form of integration as a political union. EU institutions and their *modus operandi* is also dealt with to show the *sui generis* character of its being as a supranational organization. It is also mentioned that “governance” and lobbying activities should be regarded as parts of EU’s system. It is underlined in the chapter that EU has evolved and become superior to national governments in the sense that the policies adopted by EU institutions are now not limited to some certain policy fields but have spread to almost all public policies on the principle of building a ‘common market’.

Putting stress on the importance of the goal of building a ‘common market’, the Chapter III, the last chapter in Part I, is allocated to early steps for building a common European communications policy. Particularly focusing key policy events and documents that took place after late 1970s when a powerful need for a common action for communications sector among members states was voiced up by EU authorities, a number of key issues are stressed: The decline of Keynesian approach and the erosion of the public monopoly systems in telecommunications and in mass media landscapes of European countries; increasing international competition, especially from USA-based firms with growing pressure over European markets in both information and communication infrastructure and production/dissemination of media content; and the reaction of European authorities and member states to these developments which resulted in a limited liberalisation mixed with traditional protective measures in the communications sector. In this chapter, what is mainly emphasized is that the liberalisation communications market caused erosion in the public service character of broadcasting in the EU starting an ongoing conflict between commercial goals

which comprised primary concerns and sociocultural goals which are secondary concerns in the EU's communications policies.

Part II actually elaborates on the ongoing and deepening liberalisation as (the) concept of "Information Society" is identified as an umbrella term for a "full liberalisation" in communications sector. In Chapter I the structure of the EU's policy discourse concerning "Information Society" is dealt with. It is pointed out that this discourse is characterized by the technological determinist account of social change and a strong faith in free market mechanisms. In this respect, Bangemann Report is given a specific place. It is recognized as the main founding Commission's document as to the identification of (the) concept of "Information Society" as a general societal goal for European countries. It is mentioned that Bangemann Report draws a free market-biased framework in which general discursive norms and conventions are presented and therefore it failed to identify specific steps to be taken in especially for 'societal dimension' of the strategy. This gap is tried to be filled by subsequent reports such as Green Paper of 1996 focusing on 'societal' concerns. Examining this paper, it is argued that 'society' is seen by the Commission as 'workforce' and 'the source of effective demand' which is needed to construct a 'competitive' information and communication sector. This infrastructure- and market-oriented vision is proved to be major motivator behind the policies adopted in this period which fully liberalised the telecommunication sector. It is also indicated that EU authorities regarded the main trend in communications sector, so-called 'convergence', as the main factor and justification for policy makers to prepare and adopt a new media directive – AVMS Directive.

In the next chapter, Chapter II, the formation process of the new media directive is elaborated on. Examination of all the key documents is carried out in parallel with discussing on policy events which mark turning points of policy formation, in a chronological order. The formation of AVMS Directive is divided into as formative phase covering the period 2002-2005 and the adoption phase covering

the period 2005-2007. The formative phase involves policy events taking place from the debut of policy formation in 2002 offering a broad revision of old media directive to the emergence of the idea to adopt a new directive which will cover both traditional and new ways of electronic broadcasting. The adoption phase involves the submission of proposal of the new directive and its ratification by the Council and the Parliament. In this examination, the special focus is on how the Commission design and re-define the balance between primary and secondary issues of media regulation in the digital era, underlining new set of policy vocabulary produced in the process.

For this process of re-definition was at the same time accompanied with the creation of a new discourse to mystify the vested-interests behind the new directive, the last chapter, Chapter III of the second part is allocated to the identification of the participants of the policy process. Examining position papers submitted to public consultations, four main discourse coalitions among vested-interests are identified as firms and associations from private sector, public institutions, NGOs and dissident group. It is shown that the Commission's proposal for the new directive is mostly welcomed by the private sector. Moreover, large firms' and the Commission's positions overlap in many respects while public institutions and NGOs do not challenge the Commission in especially terms of primary policy issues. However, the dissident group mostly composed by consumer protection organizations, labour unions and art worker associations present a strong counter voice against large firms and the Commission. Defending norms and conventions for public service broadcasting, the members of dissident group rejects further liberalization and marketization of digital media environment, though their demands are simply ignored by the EU authorities.

The study ends up with a conclusion which emphasizes that (the) concept of "Information Society" privileges 'technological change' and 'competition' as major factors key for transformation of contemporary economies and societies,

and serves as an *aphorism* that conceals the vested-interests behind it. The formation of AVMS Directive proves how the Commission and large firms try to use the concept and associated norms and conventions to justify and shape the new media directive. Since such a vision of “Information Society” does not comply with public interest values, what is left to the Commission and other agents of Capitalist(ic) interests to find out necessary concepts and arguments to operationalize the ‘full liberalisation’ in new media regulation. As a result, it is hard to talk about a communication policy as a branch of public policy anymore because ‘market fluctuations’ stemmed from rapid technological change which is largely motivated by free market competition become the sole regulators. In such an environment, it is not surprise to see a regulatory framework for media sector whereby even the most principal barriers between editorial content and advertisement are wiped out.

## **PART I-“INFORMATION SOCIETY” AND THE EUROPEAN UNION**

Need for building a common regulatory framework for communications policies in the European Union (previously European Community) have appeared as of late 1970s. From the very beginning, (the) concept of “Information Society” became a reference as a social phase of development. However, “Information Society” as a political and social goal did not become a major discursive reference for common policies until early 1990s. Following that US government adopted NII (National Information Infrastructure) strategy in 1992, “Information Society” was set as a general object of social transformation to be reached by the European Union (EU). Since then, it has become the main discursive basis for the market-oriented strategies concerning to telecommunication, data processing, research and development in advanced technologies, and new media as well.

As a matter of fact, the history of European common communications policies can be regarded into two general phases. The first one covers the period between the late 1970s and the early 1990s. In this first phase, common policies were protective in the sense that they were reactionary responses to increasing international competition, but at the same time they were based on a limited liberalisation for building common market to empower internal industrial production. In the second phase covering from early 1990s to the present time in which (the) concept of “IS” became a main discursive element, protective policies were replaced by less protective and then by market-oriented policies focusing on enabling market forces in especially in a converging communications sector.

In this first part of study, first phase of European common communications policies is dealt with. For our purposes, it is divided into three chapters to give information about the historical context of (the) concept of “IS”, about the EU as an economic, political and cultural project, and the significant policy

developments concerning to communications and media in the EU prior to the era of 'full liberalisation'.

## **CHAPTER I - “INFORMATION SOCIETY”: CONTEXT AND THE HISTORICAL BACKGROUND**

“Information Society” (IS) as a concept is directly associated with the idea that the progresses in information technologies and communication means would inevitably and positively change the world we all live in. The origins of what is today termed as the “IS” can be traced back to elaborations of the mainstream Western sociology as to the process of industrialization under Capitalism. As a matter of fact, societal change in the related scholarly works is always closely linked to technological improvements. In several approaches, this technologically-driven change is even formulated as a technologically determined process. Furthermore, this strong belief in technical progress is linked to/or attributed to inherent properties of Capitalism as a societal order. Consequently, technological developments in such a social thought becomes “an end itself” or “technologies of freedom”, as in the phrase of Ithiel de Sola Pool (1983), which would be enough to foster economic growth and provides social welfare to all citizens.

Concepts that are derived from such a logic of thought often become an *aphorism* that, by itself, justifies the existing social (Capitalistic) order and an ‘ideological tool’ that challenges (and represses) the critical counter voices. The ideological stance thus acquired becomes a valuable and functional instrument for the vested-interests in a Capitalist(ic) society when a new restructuring of Capitalist economies are needed at times of crises. Particularly, if the aftermaths of such crises coincide with the emergence of new technological advances, their ideological impact becomes more effective.

Above strong views clearly illustrate what has happened after the World War II. As a matter of fact, at a time when the Western (Capitalist) countries were paving

the way that would lead them to what is later called the “thirty glorious years” with an unprecedented economic growth, and social welfare extended to large layers of their societies, the ‘end of ideologies’ were also proclaimed. This situation also offered to mainstream scholarly thinking the opportunity to announce a new and happy prosperous democratic era that would remedy to all, (and still fresh) terrifying memoirs of the world war years. The situation allowed many scholars to preach that advanced capitalist countries were at a threshold of a total societal change and were moving into a new social formation.

The promised new era, thanks to new technological progress, would not be the same as the old (Capitalist) social order under which many people had suffered or at least could not enjoy their life as some others did. David Riesman’s “Lonely Crowd; a Study of Changing American Character” (1950) can be taken as an influential example of the pioneering works that preach such a new era. Among other and more elaborated scholarly works that proclaim a better new era – a new societal setting- can be observed in the works of Brzezinski’s “Between Two Ages: America’s Role in the Technetronic Era” (1970) and Drucker’s “The Age of Discontinuity: Guidelines to Our Changing Society” (1969).

Among all of such theoretical accounts that take the technological advancements as the basis of their views, the most influential and the one that directly paved the path to what is later to be named as the “Information Society” is the works of D. Bell (1973, 1980). In fact, his seminal work “The Coming of Post-Industrial Society: A Venture in Social Forecasting” (1973) can be taken as the precursor of the theories that proclaim an “Information Society”. Already, as of early 1960s, a number of influential studies had emerged and they were claiming that economies of the advanced Capitalist countries, especially the USA’s economy was in a clear transition in which ‘information’ (and/or ‘knowledge’) as a quantifiable phenomenon, had begun to be a major source of economic activities (e.g. Machlup, 1962; Porat, 1977). As expressed by Schumpeter, novelty which



essentially revealed itself as technological innovation was the central transformative factor in the evolving capitalism (Schumpeter, 1939, 1950).

The increasing importance of research on aerospace and genetics, developments in electronics and finally the advent of what is named as Information and Communication Technologies (ICTs) provided the basis and encouraged the scholarly works following such a line of social thought.<sup>6</sup> While D. Bell, McLuhan and many others were busy in the early 1970s to elaborate on or a new social formation that they were claiming the venue, thanks to technological progresses, world capitalist system was entering a new stage of its cyclical crises known as the '1973 Oil Crisis'.

These years of crisis also gave way to severe theoretical counter attacks to apologies of technological progresses. Among those critical voices, Marcuse's works are the most significant in terms of Information and Communication Technologies (ICTs) since he put the blame on them for the advent of "One-Dimensional Man" (1964). In a preface to later edition of his book on "Eros and Civilisation" (1973) he advised the 'underdeveloped countries' not to adopt the new technologies of (tele)communication if they desired to opt for social progress.

As a matter of fact, those years were the time when the world capitalist system was also challenged by opposition movements at an international level. The (then so-called) "Third World Countries", backed by the socialist bloc, claimed a "New International Economic Order" (NIEO). Blaming the new policy attempts of the advanced Capitalist Countries to curb the effects of the deep economic crisis as operations to transfer the burden to the shoulders of the less developed countries, Third World Countries' attempts in quest of a new international economic order

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<sup>6</sup> In this connection, one should note that a number of studies published after the World War II until late 1970s elaborated on 'information' as something 'quantifiable' and stressed the increasing place and role of information as an economic sector in the economies of advanced capitalist countries. Fritz Machlup's book "The Production and Distribution of Knowledge in the United States" (1962) can be taken as the pioneer of such studies where the 'information' is treated as an 'industry'. But it is Marc Uri Porat (1976) who first claimed the advent of the "information-based economies".

gained important grounds. Soon the significance of the role played by the existing state of the flow of information among countries in the present undesirable situation was unveiled as deplorable. Consequently, the demand for a new international economic order was coupled by the demand for a “New World Information and Communication Order (NWICO).

This demand was endorsed by the majority of the member states of UNESCO and an International Commission for the Study of Communication Problems (also known as Mac Bride Commission) was formed to examine communication problems, in their different dimensions, within the perspective of the construction of a new international economic order and of the measures to be taken to put a “new world information order” into practice (UNESCO Work Plan for 1977-1978, 19C/5 Approved 4155, cited in Carlson, 2003).

Finally the report prepared by the Commission is adopted by the General Conference of UNESCO despite the strong opposition of the advanced Capitalist countries led by USA. The resolutions of the General Conference that aimed to change the unbalanced state of the flow of information at the international level unfortunately stayed as a dead letter with the withdrawal of USA, Britain and Singapore from the UNESCO<sup>7</sup>.

In the course of events the world was now entering in a new phase of Capitalism named as the “neo-liberal turn” during which, in line with the neo-liberal policies at all levels (political, social and economic), the regulations concerning the communications and the media in the Capitalist countries are reformulated. Under such circumstances, “Information Society”, which was targeted as a new social order; served as an influential ideological guideline, and as a useful policy tool that directed such attempts of search for new regulations.

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<sup>7</sup> Some other advanced capitalist countries including Japan, Canada and West Germany threatened withdrawal but then decided not to do so.

In connection with these developments a great deal of change all over the World, especially in Europe, occurred in the media structures during the late 1980s and in the early 1990s. Around several parts of the world the media environments were almost totally transformed. The sources and the forces summoning this change have primarily been technological but also directed by economic and political vested-interests that determined the media telecommunication structures.

Indeed, the developments in the media environment generally indicate an expansion of the media infra-structure and an increase in media outlets and products. This is why media infra-structures should be considered as not only a technical and societal network for communication but a goal for industrial production.

... Communication systems clearly have a range of features in common with other areas of production and are increasingly integrated into the general industrial structure. Therefore, on the one hand, it is quite natural and legitimate that those who own such industries see and seek increased opportunities for profit in the developments of the media environment. On the other hand, it is equally clear that the goods they manufacture play a pivotal role in organising the images and discourses through which people make sense of the world. Consequently, in the face of the enriched media environments, 'citizens' would expect that they will obtain more and easier access to information about public affairs and thus better opportunities in a democratic society.

Similarly, media abundance as an outcome of the expanded media structures holds out a promise of cultural diversity. But it also represents a threat of 'massification of culture' if appropriate measures are not taken against concentration and commercialisation. Therefore, developments of the media environment impose itself as one of the key areas of public policy matters.

All countries, to varying degrees and in varying forms, have chosen same elements of policy for their mass media. The transformation of media infra-structure and the concomitant developments in media environment

can be an outcome of a consciously worked out media policy or an extension and a repercussion of the general economic and political policies with far reaching socio-cultural consequences.

In this context, the matter of believed coming of the informational economy is a relatively new addition to the spectrum of media-related policy issues (Kaya, 1997: 384)

The progresses in information technologies and communication means, especially the digitalisation, undoubtedly have changed the way we all live<sup>8</sup>. Assuming this progress as something positive, almost all countries have adopted the goal of becoming an “Information Society” as an official and national policy goal<sup>9</sup>.

“Information Society” today is accepted as generic term for a society in which the creation, distribution, and manipulation of information has become the most significant economic and cultural activity. The ultimate goal of becoming the “Information Society” for a country is simply to increase its share from world income and to increase the societal prosperity, according to proponents of this term. Concerning to full membership for the EU it is stated in the Chapter for Information Society and Media<sup>10</sup> that

...the *acquis* aims to eliminate obstacles to the effective operation of the internal market in telecommunications services and networks, to promote

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<sup>8</sup>Assuming digitalisation as the progress originates from the fact that in comparison to analog communication digitalisation provides a technical superiority in using channel capacity more effectively and in processing the data through computer-mediated means. See for further elaboration on the technical superiorities of digitalisation over analog transmission at Lister et al. 2003.

<sup>9</sup>Preston (2001: 73-4) states that there has been a surge of interest in the idea of emerging ‘information society’ (IS) among many segments of industrial and political elites since the early 1990. In addition to national governments, influential supranational organisations such as European Union, OECD and Group Seven (G7) have issued ‘countless’ research and policy initiatives centred around the notion of IS in the past few years. Preston underlines that it is the NII (National Information Infrastructure) initiative launched in the Clinton/Gore term in USA in 1992 is often seen to have triggered this surge of interest around the notion.

<sup>10</sup> Text can be accessed at <http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/> (last visit on November 2013).

competition and to safeguard consumer interests in the sector, including universal availability of modern services.

This is why the term “Information Society” served as a long-standing *aphorism* denoting an affluent society in which people would live in better conditions comprising all aspects of the societal life. Road to “Information Society” is envisaged and searched in new policies aiming the construction of a new national and/or international infrastructure. This was a consequence of the neo-liberal doctrine which stipulate that the workings of the market are adversely affected by excessive State intervention. In almost all accounts, views and/or practices the new policy frameworks as to reconfiguration and construction of the new media and information infra-structure are based on policies of “privatisation” and “deregulation” fixed as policy mantras. These terms are imported to Europe and other countries from USA (Kaya, 1994).

It is in such a context that McQuail and Siune conclude that,

The widely diffused concept of the “information society”, the real and rapid growth in the information technology sector of the economy, the wish to maximize participation in, and profit from, the application of new technologies, have all helped to extend the concern of industrial policy to the sphere of mass media. The driving forces behind most of the fragmentary elements of ‘media policy’ in most European countries in the past were mainly political and cultural, concerned, overtly at least, with the ‘spiritual’ rather than the material aspects of communication. This order seems to have been reversed and actors in the policy arena are more openly concerned with practical questions of how to gain a stake in this sector, with divisions mainly according to the means to achieve economic advance – whether by public investment and promotion or on the back of market forces (1986: 10).

Guiding the idea of this study is that, the scope and the nature of policy formation efforts and decisions as to the new media and communications infrastructure can and should be explained and understood in the light of above considerations. But,

before proceeding to elaborate on such policy efforts and decisions it is necessary to give briefly an account of the structure and the modus operandi of the European Union (EU) as an economic-political and cultural entity.

## **CHAPTER II- European Union As A Supranational System**

EU is one of greatest political projects in the history, it is a “unique experiment” which is neither a state nor a usual international organization (Hix, 1999; Peterson and Shackleton, 2006). As a result of a process of voluntary economic and political integration between twenty-eight members across the whole Europe the continent, the Union can be seen at the same time one of the biggest economies in the world. The apparent purpose for the Union is to have a single market by harmonizing rules among the member countries, in order to be more competitive against its global rivals, most notably USA and China.

The history of EU began just after the end of World War II. European countries had been devastated, especially economically and infrastructurally in the War. After the War, Europe was divided into two both physically (in terms of physical borders) and ideologically between Socialism and Capitalism. Those countries in the Capitalist Bloc established Council of Europe in 1949 in order to build up cooperation among them. Of those countries establishing Council of Europe, six countries<sup>11</sup> signed a treaty to start European Coal and Steel Community in 1952.<sup>12</sup>

European Coal and Steel Community was based on a main principle of that coal and steel which were crucial substances for industrial production would be subject to free circulation among the parties of the treaty. A High Authority to regulate that particular market in regards to competition codes and price transparency would be of key importance to implement the treaty. Thus, the foundation of the EU was built on production and economy. The Treaty of Rome which would take the Coal and Steel Community a step further by applying the free trade codes to

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<sup>11</sup> These countries were Germany, France, Italy, Holland, Belgium and Luxembourg.

<sup>12</sup> So far six enlargement processes have been put into practice and the Union has involved 28 member countries. See [http://europa.eu/legislation\\_summaries/enlargement/index\\_en.htm](http://europa.eu/legislation_summaries/enlargement/index_en.htm) (last visit on May 2013).

the all sectors of economy was signed in 1957. According to The Treaty of Rome, free exchange would be valid for all goods and services and thereby a 'common market' to lift the barriers before the trade was to be established. As a result, The Treaty of Rome created European Economic Community (EEC) or 'common market'.

The treaties creating the European Community in the 1950s focused exclusively on economic policies, more specifically on market-related policies. The issues not considering economic priorities were barely targeted by Community policies (Buonanno and Nugent, 2013). The Article 2 of the EEC Treaty (The Treaty of Rome) set out the main goal of the Community, as follows:

The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.<sup>13</sup>

It was obvious that, Community was based on the goal of creating a common market in especially in goods. In accordance with this goal, a custom union and other priorities were dealt with in the 1960s and Community authorities expanded their policy activities to all other areas of policies from health to education and to energy and telecom. In this expansion of Community policies, one important reason was the rising frustration of national governments and big business actors as Europe's economy was relatively declining in comparison to other global rivals such as US and Japan. To become competitive in especially newly-emerged and rapidly growing high-tech and knowledge-based services was one central concern. As a result, the expansion of Community policies to other public policy issues in order to avoid the obstacles to complete the internal market was strongly offered by business and governmental circles (Ibid.).

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<sup>13</sup> For full text of Treaty of Rome, please see at: [http://ec.europa.eu/economy\\_finance/emu\\_history/documents/treaties/rometreaty2.pdf](http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf) (last visit on November 2013).



One major result of these demands of completing ‘common or internal market’ was the next founding treaty following The Treaty of Rome- The Single European Act (SEA) which was signed in 1987. The decision made at SEA reflected the ambition of Community authorities to enlarge common policies towards new policy fields, particularly to carry out the mission of creating a common market in services as well as in goods. It was underlined in the “White Paper on Completing Internal Market” which was issued in 1985 (European Commission, 1985) – which subsequently led to SEA- that it was important to the same progress achieved on the free movement of goods should have been achieved on the free movement of services. Because the relative importance of services sector in especially rapidly evolving sectors such as telecommunications, information was increasing.<sup>14</sup> Besides, ‘audiovisual services’ was mentioned as one of the non-traditional sectors with potential of economic growth in the near future; and setting and diffusing European standards across Community in information and telecommunications sector instead of national standards was offered to be a policy measure that should have been taken in order to reach a single market. Following the suggestions of White Paper, strengthening research and technological development at member states was mentioned for the first time as one of policy priorities of the Community in the SEA. Besides, Harcourt (2005) argues that Community directives to regulate the media industry in the future became a part of initiatives of completing internal market with the SEA. Even so, the effect of SEA was indirect in terms of liberalisation over the audiovisual industry.

Besides, in order to carry out the mission of completing internal market SEA made some changes in internal decision-making mechanisms of Community to contribute to political integration and legitimation. With SEA, a new legislative

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<sup>14</sup> It was indicated in the White Paper (European Commission, 1985) that the contribution of industry to Community’s economy was 26% while market services was up to 57%. Besides, Community managed managed to create almost 5 million jobs in the sector (between 1973-1982 period) whereas USA added 13 million and Japan more than 6 million. For full text of White Paper please see at:

[http://europa.eu/documents/comm/white\\_papers/pdf/com1985\\_0310\\_f\\_en.pdf](http://europa.eu/documents/comm/white_papers/pdf/com1985_0310_f_en.pdf) (last visit on November 2013)

procedure was introduced in order to increase the legislative power of European Parliament vis a vis European Council of Ministers (Council, henceforth) in adopting Community legislation. The Maastricht Treaty took political integration a step further. It was signed in 1993 replaced European Community with European Union to express a more tight integration among the member countries. From then on, the member countries have agreed to go on for a powerful economic and political unionization in some certain issues such as common money unit and other financial issues and for a closer cooperation in foreign policy and defense. It was followed by Amsterdam Treaty in 1997, Treaty of Nice in 2001 and Lisbon Treaty in 2009. With every new founding treaty, European Union became a more tight economic and political organization in which the European Parliament's force vis a vis to other institutions was incrementally increased and the political power of the Union over the national governments became more decisive.

As a result, today, the EU is a supreme political power that makes binding decisions for member countries not only for financial and trade-related issues but also for foreign policy, defense policy and cultural policies. One natural outcome of this being supreme political power, as Sümer (2009) states, that political, economic and social issues have been dealt with at European level rather than national one at an increasing level. From the same point of view, Venturelli (1998) argues that EU like other supranational organizations has become more 'law-maker' as countries have become more 'law-takers'.<sup>15</sup>

Above all, EU is a project of harmonization and integration between European countries. Debates about the way this project would take (towards a full Union or not) have always been one of main items of political agenda of member countries. Yet, at this moment of historical development, one may argue EU authorities (European Commission, European Parliament, European Council and European

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<sup>15</sup> Venturelli thinks this character of being 'law-maker' is biased for Capitalism. According to his view, what is foreseen for EU, in order to realize the promises of 'Information Liberalisation', is not a top-down policy form, but a kind of supranational 'governance'.

Court of Justice) have become ultimate decision-makers for almost all policy subjects dealt with by member countries. Consequently, EU authorities which internalized the object of ‘common/single market’ and which were empowered to put this aim in practice at an earlier phase of its history, have so far played a crucial role in modifying the local economies of member countries for global Capitalism and in carrying out the political necessities of neo-liberal ideology. This general Capitalist tendency is aptly revealed in EU’s strategy, discourse and concrete steps toward the creation of a “(European) Information Society”.

Before proceeding to the discussion on historical development concerning the employment of (the) concept of “Information Society” in EU policies, it is necessary to look over the internal operation of the Union. Because the Union is of a sui generis organization of decision-making which is not similar to any other kind of national and supranational organizations (Rooke, 2009: 10). Subsections below will give us the information about the formal structure of decision making, and a discussion about current dominant policy concept ‘governance’ in the EU policy making.

## **2.1. The EU Institutions and Their Modus Operandi**

The Treaties of the EU are implemented in a sui generis<sup>16</sup> institutional structure whose main aim is to foster the integration between member states on the principle of single market. This institutional structure consists of four interrelated bodies as following: European Parliament, Council, Commission and European Court of Justice. The division of rights and duties among these institutional bodies are determined by the Treaties. This division is unlike to classical division of governmental branches (legislative, executive, judiciary) and differs from the

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<sup>16</sup>EU differs from other supranational (e.g. United Nations) and international organizations (e.g. International Monetary Fund) for at least two reasons: Firstly, EU is not an ordinary international organization which has relations only with member states. EU has also relations with its citizens in a similar way a national government has got. Secondly, EU has the same characteristics a national state has got such as land, flag, monetary unit, central bank and so on (Hurmi, 2008).

organizational operation of other supranational organizations (Tezcan, 2005:2). The following figure shows this *sui generis* organizational structure.

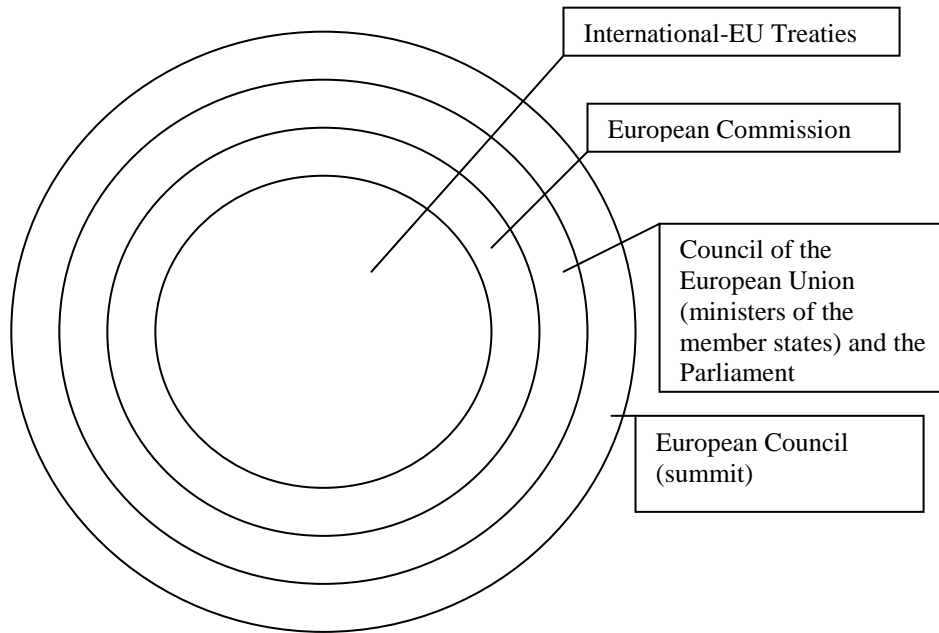


Figure 1. The Institutions of EU

Source: Rooke, R. (2009), p. 13

To better understand this figure and to have an insight about the interrelation between these institutions, it is necessary to look one by one at these bodies to understand how they function. To deal with European Parliament would be meaningful to start because Parliament is the key legislative institution whose political weight has been increasing in time with new treaties. Parliament was founded in 1962. According to European Coal and Steel Community Treaty, Parliament consisted of representatives of peoples from all member countries. Yet, these representatives had not been directly elected by the people, instead they were appointed by governments of respective national states. Simply for this reason, the Parliament had stayed as a consultant body for the Council which had been the only powerful legislative body till 1979 when was the first time that

direct elections were held at member states to pick up members of European Parliament.

Direct elections became then a turning point in changing status of Parliament from being a consultant institution to a legislative body with a growing influence on the resolutions. As SEA (Single European Act) donated the Parliament with the right of ‘avis conforme’<sup>17</sup>, Maastricht Treaty introduced the ‘co-decision’<sup>18</sup> procedure which meant in practice the Parliament’s participation at the decisions taken by the Council. These rights, particularly the co-decision procedure, have provided the Parliament with the rights of demanding amendments at, refusing or approving the legislations proposed by the Commission. Furthermore, with these legislations the Parliament was given the authority over the Council in the sense that Parliament could refuse or veto a common position taken by the Council, if seen necessary by the members of Parliament.

The member composition of the Parliament is determined with the principle that the number of the representatives of the members states is in direct correlation with their populations<sup>19</sup>. In accordance with this principle, for example, whereas Germany, the member country with highest population, has the highest amount of members (99), those relatively smaller countries like Greece and Malta send much less members (22 and 6 respectively). However, the members of the Parliament are grouped not according to the countries they represent, but the political movements they are affiliated with. There are currently seven political groups in the Parliament. The biggest one is the Group of European People’s Party (Christian Democrats-PPE) which is represented by 274 members. The second

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<sup>17</sup> According to ‘avis conforme’ procedure, the Council (Council of Presidents) would have to obtain Parliament’s assent before important decisions (like enlargement issues) are taken. Parliament would be able to reject or accept a proposal, but could not amend it.

<sup>18</sup> ‘Co-decision’ procedure requires a consensus to be reached by Parliament and Council for a legislation to be accepted or rejected.

<sup>19</sup> The European Parliament is currently made up of 766 Members from 28 countries who are elected for five-year period.

biggest group in the Parliament is Progressive Alliance of Socialists and Democrats (Socialists and Democrats- PSE) which is represented by 195 members. Socialists are followed by European Alliance of Liberals and Democrats (ALDE Group) with 85 members.<sup>20</sup>

Committees of the European Parliament and appointed rapporteurs to deal with the proposals coming from the Commission are key parts of the decision mechanism of the Parliament. Because these are the Committees where the proposals of the legislations are dealt with and discussed in detail<sup>21</sup>. And a rapporteur is generally appointed to prepare an informative document for the members of the Parliament about a proposed legislation. The document prepared by the rapporteur is expected to help Committee members and members of the Parliament make a decision about proposal to be approved, disapproved or amended. Sessions held at the Parliament are opened with the presence of one third of the total members and decisions are taken by absolute majority or qualified majority<sup>22</sup>.

Even though the weight of the Parliament have been growing in the EU system in last decades, the Council of the European Union (The Council henceforth) and European Council (summit) are still very important. When compared to the

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<sup>20</sup> As for other five political groups, these are Group of the Greens/European Free Alliance (Greens/EFA) with 58 members; European Conservatives and Reformists (ECR) with 56 members; Europe of Freedom and Democracy (EFD) with 33 members; European United Left-Nordic Green Left (GUE/NGL) with 35 members; and lastly Alliance of European National Movements (NI) with 30 members. What is worth noting in this composition Christian Democrats, ALDE Group and other liberal-right parties which have similar views concerning to neo-liberal policies have the majority in the Parliament.

<sup>21</sup>There are now more than twenty different committees. See for the list of committees: [www.europarl.europa.eu/committees/en/full-list.html](http://www.europarl.europa.eu/committees/en/full-list.html) (last visit on September 2013).

<sup>22</sup> Qualified majority is based on both coefficients appointed to the member countries according to their political, economic and demographic criteria, and the necessary amount of votes for the legislations to be approved. One may argue qualified majority is a more democratic and reliable form of decision since it relatively balance the power inequality between big member countries and smaller ones (For example, the coefficient of voting for Germany is 29 with 80 million population whereas the coefficient of voting for Malta is 3 with less than half million population.) (Tezcan, 2005:54).

Parliament, the Council<sup>23</sup> is a different organization of decision making. The Council is not a single body, indeed. It composes of several councils of ministers which focused on distinct subjects. For example, as the issues related to tobacco products are dealt with by the council of health, the issues concerning to telecommunications are discussed at another related Council.<sup>24</sup> Councils are composed of the ministers of member states who have the rights of taking decisions on behalf of their respective states (Tezcan, 2005: 46).

Prior to 1979, Council was the main executive body in the European Community but as was mentioned above its power has been balanced with the Parliament as new treaties were put into practice. The presidency of the Council rotates among the member countries of the EU every six months and presidency is basically responsible for the functioning of the Council including to chair meetings, determine its agendas, set a work programme and etc.. The decisions at the Council are taken by consensus or by qualified majority.

According to treaties, the Council is not only a legislative body where proposals are dealt with, but also it is an executive body. Particularly related to issues of economy, the Council is responsible for harmonization among member states and the decisions taken by Parliament at these kinds of issues are certainly binding. The Council makes international agreements on behalf of the Union, approves the Unions annual budget in a co-decision procedure with Parliament, and can give credit to the Commission to monitor the execution of legislations at member

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<sup>23</sup> When said Council, what is referred here is the Council of the European Union (Ministers). One must recognize the difference between Council of the European Union where ministers from each national governments meet for adopting laws and European Council or European Summit. European Council (European Summit) is held twice in a year at Brussels with the participation of prime ministers or presidents of the states. The main mission of the Summit is to put the required political vision for the most critical issues such as scope and direction of integration, enlargement in the sense of accepting new members and changing the treaties if necessary (Palabıyık and Yıldız, 2007). That the decisions can only be taken by consensus (unanimity voting) makes the summit a supreme body where only very general and strategic decisions are made.

<sup>24</sup> There are currently nine distinct councils. The list of the Councils can be reached via [http://ec.europa.eu/about/ds\\_en.htm](http://ec.europa.eu/about/ds_en.htm)

countries. The Council can also call Commission to make proposals concerning to particular policy topics, if seen necessary.

As for Commission, it is the central element of legislative process which prepares the proposals for regulations. Besides, it has some executive duties like monitoring the implementation of regulations at member states. Commission is composed of 27 Commission members and a president. As the president of the Commission is appointed by the Parliament, members of the Commission are appointed by the approval of member states and every each of them represents a single member country. Commission is divided into several departments called Directorates-General (DGs)<sup>25</sup>. It is theoretically the institution responsible for representing the interest of the EU as a whole. Members of the Commission promise to cautiously act in accepting particular jobs in order not to harm the interest and respect of the EU.<sup>26</sup>

All the treaties give wide responsibilities to the Commission. Particularly concerning to initiating proposals, Commission is like a monopoly. That is to say, it is the only institution in the EU with the right to propose legislations. Hence, both Council and Parliament can make decisions only after a proposal is communicated by the Commission. Nevertheless, this should not be interpreted as supremacy of Commission over Parliament and Council because preparations for proposals are generally launched after Parliament and Council make calls for possible policy actions. Even so, Commission as a body representing EU's interests as a whole does not have to prepare a proposal satisfying the established interests in the Parliament and Council. Yet, Parliament and Council may demand

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<sup>25</sup> Of 33 Directorates-General (DGs) 26 DGs are directly supervised by the members of the Commission. The list of the DGs can be reached via [http://ec.europa.eu/about/ds\\_en.htm](http://ec.europa.eu/about/ds_en.htm) (last visit in August 2013).

<sup>26</sup> See [www.ec.europa.eu/index\\_en.htm](http://www.ec.europa.eu/index_en.htm) (last visit in September 2013).



changes and corrections in the proposals communicated<sup>27</sup>. As mentioned above, there is also an executive responsibility of Commission to monitor the member states to see if the directives and resolutions are implemented properly. If Commission comes to the opinion that a member state does not implement a binding directive or resolution properly, Commission may demand the European Court of Justice to give a binding decision about the issue concerned.

To know how Commission prepares a proposal can also provide valuable insights about the logic of policy making in the EU. Commission usually follows the steps as following: Firstly, Commission prepares a report or holds a tender to determine the appropriate consultant organization to prepare a report which would inform Commission on a pre-identified policy subject. In accordance with the results of the reports completed by these consultant organizations/research firms Commission draws a road map to be followed. In the road map, public consultations and conferences can be held in which all the interested parties are called to participate and present their views; working and focus groups and meetings are organized where 'experts' from interested organizations can study on specific aspects of policy project in question. Collecting the views produced at public consultations, working and focus groups, conferences and other kind of meetings, Commission prepares a proposal for legislation and sends the draft to the Council and the Parliament. Depending on their internal mechanisms, the proposal are either directly approved or rejected or sent back to Commission for amendments. If the proposed legislation is accepted directly or after corrections by Parliament and the Council<sup>28</sup>, Commission has also a duty to monitor if regulations are correctly implemented by member countries. Even if the

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<sup>27</sup> Commission shares its right of preparing proposals with member countries on particular issues like visa procedures and people's circulation and with European Central Bank on economy and monetary union (Tezcan, 2005: 79).

<sup>28</sup> In this mechanism, Parliament has a supremacy over the Council. Even if the Council adopts a 'common position' and accept a proposed legislation, Parliament has a right to demand a 'second reading'. Parliament can demand European Commission to adopt some amendments to the draft legislation and after they are done, the draft is negotiated and voted by members of the Parliament. And if the draft is accepted, it is adopted as the EU law.

resolutions of EU authorities are of status of binding, European Court of Justice is also responsible to force member countries to implement regulations required.<sup>29</sup>

As for European Court of Justice, it is the highest court which is responsible for interpreting the EU Law to make sure if it is appropriately obeyed and applied equally across the member countries. Every member country sends one judge to the Court to be representative. There are also eight ‘advocates-general’ whose main duty are to present opinions of the cases in hand. Each member of the Court of Justice is appointed for the term of six years provided that there is agreement among the governments of member states. It deals with the cases which can be brought by individuals, companies, and other type organizations. Main duty of the Court is to make decisions concerning to the cases in which it is claimed that any member country infringes EU Law<sup>30</sup>. Since Courts decisions are absolutely binding for member states, it is a very powerful method for forcing member states to apply EU Law. As will be seen below, this method has been an influential method employed which has had irreversible impacts over the structural transformation of media landscape in Europe.

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<sup>29</sup> In order to understand if a resolution issued by EU authorities is binding or not, one should know the differences between the sources of legal order in the EU. There are primary and secondary sources of EU’s legal system. Primary sources include the founding treaties including, Treaty of Rome, Maastrich, Amsterdam and Nice. The codes of primary sources are absolutely binding for member states. As for secondary sources, secondary sources consist of the legal papers produced by the EU authorities. EP (together with Council) can make legal decisions binding for Member States. These are ‘regulation’, ‘directive’, ‘decision’. ‘Regulation’ and ‘decision’ are directly binding sources. However, the status of ‘directives’ is different. A directive is a kind of regulation whose implementation is left to member states. Directives set targets and principles for member states to achieve a specific goal of policy but it is the member states which determine what specific road map to be followed to achieve that goal. If Commission doubts that member states do not carry out the necessities of a directive, European Court of Justice can be activated to make a binding decision to force member states to correctly apply the directive. In this sense, directives are also binding sources. Besides, EP and European Council can also have ‘recommendations’ and ‘opinions’ which are not binding by their nature (see Treaty on the Functioning of the European Union, Article 288). The verdicts of European Court of Justice are also binding, as mentioned above, in secondary sources of European legal system. Besides, there are Green and White Papers prepared by Commission to precede any legal action. Green Papers are the documents on the subjects that European Commission wants to trigger a policy debate and White Papers are generally published after Green Papers if necessary. White Papers are generally the strategies and action plans adopted by the Council (Başaran, 2004).

<sup>30</sup> See [http://europa.eu/about-eu/institutions-bodies/court-justice/index\\_en.htm](http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm) (last visit on June 2013).

As is seen that the member states are evenly represented at EU institutions is given high importance. By the same token, that the civil society's contribution to decision-making processes is also paid great attention by especially the Commission. It is seen as the political necessity for overcoming the shortcomings of 'democratic deficit' intrinsic to the establishment and operations of EU<sup>31</sup>. This concern has been reflected in the treaties including The Maastricht, Amsterdam and Nice which reinforced the power of Parliament over other EU institutions and growing commitment to the 'governance' practices. Therefore, it is an obligation to understand the 'governance' and interest representation in the EU to understand the 'modus operandi' of the Union.

## **2.2. 'Governance' and Lobbying as Parts of the EU's System**

In fact, national governments and governmental organizations are naturally major policy actors in addition to EU institutions in the EU system. However, the recently growing commitment of EU into the 'governance' mechanisms has led to an increase in relative importance civil society including private firms, public interest organizations (such as consumer associations) and other non-governmental organizations. Actually, 'governance' is a policy term which became very popular in the literature of public policy in the world in the last decades. Insel (2001) argues that the term is French-originated (*gouvernance*) and actually means form and art of government. The term was used in the 14th-century-English but then forgotten. Then it was resurrected and promoted by World Bank and IMF (International Monetary Fund) in the 1980s and got increasing currency at local policy circles of national governments. In its increasing awareness, large firms and their 'think tank' (consultant or lobbying

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<sup>31</sup> The concept of 'democratic deficit' is commonly used in a pejorative sense to refer to that EU institutions suffer from lack of democratic legitimacy. According to this, the power transferred from national states whose political systems are based on representative democracies is largely used by EU institutions such as Commission which is anti-democratic by nature (Hurmi, 2008).

firms) allies were the main supporters so that the term was operationalized at policy initiatives, in especially European Union. In the search for a neo-liberal-oriented policy, the ‘necessity of governance’ was discursively backed by the claim that deliberative democracy fell in short as it was challenged by ‘growing complexity of new problems and of civil society’ (European Commission, 2001a).

In the White Paper of European Commission on Governance, the term was defined as ‘processes and behavior that affect the way in which powers are exercised at European level particularly as regards to openness, participation, accountability, effectiveness and coherence’ (Ibid.). In other words, term is defined as a more participative form of power use in which governments use their power sharing it with civil society organizations. That is to say, in ‘governance’ mechanisms, civil society operating out of the governmental organizations becomes much more important. The White Paper suggests that civil society includes “trade unions and employer organizations, non-governmental organizations, professional associations, charities, grass-root organizations, organizations that involve citizens” (from contributors of a church to special interest group).

In its basic form, the term refers to the more cooperation in using political power between governments and civil society. Yet, in practice, ‘governance’ is operationalized as a neo-liberal projection in which states, as the areas where public interest is defined and protected, are suppressed and replaced with flexible and precarious regulations and contracts (Ínsel, 2001).<sup>32</sup> Furthermore, it is mostly neglected that there is always a power inequality among the participator groups which stems from the structural imbalances in a Capitalist social formation. In accordance with this structural reformation, over 90 per cent of 50 largest media firms was already based in a small group of European countries including Germany, France, Britain, Netherlands, Luxembourg, Italy and Spain. This

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<sup>32</sup> As for the media environment in particular, the main actors participating at governance processes are EU organizations, member states, and civil society out of the governmental organizations. (Terzis, 2008:11).

created an imbalance between the representation of the private interests in big European countries vis a vis to smaller ones. Besides, these large firms are not 'national' companies anymore. The media ownership structure has changed radically in recent decades in Europe and most of the largest media companies based in the European countries have become subsidiaries of large multinational conglomerates. In this process of internationalization, Harcourt argues (2008), it was estimated 'French' group Vivendi is 90 per cent owned by US shareholders, 'German' group Kirch was controlled by American businessman Haim Saban, and British BskyB was owned by USA-based Rupert Murdoch. Besides, USA-based media corporations such as AOL-Time Warner, NTL and Viacom had huge investments in cable and satellite sectors. Moreover, the USA-based internet firms such as Yahoo, Google (and Youtube), Amazon have made investments in the online media sector. Consequently, the European media is not that European and is very powerful that it would reasonable to assume that the entrance of international media firms into European media sector have increased corporate pressure over European institutions as well as national states, especially through lobbying activities.

Considering the fact that empowering lobby institutions are very densely located at cities where governmental bodies are accumulated and are very active with the purpose of influencing decision-making processes, one can better understand the results of power inequality in practice. In their brilliant publication, "Brussels: The Lobby Planet" (CEO, 2011), Corporate European Observatory (CEO- a anti-lobby *organizaton* whose mission is to monitor lobby activities especially focusing on the operations of large corporations) points out the fact that Brussels is such an heartland for dozens of key EU policy formation bodies (such as EC, EP and affiliated buildings) as well as thousands of offices occupied by those who wants to be influential over decisions made. According to recent estimations, there have been thousands of professional lobbyists in Brussels representing vested-interests (between 15000-30000) including companies, civil society groups, trade unions and the others, "*with those representing big business far*

*outnumbering the rest.*” (Ibid., stress added).<sup>33</sup> There are over 85000 people working in the EU quarter<sup>34</sup>, full of bars, cafes and restaurants where the core lobby activities are carried out.

While civil society and trade unions are ‘dramatically’ under-represented, business interests covers at least two thirds of all the lobby organizations which are also located at very close places to the main buildings of EC and EP. The money spent for lobbying has already passed the one billion mark per year, which made the Brussels the second center after the Washington DC. As there are more than 1500 industry lobby groups, five hundred large corporations have their own lobbying offices such as Bestellsmann, particularly related to media industry. The primary target is the EC’s experts located at the heart of whole EU legislation. However, the EP’s importance is growing, as the MEPs (members of the parliament) have become another major target for the lobby organizations. Today, some 4000 lobbyists registered to the hold access badges for the Parliament (Ibid., p. 8).

According to CEO, there is a very simple guide for any vested-interests who wants to be influential over policy makers based in Brussels. The guide which can be reduced a formulae of *cash-lobby-power trio*. It is quite natural that it is only those large corporations which can stand for such lobbying activities to carry out these formulae mentioned. That is why Brussels is called by CEO as ‘Lobbying Paradise’ and that is why promises about the ‘governance’ is an illusion.

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<sup>33</sup> It is stated in the foreword of the publication, “when published in 2004, the first edition of this guidebook was an eye-opener to many – and caused anger among corporate lobbyists who were not used to being criticised.” Thanks to this publication, it is told a meaningful debate has emerged about how some lobbyists have more priveleged access to officials of the EU under the protection of lack of transparency (Ibid., p.3).

<sup>34</sup> Corporate European Observatory divides the EU quarter, the place allocated to EU institutions in Brussels, into two: first covers the place around the Rond-Point Schuman – the place where EC’s main building, Berlaymont is placed (Rue de la Loi, Avenue de Cottenbergh, Rue Breydel), and second covers the place around the Places du Luxemburg- EP (Rue du Luxemburg, Square de Meeus, Rue d’Arlon, Rue Montoyer and Parc Leopold).

Being aware of such a problem with transparency concerning to lobbying activities, Commission and Parliament launched an initiative in 2011 according to which lobbying organizations were expected to be registered at a database. The project called “Transparency Register” aimed at easing the monitoring of lobby activities in order to understand who connected with whom for what purposes, making policy processes more transparent.<sup>35</sup> Yet, since it was voluntary instead of being obligatory for lobby organizations to register at database, the success of the project fell to short. According to a study conducted by The Alliance for Lobbying Transparency and Ethics Regulation (Alter-EU), many law firms and lobby organizations including more than 100 influential big firms having lobby activities did not register the database of Transparency Register. These group of unregistered companies includes some very big financial organizations such as Goldman Sachs and very large firms like Deutsche Telecom and Apple. Furthermore, according to Alter-EU the manifested activities of the registered firms are hardly reliable.<sup>36</sup>

The views presented by our interviewees we met during our field research at Brussels actually confirm such kind of power inequality in terms of lobbying activities. For example, one of interviewees who was once a legal advisor for a consumer protection organization and now works for Microsoft, stated that consumer organizations and especially BEUC is one consumer organization whose concerns are apparently paid attention by EC, EP and private firms. However, s/he says, ‘...consumer organizations are weaker.... It is a problem in lobby activities that you see that your voice is absent at the outcome.... **at the end of the day there is a majority at the parliament which is very industry friendly.**’ (stress added). Another interviewee, Marietje Schaake, an MEP

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<sup>35</sup> Full title of the project: “Agreement between the European Parliament and the European Commission on the establishment of a transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation”, see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011Q0722%2801%29:EN:NOT> (last visit on June 2013)

<sup>36</sup> See <http://www.europeanvoice.com/article/imported/transparency-list-is-being-abused/74747.aspx> (last visit on June May 2013)

(member of the Parliament) of Alliance of Liberals and Democrats<sup>37</sup>, responded to our question and said ‘Lobbying is a part of the EU’s system. In such a subject like technology, there is clearly lack of reliable knowledge, therefore it is needed to pay lobbies to understand the sector’. She added, however, ‘it is still the responsibility of parliament to make the decisions.’. She thinks that ‘it is very important that parliamenters do their homeworks to make proper decisions. But it is hard to argue everybody in the parliament do their homework well.’ This situation draws the attention to the power balances among the lobbying bodies. She agrees there are power imbalances:

...imbalances in terms of financial resources, human capital, expertise...shifts to big firms like microsoft (employed officials by big business). These are all true....we have to critically think about ourselves.... the big firms and lobbies organizes big trips, big meetings and the like for parliamentarians...we need to see ourselves critically....it is our responsibility.

Another interviewee, Kostas Rossoglou, who is currently the legal advisor for media issues at BEUC (European Consumer Organizations) accepts the fact that BEUC as the biggest consumer protection organization in Europe is a frequent invitee to related meetings held both by EU authorities and private sector. However, stating that although BEUC is given chance to voice up its demands it is not influential, Rossoglou resumes that ‘they want BEUC to participate does not mean that they want to listen or care about public interest.’ Therefore that BEUC is invited to these kinds of meetings, one can argue, is to create a sense of participation and pluralism in which different vested-interests, especially the public interests, are represented in policy processes.

All these facts discussed in this section, actually, lead us to think that lobbying and lobby organizations, which call themselves as ‘think tanks’ or ‘public consultant organizations’, are both a consequence and a source of power

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<sup>37</sup> Third in total and second largest group following EPP-Christian Democrats in the European Parliament.



inequalities we face in policy processes. It seems so that the role played by lobby organizations with the purpose of designing policies towards their own ends has been welcomed and approved. However, it is observed that both representatives from EU authorities intermingling with lobby organizations and employees of organizations for public interests based in Brussels are aware of the fact that the policy of 'governance' has some sketchy points to be considered. At the last chapter of our study, we will try to show the links between dominant vested-interests whose common arguments are voiced up by several associations and policy discourse developed by the EU authorities in the policy formation of new media directive. Before proceeding to this discussion, it is necessary to know the 'major turning' points of the communications policy of European Union before (the) concept of "IS" and communications policy was brought together in the 'full liberalisation era' of 1990s.

## **CHAPTER III -NEED FOR A COMMON COMMUNICATIONS POLICY IN THE EU: EARLY STEPS**

The early steps for common communications policy in the Community was taken as of late 1970s and lasted till late 1980s and early 1990s when first wave of influential legislations were adopted. The phase of early steps is characterized by a struggle between national governments and/or governmental organizations in favor of public monopolies, cultural protectionism, public service values in communications sector and the cooperation between EU institutions (particularly Commission) and associations of large firms in favor of liberalisation, though a limited one. In this period, although (the) concept of “IS” was not a frequent term for neither communications nor R&D (research and development) policies, the idea behind the concept were expressed with the concepts of ‘wired society’ or ‘broadband networks’. This term ended in the early 1990s when Clinton-Gore government’s idea of ‘information superhighways’ were immediately and completely integrated by EU as its discourse of “IS” (Servaes, 2003:11). Below there are four sections giving information about major turning points in building a common communications and media policies in the EU in the formative term.

### **3.1 Seeking for a Common Communications Policy In Parellel With The Goal of Common Market**

It is hard to talk about a common communications policy of the EU before the late 1970s. As an outcome of Keynesian approach which was dominant in the period between Post World War and early 1980s, telecommunication was seen as a sector of natural monopoly and was owned and/or controlled by national governments as public monopolies. As for electronic broadcasting (radio and

television content production and transmission), it was run by public service broadcaster institutions typically organized as national public monopolies as well. In this pre-formative term, cooperation among the member states did not go beyond some decisions necessary for technical regulations (e.g. frequency allocation) and did not breach the national borders (Michalis, 2007:32).

The idea of establishing a postal union was the first of this kind of early common policies which was brought about just after the establishment of Council of Europe<sup>38</sup> in 1949. Yet, national governments refused to merge telecommunication infrastructure till the late 1950s despite the establishment of European Coal and Steel Community and then European Economic Community. However, Council of Europe insisted on building a postal union but had to wait until the Treaty of Rome signed in 1957. Even so, the success was limited because the only thing which was accepted by the countries to form a permanent secretary to hold meetings which would gather ministers of national PTTs (Postal Telegraph and Telephone).

Before long the first successful step was taken under the auspices of Council of Europe and nineteen West European national governments reached a consensus of establishing a Conference of Postal and Telecommunications Administrations (CEPT) in 1959. As a weak cooperation organization, CEPT would have some limited tasks in relation to regulations concerning to telecommunication such as holding meetings about price tariffs of telecommunication services. In time, some serious issues like setting common technological standards in telecommunications would be dealt with by CEPT. Even so, for CEPT's decisions were recommendations and opinions rather than being binding resolutions, its effect over the national policies remained very limited.

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<sup>38</sup> Council of Europe, a different organization from the EU, is an organization pursuing a relatively weak cooperation on some certain issues among the member countries from all over the continent Europe. For example, Turkey became a member to this organization just a few months after its establishment in 1949.

As for the electronic broadcasting, International Broadcasting Union (IBU) was the first international cooperation organization in this area which was established by nine West European and Czechoslovakian broadcasters in as early as 1925. Its task was simply to coordinate the broadcasters of member countries could act together concerning to frequency allocations. However, the agreement founding IBU was not between national governments and its decisions were not binding. Therefore, the role to be played by IBU was very limited. After the World War II a similar organization called International Broadcasting Organization (IBO) was established by Soviet Union and some other Eastern Bloc countries in 1946. As a response to this Soviet initiative, in 1950, a new broadcaster union called European Broadcasting Union (EBU) by Western European countries and Yugoslavia amid the Cold War conditions.<sup>39</sup> EBU was a non-governmental and inter-broadcaster organization. Yet, national governments in this era had the full control over the national broadcasters as a norm and therefore EBU was like an inter-governmental organization. Furthermore, it was decided that EBU's decisions as to financial and administrative issues would be binding for national broadcasters. Therefore, it is hard to claim that EBU was a weak cooperation. Initially EBU did make some decisions concerning only technical issues but its responsibilities in time enlarged towards some content-related issues as well. Eurovision, established in 1954, was one of the most known outcomes of this enlarging interest of EBU towards content and culture-related issues.<sup>40</sup>

Actually 1950s was not the key decade for the subsequent developments concerning to communications policies but 1960s was. What was particularly important for information and communication sectors was the emergence of high technologies which would in near future made the established analog infrastructure of communication obsolete. In this new rapidly evolving sector,

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<sup>39</sup> After the collapse of Communist Bloc, the organization which would be the successor of IBO and EBU merged.

<sup>40</sup> Eurovision which is popularly known as a song content across the Europe was actually a special department under EBU whose main mission was to create an exchange program for financial and cultural enrichment of broadcasters and nations See <http://eurovision.net> (last visit on March 2013).

USA was the leader country and its pressure over European industry was increasing. European Economic Community, so to speak, had to organize to respond this new industrial competition conditions. Before long, it was seen by member states as a necessity to act together to have more competitiveness. There was already a concern of 'lagging behind' in regard to high technology that became a prevailing concern among the member countries. For example, the term 'technological gap' coined in France 1960s was subsequently used for referring to the industrial gap between USA and Europe. Many reports on 'technological gap' were issued in Europe, and OECD and USA published some studies about the 'gap', which would subsequently be recurrent themes to take place in future relevant policy documents issued by EU authorities. These themes can be expressed as such: European markets and firms were argued to be smaller than their American counterparts; concomitantly economies of scale in Europe was argued to be insufficient; the lack of coordination in R&D; insufficient venture capital; the lack of entrepreneurial spirit; the lack of abilities in management departments (Michalis, 2007: 70-72).

First concrete step taken to fill this so-called 'technological gap' was the cooperations and buyings between American and European national technology firms in 1960s. For example, while West German Siemens cooperated with Radio Corporation of America (RCA) in 1964, American General Electric bought the departments of computer of two national electronic firms, the Italian Olivetti and French Bull in the same years. Anyway, up to 60% of European computer industry was already controlled by an American firm IBM (International Business Machines Corporation) in this period. As a result, it was a fact that such kind of actions and transactions were not decreasing American dominance over high-tech industry, but quite the opposite was the case.

In this period, the main problem for the European-wide cooperation against the American counterparts was the fact that national firms and governments in Europe regarded each other as rivals in high-tech sectors. For example, Eurodata, an

enterprise for supplying computer for space research, was established with the co-operation of six European countries (Britain, France, Germany, Sweden, Holland, Italy). But soon it failed since there were irreconcilable disputes among the countries. Therefore, the job of supplying computer to space research was given to IBM (Ibid, p. 75).

The situation making things worse for European countries in regard to high-tech in the 1960s was the rise of Japan as a second dominant technology-oriented economy in the world. Japan had a smaller internal market in comparison to USA but Japanese governments had been supporting their internal market with appropriate subventions as of late 1950s. Governments in such subventions did not only play the role of financing source but also a catalyzer among the public and private parties to take part in technology projects. The role played by Japanese government would subsequently be referenced repeatedly by EU policy documents in the following decades. In addition to USA, the Japanese case did contribute to the emerging Commission's discourse in which the argument that 'new industrial policies carried out by national governments separately did not led to a competitive advantage for Europe' would be the key element.

Till the end of 1970s, national protective policies prevented Commission from putting the harmonization and common market-oriented policies into practice. Yet, some particular common policies concerning to industrial strategy were taken in the mid-1960s. Though their concrete results were very limited, these first steps led to an institutionalization and became a source of experience for the Commission for the next decades. First one of these kinds of common initiatives was PREST (Scientific and Technical Research Policy) which would be managed by a committee whose members would be composed of representatives from Commission and member countries. The first report prepared by this committee was issued in 1967. The report was presented to the next Council meeting held for scientific issues. Following the opinions in this report, some certain priority areas including telecommunication and data processing were identified by the Council.

Second one of PREST reports was issued in 1969 in which some recommendations would be expressed as such ‘that common European technological standards should have been set’, and ‘subventions for those technology firms planning to get into collaborations with other European firms should have been provided’. Moreover, as a result of recommendations of the PREST the first intergovernmental scientific and technical research collaboration program COST (Cooperation in the Scientific and Technical Field) was launched.

When it comes to 1970, in its memorandum, Commission emphasized the importance of creating a pan-European industrial strategy in strengthening economic integration and having independency in technology development. In accordance, it is recommended to take steps in space and information technologies at once.<sup>41</sup> Nevertheless, the economic crisis of 1970s and increasing disagreements among member countries about the route the Community would take prevented commission from broad and strong common industrial strategies. Instead, Commission had to be contented with harmonization and common market-oriented strategies. As a result, common policies for advanced technologies particularly in information and communication technologies (ICTs) would have to wait for the end of 1970s and 80s.

However, some important steps in terms of common policies in advanced technology were taken by member states in the mid-1970s. For example, OSI (Open Systems Interconnection) can be regarded as a salient case for common policies in advanced technologies. The system was, in fact, a reaction against the new network architecture of IBM which was called Systems Network Architecture<sup>42</sup> in 1974. In response to IBM, the member countries supported the deployment of another protocol, the OSI which was approved and promoted by International Standardization Organization whose headquarters were located in

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<sup>41</sup> See <http://aei.pitt.edu/5598/1/598.pdf> (last visit on February 2013).

<sup>42</sup> A kind of protocol for connection between the computers on the net.

Switzerland. Both computer producers and national governments in Europe and Commission endorsed the deployment of OSI. At last, Commission had an important experience for common policy strategies to be developed in the near future.<sup>43</sup>

Another example of earlier common policies in advanced technologies was the establishment of a telecommunications network (Euronet)<sup>44</sup>. Euronet was a net between computers across the member countries whose establishment was principally recommended in a Council meeting in 1971. Then the issue was dealt with in Commission's four-year plan in 1974. The Euronet was established in very soon and became a working system proving that common agreements could be taken by national governments and by particularly national PTT concerning to advanced technologies. However, the cooperation among the national governments and PTTs remained limited to the establishment of a common network. Instead of empowering this common network, national authorities gave priority to strengthening their internal infrastructure for computer networks. Therefore, Euronet became a disappointment in contributing to the construction of common market in advanced technologies. Thus, the protective approaches of national governments and national PTTs continued to be obstacles for the effective common policies in advanced technologies. Yet, the changing economic and political conditions at the end of 1970s caused these national protectionism lose their weight and they were gradually replaced by new approaches and regulations.

The heralds of new policy approach came from the field of electronic broadcasting, however, instead of telecommunications. A deregulation took place

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<sup>43</sup> However, it was seen in following decades that supporting OSI as the common standard for net connection did not provide any advantage to European countries as another USA-originated protocol, Transmission Control Protocol (TCP/IP) became the basis for today's Internet.

<sup>44</sup> Please see:

<http://new.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21979A0822%2801%29&rid=1> (last visit November 2013).



in Italian broadcasting system in the mid-1970s.<sup>45</sup> Italy was one of European countries at the continent whose broadcasting was typically based on a public monopoly system. The RAI was the RAI' (Radiotelevisione Italiana), which had monopoly rights over the whole broadcasting and which shaped its programme schedule and contents according to the perceived needs of the Italian society, rather than commercial concerns (Hibberd, 2008). However, between 1974-78, several private channels launched their broadcastings from foreign countries over satellite and cable systems in spite of RAI's monopoly. In this process, a cable operator (Guiseeppe Saachi) which was one of these private broadcasters carrying its programmes from abroad over the communication satellites, sued RAI at a local court in 1973 and claimed that RAI's monopoly over the whole transmission and advertising revenue was against the European law.

The Italian court then took the issue to the European Court of Justice. The Court of Justice was demanded to make decision for two particular issues as following: First was the question if the principle of free trade of goods in the common market covered the television transmission; and second was if the right of monopoly given to the RAI covered whole kind of television transmissions and advertising revenues. Upon these questions, The Court of Justice made monumental decision answering both two questions: it was decided that that the monopoly given to public broadcasters which was based on the reason that electronic broadcasting has a non-economic nature was incompatible with the founding treaties of the Community.<sup>46</sup> And this would be a pioneering decision for deregulation not only in broadcasting but also in the whole communication environment in Europe.<sup>47</sup>

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<sup>45</sup> For an evaluation of the effects of deregulation over the European broadcasting please see: [http://papathanassopoulos.gr/docs/euopen\\_03\\_book.pdf](http://papathanassopoulos.gr/docs/euopen_03_book.pdf) (last visit on May 2013)

<sup>46</sup> European Court of Justice, case C-155/73 – Italia vs. G. Saachi

<sup>47</sup> Before long, after the decisions of Court, the Italy government adopted a new broadcasting law in 1975. According to this law, private broadcasting was allowed in the Italian broadcasting system and a duopoly between RAI and private channels (notably channels of Fininvest owned by Berlusconi) made their debut.

To sum it up, one can argue that as the communication policies was thought and dealt with within the national borders till the mid-1970s, some issues and events such as the necessity of common frequency allocation or the idea of postal union backed by Council of Europe became the first reasons behind adopting common communication policies. However, none of these developments were of the character of requiring member states to take the communication policies outside their borders. Even so, some external developments as of 1960s such as USA-based high-tech industry's growing pressure over European national markets and Japan's rise in advanced technology sectors, created a sense of 'lagging behind' among European states. This sense got stronger as the Capitalist economies got into a crisis as from early 1970s leading to decline in Keynesian policies, as the trend of globalization became salient as an indicator of restructuration in Capitalist production. These developments would provide the Commission as the agent of common market with the chance of creating a regulatory base for a more integrated economy in Europe.

### **3.2. Transitory Term Towards the Liberalisation in Communications Sector**

It is hard to claim that liberalisation was the major reference in for common industrial policies initiated by the Commission till the mid-1980s (Michalis, 2007: 101). In the period between late 1970s and mid-1980s, EU authorities did not clash with the member states concerning to protective industrial policies. Rather the Commission's efforts were largely focused on developing new common technological standards aiming at protecting the internal market of the Community, building communication networks among member countries and sponsoring R&D projects.

What makes this period particularly important for our purposes, actually, was the fact that (the) concept of "Information Society" (IS) took place, for the first time,

in a Commission Communication<sup>48</sup> issued in 1979. The title of the document was “European Society Faced With the Challenge of New Information Technologies: A Community Response” (Com [79] 650 final)<sup>49</sup>. The document was prepared by the Commission after a call was made at the conference at which the Heads of State and Government of the Community attended in Bonn in 1978. The main purpose of the document was to bring about key suggestions for the member states in the face of a new industrial shift. What is said in the document reveals how 1970s capitalist crisis changes the focus of political views about industrial competition in the world:

At their conference in Bonn in July 1978, the Heads of State and Government of the Community recognized the need to identify new sources of growth and employment to offset the difficult adjustments that traditional industries such as coal, steel, shipbuilding and textiles are being forced to undergo. At Strasbourg they agreed that the dynamic complex of information industries based on the new electronic technologies offered a major source of such economic growth and social development and invited the Commission to study the matter and report. (p. 1)

According to document, *‘Modern European’ society was already an ‘information society’*, with high quality of scientific and technological activities, economic transactions and pattern of daily life operating on a subtle network of information. Furthermore, this network of information was being advanced by new family of electronic breakthroughs. Economics of the world of electronics was thus being radically altered. The emphasis on the ‘radical alteration’ was directly related to the first important discursive theme that ‘the revolutionary developments in microelectronics sector which created the transformation permeating even into the daily life.’ The theme of ‘radical alterations’ stemming from the notion of technological ‘revolution’ is followed by another important theme of ‘possible

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<sup>48</sup> By Commission Communication, it is meant a type of official document prepared by Commission informing the Parliament and the Council about a specific issue.

<sup>49</sup> Thanks to the Dr. Jamal Shahin, the Director of the Information Society Cluster of the Institute for European Studies, for drawing my attention to this paper.

costs of 'lagging behind' in this sector'. (The) concept of "IS" in this second theme takes place as the 'opportunity not to be missed'.

These discursive themes are in fact the heralds of an order of discourse which would be frequently seen in the strategy documents of 1990s that would put "IS" as the main aim of societal transformation. Yet, this document (Ibid.) significantly differed from the subsequent Commission documents in the sense that it represented a transitory position of Commission in which there was no given faith in technological breakthroughs and the role to be played by private sector. Rather, it is observed that there is a doubt on possible implications of technological advancements and increasing 'central political and corporate power' over society.

About the expectations from technological advancements, it was unequivocally stated in the document that 'new' technologies could offer new tools for individual development and expression, new possibilities for small firms, and for all underprivileged groups and individuals of the society. However, it was also asked, "*Will they (technologies)<sup>50</sup> be used for these redeeming purposes or as an instrument for reinforcing central political and corporate power?*"(Ibid, p.3). According to the document, the mission of the European Community was to put a 'positive' answer to this question. Because this question revealed the fact that Commission saw a threat as increasing power with new technologies and also a series of opportunity for societies. This view of the mission of developing 'positive' answers to the possible political problems which might come out of adopting advanced technologies would never be stated once again in subsequent EU policy documents as clear as this document did.

It is observed in the document that growing industrial competition resulted from industrial policies taking place in USA and Japan as of late 1960s and the economic conditions emerged in the early 1970s as well, were major motivations

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<sup>50</sup> The statement in parantheses is added.

behind the Community's initiative.<sup>51</sup> The world leadership of the USA in information industry including microelectronics, telecommunications, growing USA public support to defense and space programmes vital for R&Ds in information industry, and Japan's 'remarkable' attack in this industrial sector starting with the 'Plan for the Information Society' as early as 1967 were among the frequent themes brought to the front in the document.

Using an another central theme, the "information economy", it was said in the document that the rate of USA's active population of employment after 1940 increased from 25% up to 45% and underlined USA's leadership in this sector. Japan was also praised for its consistent and harmonized government strategy for the high-tech sector. In comparison to USA and Japan, the report was of the opinion that the EU's had some certain disadvantages as such: "Europe has neither the Continental market of America nor the common strategy of Japan, while the great social debate has so far been confined to national bounds.". These disadvantages would be underlined many times in successor formative policy texts and would be the main discursive bases for the Commission which wished to bring the need for common action forward. The solution according the Commission lied indeed at a broad industrial strategy to be applied in co-operation between the private sectors and public sectors in member states. In having such a kind of strategy the Commission put stress on the necessity of developing a peculiar industrial strategy.<sup>52</sup>

As a matter of fact, the role to be played by the private sector in enhancing high-technologies are given importance, this is not done or uttered in a neo-liberal sense of policy discourse characterized by commitment to superiorities of market

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<sup>51</sup> As always, speculation over the forecasts as to the future capacity of EU to compete in this sector was a frequent theme that drives the spirit of the text. It was clearly stated in the report that 'the prospects for 1990, if the present trends continue, were hardly encouraging' for the European Community.

<sup>52</sup> It is said in the document, "One possible strategy consists in imitation the Americans and the Japanese. This strategy offers some short-term advantages, namely, the acquisition of information, profitability, etc. In the long term it will not permit Europe, as a mere imitator, to take its proper share in this field." (Ibid.).

economy. In the document, Commission pointed out the fact that firms exist for profit-making<sup>53</sup> and protection of the public against abuses that may emerge in the process of social adoptions of innovations is the task of public authorities. It was said, concerning to the creating a innovation-friendly social milieu;

Energetic action is therefore needed in order to introduce the new technologies into the industrial and social fabric at the rate at which the world markets are developing; equal weight must, however, be given to informing the public about such developments, **preventing abuses** and developing a policy which takes account of **human needs**. (stresses added)

Scepticism about the growing corporate power and possible ‘abuses’, and ‘human needs’ are easily noticed in these statements which distinguishes this document from the other related documents of the Commission. This characteristic of the document is supported by its emphasis on that Europe could only become a genuine “information society” if the users of the new services would be under favorable financial conditions.

These favorable conditions could emerge, according to the document, only if firms would have got sufficiently large markets. In the United States such large markets were organized by very large firms (e.g. IBM and ITT) and by Federal Government. In Europe, since no public authority could fulfil this function on a similar scale, the Community had to fill this gap by using its powers of standardization in order to create a large market.<sup>54</sup> Thus, the scope and borders of the EU’s common communications policy started to emerge beginning from the late 1970s. The Community, private sector and national governments were thought to be in co-operation. Private-sector was not envisaged to carry the burden of high investments into the infrastructure. It was said,

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<sup>53</sup> It is said, “What matters for the companies is to operate profitably in the market and to promote their own development under whatever conditions the public authorities lay down.” (Ibid.)

<sup>54</sup> Creating a favorable climate for especially the private investors is a particular section in the report. In this section it is stated that some concrete steps was taken like the creation of the Association of the European Suppliers of Information Services to take place in Luxemburg on 26.11.1979

The Community's contribution to the development of telematic systems and services must primarily be at the policy level, and not financial. Investment in product development and marketing is primarily the task of the private sector, while the major investments in telecommunications infrastructure and education will fall inevitably to national governments.(Ibid, p.45)

As a consequence, the document Com (79) can be regarded as a transitory text in which private sector was not given the role of leadership in developing high-tech sector. Instead an ambiguous public-private sector co-operation was foreseen and/or wished. However, in the following years this ambiguity would be alleviated by an emerging cooperation among EU institutions and influential large firms in information and communication sector. Although, a doubt can also be read about the corporate power in the document Com (79), in the next few years large firms and their associations started to take action to be influential over Community policies.

As the non-European technology firms became more and more influential in the world trade, the European counterparts got into searching for appropriate ways of collaborations in favor of supporting the initiative of common market. For example, Kangaroo Group, a pioneer one, was established in the European Parliament by Basil de Ferrenti (MEP) who was originally from the British leading computer company Ferranti. The main mission of the group was declared as 'supporting the steps to be taken in favor of common market'.<sup>55</sup> In 1983, another interest group among industrialists, European Round Table for Industrialists (ERT) was established. ERT is also known as 'the club of giants'. Established by the membership of seventeen leader industry firms in the countries, The ERT became a well-known lobby organization which would subsequently be influential over the Community policies.<sup>56</sup>

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<sup>55</sup> See [http://www.kangarogroup.eu/E/032\\_origin\\_D.lasso](http://www.kangarogroup.eu/E/032_origin_D.lasso) (last visit on April, 2013).

<sup>56</sup> See <http://www.ert.eu/> (Last visit on March 2013).

The establishment of these kinds of organizations was actually a part of the obvious consensus between large firms and the Commission in favor of common market and deregulatory policies. As a matter of fact, it was a Commissioner for Internal Market and Industry (DG), Etienne Davignon was one early initiator of co-operation among large firms. In 1981 he invited twelve leading European firms to a round table meeting about the future of communications industry. In Davignon's opinion the opportunity had already been missed for computer technology but information technology was still emerging and providing new opportunities to be caught up. In his call for the meeting, offering a leadership role to the private sector, he said<sup>57</sup>,

Gentlemen, If you want Europe's information industry to have a chance to survive, you must make joint efforts and put your pre-competitive projects in common. If you do this, the Commission will fund up to 50% of the costs of these research projects in the areas which you consider strategic.

Upon this call, a meeting called Big Twelve Round Table was held in the same year and its first report was presented in following few months. In those years, there was already a Task Force (Information Technologies Task Force, ITTF) which had been founded as early as 1978 by Davignon himself) (Goodman, 2006). ITTF's main mission was to justify the Commission's role in telecommunications sector. Composed of some 70 experts from the sector (notably from firms including Olivetti and Siemens, the largest firms of the sector) with temporary contracts, ITTF produced many influential documents for a common market strategy to be adopted by the Council in those years.<sup>58</sup>

The ESPRIT (European Strategic Programme on Research in Information Technology) which at the same time took place in the First Framework Programme was the first significant outcome of these attempts beginning in late

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<sup>57</sup> See [http://ec.europa.eu/information\\_society/doc/digitaleurope-historial.pdf](http://ec.europa.eu/information_society/doc/digitaleurope-historial.pdf) (last visit on June 2013)

<sup>58</sup> Com 79 (European Commission, 1979) discussed above is the first document prepared by the ITTF, indeed.



1970s. It was a four-year programme covering technology R&D projects across the Community. Initially, big members of the Community like West Germany, Britain, and France objected the ESPRIT with the concern of harming their national technology improvement projects but ESPRIT was put into practice in 1984 eventually<sup>59</sup>. In the debut of ESPRIT, it seems so that the attempts made by private firms and Commission under the Davignon's directions was decisive. The ESPRIT marked a new epoch in Community's projects with the aim of supporting advanced technologies. The institutions and programmes were formed in this period which would be key to the Union policies for ICTs.<sup>60</sup> Moreover, a new epoch in terms of deregulation policies was on the threshold.

### **3.3. The Era of Limited Liberalization in Communications Sector**

In addition to common R&D programs, some serious steps were taken to regulate information and communication sector in the first half of the 1980s. The first target was the telecommunications sector. In 1983, an official group was composed by the Commission which consisted of ministers of industry of the member states, representatives from large firms and representatives of national PTT's. This official group, SOGT (Senior Official Group of

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<sup>59</sup>The debut of the frame programmes was made with ESPRIT covering 1984-88 which is at the same time in First Frame Programme. In the following every four years, the Frame Programmes were renewed whose the seventh one will be completed at the end of 2013. The ESPRIT Programmes maintained till the 1998 and as of this year the name of the programmes for supporting information technology changed into Information Society Technologies Programmes in Fifth and Sixth Frame Programmes, and Information Communication Technologies in the Seventh and last Programme.

For a list of Frame Programs please see:

[http://ec.europa.eu/information\\_society/doc/digitaleurope-historial.pdf](http://ec.europa.eu/information_society/doc/digitaleurope-historial.pdf)

<sup>60</sup> For example, ITTF was turned into a Directorate-General (DG XII) in 1986 and became a responsible DG for information policies. DG XIII took a new title, DG Information Society (DG Info) in 1999 and then the term Media was added to the title of DG (DG Info and Media) in 2005. Prior to 2005 the DG which was directly responsible for the Media was the DG X, which is also known as DG Education and Media. However, after the Media was transferred to the DG Info and Media, the title of the DG was changed again as DG Connect (Directorate General for Communications, Networks, Content and Technology) in the July 2012.

Telecommunications), held six meetings in the years 1983 and 84 and issued a Commission Communication (Com [84] 277 – European Commission, 1984a) which was one of the first documents in the Community addressing the re-regulation related policy concerns in communication, particularly telecommunication sector. The main argument on which this document's discourse was based was that the share of telecommunication sector in the modern economies increased too much<sup>61</sup> and it was an urgent need for European countries to act in this sector not separately but together. Because the global rivals of the Community, US and Japan 'were not standing still and taking important steps further concerning the issue.' The decision of Federal Communication Commission's (FCC) in USA to end AT&T's monopoly in both network management and equipment supply was given as an example to the activities of this kind. According to report, the purpose of FCC's decision to force American telecommunication firms to enter competition for enlarging their markets abroad. As for Japan, it was underlined in the report that Japan's industrial strategy concentrated on producing quality integrated circuits crucial for computer technology and on equipment necessary for quality audio-visual material (media). In comparison to rival country's industrial strategies, the national PTTs in Europe were argued to be challenged by the risks for their public service responsibilities. It was said about national PTTs that, (Ibid, p.11)

- their investment requirements are increasing, whereas their traditional management structure and constraints arising from their public service role, or resulting from general economic policy, (tariff structure, equal access to services for users and price supervision by the authorities) are adversely affecting their revenue and limiting their capacity to plough back profits or raise loans;

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<sup>61</sup> For example, the share of telecommunication in total electronics sector in the countries like France and Italy was above 10%. It was also estimated that total effect of telecommunications in Gross Domestic Product in the whole community was about 2%. Besides, telecommunications indirect effect on the overall economy with its importance in the organization of businesses was also underlined. Besides, it was argued that telecommunications 'social' effect was argued to be helpful in alleviating the side effects of ongoing economic crises in terms of unemployment and competitiveness (European Commission, 1984a:3).

- they have to take greater commercial and technological risks. Since we are dealing with new products, the state of the market and the receptiveness of demand are largely unknown factors when decisions are taken to launch a product; such decisions have lead times of between two and five years.

As a consequence, Commission, in this Communication, made a call to the Council to take action for building a community-wide telecommunication market. To complete this action, Commission recommended Council to take further steps to harmonize member countries to reach common technological standards for telecommunication, enlarging market for terminal equipment and collaborations for developing advanced technologies. In the document which was prepared in close connection with big corporations of electronics and telecommunications sector, a commitment in free market mechanisms and common market could easily be observed. It was said (Ibid., p. 15):

Furthermore, producers will benefit from a larger internal market since inherent economies of scale will then permit them to distribute their products both within the Community's internal market and abroad.

In turn, the dynamism of this market will stimulate the demand for new services, which in itself is likely to encourage operators to transform their networks more rapidly, thereby creating a snowball effect.

Despite this belief in the affectivity of market mechanisms in regulating and innovating telecommunications sector, privatisation of the national PTTs were not mentioned in the document as a complementing measure. Even so, this document can be considered as a cornerstone towards the deregulation for entire European communications sector.

Another key document, COM (87) 290 which is also known as 1987 Green Document (European Commission, 1987) owes much to COM (84) 277 (European Commission, 1984a). 1987 Green Paper is a genuine cornerstone document that paved the way for broad liberalisation of European communication sector. Recommendations of this Green Paper have been accepted by Council and

by member states to a large extent so that the importance of national PTTs decreased in the following years and monopolies over telecommunications in Europe were disintegrated (Humphreys: 2005).

The deregulation (or re-regulation) in telecommunications sector was justified by 1987 Green Paper as such: First, it was argued that “telecommunication is the most critical ‘nervous system’ of modern societies”; secondly, ‘that is why telecommunication requires favorable conditions to improve’; thirdly, ‘yet, traditional structure of organization of telecommunication sector did not permit new services to flourish’; fourthly and lastly, ‘new regulations in the sector were needed in order to reach an open and dynamic market for telecommunication’. It was also underlined in the document that ‘a competitive environment for telecommunication was the proper milieu in which new services could flourish’.

To sum, it was clearly stated in the document that ‘the traditional view that telecommunication services are public services to be provided by public monopolies should have been regarded as problems to be resolved’. It was recommended that network services and terminal/equipment markets for telecommunication sector were “gradually but completely” liberalised. It was pointed out in the document that such an intention for liberalisation had already been existing in some member states which in turn urged some critical changes in both the status of national PTTs and of CEPT as the international organization of PTTs.<sup>62</sup> What was specifically suggested for the national PTTs in the 1987 Green Paper was to separate functions of ‘regulation’ and ‘market participation’ of PTTs. It was aimed thereby to avoid PTTs power originating from both being regulator and market actor at the same time.<sup>63</sup>

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<sup>62</sup>In the document, it was mentioned that Britain had recently made some modifications in telecommunication sector and licensed some value-added services in the sector, as there were similar broad amendments in the national telecommunication policies in France, Germany, Belgium, Holland, Spain, Portugal and Italy.

<sup>63</sup>There was already a decision made by European Commission for case that took place in Britain as early as 1982 which supported this recommendation of 1987 Green Paper. A private telecommunication firm, Telespeed Services Ltd., did make a complaint about the BT (British

As a matter of fact, the decision taken by Commission about the BT's (British Telecom) status of monopoly was in favor of 'deregulation' policies that neo-liberal Thatcher government wanted to activate for communication sector in the Britain. What Thatcher government did really seek for was putting similar policies with the American liberalisation policies in order to create a 'competitive' market for telecommunication. Even so, Commission's decision was taken to European Court of Justice but the Court of Justice supported the Commission leaving BT at a fragile position vis a vis to private firms in the telecommunication sector.<sup>64</sup>

In parallel with the recommendations made in the 1987 Green Paper which was largely accepted by Council, Commission issued a Directive for the liberalisation of terminal/equipment market in 1988. Although some member states like France, Italy and Germany brought this Directive to the Court of Justice, the Court endorsed the Commission once again<sup>65</sup> (Michalis, 2007). Commission's operations seeking for new ways to limit national PTTs and protective policies did not remain limited to these kinds of Directives and decisions. Commission developed some projects as well in order to curb the power of 'national sovereignty' at institutional level. ETSI (European Telecommunications Standards Institute) was established in 1988 in accordance with this intention and CEPT's

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Telecom) claiming that 'BT avoided the operations of private message communication agencies using its public monopoly power'. Upon this complaint, Commission reached a decision in favor of Telespeed Services Ltd arguing that BT 'was limiting both development of a new market and use of a new technology'.

Please see, 82/861/EEC: Commission Decision of 10 December 1982 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.877 - British Telecommunications)

Website:<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31982D0861:EN:NOT> (last visit on April 2013)

<sup>64</sup> Please see, European Court of Justice, Case 41/83

Website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1985:096:0004:0005:EN:PDF> (last visit on April 2013)

<sup>65</sup> Please see. Commission Directive 88/301/EEC ve European Court of Justice Case C-202/88

Website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1985:096:0004:0005:EN:PDF> (last visit on April 2013)

authority as a club of national PTTs over the technological standards was given to newly established ETSI.

As a matter of fact, the shift in policy paradigm in the European Community did not only bring about outcomes for telecommunication industry which was related only infrastructural concerns, but also for media industry, particularly television. Unlike the telecommunications sector, technological change for electronic broadcasting had also cultural implications responded with various political actions by the EU authorities.

### **3.4. Common Media Policies: Conflict Between Industrial and Cultural Concerns**

The interest of Community authorities for broadcasting policy increased in parallel with the radical change in broadcasting technology as of late 1970s. Initially, a project came up in the Parliament for having a Pan-European television channel to be transmitted over communication satellites. The aim of the project was manifested as helping to construct a 'European identity' and to remedy the problem of 'the democratic deficit'. It was thought that the distance between the European institutions and people can be shortened through a television channel to represent the entire Community. However, the goal of creating a 'European identity' was soon challenged by the goal of protecting 'cultural diversity' in the Community and by perceived (commercial) needs of media industry and electronics sector (Michalis, 2007).

As a matter of fact, what was behind the idea of having a Pan-European television channel was not only for political reasons but also stemmed from a mix of economic and cultural concerns about USA's increasing dominance over satellite communication. On the one hand the Commission and the Parliament were then thinking about adopting community-wide protective industrial policies for satellite

communication. However, Community authorities were aware of the fact that they had to have support from European people (whose support became very important as of 1979 when the first direct elections for the Parliament membership were held) to be influential over member states to adopt a broad industrial policy. And Community authorities did not think that they would be able to get the necessary support from the established broadcasters to connect Community to people. Therefore, a Pan-European television channel over communication satellites was offered to be established by Commission and the Parliament (Theiler, 1999)<sup>66</sup>. On the other hand, the dominance over technology has some implications for USA's cultural control over European people. For example, USA-based international news channel CNN (Cable News Network) became a influential global news channel shortly after its establishment and some American television series like Dallas gathered unprecedented audience attention across the Europe. These facts did naturally cause concerns in European governments about international news flow and cultural content consumed by European people.

Besides, the technology advancements were not standing still. The concerns about international industrial challenge were escalated by the Japanese attack in advanced television technologies. At a conference of International Telecommunication Union (ITU) held in 1986, Japan offered its own HDTV (High Definition Television) standard to be set as global standard.<sup>67</sup> This meant a

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<sup>66</sup> In those documents, the social effects of media technologies were exaggerated and technological advancements were 'blessed'. For example, in a document prepared by the Commission in this term, it was said 'satellite broadcasting was a powerful combining force or maybe a single way for European people to understand each other, giving people a strong sense of being a part of common culture and society.' (European Commission, 1983).

<sup>67</sup>As a response to the Japanese HDTV Standart (MUSE), Europe developed its own standard in 1986 as well (MAC) thanks to lobby activities carried out electronics firms Thomson (France) and Philips (Holland). Worth to mention, MAC standard was developed in a project operated in the scope of Eureka R&D program. However, both standards (MUSE and MAC) were based on analog HDTV technology and as the analog technology started to be replaced with digital television in the next few years neither standards were accepted as world standard. In the digital era, USA, Japan and Europe would adopt their own digital television standards to protect their markets. Please see for further discussion Galperin, 2004.

growing pressure over the European television electronics which was then already at a weaker position vis a vis to their American and Japanese counterparts.

To respond all these challenges, an initiative was launched under the management of European Broadcasting Union (EBU) to establish a Pan-European television channel. Eurikon and Europa were the names of first two experimental attempts to establish such a channel. These channels were started with the financial and technical supports of consortiums by EBU members which were national public service broadcasters. Nevertheless, due to some certain reasons such as lack of budget and different languages and cultural identities of the target audience (European people), these experimental channels failed. However, the implicit reason behind these failures was indeed stemming from the concerns about financial sources of these channels in a commercial media.<sup>68</sup> As a result, whatever the initial purpose of EU authorities to seek for common media policies, concerns about industrial competitiveness and financial resources was brought into front.

In parallel with these concerns for the economy of communication industry, the first significant indicator of a paradigm shift for broadcasting policy was put into practice by EU authorities with the issuance of ‘1984 Green Paper on Common Market for Broadcasting’ (European Commission, 1984b).<sup>69</sup> It was prepared by

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<sup>68</sup>Eurikon TV made its debut in 1982 and endured only five weeks. The system was based on a closed-circuit system in which a group of audience was invited to watch the television channels. The television was not thought to be the European Parliament’s television channels. Rather, it was planned to be a channel for general television audience. Program content composed of the programs provided by public broadcasters from Austria, Holland, Germany, Italy and Britain. As for Europa TV, it made its debut in 1985 with the support of public broadcasters from Germany, Holland, Portugal, Italy and Ireland. Yet in a year, its operations were shut down. It was shown as a reason that it was not lucrative to make a broadcasting to be common for a target audience composing of people from different cultural and linguistic backgrounds. Indeed, this project whose three-year budget was 35 million Swiss Franc was already spent in less than a year (Theiler, 1999). That was to say, in an environment in which public service broadcasting was questioned especially in terms of its financial sources, there was no favorable conditions available for Europa TV which apparently would not be able to attract advertisers.

<sup>69</sup>Full title of the document is “Televison Without Frontiers: Green Paper on the Establishment of the Common Market for Broadcasting, Especially by Satellite and Cable” (COM [84] 300). Before this Green Paper, Commission issued another Communication suggesting that it was a necessity to create common television market in the Community. Full title of the document is “Realities and tendencies in European Television: perspectives and options” (COM (83) 229 final).



the EC upon the call of the Parliament, actually. The Parliament had called upon the Commission “to formulate rules to ensure that public broadcasting monopolies do not seek to *prevent private broadcasters and programme makers* from fully contributing to the future developments...”<sup>70</sup> (Ibid., p. 274). Parliament’s call had actually been based on two previous Resolutions on radio and television broadcasting in the European Community. In the first one of them, Parliament saw ‘an urgent necessity’ to outline common rules of radio and television broadcasting with a special focus on ‘protecting young people and establishing a code of practice for advertising at Community Level’ (OJ No C 87 of 5 April 1982. p. 110). In the other Resolution (OJ No C 117, 30.04.1984), when it comes to concerns about the threat to cultural diversity posed by the commercialization of ‘new media’, EP manifested its position by stating that Parliament was aware of “that the new technologies require a reasonable degree of commercial support through advertising,” and Parliament believed “that a decision must be taken at Community level regarding the limits applicable to the use of advertising by public and private television companies, so that all television companies operate on an equal footing”.

After the goals for a policy were identified by the Parliament as such, the main task for the Commission was to build a new policy discourse to legitimize the future media regulations. 1984 Green Paper provides a great opportunity to see the main themes and scope of this emerging policy discourse, indeed. First theme underlined in the document was that ‘*broadcasting was both an economic and cultural phenomenon*’ whose infrastructure was undergoing a radical transformation. It was emphasized that that as satellite communication was overcoming the national (or spatial) limitations over the traditional television transmission technology, the cable television made the channel scarcity in the

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<sup>70</sup>Stress added. Indeed, EP wanted EC to develop a new policy discourse to facilitate the entrance of private investment into the broadcasting media environment. The solution presented by EC would basically and covertly be the commercialization whole media environment.

analog era an obsolete phenomenon.<sup>71</sup> It was argued that these technologies would enrich the media environment in Europe. However, it was also claimed that traditional financial resources for broadcasting were insufficient to invest in new technologies. It was therefore suggested that to encourage private investors and established broadcasters to invest in new technologies, through new media regulations to allow subscriber-based broadcasting (Pay-TVs) and advertising applications.<sup>72</sup>

Besides, the enrichment of media services was argued to have positive implications over other sectors of the economy. Above all, it was argued, advertising would allow all the firms to publicize their goods and services in a more effective way. Besides, the diffusion of cable and satellite broadcasting would give a new dynamism to electronics sector. It was said in the Green Paper that,

Among the broadcasting organizations too, there is the view that advertising will be the major source of finance for television in the future. This is an assessment also shared by representatives of public broadcasting organizations.

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Advertisers are demanding that advertising time be extended according to free-market principles, since they reckon that advertising boosts economic growth. This conviction is reflected in the fact that their overall spending on advertising is increasing at an average annual rate of 5%-10%.

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<sup>71</sup> In UK 14% of the television set owners received television transmission via cable while this rate was 90% in Luxemburg and 26% in Ireland. As for France, there were 400.000 cable television subscribers receiving foreign programmes as well. In Denmark and Germany, a substantial portions of the whole television households were given service by Community Antenna Television networks (community or master aerials), though no cable television system in the current sense which based on private cable companies was in experimental phase (European Commission, 1984b: 19).

<sup>72</sup> It was also indicated in the document that since foreign (notably US-based channels) programmes were transmitted to European television households via satellite communication, the advertising seen on these foreign content was already consumed by European viewers, anyway. It implied that there was no need to keep ban on financing through advertising.

In fact, there was a serious obstacle before the Commission's suggestion for policy change. Such 'relaxed' advertising rules of the kind that Commission wished to see was only being applied by Luxembourg and a few States of the Federal Germany. Luxembourg was indeed the only and the ideal example for the Commission. RTL (Radio-Tele Luxembourg)<sup>73</sup> was then being financed primarily by advertising. However, broadcasting limit was theoretically subject to the limits determined by the Government. Ironically, for the Government did not set any obligation as to the limits, RTL exercised the self-regulatory practice and set its own limits as to the government based on profit rationale. According to RTL's own accounts as to profit calculations, advertising must not have amounted to more than 20% of daily broadcasting time. Furthermore, it was not clear on what principles the advertisement and programmes (editorial content) would be separated in Luxembourg's legislation. For the rest of the Europe, however, there were no such 'relaxed' rules. For most of other countries, advertising percentage to total broadcast time was even under 10% or so. In Ireland, that was 10%, while it was 7% for Greece and 5% for Italy. Most of the facts were like 20 minutes each working day for television in German; 24 minutes daily in France; seven hours per week for radio and three hours per week for televisions in Netherlands. As for the Belgium and Denmark, advertising was completely forbidden.

Yet, instead of recognizing the fact that European countries should have been categorized into two distinct groups as those who had allowed advertising with almost no limitation (which was only valid in Luxemburg and a few states in Germany) and those who allowed advertising with very strict rules or totally banned it, the commission preferred to categorize countries into three groups as such: countries *allowing* advertising according to a 'stated percentage of total broadcasting time'; countries *allowing* advertising according to 'a stated length of time per day, per hour or per week'; countries allowing 'with no limitation'.

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<sup>73</sup> The Compagnie Luxembourgeoise de Telediffusion which was popularly called RTL, was a monopoly in broadcasting, but was also a private independent company whose shareholders had a special agreement with the government (McQuail and Siune, 1986).

Those countries in which advertising were completely banned was simply ignored in the document.

Indeed, 'allowing advertising' was tried to be shown as a common denominator for the European countries and the problem of advertising was tried to be reduced to a problem of 'quantity of time to be allocated to advertising'. However, rather than *quantitative* distinction between countries based on duration allocated to advertising, there was a *qualitative* distinction as those countries with almost no limitation over advertising and those which totally banned advertising or allowed it with strict regulations. In addition, some other issues like concerns about 'education' and 'culture' were also integrated into the industrial and commercial priorities. For example, it was stated in the document concerning to the expectations from 'new media technologies',

- the range of sources for information about the other Member States of the Community and their peoples is thereby dramatically increased,
- access to programmes from other Member States provides a common background of information which offers far better chances of mutual understanding, trust and rapprochement,
- with more information available, different sources can be compared; this will sharpen people's judgment and help them to make a more objective assessment of the situation in the Member States and hence in the Community (Ibid., 29).

As is seen, from a technological-determinist perspective, it was expected that the diffusion of new media to increase audio-visual program exchange among member countries would increase information of the people about each other and 'this would sharpen their judgment' in assessing the situation in Member States, automatically. Thereby a sense of 'community' or 'European identity' was assumed to appear but such an assumption did rely on a wishful thinking based on optimistic pro-technology premises.

Besides some socio-cultural concerns about the relationship between advanced media infrastructure and societies were tried to be denied with optimistic and shallow counter-arguments expressed in the document. The widespread adoption of new technologies (cable and satellite) was regarded in Green Paper as “Media Revolution” that would not have negative implications over the viewers. For example, it was said in the document that there was a concern that advanced communication technologies might lead to excessive consumption of television content causing some psychological problems like ‘personality disorders’. Against this concern, Commission cited findings of some researches conducted in the some member countries showing that despite the increase in the amount of channels, the average viewing time in member countries remained around two hours.<sup>74</sup> In addition to this, pay-televisions (subscriber-based television channels) were also argued to increase the quality of broadcasting in general. According to this claim of Commission, those private broadcasters who had to monitor the preferences of the audience (‘consumers’ in this case), would prepare more quality programmes and would have to meet the cultural needs of specific audience groups like young audience. Thus, it was claimed that the programs prepared on the principle of lowest common denominator programming<sup>75</sup> which was argued to be peculiar to the era of public monopoly broadcasters would decline.

As a matter of fact when it comes to the protection of local audio-visual material producers (programme and film producers), one actual reason for why Commission tried to connect the diffusion of new media and social integration in the Community is better understood. Because Commission also wanted to create a common market for broadcasting in the Community, improving common market

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<sup>74</sup> Today, we know that these kind of studies conducted at a verly years of media proliferation were misleading. Because, current average viewing time in almost all European countries is as high as four hours whereas in some countries like Turkey this may go up to six hours.

<sup>75</sup> The concepts of ‘lowest common denomitor’ here is used pejoratively to indicate that public monopoly broadcasters target the majority of people of a country taking the lowest common ability of perception and neglecting different audience groups with specific interests in a given society.

in which local producers could make profit and be competitive vis a vis to USA-based producers. It was said,

However, most of the films shown come from one single non-member country, the USA. As a result there is already certain uniformity in the range of films screened on television in the Community. Programmes such as 'Dallas', are carried by almost every television channel in the Member States. The creation of a common market for television production is thus one essential step if the dominance of the big American media corporations is to be counterbalanced. This is yet another area where the establishment of a Community-wide market will allow European firms to improve their competitiveness (Ibid., p. 29).

As is seen the fact that the main focus of the Green Paper (European Commission, 1984b) was on increasing competitiveness of European firms in media market by creating a common market for broadcasting thereby reducing the power of USA-based firms in this area.

To sum, what Commission simply recommended in the Green Paper from the EU authorities (Parliament and Council) and from member states was to adopt a common legislation which would avoid public monopolies to limit the operations of private broadcasters in the sector; to relax rules on advertising to create financial resource for the sector (particularly a %20 advertising duration is seen favorable); and to adopt the principle of 'country of origin'<sup>76</sup> which was 'basically not avoiding television transmissions coming from another member state', and which was seen as vital to construct a common market for broadcasting in Europe.

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<sup>76</sup> This concept has never been directly referenced in the founding treaties of the Union, however it has been deemed as being among the secondary regulations since 1986 when it was mentioned Commission's 'White Paper on Competing the Internal Market' which was adopted before the European Single Act. It was first implemented with the regulations as to fiscal issue. Television Without Frontiers Directive then become one of the directives in which 'country of origin principle' was a central regulation (European Commission, 1989 - 89/552/EEC). It was also central to the E-commerce directive of 2000 (European Commission, 2000 - 2000/31/EC). The law to be applied for a trade activity in relation to a good or service is determined by the country from which that good or service originates. This regulation gives advantage to those countries which have more liberal and free internal market vis a vis to those countries with stricter rules.

Whereas, these above recommendations comprised of the **primary or main issues** of the policy initiative, some **secondary or side issues** were also added to general discourse of the document. By secondary or side issues, we actually mean the non-commercial issues on which all vested-interests in the policy formation process could more or less agree. Actually, these were consisting of politically and socially sensitive issues ranging from advertising tobacco products or pornography issues to revealing State secrets, right of response and so on, which might need to be harmonized at Community-level if a common market in broadcasting sector was to be build. Relatedly, Commission was quite interested in the concept of ‘protection of minors’. By ‘minors’, Commission meant the children and young people who would be protected against harmful content. After stating ‘that national laws to protect minors in the Member States of the Community was primarily concerned with the dissemination of harmful books and periodicals, the projection of films and the access of young people to public bars and places of entertainment’, it was advised that such legal measures focusing on preventing obscenity and representations of violence should have been expanded to radio and television broadcasting.<sup>77</sup>

However, despite these socially sensitive issues were added to the policy recommendations, the obvious economic bias in the Green Paper caused an immediate division among those groups who would be affected in a possible legal action. For example, at an examination on Green Paper conducted by Select Committee on European Communities for the House of Lords of UK (House of Lords, 1985)<sup>78</sup> one year after its publication, it was observed that there was

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<sup>77</sup>It was actually a concern of Parliament which had stated at a previous resolution. The Parliament “considers that outline rules should be drawn up on European radio and television broadcasting, inter alia with a view to protecting young people...”(European Parliament, point 7 of the Resolution of 12 March 1983 on radio and television broadcasting in the European Community, OJ No C 87 of 5 April 1982, p. 110), cited in COM 84, p. 291.

<sup>78</sup>On 17th December 1985, a select committee whose main aim was to inform House of Lords of UK was appointed to consider Green Paper 1984 (Com 84, 300 final) and held public sessions in which many interested parties were invited to present their oral and written contributions. In addition to the officials from European Commission, representatives of British Broadcasting Corporation, National Consumer Council of UK and a Member of Parliament, many industry

serious objections to the Commission from various public service organizations like consumer protection organizations and EBU (European Broadcasting Union).

What Select Committee primarily inferred from the Green Paper was that broadcasting was deemed primarily “an economic activity” by the Commission and then existing rules on advertising were seen as an obstacle to the free flow of television broadcasts. Another issue underlined by the Select Committee report was that previous resolutions of the European Parliament that had triggered the process of Commissions Green Paper of 1984 was “political rather than economic”. It was underlined that broadcasting had generally been treated in Europe as a cultural matter and hence, Commission action for broadcasting was a new and controversial departure from the past. It was said,

It was argued that broadcasting “is of its nature different from cross-frontier traffic in pig-meat or banking”. Commission admits that these criticisms are “repeated in very second letter and memorandum we get”. And although in evidence the Commission conceded that “broadcasting is both an economic and a cultural phenomenon”, the Green Paper does not give weight equally to both aspects. The difference between the Commission’s critics and the Commission may be summed up as the difference between a traditional view that information is largely a social-cultural resource and a newer-market-oriented view that it is just another commodity to be bought and sold. (Ibid., p.15)

This “newer-market-oriented view” was not only criticized by the Select Committee, but also by some important invitees to the sessions. EBU (European Broadcasting Union), for example, was one the witnesses of the Committee which endorsed the view that the Green Paper was ‘economy biased’. EBU’s views were supported by some other important invitees of the Committee such as NCC (National Consumer Council of Britain) and BBC (British Broadcasting Corporation). NCC emphasized that advertising and subscriber-based

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organizations such as Advertising Association, Cable Television Association attended at these sessions (House of Lords and Select Committee on the European Communities, 1985).



broadcasting did not mean that private television would automatically produce more quality television content. Underlining another fact that commercialization of television market would start a competition among channels for the same audience time, NCC stated that, “Competition between channels does not necessarily lead to a diversity of programme types, but may lead ‘more of the same’, creating a pressure for low cost programming”. That is to say, the fact was that the Commission was undermining its own goal of cultural diversity and preservation by opening the media environment for full free market competition, indeed. As for BBC, the Corporation questioned, above all, if the Treaty of Rome could be applied for broadcasting services and concluded that it could not be. Besides, BBC stated that Commission’s approach is a kind of “Americanization”<sup>79</sup> of broadcasting, and broadcasting was a public service which should not have been carried out for money. It was said in the BBC’s statements,

Whilst “remuneration” is an essential prerequisite to the making of programmes it is to the purpose for which the programmes are made. The BBC needs money to make programmes but does not make programmes to make money.

....

European culture has two characteristics. The first is based on the diversity of national characteristics and expression within the continent and the second is based on a sense of shared values and common forms of cultural life. It is the belief of the BBC that the experience of public service broadcasting within Europe, and perhaps particularly in the United Kingdom, has been beneficial in maintaining and strengthening national culture which lies at the heart of the distinctiveness of the European, as opposed say to the American, tradition.

In contrast to these critics, some other invitees such as Advertising Association (AA) and Cable Television Association (CTA) did strongly endorse the position

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<sup>79</sup> ‘Americanization’ of Europe was indeed one of the frequently mentioned concerns in the European Parliament at that years. Behind the concerns was the fact that import of the American television content (audio-visual material) industry to Europe reached as high as 2,5 billion US Dollar and reached almost half of the trade surplus in whole media sector.

taken by the Commission. For example, Advertising Association (AA) of the UK underlined ‘the importance of Commission’s approach of ‘pragmatic nature’ and stated that AA was in favor of the development of ‘freedom of expression’. It was said,

The freedom of expression in the context of broadcasting, especially cross-frontier broadcasting, is a matter of utmost importance to the Community and the free world, and the rapid advances in technology add dimensions of uncertainty. We therefore strongly support the pragmatic nature of the Commission’s approach to the subject....We are in no doubt that we and our members, the advertising industry as a whole, and indeed people generally, all have a strong desire for the freedom of expression regardless of frontiers.”

CTA supported the comments of AA with similar remarks. Besides, these invitees wanted Commission to adopt self-regulatory mechanisms especially for rules of advertising instead of a common policy at community-wide.

In short, what was basically suggested by the Commission was a liberalisation in the broadcasting market of the Community (Orf, 1990). This recommendation was welcomed by the other EU authorities and a directive -Television Without Frontiers Directive (TVWFD) (89/552/EEC) – was adopted in 1989. This directive was expected to be applied by member countries by 1992 and would be in effect till a new directive adopted in 2007. The TVWF Directive’s text composed of recitals<sup>80</sup> (composed of 32 paragraphs), seven chapters<sup>81</sup> and 27 articles. One of primary purposes in adoption of this directive was to built a common market for broadcasting with minimum set of rules and to protect internal audio-visual production while building a common market. Another

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<sup>80</sup> A recital in law terms is a concise text that sets out the reasons for the provisions of an act. It generally starts with “Whereas...”. After recitals, chapters and articles of an act come up.

<sup>81</sup> To summarize the subjects of the chapters, Chapter 1 involves ‘definitions’, Chapter 2 was about ‘general provisions’; Chapter 3 was of ‘promotion of distribution and production of television programmes; Chapter 4 was about ‘television advertising and sponsorship’; Chapter 5 was about ‘protection of minors’; Chapter 6 regulated ‘right of reply’; and Chapter 7 included ‘final provisions’.

primary purpose was to adopt ‘relaxed’ rules and principles concerning to the permission of advertising in member countries.

There are also secondary issues in the directive like ‘protection of minors’ against harmful effects of broadcasting content including, for example, tobacco products, and ‘right of reply’ to be used in case any legal or natural person’s interests were to be damaged during the transmission of program. In parallel with their importance, secondary issues were allocated only two articles (articles 22 and 23) according to which member states were kept responsible to lay down specific rules for ‘protection of minors’ and ‘right of reply’. But it was stated principally that the contents with harmful effects on ‘minors’ and the content damaging a person’s interests transmitting incorrect information had to be punished.

When it comes to building a common market for broadcasting, it was primarily defended in the recitals that free flow of broadcasting services within the Community was an ‘obligation under the Treaty and abolition of restrictions on the free flow of broadcasting services had to go hand in hand with coordination of the applicable laws across the Community’. It was also underlined that coordination of the applicable laws would be based on two regulations: First, the directive would lay down the *minimum rules* to guarantee freedom of transmission in broadcasting; secondly, in accordance with the necessities of common market, member countries had to obey the *country of origin principle*.<sup>82</sup> In accordance with these recitals, ‘country of origin principle’ was adopted in chapter 2 article 2.

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<sup>82</sup> This principal is defined in recitals as such: “Whereas it is necessary, in the common market, that all broadcasts emanating from and intended for reception within the Community and in particular those intended for reception in another Member State, should respect the law of the originating Member State applicable to broadcasts intended for reception by the public in that Member State and the provisions of this Directive”. What is very important in this principal is the fact that since the Directive laid down only ‘minimum rules, the countries with less strict rules on broadcasting content or advertising,’ would be advantageous in a free market for broadcasting than those countries with stricter rules on broadcasting content. Because, no matter how strict the regulation was on the content in a member country, the competition for the audience time would lead a relaxation on the rules for content in order to provide a chance of the local broadcasters to compete with foreign broadcasts. For the full text of the directive please see: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1989:298:0023:0030:EN:PDF> (last visit on June, 2013).

Besides, it was also underlined in the recitals that ‘European audiovisual sector have had a positive effects over production in other communication industries’. Therefore, it was argued to be important to promote local audiovisual markets in member states. For this purpose, two new concepts ‘European works’ and ‘independent production’ were offered in the directive. These concepts were used to determine minimum duration or portion of local broadcasting content in total daily programming. This regulation was dealt with at chapter 3 at articles 4 and 5. In those articles it was said, ‘a majority proportion of European broadcasters’ daily transmission time would be allocated to European works’ which meant ‘works originating from Member States of the Community’. As for the independent productions, it was said ‘at least 10% of broadcasters’ transmission time would be allocated to independent producers.’<sup>83</sup> These regulations were actually aiming at putting ‘a quota application’ in practice to protect internal market.<sup>84</sup>

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<sup>83</sup>By distinguishing the concept of ‘independent producers’ from ‘European works’, Commission wanted to protect those local production companies for audio-visual material which were not a part or affiliation of professional broadcasting companies. Thus, it was aimed at protecting not only European local media market as a whole, but also protecting small producers against broadcaster stations.

<sup>84</sup>The ‘quota application’ was aiming at protecting European internal market from foreign companies particularly US-based media firms. Besides, Community authorities put a support programme for audiovisual industry in 1991 (MEDIA Programme) in parallel with the same goal which was to balance US dominance over European markets. However, considering the past accomplishments of this support programme, it can be claimed that it has broadly failed in achieving its main goal (Henning and Alpar, 2005).

In response to this protective policy adopted by the Community in the media sector, US reacted very fiercely. US instantly protested and challenged the legality of quota application aiming at promoting European works as *economic protectionism* under the General Agreement on Tariffs and Trade (GATT). From the US perspective, there was strong ground for challenging such a European regulation on program quotas. Because, the European Community was then a very profitable and growing media market for United States entertainment sector. As early as 1989, the amount paid to the US programme suppliers by European television stations was up to one billion dollars (Timothy, 1991).

As a response to the US challenge, European Community advocated that television broadcasting was a ‘service’, not a ‘good’, and therefore fell outside the GATT. In the Uruguay Round negotiations under the scope of GATS (General Agreement on Trade in Services) (1986-94), whereas Europe agreed that there had to be liberalisation in international trade in regards to ‘services’, ‘cultural services’ were argued to be excluded from the scope GATS. This objection of

However, when it comes to the relaxation of the rules over advertising, it was observed that major part of directive text was allocated to regulation of advertising.<sup>85</sup> Above all whole Chapter 5 entitled “Television advertising and sponsorship” consisted of 11 articles. First thing to note about advertising is that advertising and sponsorship<sup>86</sup> was permitted in all member states<sup>87</sup>. Broadcasters were allowed to allocate up to 20% of their daily transmission time to advertisements in parallel with the previous applications in Luxembourg.<sup>88</sup>

Yet, it must be underlined that directive permitted advertising on a very strict principle. It was stated that ‘advertisements shall be inserted between programmes or during programmes taking *natural breaks* in the programmes into the account.’<sup>89</sup> It is easily inferred from the text that advertising was only permitted if it was *clearly separable from the editorial content* which meant advertising could only take place out of or intervals between the transmissions of editorial content.

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Europe resulted in that no agreement was reached about ‘audio-visual’ products in the negotiations.

<sup>85</sup> Of all articles (27 articles) of the text, 15 articles are directly or indirectly related to rules of advertising.

<sup>86</sup> In the directive, advertising and sponsorship were defined as such: Advertising was “any form of announcement broadcast in return for payment or for similar consideration by a public or private undertaking... to promote the supply of goods and services...”. As for sponsorship, it was defined as ‘any contribution made by a public or private undertaking not engaged in broadcasting activities in return to have a view of its name, its trade mark, its image and the like on the screen.’

<sup>87</sup> However, the advertising of tobacco products and advertising in news and current affairs programmes, documentaries and religious programmes and children’s programmes were forbidden. Alcohol beverages and medicinal products were allowed to be advertised but advertisements of these kind would be limited with very strict regulations.

<sup>88</sup> It was actually stated that ‘the amount of advertising should not exceed 15% of daily time’ but it was added that ‘this percentage could be increased to 20% to include forms of advertisements such as direct offers to the public for sale, purchase or rental of products.’ Besides it was stated that the amount of spot advertising within a given one-hour period should not exceed 20% (12 minutes in 1 hour). By spot advertising here, it was meant that 30-seconds traditional advertising placed at intervals between programs.

<sup>89</sup> By ‘natural breaks’ here what is meant that there can be a natural break in the scenario of television series or in the flow of a program which would not have harmful effect on the viewing experience of audience.

Otherwise, it was stated that these kinds of advertisements would be deemed ‘surreptitious advertising’ which were ‘strictly forbidden’.

On these principals put by the directive, European media-market was regulated for over 15 years. During this period, TVWF Directive was revised in 1997 once, though it was not a broad revision. This new Directive is also named by some scholars as second TVWF (Mercado-Kierkegaard, 2006: 464). However, the scope of the change was limited to updating some rules in accordance with the new conditions of digital media. Besides, the term ‘teleshopping’ was introduced into the directive. Unsurprisingly, all the main elements of this revision were primarily targeting to expand the commercial options of the media operators.<sup>90</sup>

However, revision of 1997 had a specific importance since for the first time, (the) concept of “IS” was introduced in the media policy of European Union. It was said in the recital of 1997’s text,

Whereas the Commission, in its communication of 19 July 1994 entitled ‘Europe’s way to go the information society: an action plan’, underlined the importance of a regulatory framework applying to the content of audiovisual services which would help to safeguard the free movement of such services in the Community and be responsive to the opportunities for growth in his sector opened up by new technologies...

The main importance of that a reference to the strategic goal of building a “(European) Information Society” was added to the media directive lies in the fact that such a reference was made while “IS policies” was becoming an umbrella term for a shift towards a ‘full liberalisation’ of the communications markets. That

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<sup>90</sup> Three important revisions made in 1997 were as such:

- the advertising duration was extended 20% maximum within a given daily transmission time;
- the duration of teleshopping programs broadcasted by a generalist channel had to be of a minimum duration of 15 min;
- the application of country of origin principle was clarified and the Member State responsible for television channels was decided to be determined by the location of the head office

is not to say, the place given to the ‘cultural protection and diversity’ in the discourse of media regulation would decline but this time the role to be played by (the) concept of “IS” in communication policies in terms of balancing *infrastructural or economic* and *content-related* concerns would be decisive.

## **PART II -“INFORMATION SOCIETY POLICIES”: CONVERGENCE OF TELECOMMUNICATION POLICY WITH “NEW” MEDIA POLICY**

According to Garnham (1997) EU’s ‘Information Society Project’ can be regarded as a latest phase in ongoing efforts to develop a common telecommunication policy. However, the employment of (the) concept of “IS” in the policy strategy whose manifested aim was a societal transformation differed from previous policies that it adopted a new strategy to expand the scope of policies from infrastructural and industrial concerns to societal and culture-related issues. Besides, ongoing liberalisation in communications sector was taken to a new phase as a result of this strategy based on (the) concept of “IS”: ‘full liberalisation’ (Michalis, 2007).

The second part of the thesis is about the integration between “Information Society Policy” as an umbrella term for ‘full liberalization’ in telecommunication sector and media policies. The first chapter deals with the main policy events and emerging discourse about the “Information Society” in the EU between 1993 and 1997 and the expansion ‘Information Society Project’ towards “new” media regulation. In the second chapter, major policy events of the formation process of new media directive are dealt with. In the last chapter, main discourses and discourse coalitions (vested-interests) are identified.



## CHAPTER I - Faith In The Free Market And The Construction Of “European Information Society”

A change in the axis of the ongoing conflict between the European Commission and national PTTs became salient beginning from 1990s. An important development was the emergence of the new conditions for trade liberalisation, in especially ICTs sector, as a result of Uruguay Round Negotiations which ended in 1994<sup>91</sup>. Another factor was the USA’s governmental project (NII) which was launched in 1993 for promoting the use of ICTs by the American people. Very soon after the adoption of NII, the document which was known as Delors White Paper (European Commission, 1993)<sup>92</sup> was prepared on the call of Council meeting held in early months of 1993.<sup>93</sup> In this white paper, it was emphasized that the evolution of Europe towards an “Information Society” was crucial. Because as explained by the White Paper, “The one and only reason” behind such a policy document was *unemployment*. According to the information given by the document, the economic growth in Europe declined from %4 to %2,5 in the last two decades leading a steady growth in unemployment. Then, it was underlined that new transformation in economies brought about both ‘opportunities’ and ‘threats’ for the economies and societies<sup>94</sup>.

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<sup>91</sup> In Uruguay Round Negotiations international trade was re-regulated and the trade liberalisation was extended to services in communication sector.

<sup>92</sup> The document is commonly known as Delors White Paper because Jacques Lucien Jean Delors, the French politician, was then the president of the European Commission.

<sup>93</sup> Full title of the document is “Growth, Competitiveness, Employment: The Challenges and Ways Forward into 21st Century”. Please see [http://europa.eu/documentation/official-docs/white-papers/pdf/growth\\_wp\\_com\\_93\\_700\\_parts\\_a\\_b.pdf](http://europa.eu/documentation/official-docs/white-papers/pdf/growth_wp_com_93_700_parts_a_b.pdf) (last visit on March 2013).

<sup>94</sup> These transformations were explained under certain categories in the document as following:

- Jeopolitical Transformation: In parallel with the pressure imposed by rival countries which have well-adapted themselves to technological advancements and the emergence

As a matter of fact, what was implied by the Commission by these remarks mentioned above was nothing but the fact so-called ‘globalization’ with its technological, economic, social factors and implications. Under conditions brought about by ‘globalization’, EU was argued to have taken steps in the fields of high-technology (notably ICTs, biotechnology and environmental technologies). From a purely technological determinist perspective, the enlargement and enrichment of the field of ICTs was identified as a main agent behind the economic and social transformation in the societies. It was said,

This decade is witnessing the forging of a link of unprecedented magnitude and significance between the technological innovation process and economic and social organization. Countless innovations are combining to bring about a major upheaval in the organization of activities and relationships within society. A new 'information society' is emerging in which the services provided by information and communications technologies (ICTs) underpin human activities. It constitutes an upheaval but can also offer new job prospects.

....

The move towards an 'information society' is irreversible, and affects all aspects of society and interrelations between economic partners. Creation of a common information area within the Community will enable the Community fully to seize these opportunities (Ibid., p. 92).

As is seen what was suggested by the document was to create a “common information area” in accordance with the Union’s main goal of building a common market implying that ‘common regulatory framework’ was also needed.

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of new markets to be in service of 120 million people living in collapsing Communist bloc at the neighborhood of European countries.

- Demographic Transformation: The aging of population and the transformation of family structure.
- Technological Transformation: The emerging “New Industrial Revolution” and the knowledge-based economy requiring more qualified abilities in the work force for new kind of jobs.
- Financial Transformation: The fact of interdependency among emerging markets as a result of easier movement of Capital at world-wide.

The main aim was to pave the way for a further liberalisation in telecommunication market in order to encourage private sector for innovations and competition. That is to say, what was principally argued by Delors White Paper was to produce common policies to operationalize free market system in the ‘information and communications sector’.

This White Paper can be regarded as a cornerstone in communication policies of the EU in the shift to ‘full liberalisation’ while it was also placing (the) concept of “IS” it defined as “New Industrial Revolution”, at the heart of this policy shift. Despite this fact, another White Document issued in 1994 which was called “Bangemann Report” (European Commission, 1994a) was the most decisive one and permanent by its consequences.

### **1.1. Bangemann Report as the Principal Initiative for Building a “European Information Society” As a Policy Goal**

After the issuance of Delors White Paper, the Council recommended the Commission to form a “high level group of experts” to prepare another White Paper which would be specifically about preparing a sound strategy for “IS”. This “high level group of experts”<sup>95</sup> was then formed with the presidency of Martin Bangemann<sup>96</sup> and they prepared a seminal policy document which is also known

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<sup>95</sup> We should point out the fact that most of the members of this such an important group which would lay down the strategy for shifting to “IS” consisted of representatives of private firms from communications sector. The members and their organizations were as following:: Martin Bangemann (European Commission), Enrico Cabral da Fonseca (Campanhia Comunicaçoes nacionais), Peter Davis (Reed Elsevier), Carlo de Benedetti (Olivetti / ERT), Pehr Gyllenhammar (Volvo / ERT), Lothar Hunsel (T-Mobil), Pierre Lescure (Canal+), Pascual Maragall (mayor of Barcelona), Gaston Thorn (Cie. Luxembourgeoise de Telediffusion / CLT), Cándido Velázquez-Gastelu (Telefónica / ERT), Peter Bonfield (ICL), Etienne Davignon (Société Générale de Belgique / ERT), Jean-Marie Descarpentries (Bull), Brian Ennis (IMS), Hans-Olaf Henkel (IBM Europe), Anders Knutsen (Bang & Olufsen), Constantin Makropoulos (Hellenic Information Systems), Romano Prodi (IRI), Jan Timmer (Philips Electronics / ERT), Heinrich von Pierer (Siemens / ERT).

Source: <http://archive.corporateeurope.org/observer6/revolving.html> (last visit on March 2013).

<sup>96</sup> Mr. Bangemann was affiliated with the Alliance of Liberals and Democrats for Europe (ALDE) group in the EP, the second biggest liberal group following Christian Democrats. It is for sure that

as ‘Bangemann Report’<sup>97</sup> (European Commission, 1994a). The report basically underlined once again the importance of the continuation of liberalisation in communication sector. However, this time, the stress of the document was on the

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the appointment of Mr. Bangemann as the Commissioner for DG XIII in 1993 was one of main decisive events in history of “(European) Information Society” policies. Mr. Bangemann was known for his commitment to the neo-liberal ideology. His thoughts would be very influential in the shaping of EC’s general approach to the construction of IS. Therefore, his personal approach to the EU project deserves some attention to be paid. In his lecture given at the Royal Institute for International Relations in 1991 (Bangemann, 1991), he clearly put an argument that “the more the Community had become founded on economic reality, the more it became attractive.”(p.22). He continued as such:

If we really want to have free trade in the world, it is true that the GATT system and the mechanisms should be reinforced. We need a system that is working. If somebody trades in an unfair way, if the system is not working nobody will have trust in it. But if it is working, it needs supranational sovereignty, and possibilities and powers. And now the question is – of course – to what extent? And there, for the first time in the history of the Community, capitalism has been discovered also by those that in the past did not like it, because they did not know it, they were not accustomed to it, they had no idea about it....

He thinks that the single market was “just the beginning” for further steps in deregulation and liberalization (1992: 37). The main purpose was to have a private sector competitive at global level and enable the market environment to such favorable conditions for free market. Throughout his book, he severely opposed the academic studies that considers competition to be the most “unregulated realization of the single market”, and he stated his contend that ‘the change of attitude towards open competition was mainly achieved by a strategy paper on industrial policy, prepared on his recommendation, and adopted by the Commission in 1990 (Ibid.). Bangemann also argued that there was no alternative for EU to meet the global competition with ‘open competition’ in single market which is just a beginning and accordingly a “farewell to the concept of detailed harmonization” is needed. Besides, he said, ‘since EU authorities can not change their regulations as rapidly as technology changes, self-administration systems should be put into practice.’

He was so strictly committed to neo-liberal ideology, in his book (Ibid.) whose purpose was to “discard ideology and relax relationship between industry and politics.”, he supported the lobby activities and said that,

Rumours and worse soon arise when politicians and businessmen meet. Thus, it is no surprise that so few managers move into politics or that very few politicians are willing to accept positions in industry. A switch from one side to the other is questionable and raises doubts about a person’s independence and integrity. Politicians and business representatives carefully avoid each other. Industry does not comment on politics, and politicians carefully keep industry at an arm’s length to avoid suspicions or malicious innuendoes. Consequently, neither side realizes its **full potential**. Both depends upon each other more than **free trade purists of leftist critics of capitalism** are willing to admit. (stresses added)

It was proved that he was aware of the “full potential” he mentioned in his book since he was employed by Spanish Telecom giant Telefonica as member of administrative board just a few weeks after his resignation upon the accusations of fraud about the Santer Commission of which he was a member was reported in 1999. This was known in EU circles as ‘The Bangemann/Telefonica Scandal’ and triggered a debate about lobby activities increasing doubt about relationships between corporations and members of the Commission.

<sup>97</sup> The full title of the report: “Growth, Competitiveness and Employment: Report on Europe and the global information society (Recommendations of the high-level group on the information society to the Corfu European Council-Bangemann Group)”, European Commission, Eur-op, 1994, 36 p.

‘leadership role’ to be played by private sector in a ‘free market’ environment. In this sense, we can argue that this document was the most crystallized discursive expression of neo-liberal approach which have lied behind the European communications policy since the late 1970s.

The report consisted of six chapters and first two chapters were allocated to the defense of theoretical approach to “IS”.<sup>98</sup> The commitment to the neo-liberal approach was revealed in the very beginning of report. It was said,

- This report urges the European Union to put **its faith in market mechanisms** as the motive power to carry us into the information age
- It means fostering an **entrepreneurial mentality** to enable the emergence of new dynamic sectors of the economy
- It does not mean more public money, financial assistance, subsidies, dirigisme, or protectionism. (Stresses added)

Bringing the issues of ‘employment’ and ‘economic growth’ to the forth, Bangemann Report regarded the “IS” as “the “revolutionary challenge to decision makers”. It was said, “It is a revolution based on information, itself the expression of human knowledge”. What was also argued that ‘like all revolutions, “IS” generates opportunities (for employment and economic growth), but nothing happens automatically since IS as a revolution also generates uncertainty and discontinuity’. By these remarks what was implied was to put ‘necessary regulations’ into practice to benefit from ‘opportunities’ while avoiding possible problems generated by ‘uncertainty’ and ‘discontinuity’.

There were opportunities and threats imposed by these revolutionary changes, according to report. ‘Opportunities’ were said to have not limited only to ‘employment’ and ‘economic growth’ but also provided a chance to have “a more caring European society with a significantly higher quality of life and wider

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<sup>98</sup> The title of the first chapter was “The information society – new ways of living and working together” and the title of the second one was “A market-driven revolution”. Rest of the chapters were allocated to the technical-planning of the appropriate strategy whose main steps were set in the first two chapters.

choice of services and entertainment.” (Ibid., p.11). As for the threats, ‘the real danger’ according to report, was ‘the risk that people might refuse adopting the new technologies and their instruments’. This would create a risk of emerging a society *with haves and have-nots* according to the report. Another risk could be found in de-skilling of the traditional labor groups as the new professions were on the rise<sup>99</sup> (Ibid. p. 12). Besides, it was underlined that those countries rival to Europe had moved very quickly in preparing their infrastructures increasing the pressure over European markets<sup>100</sup>.

According to Bangemann report, the response to these threats should have been to create a “new regulatory environment” to be based on “full competition”. The member countries were urged to open up the entire infrastructure to the “full competition” instead of adopting a common market strategy mixing with protective measures for local producers. Accordingly, some certain policy steps were suggested such as ‘to give an end to public monopolies in particularly telecommunications sector’, or ‘re-use of radio spectrum employed for electronic broadcasting to be emptied with digitalisation for lucrative wireless communication’. As a matter of fact, what was mainly suggested was to adopt a new regulatory regime convenient to “enabling the market” for the private sector. It was therefore underlined that, new regulatory regime was to be based on market mechanisms in which public sector would be assigned to attract the public attention to new services to be run by private sector. In other words, public sector would be expected to contribute in creating a ‘critical mass’<sup>101</sup> in adopting new technologies and to take necessary measures to keep local communications sector open for international investment and competition.

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<sup>99</sup> However, these socially sensitive themes were said to exceed the scope of the report and the discussion was left brief: “...it is our interest to seize the opportunity”.

<sup>100</sup> It was said in the report, “Because competitive suppliers of networks and services from outside Europe are increasingly active in our markets. They are convinced, as we must be, that if Europe arrives late our suppliers of technologies and services will lack the commercial muscle to win a share of the enormous global opportunities which lie ahead...The importance is destined to increase.... Private sector expects a new signal.” (Ibid., p.12).

<sup>101</sup> When the adoption of an innovation reaches a ‘critical mass’ in terms of the amount of its users in a society, it becomes self-sustaining and generates economic growth (Rogers, 2003).

In short, Bangemann report seems to have been a product of the conviction at policy level that “IS” was ‘a new industrial revolution’ as an outcome of technological change. This change was imposing imperatives for a change in regulatory change in favor of privatization, liberalisation and deregulation. It was said,

The group is convinced that technological progress and the evolution of the market mean that Europe must make a break from policies based on principles which belong to a time before the advent of the information revolution. (Ibid., p. 16)

Besides, it employed a specific discursive structure to justify the initiative for building an “Information Society” which was subsequently be inherited by following EU documents, in one way or another. In their critical discourse analysis on mainly Bangemenn Report, Goodwin and Spittle (2002) identify four major discourses: threat/opportunity, technological determinism, market dominance and citizen vs. consumer. First of all, the Report argues that technological change brings about threats and opportunities that forced EU and members states to take an action:

The information revolution prompts profound changes in the way we view our societies and also in their organization and structure. This presents us with a major challenge: either we grasp the opportunities before us and master the risks, or we bow to them, together with all the uncertainties this may entail (European Commission, 1994a: 7).

What is mainly urged in these remarks is to take a common action to avoid risks and to take the advantageous of new information and communication technologies for economic sectors and society in general. Closely tied to this discourse, technology is presented as the only major motivator what it took place concerning communications sector in recent decades. It is said, “Throughout the world, information and communications technologies are generating a new industrial revolution already as significant and far reaching as those of the past” (Ibid, p. 5).

What is implicitly referred here technology is assumed to be an autonomous and external force outside the social processes including political and governmental decisions. Rather policy actions are shown as subject to the 'irreversible' circumstances created by technology.

Technological determinism is associated by a 'market determinism' which actually binds neo-liberal approach to other discourses. What 'market dominance or determinism' assumes is that free market in liberal pluralist sense is the most effective way of organizing economies. This faith in free market mechanisms is expressed in the Report as such: "This (audiovisual) sector is in rapid evolution. The market will drive, it will decide winners and losers. Given the power and pervasiveness of technology, this market is global" (Ibid., p. 8). In this approach, the place given governmental control and public policy is rather passive because it is thought that private firms should take the lead.

As the Report gives priority to private firms and market mechanisms, it is not a surprise to observe that 'public interest objectives' was put into an ambiguity through the terms 'citizen' and 'citizen rights' are equated with the terms 'consumer' and 'consumer rights'. First it is said, "-Europe's citizens and consumers: A more caring society with a significantly higher quality of life and a wider choice of services and entertainment." (Ibid., p.6). In this statement, 'citizen' is associated with 'quality of life' and 'consumer' with 'a wider choice of services and entertainment' connoting that 'quality of life' can be thought in social and cultural aspects whereas 'consumer' should be thought in the context of consuming services. However, in another paragraph it is said, "...once products can be easily accessible to consumers, there will be more opportunities for expression of the multiplicity of cultures and languages in which Europe abounds" (Ibid., p. 11). At another paragraph, it is also said "Citizens and users will benefit from a broader range of competing services." (Ibid., p.16). These statements show that the terms are used interchangeably and moreover, the



expression of cultures and languages are assumed to be dependent on consuming products which are commodities in the free market system, actually.

To sum, as argued by some critical scholars, the vision set out by the Bangemann Report is one of ‘unadulterated free market deregulation’ or represented ‘an unconditional belief in the market as the driving force which requires a ‘light touch’ regulation not to hinder the economic growth in new media sector (Ward, 2002; Servaes, 2003). To this end, the report actually addressed telecommunication industry and demanded to speed up liberalisation in this sector in parallel with increasing investment into new technologies. However, the report failed to address societal and cultural dimension - the use of new technologies by people and provision of content through the communication infrastructure. To fill this gap, a number of key documents were issued by the Commission subsequently.

## **1.2. Inclusion of the Social Dimension into “Information Society Policies”**

Goodwin and Spittle (2002) point out that abovementioned interconnected discourses present a set of norms and conventions whereby a ‘neo-liberal consensus’ is constructed around a policy framework through which ‘information policy’ is put into practice. Having put such a general (discursive) strategy to be followed with the Bangemann Report, the mission left for the Commission was to determine specific policy issues and the steps to be taken. For this purpose, Commission on the one hand maintained its ongoing policy efforts for liberalisation of the field of (tele)communications and supporting the R&D activities in ICTs sector, within the new policy regime of ‘full liberalisation’; on the other hand, policy efforts were also given start to embed social and cultural dimension into the “European Information Society” project. Because, according to Martin Bangemann, EU’s approach to “IS” was qualitatively different from the USA’s. He argued, whereas NII project was much more infrastructure-oriented,

EU's approach included societal dimension in its "European Information Society" project (Törenli, 2004: 177).

Some following official documents aimed at such a mission of identifying social and cultural goals concerning the construction of a "European Information Society". The typical one of these documents was "Green Paper – Living and Working in the Information Society: People First" (European Commission, 1996a). It was said in the beginning of the document that,

1. We are living through a historic period of technological change, brought about by the development and the widening application of information and communication technologies (ICTs). This process is both different from, and faster than, anything we have seen before. It has a huge potential for wealth creation, higher standards of living and better services.

2. ICTs are already an integral part of our daily life, providing us with useful tools and services in our homes, at our workplaces, everywhere. The Information Society is not a society far away in the future, but a reality in daily life. It is adding a **new dimension** to society as we know it, a dimension of growing importance. The production of goods as well as services is becoming more and more knowledge based. (stress added)

This "new dimension" in the report actually referred to employment<sup>102</sup> potential. It was argued that if 'appropriate' policies adopted implications of ICTs over society would be 'beneficial', otherwise there were some risks<sup>103</sup>. According to the report, in short, 'a new industrial and enterprise culture was developing and to be successful in such a culture it was necessary to be capable of keeping up with flexibility and constant change; traditional working and management abilities

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<sup>102</sup> According to the data given in the reports that the number of unemployed workers in the Union in 1996 was around 18 million. Yet, according to report what was behind this high amount of unemployment was not that employment was not increasing but insufficient growth in employment.

<sup>103</sup> Though measures for improving the conditions of SMEs (Small and Medium size enterprises) were also mentioned in the report, a very substantial portion of the report is allocated to concerns related to employment in the report. The report comprised of 125 articles, 34 pages and 6 chapters. 60-article chapters of 'Working and Employment in the Information Society' was allocated to issues related to employment.

were incompatible with these new circumstances under which it was easy to find jobs for those who were IT (Information Technology)-literate; therefore, it was necessary and urgent to encourage people to use these kind of technologies and to donate schools and workplaces with these ICTs equipment in order to educate ‘human sources.’

As is seen, major concern of the Green Paper of 1996 was about the employment and improvement of ‘quality of workers’ in accordance with new economic conditions. As macro-economic measures were dealt with to realize the potential of “IS” for employment, some concepts were frequently used such as “flexibility” and “human resources”, in the document. However, some socially and politically important issues were also dealt with, though relatively in shorter chapters. One of them was that the concentration in ICTs sector would eventually separate people as ‘information haves’ and ‘information have nots’. Recognizing the fact that free market mechanisms might lead to concentration in the sectors of economy, Commission claimed in the Green Paper of 1996 that appropriate public policies could avoid such potential risks. As for these appropriate public policies, Commission suggested a ‘full liberalisation’ in communications sector at Union-wide in order to foster ‘competition’ giving chance to ICTs could prove their potential to fill ‘the gaps between nations, regions and people’.

‘The importance of ICTs for democratic political systems’ was also mentioned in the document. Firstly, it was underlined that ‘democracies were not only based on voting, but participation and representation should have been improved’. Citing the first Annual Report of Internet Society Forum<sup>104</sup>, it was argued that ICTs could have “extraordinarily positive” implications for democracies, human rights and plurality. Not only improving participatory democracies by electronic means of participation, ICTs were said to have positive implications to have more equality between men and women, improving social integration and public

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<sup>104</sup> The Forum was founded by the Commission in 1995 and consisted of 128 member (half of the members were from Commission and the other half from operator and content service companies from the member countries).

services such as education and health. However, when it came to what public policies to be adopted to foster “extraordinarily positive” implications of ICTs, it was argued by the Green Paper that market mechanisms was best way to organize the sector.

Another important point worth noting in the Green Paper of 1996 is that, Commission made a definition of “European Information Society” in the last chapter of the document entitled “Information Society – The European Way”. In this chapter it was stated that with “370 million consumers” and “16 million enterprisers”, Europe was the biggest economic entity in the world. And European model was underlined to be ‘unique combining market economy, cultural diversity and political democracy’. According to this argument, Europe presented a social model based on competition among the private firms and solidarity among the countries and peoples at the same time. And the putative social transformation implied by (the) concept of “IS” brought about opportunities and risks to this social model. Finally, that appropriate political measures should haven taken in order to avoid risks was emphasized once again<sup>105</sup>.

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<sup>105</sup> There were some other similar Commission documents issued in in 1996 and 1997 about living and working conditions and cohesion in the Information Society. Yet, they have made little contributions to the general framework drawn by the Green Paper of 1996. These were as following: Europe at the Forefront of the Global Information Society: Rolling Action Plan, (European Commission, 1996d); Learning in the Information Society: Action Plan for a European Education Initiative (European Commission, 1996e); Cohesion and the Information Society (European Commission, 1997b); The Social and the Labour Market Dimension of the Information Society: People First-Next Steps (European Commission, 1997c).

However, another document, “Building the Information Society for Us All”, prepared by a High Level Expert Group leaded by a group of senior academics such as Luc Soete (chairman of the expert group) and Chris Freeman (European Commission, 1997d) differed from the other strategy documents in some respects. Above all, it criticized that the EU’s policy initiatives for “IS” were largely guided by economic concerns and technological determinist approaches that expect people automatically adapted themselves to new ICTs and markets. Instead, the report offered to avoid private sector leadership in the construction of “IS”. It was said in the report that “to leave the development of the IS to the private sector - an idea originally advocated in the Bangemann Report and subsequently elaborated upon in numerous official EU reports - is, in our view, to take an excessively minimalist approach to the role of the public authorities in that process.”. Instead, the report offered to integrate democracy into the “(European) Information Society”. For this, a “European Media Council” was suggested to be formed to balance the harmful effects of ownership concentration in media over the information flow. However, the subsequent political and sectoral developments proved that this distinguished official document remained as critique from inside the Commission with no practical use or implication.

Considering the major subsequent events that would create breaks in the history of EU's communications, the Commission approach mostly followed the roadmap drawn in these first wave of strategy documents about "European Information Society" in the mid-1990s. Accordingly, the rest of the 1990s marked a turning point in the privatization policies of the Union towards a 'full liberalisation' as urged by Bangemann report.

### **1.3. Full Liberalisation and Its Repercussions on Electronic Communication**

In parallel with the market-oriented view adopted by the first wave of strategy documents, a series of directives put into practice by the Commission triggered a re-regulation in the entire communications sector in favor of full market-competition on a converged digital technological ground. However, the process of common policies for liberalisation in telecommunication sector had already begun in the late 1980s with a principal goal of harmonization among the member countries. The Terminal Equipment Directive of 1988 (88/301/EEC – European Commission, 1998) made the debut of these kind of policies.<sup>106</sup> With this directive, three goals were targeted: First, member countries were urged to take necessary measures to avoid dominant telecommunication companies (national public companies) in local markets to abuse their power against private companies; secondly, member countries were kept responsible to share the information about technical standards demanded so that every company in the Union could have information about infrastructures of the member countries; thirdly and most importantly, all national trade barriers for European equipment

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<sup>106</sup>By terminal equipment it is meant by the document that "...equipment directly or indirectly connected to the termination of a public telecommunications network to send, process or receive information. A connection is indirect if equipment is placed between the terminal and the termination of the network. In either case (direct or indirect) the connection may be made wire, optical fibre or electromagnetically."

producers were terminated so that they could sell their products in all of the member countries.

To complete Terminal Equipment Directive, a new directive, “Competition in the Markets for Telecommunications Directive” (90/388/EEC – European Commission, 1990a) was put into practice, two years later. With this directive, member countries were also regarded as responsible to take necessary measures to make all the companies to provide all the services (with the exclusion of voice telephony<sup>107</sup>) and to benefit from all the special and exclusive rights which were previously enjoyed only by dominant national operators. Thus, it was aimed to end the dominant positions of national incumbent operators in the local telecommunication markets. Another directive of this kind was issued also in 1990. The title of the directive was “The Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision” (90/387/EEC – European Commission, 1990b). Its aim was to open up technical infrastructure of the national incumbent telecom operators to the private operators. In doing this, the directive kept member countries responsible to share the information about technical infrastructure which was necessary to make interconnection to national telecommunication infrastructures so that a common policy could be developed to build a common technical infrastructure across the EU. Thus, private operators would be able to make necessary investments to use these national infrastructures.

Actually, all these early directives before mid-1990s were adopted as a result of the close partnership between the European Commission and national governments (Thatcher, 2011). The partnership became possible when Community authorities decided to take a modest action which covered only a part of the communications sector, leaving many other parts of the sector to the national governments. That meant Commission took a middle way between liberalisation and protectionism based on national interests. In accordance with

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<sup>107</sup> By “voice telephony”, it is meant traditional two-way voice-based telephone communication.

this policy strategy, the directives of the late 1980s ruled to end, on the one hand, the exclusive rights of national PTTs over, for example, supply side of terminal equipment market. On the other hand, they recognized national PTTs and their public service objectives as legitimate. Accordingly, the monopoly over ‘voice telephony’ as critical exclusive rights of national authorities was protected by earlier directives.

When it comes to mid-1990s, the liberalisation and harmonization-oriented policies shifted to a new phase, however. One of the first striking features of this new term was the awareness of the process of convergence. Accordingly, two interconnected directives put the regulatory measures for convergence and liberalisation into the force. Firstly, a directive on satellite communication was issued in 1994 (94/46/EC – European Commission, 1994b), then a following directive on cable TV in 1995 (95/51/EC – European Commission, 1995). Together, these directives regulated that ‘all the communication on satellites and cables were directly connected to telecommunication infrastructure and thereby would be subject to common rules with telecommunication’. Besides, it was ruled that all the services provided by telecommunication operators would also be presented by both satellite and cable operators. Thus, while liberalisation movements in telecommunication sector were spreading to cable and satellite, operators in cable and satellite sector were enabled to compete with telecommunication operators for the same services.

Besides, a new series of directives targeting “full liberalisation” in the telecommunication sector were adopted in the mid-1990s. Their main aim was to prohibit some other exclusive rights of national PTTs especially over the fixed line public infrastructure and ‘voice telephony’. The directive of “Implementation of Full Competition in Telecommunications” (European Commission, 1996b) was a genuine milestone in this respect. With this directive, the last and most important exclusive right of the national telecom operators, namely exclusive right for providing ‘voice telephony’ service, was terminated. 1 January 1998 was

set as the deadline of opening up ‘voice telephony’ market for the newcomer operators. Moreover, private operators were allowed to build up their own infrastructures for services.

One year later in 1997, a further liberalisation was put into practice with two directives on harmonization for common licensing of newcomer private operators and for allowing them to access to existing telecom infrastructures (European Parliament and the Council, 1997a/b).<sup>108</sup> As a result of these directives, ‘competition’ became the only basis for regulation of (tele)communications market. Accordingly, the term of “significant market power” appeared as the only significant legal basis for government intervention to the market<sup>109</sup>. In other cases, public intervention would be insignificant and limited to technical issues such as monitoring operators. Meanwhile, the concept of ‘universal service’ which was originally in favor of public interest was re-defined. According to The Interconnection and Universal Service Directive (European Parliament and the Council, 1997b), only a limited number of services such as basic fixed-line voice telephony and emergency services was to be available for all users ‘at affordable prices’ but other advanced services would be accessible to all but only those who would pay more would benefit from them.

In addition, these directives made it necessary for member states to separate regulatory agencies from the suppliers of services in order to end the regulatory rights of national monopolies of telecommunication and have independent

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<sup>108</sup> These directives are as following:

-Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorizations and individual licences in the field of telecommunications services

-Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP)

<sup>109</sup>This term was used to refer to the existence of a corporation in the sector which controls 25% percent of given telecommunication market. This share of market was initially seen enough for public authorities to intervene into the market. However, with a regulation adopted in 2002 the assessment of “significant market power” was relaxed in favor of powerful corporations. See, “Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services” (2002/C 165/03)



authorities to regulate the market of telecommunication involving newly licensed private operators. Thereby, Commission enlarged the full liberalisation to entire telecommunication sector in the Union by 2000. In doing this, major support to the EU authorities came from the large firms and their associations which were especially established as of early 1990s. Major contribution of the capital groups to EU authorities was to convince the national governments to apply 'necessary measures' (Bartle, 2005). One important example of this kind of vested-interests was the European Virtual Private Network Users' Association (EVUA). It was established in 1993 and the number of members rose soon to around sixty with the participations of some very influential transnational corporations like Rank Xerox and Du Pont. Other examples of influential associations were European Competitive Carriers Organization (ECCO) established in 1996 and European Competitive Telecommunications Associations (ECTA) in 1997.

There were some other associations which have activities limited to national level. One of them was The French Association des Operateurs de Services de Telecommunications (AOST) which was established by the cooperation of French and USA-originated companies based in France. Another important example of this kind of lobby organization was Verband der Anbieter von Telekommunikations und Mehrwertdiensten (VATM) whose majority of members were transnational corporations with affiliations in Germany. These kind of vested-interests soared towards the mid-1990s and their number rose to twenty five as early as 1995 and to around seventy five in 2000 (Ibid.). In parallel to growing in number, the influence of the associations of capital groups can be argued to have grown and they have played a key role in the formation of policies.

As a result, certain radical structural transformations were observed at national telecommunication operators. In France, for example, the structure of France Telecom which had remained the only telecom operator under public ownership and control in the country for the past century, changed very rapidly in the 1990s. First, its statute was changed in 1990, and became an autonomous corporation

which was subject to rules of private law. Then, after the EU's directive "Implementation of Full Competition in Telecommunications" was adopted in France in 1996, an autonomous regulatory authority 'Autorite de regulation de telecommunicaitons (ART)' was established. Same year, France Telecom became a limited company whose shares are sold in New York and Paris stock exchanges. Although initially shares to be sold on the stock exchange markets were kept under 50%, this application was terminated in 2003. According to Marino (2007a), this decision of declining the public share in France Telecom under 50% was a concomitant of the radical change in rationale of public administration which saw no more significant reason for public existence in the free market environment. This in turn proved that principles of public service such as universal service of providing users equal and fair services were seen less important, if not totally insignificant, by public authorities.

A similar trend was observed in Germany in the same period. Deutsche Telekom, the public monopoly of the country, which had been guided by rationale of public service for decades, transformed very rapidly into a commercially-oriented company getting bigger and bigger thanks to its high competitive power at international markets. In parallel with the directives adopted by the Commission, first whole exclusive rights of the Deutsche Telekom were terminated and then an autonomous regulatory authority, The Regulatory Agency for Post and Telecommunications (RegTP), was established to regulate the telecom market. Concomitantly, Deutsche Telekom adopted a new strategy of business aiming at declining the number of workers in the company, cooperating other international corporations to have assets at other countries, and doing anything else necessary to be more productive and lucrative. Being successful to reach its aims as a private company, Deutsche Telekom reached at very high levels of productivity despite the sharp declines in employment (Knieps, Müller and Heuermann, 2007).<sup>110</sup>

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<sup>110</sup>According to the decisions taken by Deutsche Telekom, the quantity of workers was declined from 230.000 in 1994 to 179.000 in 1998 in Germany. After being a big international company, total number of workers including workers at international affiliations rose to 244.000 in 2004.

As for the Britain, because the UK was already a leader in telecom privatisation (except in postal services) the EU directives did not stimulate the privatisation in the Britain in the same way it did in other European countries. One year after the Conservative party became the ruling party in 1979, Post Office, the public monopoly, was divided into two public corporations as Post Office and British Telecommunications. Three years later, in 1982, the monopoly status of British Telecommunications was ended and a new company entitled Mercury was licensed by the government in order to open up telecommunications market to competition. Then, with the adoption of Telecommunications Act of 1984 an autonomous regulatory authority, “The Director General of Telecommunications” was established and almost 50% of the shares of British Telecom was sold at stock market. However, the duopoly system was maintained till the 1991 when a ‘duopoly review’ took place. From then on, in parallel with the legislation put into practice by EU, firstly new licenses were given to newcomer private telecom companies to end the duopoly system and then the rest of the shares of British Telecom were sold at stock exchange in 1993. Although the public share in British Telecom fell to 0,5% after sales, the ‘golden share’ which gave government the right of disapproving any kind of decision taken by the shareholders was protected till the 1997. However, this exclusive right was abandoned in 1997 after the adoption of the directive of full competition of the EU in 1996. As in other major examples of local telecom markets in Europe, the privatization of British Telecom was often questioned if the quality of telecommunication services got better whereas prices did fall. However, there was little doubt that British Telecom became a more lucrative and productive company as employment sharply declined after its privatisation.<sup>111</sup>

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Today there are approximately 230.000 staff working for the company. Please see: <http://www.telekom.com/company/at-a-glance/92662> (last visit on September 2013)

<sup>111</sup> The employment in British Telecom declined from around 238.000 in early 1980s to around 145.000 by 2009. Please see <http://news.bbc.co.uk/2/hi/business/8049276.stm> (last visit on November 2013)

After being privatised, national telecom operators have also become international companies. Because, another dimension of the Union's new wave of legislation in the 1990s was that companies were allowed to get international cooperations depending on the conditions of competition law. The cooperation with other European operators and especially USA-based companies comprised the major alliances that have taken place at European telecom market. Some major American companies like IBM and AT&T were already powerful in European market. As of 1990s, thanks to the activities of other major international USA-based companies, American pressure over the European market remained to be decisive. For example, British Telecom and MCI Corporation which was the second largest telecommunication operator in USA made an alliance in 1992. In response to this alliance, Deutsche Telekom and France Telecom made an alliance to have more effective at international markets. Thus, European telecommunication market became internationalized and some alliances between companies started to dominate Union's telecom infrastructure (Thatcher, 2008).

As for the broadcasting, the European media environment of 1990s and early 2000s was quite different from what it had been in the early 1980s. The most obvious change was the shift from a public service model in which radio and television channels are owned and controlled by public authorities and the schedule and program content are formed according to perceived needs of the citizens to a commercial broadcasting model in which programming strategies are picked up according to best possible way of maximizing viewers. In the early 1990s, following the adoption of TVWF Directive, a series of new broadcasting laws were adopted in especially leading member countries including Britain, Germany, France and Italy.<sup>112</sup> Main aims of these regulators were either for

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<sup>112</sup> Actually, first wave of deregulatory regulations in media sector in leading European countries took place before the adoption of TVWF Directive in 1989: France put a media reform into practice in 1982 and it was decided to establish Canalplus in 1983, a pay-based channel; Federal Government of West Germany decided in 1983 to build a cable television infrastructure to end the public monopoly over broadcasting in practice; the decisions of European Court of Justice taken in the first half of 1970s had already led to the de facto privatization of Italian media; and likewise Britain had already had a private channel (Independent Television) since 1950s. After this first deregulation wave, many European countries adopted new broadcasting laws and regulations that

liberalizing the media market to grant broadcasting licenses to the new media operators (radio and television channels, digital satellite/cable platforms and the like), or for regulating the ownership rules of newly emerging oligopolistic media markets through updating ownership caps and principles and through establishing regulatory authorities to monitor the media market.

Meanwhile, European Court of Justice (ECJ) became the main EU institution that secured the implementation of the rules of TVWF Directive in member states. In the following years after the directive was put into practice, there was a dramatic increase in the number of cases dealt with by ECJ concerning media sector.<sup>113</sup> In those cases, ECJ influenced the implementation of EU directive in two respects: Firstly, the Court interpreted the TVWF Directive in a way to enlarge the liberalisation over the markets and secondly, it rejected any legal action to treat the public service broadcaster any differently from commercial companies in order to protect competition.

In the court cases, ECJ generally made decisions against national states which were seeking ways to protect their internal production industry.<sup>114</sup> In some cases, its decisions enabled media market for the new media moguls such as News Corporation (BskyB in Britain) to find out a chance of enlarging across all the European markets, being free from national laws and even free from minimum public interest obligations of TVWF Directive. For example, The 1990 Broadcasting Act of Britain applied different regulatory regimes for domestic satellite services and non-domestic satellite services. Non-domestic satellites were exempt from all significant public interest obligations like cross-media ownership

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led a further liberalisation in the media market as of early 1990s. Britain and Italy adopted two Broadcasting Acts, one in 1990 and the other in 1997, whereas France adopted a new media law in 1997 and an interstate agreement was signed in Germany between Federal Government and Lander Governments to bring a uniform framework conditions. For further information please see Çaplı, 2001.

<sup>113</sup>Whereas there had been around ten court cases dealt with by ECJ before 1989, the number of court cases soared to some fourteen in the period 1989-1993 (Harcourt, 2005).

<sup>114</sup> Notably in the court case of Commission of the European Communities versus Kingdom of Netharlands in 1991 (Case C-353/89) and in the court case of European Communities versus Kingdom of Belgium in 1992 (Case C-211/91).

rules, and minimum rules on alcohol and tobacco products and advertising which were included by TVWF Directive. These relaxed rules on especially public interest obligations of the directive immediately became a problem with other EU member states. Because BskyB which had non-domestic satellite license from UK was airing television programmes and advertisements including alcohol and tobacco products in France and Germany and advertisements in children's programs, which were all against the rules of the Directive of 1989. The ECJ, however, ignored these abuses and instead ruled the UK government to treat the domestic satellite broadcasters in the same liberalised way.

This extremely relaxed regulation for satellite broadcasting made many European broadcasters to perceive UK as a kind of satellite broadcasting paradise. As a result, a number of media companies moved to UK to benefit from relaxed regulatory regime (Harcourt, 2005). According to ECJ, this was a true implementation of the country of origin principle adopted by the TVWF Directive. In accordance with this stance, when the court cases among the private and public service broadcasters increased and even after the Commission issued a communication (European Commission, 2001c) recognizing the importance of public service broadcasters for pluralism, ECJ insisted on not treating public service broadcasters any differently from commercial channels<sup>115</sup>.

As a matter of fact, TVWF Directive, national broadcasting laws and ECJ ruling, together made the most radical change in the composition of programs (schedule), namely the content of media. The program flow of newly licensed private channels composed predominantly of entertainment programs, unlike public service channels whose program flow composed mainly of educative and

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<sup>115</sup>As a matter of fact, there was a contradiction in the EU's approach to Public Service Broadcasting. While EU had recognized the importance of Public Service Broadcasters by signing Amsterdam Protocol to the Treaty on the European Union on the financing of public service broadcasters in 1997 stating that "the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism", it had been underlined in the following statements of this protocol that 'the funding of public service broadcasting could be maintained by member states insofar as such funding did not affect trading conditions and competition in the Community.' (see: <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0109010012>)

informative programs. This stark contrast can best be understood the below tables showing the program composition of two major national media markets in Europe, Britain and Germany.

Table 1 – TV Program Composition in Britain in 1989

	Fiction, sports and entertainment %	News, culture and knowledge %
BBC 1	40	36
BBC 2	31	54
ITV	61	30
C4	40	34

Source: Souchon, 1992

Table 2 - TV Program Composition in (Federal) Germany in 1989

	Fiction, sports and entertainment %	News, culture and knowledge %
ARD	45	39
ZDF	49	46
RTLplus	63	13
SAT1	69	21

Source: Souchon, 1992

In both tables, first two channels are public service broadcasters, the other ones are commercial channels. It can readily be observed by the percentages of programs, there is a stark contrast between the public service broadcasters and commercial channels in terms of broadcast time allocated to entertainment and informative programs.

Furthermore, repercussions of this ongoing commercialization occurred also in the values guiding the preparation of editorial content (programs). While ideas of cultural promotion and protection, national values, political unbiasedness were at

the origin of central values forming editorial content in the public service era lasting till early 1980s, the logic of market, wants of consumers (rather than interests of citizens) became prevailed in following decades. Under these circumstances, a whole new policy discourse with a new vocabulary was started to be built while it was changing the definition of public service/interest which would be reconceptualized around the economic/commercial and consumerist values (Cuilenburg and McQuail, 2003: 200). The lack of emphasis on 'equality', however, has been tried to be compensated by the inclusion of 'protection of minorities' in the recent media policy texts. Besides, some other concepts like 'infotainment' can also be considered in this context of creating new vocabulary for policies which apparently made the mission of 'educating' obsolete (McQuail and Siune, 1998) and diluted the mission of 'informing' in favor of 'entertainment'.

Changes in national laws and the influence of EU authorities, together, not only did radically change the program schedules, contents and guiding values in broadcasting environment, but also prepared the media landscape for coming of digital media. Actually, it is the technological infrastructure- the way people access to media content- which has changed most radically since the beginning in 1980 when almost all broadcasting transmission was by terrestrial systems using 'scarce' radio frequencies. However, when it came to the mid-1990s, up to 90% of households in some places of Europe received their broadcast transmission either via cable television or satellite platforms (Dahlgren, 2000).

Such a fast and dramatic change provided advantage to the private broadcasters (mostly pay-based platforms) who could easily adapt to technological conditions. These private channels took place in bundles on pay-based platforms in which hundreds of channels and interactive services (like video games, e-banking) were offered. Public Service Broadcasters lost all the control in such a fast changing commercial media environment and large media holdings such as News Corporation (Sky Channels), Bertelsman (RTL Group), Mediaset, Vivendi



(Canalplus) took over the control of European media markets. In fact, increasing competition and cooperation among large firms in the digitalized and liberalized media markets created a kind of ‘fusion’ (Kaya, 2009) in terms of ownership and control in media markets. For example, as Murdock indicates (2000) the key players of the British cable television industry in 2000 was not traditional media service providers but Microsoft, the leading computer software company, the France Telecom, world’s one of the largest telecom operators, and Telewest, a UK-based cable communication company. Thus, the digitalisation of the media technology did also become a decisive factor in oligopolization of EU media market with an increasing competition and cooperation with USA-based firms.

The increasing commercialization of the media markets had already increased the dependency of European commercial broadcasters to their American counterparts. Because the competition required European broadcasters to employ more and more trusted formulae of broadcasting. They also needed cheap content. This allowed American producers kept their imports to European market at high levels. For example, Bens and Smaele (2001) showed that the commercialization elevated the fiction (television series and films) the status of most-viewed program genre of European television in 1980s and 1990s. Its average share in overall programs across the Europe was up to 37% percent by 1997. And American share in this was more than 60% at the end of 1990s. Not maybe the American domination but American cultural influence followed the similar patterns with the fiction programs on television when it came to other program genres. Because a significant portion of other type of programs were no more than the copies of American program formats, according to a report (European Audiovisual Observatory, 1999 cited in Bens and Smaele, 2001.)

Furthermore, the coming of Internet-connected media services has recently become a trend and seems to dominate the market in a near future. Because as the broadband Internet connection is observed to have rapidly increased worldwide, the television viewing habits have also been shifting from a linear-schedule type

programming to on-demand (online) media viewing. Because, on-demand media viewing provides the audience with a new media consumption pattern including that a viewer access to the content s/he wants to watch whenever and wherever s/he wants through a Internet-connected communication tool (e.g. desktop, tablet PC or mobile phone).<sup>116</sup>

It should also be born in the mind that in the age of Internet-connected media, European firms had to compete within a new environment in which majority of the most valuable brands of the digital age are USA-based like Apple Inc, Microsoft, Amazon, Google, Yahoo, Youtube, Facebook and Twitter. These new media giants have already in cooperation with media moguls like AOL/Time Warner and News Corporation to develop internet television platforms<sup>117</sup>. That proves US domination in the Internet media market will sure put more pressure over the European firms.’

Actually, the coming of such a fast changing new media environment was foreseeable in the late 1990s and therefore EU commission took further steps to take the advantage of adapting communication industry to changing conditions. The enlargement and diversification of Union policies towards content-related issues and media was the most salient property of this period.

#### **1.4. Enlargement of “Information Society Policy” towards Media Policy**

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<sup>116</sup> According to a recent Commission report (European Commission JRC, 2012), ‘the audiences of all sorts of TV-related Web-based platforms have been growing significantly’. The websites of television dramas, films, TV programmes have been among the most visited websites in all European countries.’ Besides, there emerged successful television-related online platforms involving direct forms of payment by consumers. For example Netflix (a US-based on-demand media content provider company) has been the most salient example of this kind which has expanded into several European markets.’

<sup>117</sup> For example, as Apple tries to empower its own Internet TV console with buying content from Disney, Microsoft cooperates with Time Warner to enrich its console Xbox providing television. See: <http://www.forbes.com/sites/markrogowsky/2013/08/28/appletv-has-more-content-now-it-has-to-get-good/> (last visit on September 2013)

The Commission bias for enabling the market conditions for private sector leadership has been obvious in initiatives of research programs for technological development, as well. INFO 2000 was one of those policies after the “European Information Society” strategy was adopted<sup>118</sup>. Its main aim was to create a favorable environment for the private investors as was foreseen by previous strategy documents. The aim of the project was explained as such:

To stimulate demand for, and use of, multimedia content; to create favourable conditions for the development of the European multimedia content industry; and to contribute to the professional, social and cultural development of the citizens of Europe.

As a matter of fact, INFO 2000 can be seen as the fourth one of a series of technology-development projects which had started as early as 1984 with the ESPRIT as mentioned in the first part of thesis. Yet, this project was differing from the previous ones since it included sociocultural goals in addition to economic goals. INFOMAR C, IMPACT 1 and IMPACT 2 were the titles of previous three programs whose main aim were to support researches and development (R&D) for technological innovation.<sup>119</sup> INFO 2000 added these projects a ‘European dimension’ (Christensen, 2009), in accordance with the goal of reaching an “Information Society”. That was to say, in INFO 2000 information sector was not only seen as a project for developing technological infrastructure but also for economic exploitation of cultural domain. Following statements in the document of INFO 2000 is the evident of such a goal of information economy harmonized with free market notions:

Support will be given to projects that will accelerate the development of the multimedia content industry in four key areas: economic exploitation of Europe’s cultural heritage, notably through edutainment methods; business

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<sup>118</sup> It lasted between the years 1996-99 with a budget of 65 million Euro.

<sup>119</sup> INFOMAR C (Community programme (EEC) for the development of the specialized information market in Europe, 1984-1988) 25, IMPACT 1 (Plan of action (EEC) for setting up an information services market, 1988-1990) 36, IMPACT 2 (Programme (EEC) for the establishment of an internal information services market, 1991-1995) are such programs whose main aim to support sectoral competitiveness of technology firms, with budgets up to 64 million Euro.

services for firms, in particular SMEs; geographic information; scientific, technical and medical information.

Following programs, E-content and E-contentplus (covering 2001-2008)<sup>120</sup> targeted at content production for the new communication technologies and provided firms in this sector with a support program having a total budget up to 100 million Euro. The policy discourse employed in the documents of these two programs was in parallel with the INFO 2000 in terms of harmonizing approaches of new model of capital accumulation with the themes related to public interest. For example, the aim of E-Contentplus was described in its document as such: “The programme aims to make digital content in Europe more accessible, usable and exploitable, facilitating the creation and diffusion of information, in areas of public interest, at Community level.” However, the examination of the inner pages of the document proves that this and similar kind of programs were seen as a part of a broader economic project for meeting the demand of a new kind of content depending on the rapidly changing infrastructure of communication technology. That the addition of the concept “Knowledge-Based Economy” renders this discursive strategy more understandable, indeed. It is said in the document of E-contentplus,

The evolution of the information society and the emergence of broadband will influence the life of every citizen in the European Union by, inter alia, stimulating access to knowledge and new ways of acquiring knowledge, thus increasing the demand for new content, applications and services.

The conclusions of the European Council held in Lisbon on 23 and 24 March 2000 stressed that the shift to a digital, knowledge-based economy, prompted by new goods and services, will be a powerful engine for growth, competitiveness and jobs. On that occasion the role of the content industries

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<sup>120</sup> Please see the official websites of these programmes:  
e-content: [www.cordis.europa.eu/econtent/](http://www.cordis.europa.eu/econtent/)  
e-contentplus: [www.cordis.europa.eu/programme/rcn/840\\_en.html](http://www.cordis.europa.eu/programme/rcn/840_en.html)

in creating added value by exploiting and networking European cultural diversity was specifically recognised.<sup>121</sup>

One year before the abovementioned European Council held in Lisbon in 2000 (also known as Lisbon Summit)<sup>122</sup> was E-Europe Initiative (European Commission, 1999b) entitled “Information Society for All”. In this initiative, it was stressed that what was critical to “Information Society Project” was not only developing digital technologies and content to be accessed through these technologies but also the abilities of people to use these technologies. In fact, E-Europe Initiative project differs from other similar projects by its focus on especially creating an “entrepreneurial culture” and educate people primarily as consumers of digital technologies rather than taking measures to support local producers at new communications technologies sector.<sup>123</sup> What this fact reveals is that the economic exploitation of the digital communications sector is the primary expectation of EU authorities instead of rhetorically underlined goals of cultural diversity and improving democracy.

Such an approach was reproduced in subsequent E-Europe Initiative documents. European Commission updated E-Europe Initiative with E-Europe 2002 adopted

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<sup>121</sup> The Lisbon Summit Declaration revealed the main reason behind the inclusion of social dimension to the goal of “(European) Information Society”. In the first chapter of the Declaration (covering the 42 articles out of 59) entitled “Employment, Economic Reform and Social Cohesion”, it was said that amid of a global challenge resulting from ‘knowledge-based economy’, the most important failure of European Union was the high rate of unemployment despite the fact that there was a significant need for employment in the sectors of telecommunications and Internet. Therefore, it was urged to determine a new broader strategic goal. This new goal was expressed as such: “...to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion.”.

To access the document, please visit,  
[http://cordis.europa.eu/search/index.cfm?fuseaction=prog.document&PG\\_RCN=7258887](http://cordis.europa.eu/search/index.cfm?fuseaction=prog.document&PG_RCN=7258887) (last visit on September 2013)

<sup>123</sup> Three major aims of the E-Europe Initiative were as follows:

- to bring every citizen, home and school, every business and every administration into the digital age and online;
- to create a digitally literate Europe, supported by an entrepreneurial culture ready to finance and develop new ideas;
- to ensure that the whole process is socially inclusive, builds consumer trust and strengthens social cohesion.

in 2001 (European Commission, 2001b) and E-Europe 2005 adopted in 2002 (European Commission, 2002b) and i2010 adopted in 2005 (European Commission, 2005). Of these three strategy documents, E-Europe 2002 and E-Europe 2005 reiterated the main goals of E-Europe Initiative by focusing on some certain themes such as diffusing computer and Internet use in the societies and developing e-trade and e-state services.<sup>124</sup> However, next strategy document, i2010 entitled “A European Information Society for growth and employment” (European Commission, 2005), added a new dimension to these established strategy which is of utmost importance for our purposes: The media. The document was announced to be a new strategic framework including Commission’s political guidelines in terms of “Information Society and Media”. It was said, “With i2010, the Commission launches a new **integrated** Information Society policy approach. Fully in-line with the new governance cycle of the re-launched Lisbon Strategy, i2010 will contribute to the core Lisbon goal of sustained growth and jobs.”<sup>125</sup> (stress added). In this aspect, i2010 differed from the previous E-Europe Initiatives in terms of expanding the priorities of “European Information Society” policies towards ‘media’ referencing to the phenomenon of ‘convergence’ among information and communication technologies.

As a matter of fact, ‘convergence’ had been dealt with at an earlier Green Paper of the Commission issued in 1997 (European Commission, 1997a).<sup>126</sup> Yet, political implications of ‘convergence’ were not paid attention again till the adoption of i2010.<sup>127</sup> What had been mainly indicated in the Green Paper on Convergence had

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<sup>124</sup> It was underlined in E-Europe 2002 that although computer and Internet use in total population grew up to 40 % in 2000, the percentage of the population using e-trade was as low as 5 % and e-state was 10%.

<sup>125</sup> Text can be reacht at [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=CO\\_Mfinal&an\\_doc=2005&nu\\_doc=229](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=CO_Mfinal&an_doc=2005&nu_doc=229) (last visit on April 2013)

<sup>126</sup> Full title was “Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and The Implications for Regulation”– COM97(623)

<sup>127</sup> The Green Paper defined ‘convergence’ as a new technological trend of carrying all kinds of data –voice, video and so on- on the same pipeline of information. Such a technological

been that the convergence had led a new and dynamic communications sector, and thereby, it had been argued, “Information Society” had been “closer” than ever before. This trend meant a radical market convergence between telecommunications and media sectors as well as technological convergence, leading to a fluctuating market with ups and downs in a hardly predictable manner. According to the document, there were some certain measures to be taken in such a fluctuation. The measure, according to the document (Ibid.), was to maintain the liberalisation process and extend it to a full liberalisation:

Telecommunications liberalisation is widening choice and lowering prices.... The regulatory traditions of the telecommunications sector contrasted sharply with the free- market environment in which the computing industry had developed and their coming together meant that some rationalisation of these different regulatory philosophies would be needed if the new services were to flourish. The 1987 Green Paper concluded that greater harmonisation and gradual market opening in telecommunications would provide the most fertile environment for such growth. The first measures were initiated in 1988 and culminated in the introduction of full liberalisation of the telecommunications sector by 1 January 1998.

The document had been emphasizing that convergence which had led to the emergence of new type of communications would have positive contributions for both employment and production in content-related traditional sectors (audiovisual content production). For example, it had been argued that pay-based satellite television platforms such as CanalPlus in France and BskyB in the UK

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development paved way to the new type of transactions among the existing and new communication companies, such as telecommunication operators providing cable television services on their lines. Besides, Internet became a common media for both telecommunication and mass media services. This was in turn leading to merging between both technologies and economic sectors of telecommunication, computer/information and mass media. Another major implication of this technological trend was cultural as well as economic and technological. In addition to mass media, an on-demand or online media was emerging, thanks to Internet’s ‘interactivity’, differing from the mass media. Hence, the trend of ‘convergence’ was by no means a mere technological phenomenon, but a complex one with industrial and cultural dimensions and it therefore had implications for regulatory framework of communications.

had had reasonable investments to the drama (cinema and television) sectors (Ibid., p. 10).

Following the Green Paper of Convergence, it was argued in i2010 that “Information Society” came to a “turning point” by 2005. It was once again underlined that rapidly developing information and communication technologies became the source of economic growth and employment in the Union.<sup>128</sup> The most salient innovation in this sector was argued to have occurred in the production and distribution of media content (e.g. films or television programs over online databases) making audiovisual content ubiquitous in daily life, through new communication tools and gadgets getting ‘smarter’, smaller and mobile. The Commission was expecting these developments would create a new economic sector being prone to sustainable growth offering vast of new revenue opportunities.

New services were named in i2010 as “Information Society and Media Services”<sup>129</sup> and three priorities were also identified to provide private sector in Europe with a chance to compete globally. First two priorities were traditional measures which had always taken place in similar policy documents: Firstly, it was recommended that EU and member states to increase their investments in R&D of new technologies not to be surpassed by Japanese and American counterparts.<sup>130</sup> Secondly, e-state applications should have been developed for an

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<sup>128</sup> According to the i2010, 25% of EU’s GDP (Gross Domestic Product) and 40% of increase in the productivity were generating from the new information and communication technologies.

<sup>129</sup> Actually, the term “Information Society Services” had previously been adopted in the Union acquis in some directives, notably in the Directive of Electronic Commerce (2000/31/EC). In this directive the definition of “Information Society Services” covered “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service...”

<sup>130</sup> The numbers and percentages given by the Commission as to the R&D expenditure for ICTs are as following:

ICTs R&D	EU-15	US	Japan
Private Sector Investments	23 Milyar Euro	83 Milyar Euro	40 Milyar Euro
Public Sector Investments	8 Milyar Euro	20 Milyar Euro	11 Milyar Euro

Source: [http://eur-](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=CO)

[lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=CO](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=CO)  
[Mfinal&an\\_doc=2005&nu\\_doc=229](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=CO)



inclusive Information Society.<sup>131</sup> As for the third measure identified by i2010, as a new political priority, was to add broadcasting/media sector to the “European Information Society”. Accordingly, Commission mentioned building a “Single European Information Space” to refer particularly to clarify the legal framework for (digital) content production so as to provide private investors with appropriate market conditions. As a result, the Commission suggested to revise or fully replace the Television Without Frontiers (TVWF) Directive in order to build a common legal framework of future (digital) media market, in the i2010 document<sup>132</sup>.

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<sup>131</sup> In i2010 document, Commission recommended the EU authorities and Member States to increase their investments in the ICTs sector by almost 80%. As a matter of fact, ICTs was one of the main privileged sectors to be invested in according to 7. Framework Programme which had the biggest budget of this kind of programs lasting since 1984. Actually, ICTs had always been one of the sectors given importance in the Framework programs since their inception. However, ICTs were identified, for the first time, as a priority in the 3. Framework Programme of years 1991-94. In the last program (7. Framework Program), it was given the highest budget ever (10 billion Euro). Other privileged sectors in the Framework Programmes have been energy, life technologies, sustainable growth. see <http://ec.europa.eu/research/>

<sup>132</sup> The last strategy document adopted in relation to the ‘(European) Information Society’ was the Europe 2020 Initiative: Digital Agenda for Europe. It was put into practice in 2010 and can be seen as an extension of i2010 in the sense that it seeks for building single market in information and communication technologies, as well. Besides, main priorities of i2010 and the Europe 2020 Initiative are similar in many ways. These include, Digital Single Market, common standards in technological infrastructure and securing transactions over Internet, developing fast Internet connection, and developing social use of information and communication technologies. The Europe 2020 Initiative, in parallel with the i2010, is a document in which the notion of digital single market and free market is proposed as the single way of re-organizing digital communications, such as reallocation of magnetic spectrum for digital tools or investing in digital content production for especially Internet media. For example, as a striking case, it was expressed at the section of Research and Development (Pillar IV) that “The best research ideas must be turned into marketable products and services.”

For Europe 2020 Initiative please See: <http://ec.europa.eu/digital-agenda/en/our-goals/pillar-v-research-and-innovation> (last visit on September 2013).

## CHAPTER II - The Adoption of “New” Media Directive

*It (AVMSD) 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. (IP/07/706, EC welcomes the political agreement between European Parliament and Council).*

The ongoing technological convergence was creating a single medium, indeed, in which broadcasting, telecommunications and computer were becoming one. This new entity was different from the broadcasting and telecommunications in traditional terms. The backbone of this new communication environment was Internet in which telecommunication and computer firms have considerable stakes. Thus, new media environment have become interplay between broadcasting, telecommunications, computer and newly emerging Internet industry.

On the other hand, the industrial convergence was causing to, on the one hand, new wave of big mergers and acquisitions among firms<sup>133</sup>, and on the other hand, it was generating a series of frictions among the different capital groups operating in media sector. One important friction stemmed from digitalisation of broadcasting which created the opportunity that a substantial portion of the valuable radio frequencies used for traditional analog broadcasting was now unnecessary and could be used for further arrangements. Naturally, most of the governments wanted to use the extra spectrum for revenue source. As the radio spectrum became a profitable asset for the public sector, another question was

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<sup>133</sup> For example, Google has recently become one the giant firms of the new media environment such as Facebook, Apple and Microsoft. It has got investments into the all areas of hardware and software production. It has recently bought the a part of Motorola, the leading US mobile phone producers, owns Youtube. It has also been known that Google has serious plan to develop an IPTV platform.

raised within the political agenda: ‘why did not the private broadcasters pay the money for the spectrum they use?’ Another friction originated from the inclusion of the computer industry to the media sector. Besides, the coming of Internet firms to media environment made the things quite difficult to grasp. Thus, media environment has become a playground not only for traditional broadcasters and newly commercialized telecom operators, but also for computer hardware and software firms and internet content manager firms (google, facebook, twitter, youtube etc.).

In addition to creating new revenue sources, new technologies also expanded the revenue opportunities of existing financial ways, primarily advertising. An important outcome of the convergence was that the new advertising techniques like split screen<sup>134</sup> and product placement<sup>135</sup> which has rendered the broadcasting media unprecedentedly profitable was now easy to apply on the screens. As a result, total expenditure for advertising on TV and radios steadily increased in the last years and there is still a growing market for new advertising techniques.<sup>136</sup>

In the early years of new millennium, under direct and indirect influences of these industrial and technological trends, the EU authorities seemed to have been convinced that TVWF Directive was already outdated and it was urgent to revise it thoroughly or adopt a new directive to meet the requirements of new media

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<sup>134</sup> Split screen is a technic of dividing the screen into at least two parts so as to allow broadcasters to air advertising on one of the parts while programme continues.

<sup>135</sup> ‘Product placement’ is defined by Dictionary of Media and Communication of Oxford (Chandler&Munday, 2011) as “The promotion of a particular product through its visible inclusion as part of the set or scenery in a film or television production”. The advertising activity which is now called ‘product placement’ was variously termed in the history of film like “exploitation, tie-ups or tie-ins” (Newell, Salmon and Chang, 2006). Although, scholars may trace the history of product placement back to the early years of film, the application of product placement has become an established form of advertising in film did not occur until mid-1980s. In the 1990s, first in US television it has become a frequent application in television too. According to an estimation made in 2005 the value of product placement in film sector is 1,2 billion USD annually, whereas with television revenues it exceeded 1.8 billion USD (Kivijarv, 2005 cited in Newell, Salmon, Chang, 2006).

<sup>136</sup> According to ‘Global Product Placement Forecast 2006-10’ issued by PQ Media, where as the TV product placement spending was 2.4 billion \$ in 2006, a high increase by 33.9% was expected for 2007 (cited in Geach, 2008: 7).

environment. In this new policy process, the balance between the **primary** and **secondary** issues of media policy would be re-defined on new themes of discourses and with new set of vocabulary. This process of re-definition was at the same time a new discursive process of mystification the vested-interests behind the language of new policy.

Audiovisual Media Services (AVMS) Directive replaced the Television Without Frontiers Directive in 2007 after a long, comprehensive policy formation process with broad participation of representatives of vested-interests. The policy formation process was launched in 2002 with Fourth Communication from the Commission (COM [2002] 778 final) which was based on independent studies tendered by the EC to ‘consultant firms’ as contractors.<sup>137</sup> Common concern for all reports prepared by consultant firms was ‘the increasing commercial opportunities’ in a rapidly changing technological environment. Then in 2003, “discussion papers” were prepared by the EU upon the assessments of reports presented by ‘consultant firms’. “Discussion papers” included six different policy items in which the most important one was the ‘paper 3’ entitled “Protection of general interests in television advertising, sponsorship, teleshopping and self-promotion”. ‘Access to major events’, ‘protecting cultural diversity and competitiveness’ and ‘protection of minors’ were among the other policy items in “discussion papers” which were paid less attention by the participants of policy process. Then a public consultation was held in 2003 with 150 submission producing nearly 1550 pages opinion papers. These were followed by another document on the future of European regulatory audiovisual policy (COM [2003]784 final). Then ‘focus groups’ were held in 2004. At the meetings of ‘Focus groups’ six “issues papers” were prepared to guide a new public consultation. Then “issues papers” were finalized by the Commission in July 2005. Among them the fourth one entitled ‘Commercial Communications’ was the main item of the debate. ‘Protection of minors’, ‘right of reply’, ‘cultural diversity’ and the like were among the side items of the debate. Then vested-

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<sup>137</sup> The reports prepared by Bird&Bird, Bird&Bird and Carat Crystal in 2002 and Andersen in 2001.

interests were invited to submit their positions about the ‘issues papers’. Finally, a conference was held at Liverpool in 2005.

After all these steps mentioned above were taken, a draft of the new directive (Audiovisual Media Services AVMS) Directive was sent to the Council and Parliament. And this process took two more years producing hundreds of pages long policy papers including Commission Communications, Draft Directives, Press Releases, Impact Assessment Reports. As a result, the new directive, AVMS Directive, was adopted in 2007 and Member States were given initially three and then five years to fully adopt the directive into their national legislation. Having adopted the new Directive, Parliament issued a press release revealing proved the fact that ‘further commercialization through the new advertising techniques’ was the **main item** of policy initiative. It is succinctly said in the press release, “**New TV and product placement rules should be applied before end 2009.**”<sup>138</sup> (stress added).

However, just a few days after the adoption of the new directive in 2007, the biggest consumer organization in the EU, BEUC issued a position paper on their official website announcing, simply, that the organization was not happy with the result in particularly regards to the main policy item: ‘permission to new advertising techniques’. It was a fact that BEUC was among the frequent invitees as participant for such policy activities in the EU. However, as the current legal media advisor of BEUC told during our interview, ‘to be invited to such meetings and organizations does not mean that they want to listen to BEUC or at least, that they want to take BEUC’s opinions into consideration.’

As a matter of fact, in order to understand how such a policy outcome was produced, it is necessary to elaborate on the formation of policy. To complete this mission, below the history of AVMS Directive is divided into two. The first is the formative phase covering the years 2002-2005 in which TVWF Directive was reviewed for the last time to see if it was appropriate for the new technological

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<sup>138</sup> Press release can be accessed via <http://europarl.europa.eu>

and industrial conditions. Second is the adoption phase of new directive (AVMS) covering 2005-2007 in which draft text of new directive was published and ratified by the Parliament and the Council.

## **2.1. Formative Phase (2002-2005): Justification for Revision**

The last and decisive structural review of the audio-visual policies of the Union started with the Fourth Communication of the Commission<sup>139</sup> in 2002 (European Commission, 2002/COM [2002] 778 final) which was emphasized to be directly connected with other policies of the Union such as ‘competition, intellectual property<sup>140</sup> and media<sup>141</sup>, information society - notably the electronic commerce directive<sup>142</sup> and the ‘electronic communications’ package<sup>143</sup>, or consumer protection<sup>144</sup>’ in pursuing the “fundamental freedoms” (European Commission

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<sup>139</sup> A brief account of the history of AVMSD and important policy texts are available on the website [http://ec.europa.eu/avpolicy/reg/history/consult/index\\_en.htm](http://ec.europa.eu/avpolicy/reg/history/consult/index_en.htm), (last visit 17 May 2012).

<sup>140</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, p. 10.

<sup>141</sup> 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, OJ L 248, 6.10.1993; Report from the Commission Report from the European Commission on the application of Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (COM (2002) 430 final, 27.7.2002; 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, OJ L 320, 28.11.1998, p.54; and Communication from the Commission on the application of the general principles of free movement of goods and services - Articles 28 and 49 EC - Concerning the use of satellite dishes (COM (2001) 351 final, 27.5.2001). [http://europa.eu.int/comm/internal\\_market/en/intprop/docs/index.htm](http://europa.eu.int/comm/internal_market/en/intprop/docs/index.htm).

<sup>142</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L 178, 17.7.2000, p. 1.

<sup>143</sup> [http://europa.eu.int/information\\_society/topics/telecoms/regulatory/maindocs/index\\_en.htm](http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/index_en.htm).

<sup>144</sup> See Communication from the Commission - Follow-up Communication to the Green Paper on EU Consumer Protection, Brussels, 11.6.2002, COM (2002) 289 final. Cf. work in progress on a framework directive at the following address: [http://europa.eu.int/comm/consumers/policy/developments/fair\\_comm\\_pract/follow\\_green\\_en.html](http://europa.eu.int/comm/consumers/policy/developments/fair_comm_pract/follow_green_en.html)

2002: 28). The review was actually a necessity laid down by the TVWF Directive.<sup>145</sup>

At the beginning of this document (European Commission, 2002) some reasons were manifested to be behind this broad review of TVWF Directive. These reasons were as following: ‘The need for adjusting regulatory framework because of developments in markets and technologies’; ‘the commitment to the objectives of creating a pro-competitive’ and ‘growth-oriented environment for the audio-visual sector’. Accordingly, the growing number of the communication channels in the EU territory was deemed positive for ‘*economic health*’ of the sector<sup>146</sup>. It was also indicated in the report the channels in inter-territorial character were also in increase by number.<sup>147</sup> The satellite broadcasting was growing steadily<sup>148</sup> and cable broadcasting was varying from country to country<sup>149</sup>. As a result of these

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<sup>145</sup> “Article 26 of the Directive provides that, not later than 31 December 2000, and every two years thereafter, the Commission must submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of the Directive as amended and, where appropriate, make further proposals to adapt it to developments in the field of television broadcasting, in particular in the light of recent technological developments. This report follows the Third Report that was published at the end of the year 2000 and deals with the application of the Directive in the years 2001 and 2002.” (From the report, p. 4).

<sup>146</sup>It is said in the document, “At the beginning of 2001, over 660 channels with potential national coverage were broadcast in the EU via terrestrial, satellite or cable means. This represents an increase of over 25% compared to the relevant data of the previous year. Over the same period, investments continued to grow in the relatively marginal - from the point of view of mass audience - sector of channels with no analogue terrestrial transmission (+ 30%).” (European Commission, 2002: 5).

<sup>147</sup> It was said “There has been a significant increase in the number of channels transmitted across the EU territory. Many channels are regularly broadcast over more than one type of transmission infrastructure and are often received in more than one EU country, mainly via satellite. Moreover, proliferation in channel numbers (actually originated in other countries) is striking. The number was 68 in 2001 showing 13% increase in relative to previous year.” (Ibid., p. 5).

<sup>148</sup> It was said “Overall, satellite broadcasting is becoming more and more popular. The number of EU households receiving TV channels directly or through collective antennas has increased to over 33 million in mid 2001 with a 21% increase vs. the previous year and a 52% increase since mid 1997. Moreover, many more households receive TV signals originally broadcast by satellite through local cable operators.” (Ibid., p.5).

<sup>149</sup> It was said “The structure of cable industry remains largely different from country to country. Overall, investments in new cable connections are progressing rather slowly amid the public’s relative indifference. The percentage of EU households connected to cable networks in 2001 remained at the level of 53% of all TV households, and the rate of connected households actually

developments, at the beginning of new millennium the economic size of the EU audio-visual market reached a remarkable level.<sup>150</sup> The share of Pay-TV was also in increase.<sup>151</sup> However, an interesting fact presented by the report was that despite all the longstanding concerns and ‘measures’ against the rising share of USA-originated audio-visual products in EU market, this trend was still remaining as a severe concern at stake<sup>152</sup>.

As a matter of fact, this document was largely based some preceding reports prepared by consultant firms commissioned by the European Commission. In these reports options for policy strategies and some key concepts were proposed. The first report of this kind was the report prepared by a ‘consultant/lobby organization’ Bird&Bird Brussels (2001) which was about the “impact of television advertising and teleshopping on minors”. In this report, “self-regulation”<sup>153</sup> was offered as an option to be deployed in new media policy. Second report preceding the document – Fourth Communication of the Commission (European Commission, 2002)- was also prepared by Bird&Bird in

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subscribing to audiovisual services was almost unchanged compared to the previous year at about 61% of connected households (about 49 million households, +24% vs. 1997).”

<sup>150</sup> According to estimations, the overall turnover of the TV and radio broadcasting sector in the EU was about € 62 billion showing 11.6% increase in relative to 1999. Moreover, TV advertising which remained the main source reached about € 22.5 billion with a 8% increase in relative to 1999. And economic slow down experience in the beginning of new millennium did not much change the picture (Ibid., p.7).

<sup>151</sup> Pay-TV subscriptions have also increased the revenue flow of the audiovisual sector to an overall amount of € 10.7 billion in 2000, an increase of 22.8% compared to the previous year (Ibid., p. 7).

<sup>152</sup> According to the document ‘overall, trade in TV rights with the US continued to deteriorate and in 2000 it recorded a deficit estimated at about 4.1 billion € (+ 17.5% vs. 1999) out of a total audiovisual deficit evaluated at 8.2 billion € (+14% vs. 1999)’ (Ibid.). The trade imbalance continued in 2001. What is really interesting is that EU authorities of 1980s who were warned that the commercialization was not the remedy for growing US industrial hegemony over the media products was still a growing problem in the threshold of the millennium and the further commercialization was still put forward as a remedy by the EU authorities of 2000. This situation necessarily reminds a quote from Albert Einstein: “Insanity: doing the same thing over and over again and expecting different results.”

<sup>153</sup> Actually, the Communication on audiovisual policy in 1999 (COM 1999, 657 final) had before stressed the importance of co- and self-regulatory instruments. Besides, the terms came to the policy agenda with the Commission’s White Paper on European Governance (COM 2001, 428 final) and the Better Legislation Action Plan (COM 2002, 278 final).



cooperation with Carat Crystal (2002) (another consultant organization expert on advertising). The study was about ‘**the development of new advertising techniques**’. In this report (Ibid.) ‘advancements’ in teleshopping and in advertising techniques were dealt with taking ‘the development and evolution of current practices of advertising’ at focus. It is argued in the report (Ibid.) that there was a ‘regulatory gap’ concerning to the new techniques of advertising like interactive advertising, split screen and virtual advertising<sup>154</sup> (or sponsorship) and more importantly **product placement**.<sup>155</sup>

Therefore, Commission decided to have a new study prepared on the possible developments concerning broadcasting. Another ‘independent consultant’ was granted as a contractor to prepare a new report to forecast the future of television as business. Andersen<sup>156</sup> (2002) which was a prominent financial consultant firm issued a report on “Outlook of the development of technologies and markets for the European Audio-visual sector up to 2010”. It was a social and market forecasting on which many preliminary assumptions of the Commission would be built. The main idea of the forecasting report prepared by Andersen was that the economic value of the audiovisual media would significantly grow till 2010

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<sup>154</sup> A technique which includes inserting advertising image into a live or pre-recorded television content.

<sup>155</sup> It is understood from the documents that though different regulations were available from country to country as to the new advertising techniques, general tendency of the majority of the member states were in favor of being *restrictive of and forbidding* such techniques. For example, while there was a ban on using split screen in the Netherlands, Portugal, Sweden and France, virtual advertising was treated in the same way in Italy, France, Portugal and Norway. Since there was no detailed information country by country in the report, it was understood roughly that only the UK and Germany had regulations, still restrictive, about new techniques. However, it was expressed that as the report showed, new advertising techniques were in their infancy and the traditional advertising methods comprised the 99% of the advertising revenues of the broadcasters in the late 1990s. Even so, it was underlined in the report that new advertising techniques were extremely important when especially media sector’s growing significance in connection with the other policy issues such as Internal Market Strategy of the Commission’ was concerned.

<sup>156</sup> Andersen was once one of the biggest accounting and consultant firm whose business fame was severely damaged since it was kept as one of important responsables in the famous Enron Scandal in 2001. Though, according to court decision taken in 2005, Andersen was not directly guilty and free to operate its business, its life as a firm in the market almost ended subsequently because of reputation problems. The report can be accessed on:

<http://ec.europa.eu/avpolicy/docs/library/studies/finalised/tvoutlook/finalrep.pdf>

because of market trends. The main factor was that growing numbers of ‘consumers’ would have access to multi-channel platforms demanding subscriptions (Ibid., p.11) Furthermore, thanks to the digitalization of the audiovisual infrastructural technology, new ways of programming and advertising would emerge (e.g. personalization of ads). Pay-TV would continue to rise, competition for the ‘consumer’s time would be more harsh among traditional audiovisual and entertainment firms and newcomers (e.g. broadband internet firms). However, the cross-integration, mergers and acquisitions between the capital groups operating in or towards the sector would continue to be a strong tendency.

In such an economic fusion, though the report (Ibid.) presented different development scenarios for the future audio-visual industry, indicating the best and worst expectations as to the economic growth<sup>157</sup>, it was also indicated that since there were conflicting interests between capital groups it was doubtful if the audiovisual industry would reach an industry optimum in the future:

Industry stakeholders have clearly different economic interests. While interactivity is the best-case scenario for access providers, it is not for content providers. Nevertheless, access providers (diffusion) need attractive content and services to attract new customers. Access providers need to find revenue sharing mechanisms that increase the attractiveness towards content producers.

As a conclusion, in view of the different (economic and general) interests of the main industry stakeholders (industry operators and consumers), it is

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<sup>157</sup> It is said in “The audio-visual industry has three main revenue drivers: advertising, subscriptions and public funding. The total revenue of the audio-visual industry has been estimated to 52,5 billion Euro in 1999. In the most optimistic scenario for the industry (i.e. the “interactivity” scenario in a positive economic environment), the total revenue will grow to 89,4 billion Euro in 2010. In the most pessimistic scenario (i.e. the business as usual scenario in a negative economic environment), the total revenue will still grow to 60,7 billion Euro in 2010.” (European Commission, 2002).

unlikely that the simple play of the market mechanisms will favour optimal consumer choice and control and optimal industry revenues at the same time.

The report presented two policy options for the public authorities: The first one was to develop specific industrial policy measure in order to stimulate audio-visual industry and the second one was to balance individual and general interests. Besides, there should have been a *distinction* between ‘television broadcasting services’ and ‘information society services’. The first one (television broadcasting services) was regulated by TVWF Directive (1989, 1997) and the latter one (information society services) was by the Electronic Commerce Directive (2000). In addition to these policy advices, some critical concepts were also proposed to the Commission such as “co- and self-regulation” (Ibid., pp. 32-34). Moreover, using the concept of ‘**non-linear**’, the report proposed to consider television broadcasting and video-on-demand broadcasting *separately*.

*Shortly, it would not be wrong to claim that initial formative policy frame of the Commission were based on abovementioned ‘independent’ studies conducted by consultant/lobby organizations.* From the term of ‘product placement’ to ‘linear/non-linear distinction’, various key concepts for the coming regulatory framework appeared for the first time in these consultant reports. All consultants’ reports drew the attention to ‘the proliferating commercial possibilities’ depending on the technological ‘advancements’. And Commission used these reports to form a policy frame. In doing this, Commission wanted to see developing new advertising techniques to affect the media market.

After discussing the findings and suggestions in the reports submitted by consultant firms, a working programme including the steps to be proceeded for the adoption new media policy was finally given place at the end of the Fourth Communication of the Commission (European Commission, 2002). In accordance with this working programme, a public hearing would firstly be held whose framework was to be determined by ‘discussion papers’ including specific ‘policy

themes' which were also presented in the Fourth Communication of the Commission (Ibid.).<sup>158</sup>

Theme 1 was related to the new additions to be made to Article 3 of TWFD. It was about necessary measures to ensure that television channels did not broadcast events which had major importance for the society on an exclusive basis (excluding a major part of the society). Commission was not wishing to expand the scope of this mechanism which did only cover traditional television broadcasts. Theme 2 was related to two interrelated issues: First was about taking necessary precautions to protect European culture and support the local (European) television broadcast market. Commission wanted to see the possible applications of the related articles in TVWF Directive (Article 4 and 5 which were related to 'protection of culture and cultural quotas to protect local program industry) in the new term. Theme 3 was the only critical theme among the other ones. It was about 'legal measures' to be taken for new advertising techniques. It was emphasized by the document that "The Commission will also examine the economic and financial implications of possible adaptations." (Ibid., p. 34). Theme 4 was about the principles to protect the minors with a common European policy to be valid for all Member States. The theme was also related to the application of the common rules for 'the right to reply' in case 'any natural or legal person's reputation was damaged because of broadcasting of incorrect facts' or so. Theme 5 was rather a technical topic including the principles related to the regulatory bodies to be kept responsible on behalf of Member States. As for Theme 6 (it was related to the Theme 1), the subject was to review of the events which were already subject to exclusive rights such as sport events. Commission wanted to see the possible ways of developing common policies among the

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<sup>158</sup> These themes were: 'Access to events of major importance to society' (Theme 1), 'Promotion of cultural diversity and of competitiveness of the European programme industry' (Theme 2), 'Protection of general interests in television advertising, sponsorship, teleshopping and self-promotion' (Theme 3), 'Protection of minors and public order - The right to reply' (Theme 4), 'Application (related aspects)' (Theme 5), 'Issues not covered by the Directive: access to short extracts of events subject to exclusive rights' (Theme 6).

Member States as to the regulation of the short extracts of these kinds of exclusive events.

After these six specific themes were expressed in the document (European Commission, 2002), six discussion papers matching with these themes were issued. These discussion papers which were manifested in the working programme were planned to be the basis for following public consultation which would be held in 2003 to which all the interested parties were invited to participate and present their views. Of the discussion papers, second and third discussion papers (Themes 2 and 3 mentioned above actually) were the critical ones which could also be seen as the main policy issues. Other discussion papers were rather presenting some technical questions with the aim of developing common regulatory policies for some relatively insignificant issues such as the broadcasting of World Football Cup across the Union. Discussion Papers 2 and 3 (Themes 2 and 3) were actually very critical in terms of restructuring the media market in the digital age because it was a fact that arguments and questions to be produced in these papers would trigger and shape the subsequent public consultations.

Accordingly, in Discussion Paper 2, participators of public consultations were mainly asked about if the criteria for protecting European works by ‘independent producers’<sup>159</sup> (in the original TWFD) were adequate or not. In the Discussion Paper 3, the participators were asked if definitions and rules included by the TVWF Directive adequate to meet ‘the market necessities’ and they were questioned about what they thought on the new advertising techniques such as virtual advertising and split-screen. No remark about the ‘product placement’ was included by this very first revision initiative, while the concept of ‘commercial communication’ adopted from the E-Commerce Directive of 2000 was remarked for the first time in this Discussion Paper. Furthermore, the terms co- and self-

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<sup>159</sup> A definition of ‘independent producers’ was also asked from the participators in the discussion paper.

regulation were brought to the front in both of these two critical papers prepared by the Commission.

Guided by these Discussion papers, first public consultation was held in 2003. More than 150 participants submitted approximately 1500 pages-long position papers (The list of participants and the main themes of their position papers is presented at Appendix 1).<sup>160</sup> With the completion of the first public consultation, formative phase of the making of new directive was completed. The next phase was started with the Commission Communication On The Future of European Regulatory Audiovisual Policy (European Commission, 2003/COM 2003, 784 final). In this paper which was prepared upon the observations obtained from first public consultation, it was claimed by the Commission that most of the participants of the public consultation were of the similar views as to the policy initiative (Ibid., p.14):

Most submissions agree that (in the first public consultation) the Directive has provided a flexible and adequate framework for regulation by Member States and support the Commission's pragmatic approach. Overall, the Directive has made a positive contribution to enabling free movement of broadcasting services within the EU (the remarks in parentheses added).

As is seen from the findings presented at Appendix 1, this claim does not present what actually took place in practice. Rather than a consensus or agreement, as will be seen in the next chapter in detail, there was a conflict about especially whether the future media regulation should have been that 'flexible' or not. Besides, other conclusions drawn from the first public consultation by the Commission were as such: Firstly, the principle of 'the cultural protection' (The protection of European Works and independent producers) were supported by most of the contributors. It

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<sup>160</sup> As is seen from the table at Appendix 1 and at the discussion based on main themes produced by the participations in the first consultation were about policy issues such as permission to new advertising techniques, the relationship between editorial independence and advertising, self-regulation, the protection of European works and fostering competition and so on. Actually main axis for this thematic analysis was about how participators took position concerning to further commercialization of the media environment in the age of digital communication.

was also pointed out that many participants, -especially scriptwriters, producers and artists- showed their discomfort with the condition of ‘where practicable’<sup>161</sup>. The issues of ‘protection of minors’ and ‘right of reply’ were the other issues on which a general consensus was easily reached. As a principle, all the participants endorsed the idea of ‘protecting minors’ amid the changing communication environment. Likewise, most of the participants who commented on the right of reply in respect to television services found that the provision, as it was already standing, needed no more regulation, though some proposed applications should have been reconsidered to apply all electronic media (analogue-digital). Other issues about the first consultation worth noting, according to Commission, were the demands for clarification over the terms ‘independent producer’ and ‘co- and self-regulation’.

However, consensus was completely *absent* when it came to the issue of ‘commercial communications.’<sup>162</sup> The discourse produced by the Commission Communication is far away from underlining the clash between the rival discourse coalitions<sup>163</sup>. Instead of pointing out the discomfort with the new advertising techniques raised by some important participants such as Swedish Authors and performing Artists - KLYS and International Federation of Actors- FIA, Commission opted for putting stress the demands of business coalitions for more flexibility for new advertising techniques. It is said,

While supporting the principle of the separation of editorial and advertising content, some operators, particularly advertisers, marketers and commercial broadcasters, would nonetheless welcome some degree of flexibility with

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<sup>161</sup>In the original TVWF Directive, the articles 4 and 5 which were related to cultural preservation and promotion, assumes the member states to ensure that broadcasters allocated European productions at determined levels “where practicable and appropriate means”. This statement had always been criticized to make these rules difficult to apply and open to be abused by private broadcasters.

<sup>162</sup> This term of ‘commercial communication’ was originally adopted by the e-Commerce Directive of 2002 and it was started to be used as an umbrella term for commercial audiovisual communication with this report.

<sup>163</sup>By the term ‘discourse coalition’ we mean the groups of vested-interests around similar themes/arguments of policy discourse.

regard to the implementation arrangements, particularly as regards the exceptional nature of isolated spots or the banning of surreptitious advertising.

It was also added that “a substantial majority” of the participators of first public consultation took the view that, ‘the split screen’, ‘interactive advertising’ and ‘virtual advertising’ are convenient to the rules of the TVWF Directive. However, this is not the case given the fact that if the identity of participants (qualitative dimension) is to be considered rather than number of the participants (quantitative dimension) supporting the position taken by the Commission. Because, many consumer protection organizations and artist associations actually manifested their concerns about both adopting new advertising techniques in particular and considering the communication as business’ in general.

The issue of ‘commercial communications’ (new advertising techniques) were so central to the policy making process that it was stated in this Commission’s Communication (European Commission, 2003/COM 2003, 784 final) that an ‘Interpretive Communication’ would be prepared in order to clarify ‘new advertising techniques’. One year later in 2004, the ‘Interpretive Communication’ was issued as planned (European Commission, 2004 - 2004/C 102/02)<sup>164</sup>. In this document, some critical founding principles of European common media policy were reiterated: It was reminded that ‘with regard to issue of advertising, TVWF Directive laid down provisions aiming at reconciliation of the principle of freedom to produce television advertising/commercial concerns and appropriate protection of general public-audience/concerns of public interest.’ In order to reach this aim, the Directive was said to have put some sub-principles such as *‘separation between editorial content and advertising and rules determining hourly limits of advertising’*.

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<sup>164</sup> Title of the Interpretive Communication was “Commission interpretative communication on certain aspects of the provisions on televised advertising in the ‘Television without frontiers’ Directive” (European Commission, 2004).



However, the interpretive Communication stated (Ibid.), public consultations raised some questions about new advertising techniques such as mini-spots especially necessary for sport-organizations (i.e. intervals of rounds of a box match) and “product placement”. It was added, this situation necessitated reconsideration of some concepts like ‘sponsorship’ and ‘surreptitious advertising’ which were directly related to the founding principle of ‘separation between editorial content and advertising’. In this case, the definition on ‘surreptitious’ advertising was important because the interpretive Communication already mentioned that Fourth Communication from the Commission (European Commission, 2002) had paved way for some new advertising techniques such as split screen, virtual and interactive advertising thanks to the independent study conducted by Bird&Bird and Carat Crystal. In addition to this earlier relaxation on the rules, “interpretive Communication” led to further liberalisation about sponsorship rules and provided a kind of explanation in order to rationalize the compatibility between virtual and interactive advertising techniques with the TVWF Directive which was then in effect.

Although the principle of ‘separation between editorial content and advertising’ was reiterated by the “interpretive Communication”, it was defended for the first time in this document that new advertising techniques are compatible with the TVWF Directive, provided that they were “**readily recognizable and kept quite separate from content of the programmes by acoustic or optical means so as to prevent viewers mistaking advertising.**” (European Commission, 2004, stress added). It was assumed in this ‘solution’ that such acoustic and optical means (it is not clarified what is meant by acoustic and optical means) would prevent viewers to be misled by the advertising which would subsequently be applied to the ‘product placement’ which caused advertising messages into the scenarios of programmes, formats of game shows etc.. This was actually to be the major discursive ground of destroying the main principle of ‘separation between advertising and content’.

After the interpretive Communication (Ibid.), Commission commissioned another independent study and held focus group meetings in 2004 in order to clarify the road to be followed. The independent study was conducted in 2005 by David Graham and Associates Ltd. on “Impact Study of Measures Concerning the Promotion of Distribution and Production of TV Programmes Provided for Under Article 25(a) of TWFD” (David Graham & Associates Ltd., 2004). According to the findings of this study which put stress on the fact that the main aim of the rules in TWF Directive (Article 4 and 5) was economic, the implementation of the rules in member states had contributed to the increase in the share of European works and independent productions. Upon this finding, it was advised that the common rules for protection of European works to be implemented more ‘consistently’ in order to avoid differences in implementing the rules among Member States. Nevertheless, the trade deficit was said to have continued between the European TV companies and US content companies reaching to 4.4 Billion Euros importing from US companies. And worth noting, it was also claimed by the study there was no proven relation between the Article 4 and 5 (Protection of European Works and Independent Producers) and trade deficit with the USA. More importantly, the independent study put stress on the importance of the development of new media which was seen to create new opportunities for European media companies to compete effectively. However, *no benefit was seen to regulate internet* since it offered quite different producer-consumer relations in terms of patterns of accessing and using content. The report concludes with a query putting doubt on the future feasibility of ‘quota application’ in the future. It is said, “In so far as Articles 4 and 5 were put in place to deal with an era of increasing channel choice and audience fragmentation, the true test of their impact may be yet to come”. Therefore, the study reflected an uncertainty, if not a doubt or disbelief, on the necessity or affectivity of Articles 4 and 5 in regards to commercial competition and policy intervention.

As for the focus group meetings, there were three focus groups and one expert group held in the formative process. The subjects of the focus groups and expert

group were as follows: ‘regulation of audiovisual content’ (focus group 1), ‘the level of detail in the regulation of advertising’ (focus group 2), ‘the right to information and the right to short extracts’ (focus group 3), ‘cultural diversity’ (expert group), respectively. The first thing to say about focus groups is the fact that the representatives of the large media firms and of their associations attended all the group meetings and they were in majority in number in comparison to participators from other vested-interests. For example, some 20 out of 57 participators of focus group 2 which is related to advertising were representing the business companies including media, advertising and ad-giver companies like Toys Industries of Europe (TIE).

When it comes to final working papers produced by the groups, the focus group 1 which dealt with ‘regulation of audiovisual content’ brought to issue of “graduated or two-tier regulation” to the policy agenda. According to this, technological convergence made it possible to carry television signals and new type of broadcasting over the new networks (internet over DSL, 3G etc.). Hence, it was claimed that appropriate regulatory regime should have been found. The TVWF Directive did only cover the traditional schedule type of broadcasting and accordingly, online (on-demand) type of broadcasting was not dealt with by this regulatory framework. On-demand types of broadcasting services were regulated only by E-commerce (2000/31/EC) directive and only from the commercial perspective. Any necessary content regulation had not previously been imposed on such on-demand audio-visual services. For this reason, focus group 1 proposed to bring a *two-tier* regulation for the new directive. It was also proposed to call traditional television services as ‘linear media’ and on-demand broadcasting as ‘non-linear’ media. As linear media would be subject to stricter regulations, non-linear media would be subject to only minimum necessary obligations. It was also proposed by the focus group 1 that ‘minimum necessary obligations’ should have included the rules for ‘protection of minors and human dignity’, the principle of ‘separation and identification of commercial content’ and ‘right of reply’. In relation to this, different types of regulations (strict regulation, co-regulation and

self-regulation) were suggested to be considered depending on the different type of broadcasting (linear and non-linear).

As for the second focus group whose mandate was to deal with the issue of advertising, the group proposed the key definitions concerning to advertising available in TVWF Directive such as ‘television advertising’, ‘surreptitious advertising’ should be reviewed. It was urged by the group to decide if the definitions of types of advertising were still appropriate with the new technological and market conditions. In this context, new advertising techniques were suggested to be reconsidered. As is understood from the final paper of second focus group, the principle of protecting both the rights of viewers and interests of broadcasters remained valid, though rhetorically. It was said in the paper that “the aim of this rule is to make sure that viewers do not confuse commercial and editorial content.” (The paper of Focus Group 2, p.2)<sup>165</sup>. Accordingly, when it comes to the new advertising techniques, the focus group suggested changing *the definition of surreptitious advertising to avoid new advertising techniques to be regarded as surreptitious*. Considering the definition of ‘surreptitious advertising’ in TVWF Directive, focus group argued that what was vital in traditional definition was to prohibit non-identifiable elements of advertising taking place during a programme<sup>166</sup>. Also giving reference to ‘the interpretive Communication’ (European Commission, 2004), the focus group, thus, advocated to review and change the definition of ‘surreptitious advertising’.

Other related issues of advertising which were mentioned in the final paper of second focus group were about ‘split-screen’, ‘sponsorship’ and ‘insertion of advertising’. For all these issues, focus group demanded these issues to be

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<sup>165</sup> Reports submitted by focus groups can be accessed via:

[ec.europa.eu/avpolicy/reg/history/consult/focus\\_groups/index\\_en.htm](http://ec.europa.eu/avpolicy/reg/history/consult/focus_groups/index_en.htm)

<sup>166</sup> ‘Surreptitious advertising’ is defined by the TVWF Directive (Article 1.c.) as such: “‘surreptitious advertising’ means the representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration.”

interpreted in favor of more liberalization in the media sector. ‘Insertion of advertisement’<sup>167</sup> during the programme flow was particularly underlined by the focus group. It was pointed out that rules as to ‘insertions of advertisement could only be valid for the traditional (linear) schedule type of broadcasting where viewers were passive to choose the time and duration of watching. That was to say if a programme was to be regarded as subject to on-demand viewing, programme owners would not have to think about rules limiting the ‘insertions of advertisement’ in especially regards to duration allocated in daily or hourly transmission time. Behind such an emphasis of focus group were arguably the concerns of private broadcasters who were aware of the fact that traditional television viewing was gradually being replaced by the online (or on-demand) viewing that enabled the viewers to skip the advertisement breaks.<sup>168</sup> It was obvious that such an approach was providing private broadcasters with a rhetorical basis to rationalize permitting new advertising techniques so as not to be deemed as breaching the principle of ‘separation between content and advertising’.

Secondary issues which were dealt with by the second focus group included concerns such as ‘public health protection’ and ‘protection of minors and human dignity’ in advertisements on audio-visual media. The former one included principles of ‘putting ban on tobacco, medicinal products and alcohol in programmes’. Focus group proposed this ban to remain valid for both linear and

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<sup>167</sup> In schedule-type (linear) traditional analog broadcasting, advertisings can only be inserted in programme intervals or breaks during programme flows. In commercial broadcasting systems, it is a very important duty of policy makers to determine the principles and rules guiding broadcasters to decide how and when to insert advertising during programme flows. For example, according to TVWF Directive, the amount of advertising could be risen up to 20% of daily transmission time and advertising would be inserted between programmes. It was so important in the TVWF Directive that 12 articles out of 27 in the Directive were allocated to rules about advertising and sponsorship.

<sup>168</sup>: Advertising (or commercial) skipping’ has become a common application among the viewers of television who use digital video recorders, TV sets or set-top-boxes allowing video recording, or online platforms buffering programs from audio-visual databases. Since audio-visual content can be or is already recorded on and through these means, viewers/users can skip the commercial breaks.

non-linear broadcasting. For the latter one, it was said that the provisions in TVWF Directive to protect minors and human dignity were generally satisfactory.

As for the third focus group studying about ‘rights to information and rights to short extracts’, produced some questions rather than answers, about the necessity of preparing provisions to regulate ‘short extracts from the contents with exclusive rights’. This task stemmed from the fact that ‘the concepts of short extracts of events worthy of media interest’ had not been previously defined in Community law. However, at a related policy paper (European Convention on Transfrontier Television<sup>169</sup>), there was an article stating that parties to the Convention could adopt measures “such as introducing the right to short reporting on events of high interest for the public to avoid the right of the public to information being undermined due to the exercise by a broadcaster within its jurisdiction of exclusive rights” (European Convention of Transfrontier Television of May 1989). In this context, focus group asked if it was necessary to adopt a similar kind of article to the directive or not.

As for the expert group’s task which was relatively important when compared to the third focus group was about ‘the cultural diversity and promotion of European and independent production’<sup>170</sup>. The focus group’s paper starts with indicating a major consequence of the first public consultation held in 2003, that there was no consensus between the participators about the possible amendments on the measures of cultural protection. It was said however,

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<sup>169</sup> European Convention of Transfrontier Television is a non-binding treaty on television broadcasting across members of Council of Europe which is, as mentioned previously, another international organization different from European Union.

<sup>170</sup> Status quo in regards to cultural protection in TVWF Directive was that The chapter III (Articles 4 and 5) of the directive was on the cultural preservation and promotion of independent producers. Article 4 required broadcasters to reserve a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, for European works whereas Article 5 required broadcasters to reserve a minimum proportion (at least 10%) of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, for European works created by independent producers

(Please see:

[http://ec.europa.eu/avpolicy/docs/reg/modernisation/focus\\_groups/eg4\\_disc\\_paper\\_en.pdf](http://ec.europa.eu/avpolicy/docs/reg/modernisation/focus_groups/eg4_disc_paper_en.pdf)).

Whereas producers, scriptwriters and trade unions proposed raising the majority proportion for European works, some Member States and private broadcasters considered broadcast quotas to be an disproportionate restriction of broadcasters' scheduling freedom. A majority of Member States were in favour of keeping the status quo.

Accordingly, expert group asked whether there was a need to reconsider the measures for cultural protection or not. An important point was also emphasized that measures based on 'transmission time' could not be applied for the on-demand (non-linear) communication, therefore 'non-binding' instruments could be considered to promote cultural promotion for non-linear media. Behind such an argument was the expectation expressed by expert group that non-linear services would probably have increasing offers for audiovisual content "with high potential to market shares and profits". In order to enable such a 'profitable' environment, 'binding' measures were argued to be inhibitive.

The next major step in the formation of AVMS Directive was that the Commission announced "Issues Papers"<sup>171</sup> covering very similar matters with the "Discussion Papers" dealt with above<sup>172</sup>. These "Issues Papers" were planned to be guide for the next public consultation to be held in autumn of 2005. The main themes, categorization and the questions raised in these "Issues Paper" were said to be built on the information and opinions obtained from the previous three-year policy formation process which started in 2002. Commission formulated more specific questions in these "Issues Papers" and declared that these categorizations of the issues would be basis for both second public consultation and for the draft text of new directive and main arguments presented by the Commission Communication i2010 (European Commission, 2005a) would be at the heart of

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<sup>171</sup> Issues papers can be accessed via:  
[ec.europa.eu/avpolicy/reg/history/consult/consultation\\_2005/index\\_en.htm](http://ec.europa.eu/avpolicy/reg/history/consult/consultation_2005/index_en.htm) (last access on June 2013).

<sup>172</sup> The only major exception was the issue of "Media Pluralism" dealt with in the sixth "Issues Paper" as is discussed below.

this process. Because it was expressed in the preambles of all the “Issues Papers” that in its communication i2010, “the European Commission noted that digital convergence required ‘an integrated approach to information society and audiovisual media policies in the EU’ and announced its desire ‘to increase legal and economic certainty to encourage new services and online content’”.

Within this framework, the subject of first “Issues Paper” was “Rules Applicable to Audiovisual Content Services”. It raised some important questions for the participants of public consultation. To mention some major questions, the participants of public consultation were asked what they did think about the “two-tier regulation”. According to this implementation, the broadcasting services would be divided into two categories as “linear” and “non-linear” broadcasting services and would be subject to two different set of rules. While linear broadcasting would be subject to rules derived from those in the TVWF Directive, “but lighter and modernized”, non-linear services would be subject to minimum content rules.<sup>173</sup>

Another key issue expressed in the first “Issue Paper” was about the identification of commercial in the editorial content. It was stated “There appeared to be a *consensus* among experts consulted that commercial communications should be subject to the principle of identification.” (stress added). By “the principle of identification” it was meant that the identification of advertising to be inserted in the programmes rather than between the programmes would be sufficient to deem these kind of advertising as not ‘surreptitious’. The assumption of the Commission that there was a “consensus” among experts that advertising on audiovisual media which should be subject the principle of identification was critical because this rationalizations would be in turn was to be used to allow new advertising techniques to be applied on new media environment.

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<sup>173</sup> Major public policy objectives mentioned were as follows:

- Protection of minors and human dignity
- Identification of commercial communications
- Minimum qualitative obligations regarding commercial communication
- Right of reply



However, there was not a “consensus” at all among the experts since we know that BEUC (European Consumer Organization) which was one of the invitees of the focus and expert groups (especially the second focus group which was related to new advertising technics), has never been happy with the developments as to new advertising techniques.<sup>174</sup> One major reason of this assumption of consensus could be the majority of representatives of private firms in the focus groups, demanding new revenue sources in the media sector. As for the minor issues, these included the problems of applying ‘country of origin principle’ in digital media environment; and how to deal with new and old concepts in the new directive such as ‘audiovisual content service’, ‘content service provider’, ‘linear and non-linear services’, and ‘broadcaster’.

The third “Issues Paper” was about “cultural diversity and promotion of European and Independent Audiovisual Production”. Making a reference to the report of expert group on cultural diversity mentioned above, the main question raised in the “Issue Paper” was that if the new directive would cover the non-linear services then how measures to protect cultural diversity and promote independent production would be applied to new services. Considering this issue, the Commission drew the attention to a general assumption that new media services promised high commercial opportunities and for this reason the regulatory intervention should be more relaxing to “create a more level playing field for all platforms of distribution” that “would lead to the conclusion that there should be, at European level, at least a political signal to the effect that new ‘non-linear’ services will be expected to contribute to the promotion of European works, the availability of which will also be of benefit to them (the new services).” (Third Issue Paper, p.2). While taking the economic expectations at the focus of the

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<sup>174</sup> BEUC’s position about the new advertising technics can readily be seen at its position papers submitted to public consultations held for the new media directive, as is discussed in detail in the next chapter. Besides, the interviews with the current and previous legal advisors responsible for media of BEUC held as a part of reseach field of this study prove that BEUC has felt discomfort with the clear conflict between the viewers’ interests and new advertising techniques.

policy benefitting from the excuse of ‘cultural diversity’, ironically, the Commission presented view of major “stakeholders” as such,

While some stakeholders (mostly producers) argued that the contribution for non-linear services should be introduced as obligation (with the same qualification as in the “Television without Frontiers” Directive: "where practicable ..."), others feared delocalization, especially with IP-based services and rejected compulsory measures. Some broadcasters, transmission companies and Internet providers felt that any measure would be premature at this stage as it would risk hindering the development of new services, however they proposed a close monitoring of the production structures in order to determine the right time for future possible intervention.... Some stakeholders supported the adoption of a “soft” non-binding instrument which according to them would not be a burden on a nascent industry but would give a positive signal for the European content supply industry and create a level playing field between the different platforms.

It was already known that Commissions’ approach was for a policy to foster the industrial development in media sector in accordance with the Commission Communication i2010’s goals. Therefore, it was argued that a ‘non-binding’ measure would be more proper to adopt in the new directive. Other questions which were relatively technical, taking place in the third “Issues Paper” were in parallel with the expert group’s paper on cultural diversity discussed above. It was asked how to monitor the implementation of measures for cultural diversity and promotion of European works accross the EU; how to improve or support the European works; and if there was a need to clarify the definition of “independent producer”.

As for the fourth “Issues Paper”, it dealt with the most critical policy subject which was “Regulation of Commercial Communications”. In the preamble of this “Issues Paper”, it was reminded that the main problem was ‘how to shape the new legal framework under the conditions of technological progress and market development’. In this respect, it was first suggested to adopt the term of

‘audiovisual commercial communications’ in order to cover all the forms of (old and new) advertising. Depending on this new ‘nomenclature’ a sub-set of re-definitions were also suggested by the fourth “Issues Paper”. The most important one among them was about the re-definition of ‘surreptitious’ advertising. It was said,

Surreptitious advertising’ means the representation in words or pictures of goods, services, the name, the trade-mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended as advertising and might mislead the public as to its nature. Such representation is not considered to be surreptitious advertising if the **public is informed of its existence by any means**. (stress added) (Fourth Issues Paper, p.2).

Having offered such a radical change in media policies, the fourth “Issues Paper” proceeded to the secondary issues on which there was no remarkable controversy among the participators of the policy formation. One of them was about ‘the necessary measures to protect human dignity and protection of minors’ which mainly refers to the protection of children. These issues had taken place in the old directive, too - TVWF Directive (Article 12 and 16). This time it was suggested to expand the implementation of these measures to non-linear services which would actually be welcomed by almost all the participators of policy process. Another issue which was subject to broad consensus was about ‘the total ban on advertising of tobacco and alcohol products and a partial ban on medicinal products’ in advertisements. The only question raised in this section was whether “pharmaceutical products should be the subject of product placement contracts in audiovisual programmes.” (Ibid, p. 4). Besides, it was also suggested that ‘religious programmes, news programmes and programmes for children should be kept out of the product placement application’. However, for the majority of programme types, “product placement” was suggested to be authorised if it would be implemented.

It is worth underlining that one important rationale behind the permission of product placement took place in the fourth “Issues Paper”. It was said, “For the new Directive, the possibility of authorizing product placement is an option which would cover the development of the advertising market as it presently exists, whereas product placement today **in fact operates without any regulated environment.**” However, it has to be underlined that this statement was misleading in the sense that there had been no regulated environment as to product placement before the adoption of AVMS Directive. Actually, all kinds of surreptitious advertising had been forbidden in the TVWF Directive and product placement, though not mentioned, had been subject to this ban. However, de facto implementations of European private broadcasters, when especially transmitting USA-originated programmes, had already involved product placement for many years before the adoption of new directive, thus breaching the legal ban on surreptitious/hidden advertising.<sup>175</sup> What was being suggested by the ‘Issues Paper’, in this context, was actually nothing but to provide this de facto situation a legal cover.

As for the other issues which were addressed in this issues paper on commercial communications, these included questions in technical character like ‘how to regulate quantitative rules as to advertisement’ (hourly and daily limits of advertising). About the amount of advertising in broadcast time, EC concluded that there was no need to question the hourly limits of advertising which were already ‘high’. Furthermore, it was suggested that quantitative rules (showing advertising limits as percentages and minutes) made little sense for the ‘non-linear’ (online or on-demand) broadcasting. A related issue dealt with in the context of commercial communications was about ‘insertion of advertising’. Having stated that in the new term the advertising would be able to be added within programmes, and underlined that “broadcasters, advertisers and advertising agencies are in favour of relaxing the rules on insertions” (Issues Paper on

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<sup>175</sup> Although it had been like norm for European countries to ban on product placement before the adoption of new directive, European private broadcasters had earned 31 million dollars from product placement in 2007 according to an estimation (The Economist, 1 Nov. 2007).

Commercial Communications, p.7)<sup>176</sup>, it was suggested participators of public consultation to reconsider this issue.

The fifth “Issues Paper” was on “Protection of Minors, Human Dignity and Right of Reply”. It was suggested to save and expand the existing measures for protection of minors and for incitement to hatred (Article 22 of TVWF Directive), and right of reply (Article 23 of TVWF Directive) to non-linear services. As an option in monitoring the implementation of these measures, it was suggested to adopt co- and self-regulatory mechanisms. It was also stated that “There was no controversial discussion about this issue, and it was concluded that minimum obligations, such as the one described above, were widely supported by the consulted experts” (Issues Paper on Protection of Minors, Human Dignity and Right of Reply, p.3).

As for the sixth and last “Issues Paper” whose subject was “Media Pluralism”, the participators of public consultation were asked about the role to be played by European Union about media pluralism. The paper started with some remarks about that a Community action for media pluralism had been subject to debates since the publication of a Green Paper on *Pluralism and Media Concentration in the Internal Market: an assessment of the need for Community action* by EC in 1992 (European Commission, 1992). Since then the issue has come to the EU’s policy agenda several times, but EU authorities have seen no urgent need to take a common action about ‘media pluralism’. In the sixth “Issues Paper”, it was underlined that there were various reasons that EU had not made a common action about media pluralism: Firstly, Member States had never been in favor of such a common action and demanded to keep the issues of media concentration and pluralism within their borders; secondly, European competition law was said to have provided a sufficient common ground to fight against the mergers and

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<sup>176</sup> It was also stated in the “Issues Paper” that “consumers, rights holders and the print media fear that the general interest objectives pursued by the Directive will be called into question” (p.7) if a relaxation would be happen as to the advertising insertion rules. It was the fear of public interest organizations that such a liberalization would harm the principle of the separation of editorial content and advertising.

acquisitions in European media sector; thirdly, existing TVWF Directive included some indirect measures that might help authorities to get a pluralist media environment<sup>177</sup>; lastly, the role played by public service broadcasters and the national limits on media ownership were effective to avoid excessively concentrated media environment.<sup>178</sup> However, some statements in the last section of the issues paper showed that EC was not in favor of common rules concerning to media concentration. Because, it was assumed that size of USA-based media organizations provided them with an advantage over their European counterparts. A recurrent theme of trade deficit with US was a rhetorical element in these statements. It was said,

The US-deregulation of ownership rules in 2003 enabled media giants, such as NBC Universal Inc. or Viacom Inc. to acquire more television and radio stations. This consolidation process made it easier for these companies to expand their activities not only within the US but also towards Europe.... Too restrictive ownership rules in Europe might hinder European companies to compete globally.... A balance between the safeguard of media pluralism in Europe and the possibilities for European companies to compete globally is crucial if we want a European presence at the global “top table” in the communications and media sector, especially in view of trade deficit of around \$8bn p.a. with the US.

Even so, the issues paper concluded that it was difficult to propose any kind of harmonisation for media ownership rules among Member States.

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<sup>177</sup> The issues paper made reference to Recital 44 of TVWF Directive that mentioned “The need to safeguard pluralism in the information society and the media”. It was also stressed in the issues paper that “the aim of Articles 4, 5 and 6 is to facilitate the circulation of audiovisual works from other countries and to support independent producers.” (Issues Paper on Media Pluralism, p.3).

<sup>178</sup> It was assumed that there was no excessive media concentration in European countries. However, there were some independent studies on media concentration in Europe which were conducted at a very close date to the issues paper whose findings were far away from supporting the optimism of EC. A report, for instance, conducted by David Ward from Westminster University in 2004, which studied the media concentration in ten leading European countries, argued that “The majority of countries in the study, which had set limits on market shares for the media industry, were witnessing concentration levels reaching the established limits and there was a lack of effective instruments to deal with the issue of increased market presence brought about by performance.

Source: <http://www.mediamonitor.nl/dsresource?objectid=435&type=org> (last visit on November 2012)

To sum, Issues Papers were conveying the final approach of Commission concerning the new directive. In accordance with the Commission Communication i2010, Issues Papers were in favour of a market-biased directive full of “flexible” regulations in which basic broadcasting principles became less important than ever before. Following phases of the formation of the new directive, which was the adoption phase, had no significance but to legitimate the general approach of Commission.

## **2.2. The Adoption Phase of New Directive (2005-2007): AVMS Directive**

Having issued these papers to guide the second phase of consultation process and before collecting the position papers submitted by the participators, a conference was held in Liverpool in September 2005<sup>179</sup>. The aim was to hold all vested-interests together and to finalize the consultation processes. It was the last policy action of EC before it completed the draft of new directive to be sent to EP and Council of Europe. During the conference, focus and expert groups submitted and presented their reports to the participants; an industry panel on “new and evolving business models” and parallel workshops on the subjects of six issues papers were held. In the conference, Tessa Jowell (Secretary of State for Culture, Media and Sport of UK), James Purnell (Minister of Broadcasting of UK) and Viviane Reding (Commissioner for DG Information Society and Media) delivered speeches<sup>180</sup> that gave valuable insights about the political stance driving the conference. Common point underlined by all the speeches was that the rationale behind this change was the ‘rapid technological innovations’. While Tessa Jowell

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<sup>179</sup> Liverpool Audiovisual Conference – Between Commerce and Culture, source: [http://ec.europa.eu/avpolicy/docs/reg/modernisation/liverpool\\_2005/uk-conference-report-en.pdf](http://ec.europa.eu/avpolicy/docs/reg/modernisation/liverpool_2005/uk-conference-report-en.pdf) (last visit on august 2012)

<sup>180</sup> The full texts of the speeches can be reached via this web address: [http://ec.europa.eu/avpolicy/reg/history/consult/liverpool\\_2005/index\\_en.htm#speeches](http://ec.europa.eu/avpolicy/reg/history/consult/liverpool_2005/index_en.htm#speeches) (last visit on March 2011)

called it ‘revolution’, Purnell reminded participators that ‘the preamble to the 1997 revision of the TVWF Directive mentioned “the opportunities for growth in the audiovisual sector opened up by new technologies”’. Anyway, for Jowell it was the main aim of the conference and of whole policy formation process “to try and find the right way of regulating sensibly the broadcasting and audiovisual industries, without stifling tomorrow’s innovations or hampering the economic growth of Europe’s most creative industries”. ‘Flexible’ regulation, for Purnell and Reding, would help authorities and industry reach such a ‘sensible’ balance between broadcasting and economic growth. ‘Minimum possible regulation’, according to Reding, was the only way to reach the aims put by the Commission Communication i2010 which put a great weight on the economic growth and employment for which ICTs sector were said to have a great prospects. She said,

Let me be clear: I am convinced that nascent markets and services should have the biggest possible freedom to develop. That is why, for example, I have convinced the national telecom regulators in the EU to have a “light touch” approach on Voice over IP. This “light touch” should also be the rule for new audiovisual content services.

One common point in the speeches delivered was about new advertising techniques. Purnell, the Minister of Broadcasting, gave a special place in his speech to the issue. Purnell said ‘there were distinct views in the formation process of new directive particularly about the “product placement” and therefore the issue should have been considered, thoroughly’. In parallel with this call, Reding who delivered her speech after Purnell mentioned the same issue as “controversial”. However, she made it clear that she was in favor of allowing “product placements” by arguing that it was necessary *to* be ‘honest’ to consumers. She resumed, “*Product placement is a reality, but we lack clear rules*”. Interestingly, Commissioner Reding defined their role as ‘increasing consumer information’ about what they watched, revealing an *awful truth* about policy formation process- a *fait accompli* on established market practices.



After completed second consultation process<sup>181</sup>, EC prepared the proposal of new directive (COM 2005/646 - COD 2005/0260)<sup>182</sup> and submitted it to the European Parliament and the Council of Ministers to be reviewed and ratified. In the very first sentence of introductory chapter of the proposal, technological and industrial (market) convergence were shown as the main impetuses behind this policy action. Especially the rise of on-demand services were said to have required a “fresh-better” regulation. Then, the text made a reference to i2010 Commission Communication that had called an ‘integrated approach between Information Society goals and audiovisual services’ putting a great emphasis on ‘competitiveness of European industry in the ICTs sector’. Another important point worth to underline in the introductory part of the draft text is that the claim that policy formation process was completed with the ‘broad participation’ of across the Europe was underlined repeatedly.<sup>183</sup>

Commission’s this proposal (COM 2005/646) was dealt with by the Council of Ministers (Education, Youth and Culture) and the Council presented a ‘general approach’ on November 2006. The general approach of the Council was ‘broadly in line with the Commission’s proposal’<sup>184</sup>, the Commission declared on its official website. Then it was opened to discussion at EP in December 2006<sup>185</sup>.

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<sup>181</sup> The vested-interests and their discourse taking place in the public consultations are discussed in detail in the next chapter.

<sup>182</sup> The policy document can be accessed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0646:EN:NOT> (last visit on August 2012)

<sup>183</sup> At least two times the numbers of participators were given as ‘more than 200’. Thus, it is tried to be shown that how much policy formation process was ‘participative’ and ‘democratic’.

<sup>184</sup> The Council issued press release whose one and a half-page was allocated to Commission’s proposal for new directive. In this statement, it was said that all the delegations supported a compromised text ( except a group of small member countries including Sweden, Latvia, Ireland, Lithuania, Belgium, Luxembourg, Austria) which was broadly in line with Commission’s proposal.

For the press release please see:

[http://ue2006.fi/NEWS\\_AND\\_DOCUMENTS/CONCLUSIONS/VKO46/EN\\_GB/1163448016726/\\_FILES/76247735264216097/DEFAULT/91666.PDF](http://ue2006.fi/NEWS_AND_DOCUMENTS/CONCLUSIONS/VKO46/EN_GB/1163448016726/_FILES/76247735264216097/DEFAULT/91666.PDF)

<sup>185</sup> Members of European Parliament (MEPs) from different political groups made speeches at the sessions concerning AVMS Directive. These speeches were delivered before and after the voting for Directive. It was observed that all the members affiliated with European People’s Party (PPE) and with Alliance of Liberals and Democrats (ALDE) and (UEN- conservative and nationalist

Although, EP demanded some amendments in the draft text, these amendments did not change the essence of the proposal at all and the Commission's proposal was adopted without making significant changes to the original proposal.<sup>186</sup> Because both the Commission's proposal and EP's report<sup>187</sup> was in the same direction on almost all the contested issues. Furthermore, EP's contribution to Commission's proposal was endorsing rather than challenging in especially regards to the emphasizing the original basis which was i2010-Information Society Goals. It was said in a recital of EP's report that,

The goal of the i2010 will in principle be achieved by allowing industries to grow with minimal regulation, as well as allowing small startup businesses, which are the wealth and job creators of the future, to flourish, innovate and create employment in a deregulated market (recital 7).

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group) were of the opinions in favour of proposed directive. They all endorsed the critical amendments for new advertising techniques and maintaining country of origin principle. Some concepts such as "digital revolution" and/or "digital age" and "knowledge-based economy" were key discursive elements in the speeches of these MEPs with liberal approaches. Some of the MEPs from Group of Party of European Socialists (PSE) were also observed to be in generally favour of proposed directive. Likewise, the MEPs from Eurosceptics (IND/DEM) were mixed. However, those MEPs from Greens –European Free Alliance (Verts/ALE) and European United Left/Nordic Green Left (GUE/NGL) voted against the proposed directive. In their speeches, greens and leftist members of parliament underlined the cultural and ideological importance of media and possible repercussions of "uncontrolled liberalisation" over society. (for further information about minutes of debates and voting at Parliament please see at <http://www.europarl.europa.eu/sides/getDoc.do?type=PV&reference=20061212&secondRef=ITEM-018&language=EN&ring=A6-2006-0399> (last visit on October 2013).

<sup>186</sup> One important exception to this argument can be that EP added some general provisions as to the media pluralism. It is said in the General Approach of EP to the Commission's proposal that it is essential that Member States "prevent the emergence of dominant positions that would lead to a reduction in pluralism and restrictions on freedom of media information as well as on the information sector as a whole, for instance by taking measures to secure non-discriminatory access to audiovisual media service offerings in the public interest, e.g. through must-carry rules." (European Parliament legislative resolution on the proposal for a directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provision laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcast activities (COM/2005/0646 – C6-0443-2005 – 2005/0260(COD)). However, this addition to directive text did not result in any rule in the final text of the directive in regards to media pluralism and ownership.

<sup>187</sup> All the amendments proposed by the EP can be found in the Hieronym Report prepared by Christian Democrat Member of Parliament Ruth Hieronym who was chosen as the rapporteur for the proposal of the Commission (Report can be accessed at the web site: [http://ec.europa.eu/avpolicy/reg/history/codecision/index\\_en.htm](http://ec.europa.eu/avpolicy/reg/history/codecision/index_en.htm) (last visit on October 2012)

Accordingly, some important issues were drawn attention by the EP such as: ‘endorsing information and communication technologies sector (ICTs)’ as a general industrial goal; ‘self-regulation’ as a beneficial way of regulation; ‘the co-existence of private and public broadcasters together’ as a way of organizing digital economy; some additional provisions necessary concerning to the application of country of origin principle particularly allowing Member States to apply stricter rules for media service providers under their jurisdiction. In addition to these contributions, some issues like media education (media literacy)<sup>188</sup> were also underlined by the EP. However, issues like media education (or literacy) could only take place in the recitals of the final text of Commission’s directive and thus did not lead any significant conclusion for those organizations which were subject to the rules imposed by the directive.

Revised proposal of EC which based on discussion taking place at Council and the Parliament was issued on March 2007. With some minor changes in wording, a modified version of the revised proposal was adopted by the EP on 27 October 2007. Finally the AVMS Directive was published in the Official Journal on 18 December 2007 and came into force in the very next day. Member States had initially two years to transpose the new provisions into their national law. Then this period was extended for one more year. In 2010, a ‘codified version’ of the new directive was issued.

‘The codified version of AVMS Directive’ text consists of 105 recitals, 12 chapters and 36 articles.<sup>189</sup> The ‘codified’ version of the directive text starts with a

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<sup>188</sup> Media education (or literacy) is an educational activity which aims at audience/users of media learns how to intepret the content of media so that they can be critical to messages they are imposed.

<sup>189</sup>As Chapters 1 and 2 were allocated for introductory information and definitions of the key terms in the directive text, the titles of the other chapters were as follows: Chapter 3, ‘the provisions applicable to all audiovisual media services’; Chapter 4 ‘provisions applicable only to on-demand audiovisual services (two-tier regulation)’; Chapter 5 ‘exclusive rights and short news reports in television broadcasting’; Chapter 6, ‘the protection of European cultural works’; Chapter 7, ‘television advertising’; Chapter 8, ‘protection of minors’; Chapter 9, ‘the right of reply’. Last three chapters were allocated to final provisions including establishment of a contact committee to

traditional motto of EU's media policy that media services "are as much cultural services as they are economic services." (recital 5). That is why, it is said in the directive text, 'specific rules are applied to media services for their growing importance to societies, democracies, education and culture'. It is also stressed that EU advocates that the media services are of cultural and political importance and therefore should not be treated as they are of solely economic importance so far at different international events.<sup>190</sup> However, at the very next few recitals (recitals 9-11), it is strongly argued that 'traditional television services and newly emerging on-demand services offer significant employment opportunities, stimulate economic growth and investment'. Besides, recital 14 makes a direct reference, once again, to 'i2010 Commission Communication which initiates a strategy for 'European Information Society to foster economic growth in jobs in information society'. It is said,

The Commission has committed itself to creating a consistent internal market framework for information society services and media services by **modernising** the legal framework for audiovisual services. The goal of the i2010 initiative will in principle be achieved by allowing industries to grow with **only the necessary regulation**, as well as allowing small start-up businesses, which are the wealth and job creators of the future, to flourish, innovate and create employment in a **free market**. (stresses added)

A commitment to free market mechanisms which have been legitimated under the dominant conceptualization of "Information Society" are thus mentioned in the Directive very clearly. A natural concomitant of this rationalization, the country of origin principle is defined as a necessary basis for 'new business models' to be deployed by all of the member states (recital 33). As a logical extension of this assumption, new advertising techniques and very loose rules for on-demand services (recital 58) are argued to be legitimated. In addition, self- and co-

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monitor the implementation of the directive at member states and cooperation between regulatory bodies of the member states.

<sup>190</sup> The text makes references to Doha Round (April 2006) and the WTO (World Trade Organization) Ministerial Conferences at which EP called for basic public services to be excluded from liberalisation under the General Agreement on Trade in Services (GATS).

regulation mechanisms are also offered as effective ways of regulation of new media environment (recitals 44). Shortly, having started with a rhetorical expression that media services are politically and culturally important as well as economic activities, the directive text builds its necessity on especially a series of economic and commercial concerns.

In accordance with this general approach for “modernizing the legal framework”, the directive brings about a series of new definitions to the media regulation. It was intended with the new directive to cover both analogue-traditional and digital-generic ways of communication. The manifested aim was to ‘**modernize and simplify** the regulatory framework for communication activities professionally serviced; to remove the **legal uncertainty** and avoid the **distortions of competition.**’ What was important for our purposes was that many new concepts were proposed in the directive in order to modernize the regulatory framework. First of all, all the mediated communication activities both on traditional and new platforms operated by media service providers (professional media organizations) were called **audiovisual media services**<sup>191</sup>. Thus, it was intended to take all ways of electronic communication, the analog and digital ones, under the same legal framework. This is the core concept in the new directive of all the other new terms are built around. It is only related to communication activities with commercial purposes by a professional communication organization, private or public. All other forms of communication activities like e-mail exchange or blog writing with non-economic interests are excluded from the scope of this term; newspapers and magazines e-versions are excluded as well.

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<sup>191</sup>Besides the term of ‘**audiovisual media service**’, ‘**media service provider**’ and ‘**audiovisual commercial communication**’, are other new or newly operationalized concepts of the Directive. By ‘media service provider’, it is meant ‘a natural or legal person with editorial responsibility for the choice of the content to be presented to the audience-user’. As for the ‘audiovisual commercial communication’, it is referred “moving images with or without sound, which accompany audiovisual media services and are designed to promote directly or indirectly the goods, services or image of a natural or legal entity pursuing an economic activity.” (AVMSD, 2010).

In addition, the directive made the ‘long-awaited’ distinction between schedule-type (flow-type)<sup>192</sup> broadcasting which is now called **linear** and the ‘on-demand’ content which is now called **non-linear**<sup>193</sup>. A “two-tier regulatory approach” is also imposed by the directive. By ‘two-tier regulatory approach’ it is meant that while the directive adopts stricter rules for linear broadcasting which is traditional one, it adopts softer or basic set of minimum rules or principles for non-linear broadcasting which refers to on-demand content exchange.<sup>194</sup> It is seen that the directive gives more ‘flexibility’ to the on-demand (non-linear) communication which is mostly provided on the Internet-connected devices.

As for the revision of advertising rules, a limit of 20% of television advertising spots and teleshopping spots per clock hour (12 minutes per hour) is maintained for linear traditional television broadcasting. Broadcasters are given the flexibility

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<sup>192</sup> This term can be called ‘flow television’, a term used by Raymond Willams (1974), which refer to putting programs in a schedule by channel (radio or television) managers in a row to avoid viewers to turn the channel or television set, keeping their attention alive. It is a term which can be used mostly for analog era of mass media in which viewers have minimum range of channel choice and cannot change the flow of programmes or time of watching.

<sup>193</sup> The distinction between the linear and non-linear audio-visual communication is rationalized as such: The linear audiovisual communication is referring to traditional broadcasting in which the audiences’ only activity was to change the channel within a bouquet of channels on a platform. There is a linear communication flow in traditional broadcasting in which a source of communication, a channel, message/content and receiver (audience) available. However, it is allegedly assumed that in on-demand communication the audience is active rather than being passive in the sense that audience can now pick up the content (music clips, news reports, games, etc.) from the large archive or options presented by Internet-based communication environment. Moreover, audience can also process the content s/he chooses to have. Nevertheless, the distinction made between linear and non-linear communications is beyond a technical necessity, it is rather a part of new industrial strategy whose main aim is to support new media in terms of facilitating commercial activities by lifting the rules over the sector as much as possible. It is actually a familiar industrial strategy in the history of communications technology.

<sup>194</sup> By ‘basic set of minimum principles’, some qualitative rules are meant such as protection of minors, prohibition of incitement of hatred, identification of the media service provider (name, physical address and e-mail link), identification of commercial communication. Apart from these, other set of rules like ‘quota’ application would be applied ‘where it was practicable’. Minimum principles would also cover the ‘fair access and non-discrimination’ as to the news reportings. According to this principle, member states cannot avoid the media service providers to access the news reports. In the directive it was said about ‘fair access and non-discrimination’, “For the purposes of short news reports, broadcasters established in other Member States should not be deprived of access on a fair, reasonable and non-discriminatory basis to events of high interest of the public...”.

of deciding when to insert advertising on the other hand.<sup>195</sup> No quantitative rules are identified for on-demand media services due to the fact that the nature of communication of on-demand videos does not justify such a regulation. However, “product placement”, which is the most contested issue of policy formation process, *is allowed for the most valuable products of television broadcasting* (e.g. television dramas, sport programmes, games, shows etc.). The order of discourse for justification of “product placement” is worth noting: It is said in recital 90 (and in article 9 of chapter 3) that ‘surreptitious’ commercial communications (advertising) is *prohibited* because of its negative effects on ‘consumers’. But the recital resumes, the prohibition of surreptitious advertising should not cover “*legitimate product placement*”.<sup>196</sup> In the next recital (recital 91), it is said “product placement” is already an industrial reality. It is said to be available in the cinematographic works.<sup>197</sup> And it is added that “in order to ensure a level-playing field, and thus enhance the *competitiveness* of the European media industry, rules for product placement are necessary”. Lastly, in recital 92, it is said ‘product placement’ should in principle be prohibited but derogations are appropriate for some kinds of programmes. But in that case, the principle of informing ‘consumers’ with ‘appropriate acoustic and visual’ warnings is said to be adopted (article 9 bend d). It is ironic that on the one hand it is said ‘product placement in principle is forbidden’ but on the other hand it is allowed for some kind of programmes. These kinds of programmes are the most valuable programmes of the television market including television dramas, cinematographic works, sport programmes, games, shows etc.. Out of these, “product placement” is forbidden for children programmes. However, children programmes can be sponsored but

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<sup>195</sup>It is said in recital 85 that current technological opportunities give the viewers to skip the advertising spots thanks to the personal video recorders and increased channel capacity (zapping). Therefore, it is advocated that while there is no use to increase amount of advertising spots, broadcaster should be given the right of determining the time of insertion of advertising according to their strategy.

<sup>196</sup>Worth to emphasize that the distinction between ‘surreptitious’ advertising and ‘legitimate product placement’ is a result of an approach of the Commission which was guided by the very first consultant firm reports issued since 2002 and for the first time in 2004 in its interpretive Communication (European Commission) introduced the idea of distinguishing these two concepts.

<sup>197</sup> What is implied is films and television dramas imported from US.

can take advertising spots with 30-minute intervals. In addition, news programmes shall not be sponsored by any means but it is said even if children or religious programmes are sponsored, “Member States may choose to prohibit the showing of a sponsorship logo during children’s programmes, documentaries and religious programmes.” (article 10 bend 4).

As for cultural protection, the measures are not extended to the on-demand media in practice. But it is said in the recital 69 and in article 13 of chapter 4 that it may be possible to protect and promote European works on-demand services through a provision which would determine a percentage of European works of on-demand service providers’ programme guides, catalogues or archives.<sup>198</sup> Member states are kept responsible to monitor the contribution of on-demand services to the promotion of European works, but “where practicable and by appropriate means”. That is to say, EU authorities do not define any binding action for Member States; rather, member states are left free to decide how to apply the rule<sup>199</sup>. For linear broadcasting, the rule of preserving 10% of broadcasters’ transmission time or programme budget for European works remained unchanged (article 17).

On the other hand, concepts such as ‘media literacy’ (recital 47), ‘right to reply’ and ‘right for short extracts’ (recitals 48-49) take place in common media rules *for the first time*. The protection of minors from the content harmful for ‘physical, mental and moral development of minors and human dignity’ are preserved as the traditional provisions for public interest (recital 60). These are also comprised ‘the minimum rules for audiovisual services’ which are applicable to on-demand

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<sup>198</sup> The service provided by on-demand television broadcaster platforms like Hulu TV in US and Tivibu in Turkey, is primarily based on certain programme archives and catalogues from which users pick the content they want to watch.

<sup>199</sup> It is added in other bends of article 13 that Member States are expected to present a report every four years about the implementation of the protection of European works on non-linear services. But it is said these reports will be dealt with by European Commission by “taking into account the market and technological developments and the objective of cultural diversity.”



services. The total ban on tobacco products is maintained, and some stricter rules (but less strict than previous applications) are determined for alcoholic beverages and medicinal products.

To sum it up, AVMS Directive brought about a broad liberalisation in the European media environment leaving market forces almost uncontrolled, especially in rapidly growing digital media. To justify this policy the Commission tried to benefit from the rhetorical prestigious of (the) concept of “Information Society” by combining media regulation with “European Information Society” project. Besides, the Commission used, recurrently, main approaches and concepts presented by consultant firms which had prepared preceding reports for the Commission’s Communication. In addition to these, the Commission reiterated the claim that decisions in the formation process was mostly welcomed by the participant groups involved through especially public consultations. However, even a superficial examination of the policy formation process revealed some examples showing that there was a strong discomfort among some vested-interests including primarily consumer protection organizations for the broad liberalisation in media regulation. Therefore, next and the last chapter is allocated to identify and discuss about all the main vested-interests, and their discourse-coalitions in the new media directive formation process.

## CHAPTER III - Vested-Interests in the Formation of New Directive

Given the fact that most of the contributing parties welcomed the revision of existing directive and adoption of AVMS Directive in general, the European Commission (EC) should not be regarded wrong in the conclusion that new media policy formation was a ‘good governance’. Because numbers do not lie! Nearly 290 participators submitted more than 320 ‘opinion and position’ papers (or written observations) with around 3000 pages-long. Therefore, it is not a surprise to observe that ‘consensus’ has been one of the most frequent themes that the Commission used to refer to the AVMS Directive policy formation process. For example, after completing the consultation processes, it was stated on the official website of the Commission’s media task force that “Most contributions agreed that the Directive has provided a flexible and adequate framework for regulation by Member States and support the Commission's pragmatic approach in reviewing the regulatory framework”.<sup>200</sup> However, the language used by the Commission in this quotation can be seen as a product of a very totalizing and misdirecting approach which builds its arguments on quantitative data rather than qualitative dimension of the events and which is also *ideological*.

Below the analysis focusing on the discourses of the position papers submitted by participators of the consultation processes seek to prove how the Commission’s approach is biased about what did actually happen within the policy formation process. It is seen in the analysis that rather than a broad consensus, a fierce conflict can be observed among the participators of the consultation processes in especially relatively important, primary issues of the policy formation process.

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<sup>200</sup> [http://ec.europa.eu/avpolicy/reg/history/consult/index\\_en.htm](http://ec.europa.eu/avpolicy/reg/history/consult/index_en.htm) (last visit on October 2012)

### **3. 1. Identifying Vested-Interests in the AVMS Directive Formation Process**

Vested-Interests and their discourses can best be analyzed via the position papers produced for the two consultations held by the European Commission (Please see for the full list of participants of public consultations at Appendices 1 and 2). In the next two sections, you will find a general evaluation about the discourses of participators and a more focused interpretation of some selected position papers issued by the leading representatives of the determined vested-interest categories presented below. To understand what vested-interests were in the policy formation process and who participated with what weight, we tried to categorize them. We divide participators into 4 general groups and sub-groups according to their position concerning to primary policy issues<sup>201</sup>. These are,

**Group 1** includes the profit seeking firms and their associations which have submitted 174 different position papers. Group 1 may be divided into 4 sub-groups.

- Group 1/A: big media firms-telecom operators-new media companies and associations (e.g. Advertising Association [AA], Association of Commercial TVs [ACT], Microsoft, Satellite and Cable Broadcasters' Group [SCBG], Telefónica)
- Group 1/B: relatively smaller media firms (e.g. An alliance of small firms specialized on audio-visual production [ANEPA], European Coordination of Independent Producers [CEPI])
- Group 1/C: organizations for general capitalist interests rather than interests of individual companies (e.g. An alliance of marketing firms [AACC])
- Group 1/D: capital groups outsider to media industry (e.g. Amsterdam Group - Alliance of Alcohol Drink Producers)

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<sup>201</sup> Position papers submitted by individuals were not categorized.

**Group 2** includes the public organizations (States, Governments, Ministries, Public Authorities, Public Service Broadcasters) which have submitted 63 different position papers. Group 2 may be divided into 2 sub-groups:

- Group 2/A: State Departments, Governments, Regulatory Authorities (e.g. - Communications Regulatory Authority- Italian [AGCOM])
- Group 2/B: Public Service Broadcasters (e.g. ARD-ZDF, British Broadcasting Corporation [BBC])

**Group 3** includes the NGOs (non-governmental and non-profit seeking organizations) which have submitted 42 different position papers. Group 3 may be divided into 2 sub-categories:

- Group 3/A: NGOs and communities with full support for capitalist development (e.g. Italian Association of Clubs of Alcoholics [AICAT])
- Group 3/B: NGOs with no word about capitalist development (e.g. Censor Watch- Representing Adult Service viewers in UK)

**Group 4** includes all the opponent groups to AVMS Directive in regards to primary policy issues. The participants included in this group have submitted 36 different position papers (e.g. BEUC, Coordination of associations for communication-Italy [CoperCom], Euro mei Uni, Federation of Scriptwriters).

These categories stand for main vested-interests which formed different discourse coalitions in the AVMS Directive formation process, excluding the EU authorities and lobby organizations. Worth noting that collecting such a broad group of participators under certain divisions was not an easy task because every individual participator may have different approaches to different issues at stake. A participator view may vary according to whether it is related to primary or secondary issues of the policy. For example, BEUC which is the most typical representative of the dissident group welcomes the policy initiative in regards to

revising the old TVWF Directive and welcomes as well many revisions for the secondary policy issues such as ban on advertising of tobacco products. However, when it comes to the mostly contested issues of the policy, which is expanding the application of new advertising technics and further liberalisation in traditional advertising rules, BEUC is one of the most active dissidents. Public service broadcasters such as BBC and ARD-ZDF can also be shown as other examples. These public broadcasters are in fact opposed to lifting ban on “product placement”. Yet, they are not that determined in their articulation of the problem and welcome the liberalisation on advertising rules in general. Therefore, they are categorized under the Group 2, not in dissident group (Group 4). Considering these factors, we made a categorization according to the general position and discourse of the participating party for and against the neo-liberal accounts of the new media regulation in the context of EU.

The next two sections are actually parts of the same discourse analysis. Former part includes a grouping that shows the thematic distinction between two rival groups. And the latter part presents a discussion based on detailed analysis of selected position papers to give a deeper understanding of the cleavage among different discourse coalitions (or vested-interests).

### **3.2. Thematic Analysis of the Discourses of Vested-Interests<sup>202</sup>**

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<sup>202</sup> Our analysis is based on the central ideas (themes) than one can readily infer from the texts examined and a critical intpretation on the connection between themes within themselves and with the macrostroyline of the dominant conceptualization of Information Society and Eruoepan media policy. In this context, our analysis do not rely on any numerical or statistical (quantitive) analysis of the texts. Because in our case, focusing on number would be misleading. For example, a recent academic work (Ginosar, 2012) studying on the how those participators of the second public consultation of AVMSD reacted concerning to issue of product placement. Ginosar detects that 51%percent (78 papers) of the total participators of second consultation included positions on product placements. Ginosar makes to general categories. Liberal position includes those participators who directly endorse the permission to product placement as Conservative position includes those who endorses the permission of product placement but on some restrictive conditions. Whereas only 6% of the participators are in liberal position, 94% of participators are deemed as in conservative position. However in the second part of the analysis which is on ‘discourses’ giving some examples from the typical representatives, we see that RTL Group which is the biggest private media group in Europe is argued to be the most typical example of

A critical discursive review of the official texts produced in the context of AVMS Directive reveals that some concepts are relatively frequent and some themes are very controversial leading to discursive distinctions among the vested-interests. It is seen the *main dispute is between the Group 1 (business groups) and Group 4 (dissident group) which concentrates over the further commercialization of media environment.*

‘Better regulation’ is one of these frequent concepts that took place in the discourse of the Commission.<sup>203</sup> By ‘better regulation’, it is generally meant to have regulatory rules which are ‘as light and as flexible as possible’. Terms, ‘self and co-regulation,’ are also key to the ‘better regulation of the EU.’<sup>204</sup> These terms have always been strongly supported by the big business groups. In comparison to this coalition of the power group including big business group and EU authorities, many public interest organizations have opposed severely so far. A prominent member of the anti-hegemonic discourse coalition is European Digital Rights

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conservative group. Because, RTL Group was saying “...product placement should be allowed to operate within a regulated environment (the principle of identification)”. This position is said to represent the major part of the ‘actors’ in the policy process. Nevertheless, those which demand a complete ban product placement such as BEUC, EFJ or BBC are deemed by Ginosar (2012) as the most conservatives. It is interesting that in this study based on numerical evidence, manage to aggregate two distinct participators such as BEUC and RTL Group into the same category and manage to make one of the media moguls’ position represent the majority. For our analysis too it is true that the positions of business groups represents largely the general outcome of the policy formation process. However, it is impossible to categorize opposite participators under same group since neither their aims concerning to future of media nor the language they use in policy process have something to be deemed as ‘common’.

<sup>203</sup> The history of the concept goes back to 2001 when the White Paper on European Governance was issued. Website: [http://ec.europa.eu/governance/better\\_regulation/key\\_docs\\_en.htm#\\_br](http://ec.europa.eu/governance/better_regulation/key_docs_en.htm#_br) (last visit on September 2012)

<sup>204</sup> From the Institutional Agreement Between EP, Council and Commission on Better Law Making (2003/C 312/01);

Article 17. The Commission will ensure that any use of co-regulation or self-regulation is always consistent with Community law and that it meets the criteria of transparency (in particular the publicising of agreements) and representativeness of the parties involved. It must also represent added value for the general interest. These mechanisms will not be applicable where fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States. They must ensure swift and flexible regulation which does not affect the principles of competition or the unity of the internal market.

(EDRI)<sup>205</sup>. In a discussion paper recently published by EDRI (2011)<sup>206</sup>, European Union is accused of “pushing enthusiastically in favour of Internet ‘industry self-regulation’ without learning from the experience of the devolved enforcement initiatives that have been attempted in recent years.” (Ibid., p. 6). Whatever the meaning of ‘self-regulation’ initially was, according to EDRI, it is not neither ‘self’ nor ‘regulation’ anymore. Rather, ‘self-regulation’ is *misnomer* covering the illegal and unfair ‘law enforcement by private companies’. Calling ‘intermediaries’ for all the private vested-interests (Internet Service Providers, corporate copyright holders, content producer companies), EDRI argues that “this is a new environment where Internet intermediaries take it upon themselves (as a result of coercion by governments and/or vested interests and, occasionally, their own business interests) to police private online communications, often in blatant disregard of legal safeguards and impose sanctions for alleged infringements.” (Ibid., p. 8). Furthermore, EC and other EU authorities have showed insufficient and unorganized effort against these unfair corporate implementations. The new market system, as a conclusion, lacks of transparency and judicial oversight.

As a response to the Themes of first public consultation (“Discussion Papers”) and “Issues Papers” of second public consultation, contributing parties produced position papers which are observed to be concentrated on some certain themes and arguments. On thematic level, there can readily be observed a clear cleavage between the two main rival groups, Group 1 and Group 4, on some certain issues. Below is presented the most common themes and arguments (central ideas we inferred from submitted position texts) available especially in the position papers of Group 1 (protecting primarily the business interests) which is the main collaborator of the EC (these constitute the ‘dominant group’) and Group 4 which is the dissident group being subordinated to what is decided by ‘dominant group’. It is seen that the cleavage between these two rival groups were around three main

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<sup>205</sup> <http://www.edri.org> (last visit on September 2012)

<sup>206</sup> EDRI (2011), The Slide From ‘Self-Regulation’ to Corporate Censorship, Discussion Paper Prepared by Joa McNamee (EU Advocacy Coordinator European Digital Rights), Brussels

issues: These are, firstly, the scope and main feature of Commission's proposal of the new directive; secondly, the importance of country of origin principle and the cultural quota application; thirdly and most importantly, new regulations as to advertising.

As the members of Group 1 were strongly welcoming the proposal of the Commission which was said that the concepts such as 'light-touch', 'flexible regulation' and 'self-regulation' would be crucial within the approach of the new directive, the members of the Group 4 were extremely opposite to such a policy approach and associated concepts. For example European Advertising Standards Alliance (EASA) stated that "Self-regulation is the best way to deliver effective consumer protection in the 'new media'". European Telecommunications' Network Association (ETNO) and Kellogg's agreed with the Commission that 'new regulations should be in form of light-touch'. A club of large firms The International Communications Round Table (ICRT) linked (the) concept of "IS" to deregulation and argued that 'elimination of unnecessary regulation in the age of Information Society is necessary'. For (European Group of TV Advertising) EGTA 'more flexibility' was needed in new legal environment and AOL Europe presented supporting ideas stating that 'even the basic tier of regulations stifle the innovation'. Österreichischen Rundfunk (ORF) sought for drawing attention to another argument that 'if the regulation would be converged (the regulatory convergence between mass media and telecommunication), it should mean simplification'. Telefonica brought this argument a step forward and stated that 'new media's economic potential should not be contaminated' with stricter rules. It is thus understood that the economic potential provided by the new technologies (or new media sector) is the main pretext for the members of Group 1 who does not want the Commission to expand the scope of content-related rules of media directive.

It is very easy to multiply such supporting statements from the members of Group 1 in favor 'light-touch' or 'flexible' approach. However, the members of Group 4



presented opposite arguments. The members of Group 4 were generally observed to be opponent to the language in favor of free capitalistic market, actually. For example, Coordination Council for Communication Organizations-Italy (CoperCom) unequivocally expressed that ‘TV was a public good, not just an arena of businesses’. And Open Channels for Europe underlined that ‘there is no democracy without media democracy’. These kinds of statements were indeed aiming at emphasizing the sensitivities of those public interest groups about ongoing liberalisation and marketization of communications environment. Besides such general remarks, the members of Group 4 also specifically addressed the ‘light-touch’ and ‘flexible policy’ approach of the EC. For example, whereas a group of participators such as Mediawatch-UK, BECTU (BEUC) and USU Verdi were against ‘light-touch’, some others were more specific in their critique that they argued (e.g. FSE and STAP) that ‘simplification of rules should not mean self-regulation’ and ‘self-regulatory forms are insufficient particularly in terms of advertising’.

Besides, the scope of new directive (especially in terms of its expansion towards internet-based forms of media services) was another subject of cleavage among the rival groups. Whereas members of the Group 1 were against the expansion of content regulations for traditional schedule type broadcasting towards new on-demand type of media services, the members of Group 4 were in favor of applying same content rules for both traditional and new forms of media services. For example, International Communications Round Table (ICRT) was arguing that,

Horizontal content regulation does not appear to be either necessary or legitimate in view of the multitude of offerings via the internet and in digitised formats, available at any time, at any place, on demand, or through interactive communication.

Some other members of Group 1 such as Association of Online-Publishers (AOP), European Competitive Telecommunications Association (ECTA) and Cable Europe, were also underlining that ‘Electronic Commerce Directive’ (Directive

2000/31/EC) was sufficient in regulation of on-demand services and therefore there was no need to extend content-related regulations of media directive to online media market. In comparison to these remarks, some members of Group 4 like Fédération Scénaristes Europe (FSE), the rules in media directive should be applied to all kinds of media, no matter it was linear or non-linear.

At the origin of this discussion about expanding the rules of new directive towards new media services were indeed two important regulations: One was related to expansion of cultural quota application to new media services and the other one was about permission to the new advertising techniques. For example, prominent members of the Group 1 especially from mass media sector such as Pro.Sieban.Sat 1, cultural quota application was not necessary to protect culture of Europe. In comparison to this, the preservation and expansion of quota application in new media directive is one of frequent and important themes for the members of Group 4 such as SACD (Society of Drama Authors and Composers) and GESAC (European Grouping of Societies of Authors and Composers). Besides, some other members of group four like Fédération Internationale des Acteurs (FIA) and European Film Companies Alliance (EFCA) underlined that the statement of ‘where practicable’ in the rules of cultural quota was problematic in practice and should have been reconsidered.

As for new advertising rules, most of the members of Group 1 were unsurprisingly in favor of permission to new advertising technics. For example, PT Multimedia was of the idea that ‘the advertising rules should be flexible to allow new technology to evolve.’ SNPTV (National Union of television advertising- France), in parallel with PT Multimedia, was underlining that ‘interactive ads are needed for digital economy’. AFDESI (Association for the Development of Enhanced TV Services) also supported this view saying that “‘qualitative advertising rules’ should be imposed in order to stimulate growth of

the interactive sector.”<sup>207</sup> Quite the opposite of these views, members of group 4 make clear statements for not to permit new advertising technics. For instance, according to Fédération Internationale des Acteurs (FIA), ‘new advertising technics are unacceptable’ because they can be harmful for editorial independence. Many other members of the Group 4 presented similar views: Film Swedish Institute and KommAustria stated that ‘broadcasting and advertising must be considered separately’; BEUC and The Federal Association of Media Alliance (BAG) stressed that ‘product placement must be forbidden’; Eurocase argues that ‘relaxation of the advertising rules should be reconsidered carefully because all kinds of harmful addictions (e.g. drug and alcohol) comes with the pink dreams of advertising world’.

Apart from these most contested issues, the members of group 4 sought to draw the attention to the issue of ownership even if it was not asked by the Commission in the issues papers. Any of the members of first three groups did not make any reference to the issue of increasing ownership in the media sector. However, for example, CPBF (Campaign For Press and Broadcasting Freedom) from the group 4 expressed that ‘oligopolistic media structure should be reconsidered carefully’ and Fédération Scénaristes Europe (FSE) noted that ‘media concentration is a problem’. Even if, underlining the necessity to reconsider the issue of ownership was not frequent theme in the position papers, that some of the members of group 4 took the issue to the front indicates that there was a significant difference among the members of group 4 and the rest of the participators in approaching the new media regulation. There were some other cues supporting such an argument that, for example, BSAC (British Screen Advisory Council) stated that ‘benefits of citizens, rather than consumers, should be protected’. Such examples indicating the qualitative difference in the views and approaches of members of group 4 can be multiplied. However, to comprehend this qualitative difference deeply, a

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<sup>207</sup> By ‘qualitative advertising rules’ it is here meant some certain rules which would not include any statement about the amount of time and the like to limit the duration or amount of advertising in an on-demand program.

detailed discussion on the discourses produced by the members of the groups contributing to consultation processes.

### **3.3 Detailed Analysis of Selected Position Papers**

This second part of the analysis which includes a detailed discursive examination of selected papers from the position papers submitted to public consultations by the main vested-interests. This will sure help understand the main controversies between the dominant group and dissident group. It will also help understanding differences between discourses employed by participant groups concerning the new media regulation.

#### **3.3.a. Group 1 – Private Firms in Media Sector**

The subgroup Group 1/A which includes large media firms, telecom operators and firms from Internet and computer industry, can actually be divided into three sub-discourse coalitions as *traditional broadcasters and advertisers, telecom operators and new media (Internet and computer industry) firms*. First sub-group includes traditional capital groups operating traditionally in the broadcasting market. Radio-TV stations and advertising firms and associations are such organizations. Telecom operators and associations comprise the second sub-group which is actually traditional elements of the whole electronic communications but new comers for broadcasting after deregulations. Technological developments as to the Internet and cable television towards broadband connections have made the part played by telecom operators more important. As for the last sub-group, it is essentially related to the developments in computer industry and Internet. It includes all new media firms (no matter what their origins are) such as Microsoft, Apple Inc., Facebook, Google and the like. They are ‘the new players’ of the media sector but they all have recently become the media moguls having investment in all areas of the new media sector from computer games to IPTV

(Internet Protocol Television) platforms. Below we are examining the discourses of selected representatives of these three sub-groups to understand the similarities and differences between their approaches and to see if there are clashes between their interests.

For example, for the third sub-group (newcomers from the computer industry), Microsoft can be seen as the most typical participant. As is known well, Microsoft is one of the biggest transnational corporations with huge monetary value according to stock exchange indicators, which have got investments across all the segments of new internet-based media industry. Microsoft presented 5-page-long position paper to the second consultation. It is said in the preamble of the paper that Microsoft “remain committed to working with others to help ensure that the economic growth goals of the Lisbon agenda can be met while properly addressing public concerns in the area of online Audiovisual content.” (Second Consultation Paper, Microsoft, p. 1). It is the clear statement of the general goal of European media regulation which is ‘keeping economic and public/cultural concerns at balance.’ For balancing economic and public service aims, Microsoft puts three interlinked arguments forward to contribute the microstoryline of the AVMS Directive:

- The E-Commerce Directive is sufficient to regulate internet/on-demand media.
- Self-regulation is an appropriate way of regulating new media markets.
- The extension of the media directive to online services is ineffective.

It is understood from the rest of the position paper, the extension of the ‘quota/cultural protection’ application towards the new media was a concern for the new media organizations since such an obligation would put additional limits on the new media sector. No expansion for the cultural quota application towards online market was a demand which was shared by telecom operators having substantial market shares in online markets. ETNO (European Telecommunications Network Operators’ Association), can be seen as the most

typical member of telecom operators in sub-group Group 1/A. It represented 39 largest and most established telecom operators in 35 European countries. Therefore, its position paper submitted for first consultation process gives valuable insights about the interests of telecom operators. In its 6-page long position paper, ETNO supported the main idea of the Commission that “cultural pluralism and the need for market competition” could be guaranteed in the “Information Society” at the same time: It was said in text that there were social and economic benefits of ‘an information society for all’. However, to achieve these benefits, broadband development was said to be ‘central’. And for the broadband development it was argued that “content is the cornerstone”. And ‘to allow the content to develop in broadband’, it was said to be risky to extend the content-based rules and obligations of TVWF Directive to Information Society services (online or on-demand services). It was also added that ‘Internet-based services were covered by Electronic Commerce Directive which was argued to be sufficient for these kinds of services’. Therefore, a ‘light framework’ was offered to be adopted to foster the multimedia content “by contributing to eliminating threats and barriers to its delivery”.

As for the traditional actors of broadcasting in the sub-group Group 1/A, the position papers prepared by WFA (World Federation of Advertisers) and ACT (Association of Commercial Television in Europe) are selected as typical examples of this group. WFA presented a 4-page contribution and position letter for the first consultation in 2003. The first thing worth mentioning about this text is that it is like a guideline for the Commission to give proper attention to the critical issues at stake in the revision of TVWF Directive. First of all, WFA’s endorsed the idea that there could be made a distinction between “the linear” (traditional schedule type) media services and digital interactive media services since it is “more like an information society service” (online or on-demand service) (First Consultation, WFA, paragraph 1.2). WFA also supported that “All forms of advertising need to be permitted across Europe, as long as they respect the principle of separation between content and advertising” (Paragraph 3.2).

Besides, WFA, concerning to the relaxation of the existing advertising rules, WFA suggested that “it should be entirely up to the broadcaster to decide how long advertising breaks are structured within films...” (Paragraph 4.1).

The regulation of advertising breaks was actually subject to fierce debates among the private broadcasters and artist associations (e.g. scriptwriters). Artists who were the creators of the television programs (particularly television and cinema movies) were claiming that there were natural breaks in the flow of a narration (a film in this case), and hence, advertising breaks had to be put in line according to these natural breaks and demanded the EC to regulate this issue in way binding private broadcasters to obey strict rules. However, private broadcasters and advertisers claimed that advertising breaks had to be determined by commercial purposes and strategies and denied the necessity of binding and strict rules. Unsurprisingly, the Commission took the side of private broadcasters and advertisers. Below is the related article of AVMS Directive (“consolidated version”):

#### Article 20

1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders are not prejudiced.

This article puts no time limits for inserting advertising and leaves the issue of advertising breaks uncertain in favor of advertisers and television stations and furthermore, creates new ambiguous points like ‘natural breaks’. Apart from these demands, it is observed, WFA reaches a similar point with the newcomers of broadcasting sector (new media firms and telecom operators) as to that “light-touch regulation is more appropriate” since it is still unknown how the new advertising techniques will develop. Otherwise, it is referred; the development of new sector might be hindered.

It is not a surprise that commercial broadcasters are the major stakeholders of the ‘modernization’ of TVWF Directive. Association of Commercial Television (ACT) as the prime representative of this interest group, produced voluminous position papers for the AVMS Directive ( 33-page-paper for the First Consultation and 28 pages for the Second Consultation). Apart from these position papers ACT issued many other position papers, reports, press releases as to the issue at various media (e.g. their official website).<sup>208</sup> ACT seems to be the best organized interest group as to the broadcasting in Brussels. It regularly holds conferences in which many other organizations largely participate. The EU officials (especially from the DG Information Society and Media) are regular invitees of these conferences.

What is striking in the ACT’s position papers, the ‘gratitude and support’ for Mrs. Reding, the ex-commissioner for DG Infso, were underlined. It is understood from the papers that it was Mrs. Reding, who shaped the whole revision process in a way that the members of ACT have been very pleased. In the speech delivered by Ross Biggam, then Director General of the ACT, just after the AVMS Directive draft was ratified by the Parliament, he said:

We’re encouraged that the European Commission shares our view – Commissioner Reding has said as much in recent speeches, and in a 2004 Interpretative Communication on New Advertising Techniques. We hope that Member States bear in mind this modernising spirit when they come to implement the changes.<sup>209</sup>

To understand the discourse of ACT as to new media regulation, some selected texts are dealt with below. First document is a presentation by ACT for the

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<sup>208</sup> See for further information [http://www.acte.be/EPUB/easnet.dll/execreq/page?eas:dat\\_im=025AE1&eas:template\\_im=025AC4](http://www.acte.be/EPUB/easnet.dll/execreq/page?eas:dat_im=025AE1&eas:template_im=025AC4) (last visit on August 2012)

<sup>209</sup> The speech can be reached via this website: [http://www.acte.be/EPUB/easnet.dll/GetDoc?APPL=1&DAT\\_IM=026144](http://www.acte.be/EPUB/easnet.dll/GetDoc?APPL=1&DAT_IM=026144) (last visit on August 2012)



conference held by the Commission in Sofia in 2008<sup>210</sup>. This presentation consists of four basic arguments: Firstly, despite the TVWF Directive was a satisfying ‘cornerstone’ of European media policy, conditions have changed and ‘the media world has shifted from monopoly to unlimited choice’<sup>211</sup>. Secondly, a new regulatory framework was argued to be urgently needed. Thirdly, the making of new directive (AVMS) was a “very thorough – and very inclusive- **all stakeholder** participated (public and private broadcasters, producers, civil society, trade unions, consumers, pro- and anti-advertising lobbyists)”. (stress added). And lastly, it was claimed that a series of benefits were acquired from the adoption of new directive such as that regulation concerning to “product placement” was clarified; some critical concepts like self-regulation started to take place in the new jurisdiction; and a deregulation was carried out as to advertising insertion rules. Lastly ACT argued that “...the new text represents a significant improvement on the 1989 Directive, and should help European media remain competitive in the digital era. With the ever-increasing pace of change in our sector, it’s essential that governments implement the text in a flexible, future-proof manner”.<sup>212</sup> As a result, ACT seemed to be happy and satisfied with the final directive.

Naturally, all the interested parties of the Group 1/A focused on different subjects they are mostly interested in. However, a closer look into the position papers of new media companies reveals the fact that main discourse strategy used by them is very similar to each other. What is common to these discursive strategies, above all, that they all claim that there are ‘opportunities and threats’ for EU in the new

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[http://www.acte.be/EPUB/easnet.dll/execreq/page?eas:dat\\_im=025B3F&eas:template\\_im=025AE\\_9](http://www.acte.be/EPUB/easnet.dll/execreq/page?eas:dat_im=025B3F&eas:template_im=025AE_9) (last visit on August 2012)

<sup>211</sup> The radical increase in the number of television channels across Europe (from 47 television channels in 1989 to around 1500 television channels in 2008) and the accelerating pace of new ways to distribute media content (from mobile phones to digital cable) were two factors which were underlined.

<sup>212</sup> One of main concerns for ACT, since the inception of common media policies, has been ‘the cultural quotas’. In the new directive they demanded this implementation to be repealed. Although, they look like not to reach this goal, they must be satisfied with the conclusion that the issue of cultural quotas happened to be invalid in practice for on-demand content distribution.

media environment. A common stress in the papers is that ‘new media environment is a very competitive and dynamic one’ and there are many opportunities in new media environment in terms of economic growth. However, it is claimed any restrictive regulation- be it for clarification of the regulation or be it for cultural protection- may hinder the innovative activities and economic interests in such an environment. It is not a surprise since it is known by these private firms that what is really at stake for the Commission was to foster new businesses. For example, Satellite and Cable Broadcasters’ Group (SCBG) stated at its position paper submitted to second consultation paper,

At a time of unprecedented technical developments in communications technology, and the attendant liberalisation of both services and infrastructure, it would be unfortunate in terms of industry development to require broadcasters to meet increasingly inflexible European content regulations. Such requirements would stifle the growth of the European audiovisual industry by, inter alia, preventing the establishment of new channels and place in danger existing channels, thereby calling into serious question the ability of European broadcasters and others to contribute to the digital revolution and the Information Society.

It was obvious that such statements were quite similar to those of the Commission whereby it sought for justifying the policies adopted in the context of “European Information Society” project.

When it comes to other sub-groups of the Group 1, such a discursive proximity can hardly be observed, however. It is the case for sub-group 1/B which includes small or mezzo level media firms mostly operational at local/national levels. Unsurprisingly there are some differences in their approach to new media directive. CEPI (The European Coordination of Independent Producers) was selected as the typical member of this sub-group, representing 15 national associations from member states. As a result of being an alliance of independent producers, main focus of the CEPI was on the definition and application of

‘cultural quotas’ for broadcasting environment. The 10% quota application for European audiovisual works was observed to be the main cleavage between the big capital (commercial media corporations mostly operating at transnational level) and smaller capital groups (mostly relatively small production companies operating within national boundaries).

CEPI submitted position papers for both of the public consultations. The significant parts of these two papers focused on almost the same issues and demands. CEPI’s discursive strategy was based on two arguments: Firstly, it argued that ‘quota application’ for ‘European works’ was important but if the objective had been to increase the circulation of ‘European works’ (and it was rhetorically so) it failed. Secondly, supporting independent producer companies by quota application should have been maintained because “the relationship between production and broadcasting is still characterized by the same unbalanced features marked by the dominance of the broadcasting corporation” (First Consultation, CEPI’s position paper). Therefore, a series of new regulations were demanded by the CEPI. First demand was that ‘a new quantitative approach should have been adopted that would include a percentage of quota of a minimum of 25% of programming budget’ instead of 10% for total transmission time. Secondly, the Commission was requested to define a set of new criteria to support independent producers against the large broadcasting companies.<sup>213</sup> Thirdly, and most importantly, the term ‘where practicable’ was recommended to be excluded from the articles 4. and 5. (articles regulating the cultural protection and quota application): It is said in the position paper, “‘Where practicable’ preempts any possibility of the independent production quota achieving relevant national implementation, and causes occasional distortions in the broadcasting market.” (First Consultation, CEPI’s Position Paper, p. 6).

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<sup>213</sup> For example, it was demanded that ‘intellectual property rights should have been given back to the producer after a maximum period of 3 years. (For further information see the first consultation paper of CEPI)

And lastly, it was demanded that the Articles 4. and 5. to be extended for non-linear services (Second Consultation Paper). Because, CEPI was of the opinion that (unlike the Commission and members of Group 1/A) not to extend the scope of media directive to non-linear/internet-based services would “create an uneven playing field between linear and non-linear services” which is against fair competition principles. It was also stressed in the second consultation text,

we believe that non-linear services empty of quality content will not captivate European viewers. Failure to promote measures that ensure a diverse and competitive content supply market also for non-linear services will only delay and possibly endanger the establishment of new services whilst deeming Articles 4&5 obsolete in the future. (Second Consultation, 2005: 2).

It is argued, non-linear services could not be developed without protection of culture/quality programme without market competition in favor of independent production companies. However, following recital and article quoted from the ‘codified version’ of AVMS Directive proves that the demands of CEPI were not met by the EU authorities:

recital (68) A commitment, where practicable, to a certain proportion of broadcasts for independent productions, created by producers who are independent of broadcasters, will stimulate new sources of television production, especially the creation of small and medium-sized enterprises. It will offer new opportunities and marketing outlets to creative talents, to cultural professions and to employees in the cultural field.

#### Article 17

Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least **10 %** of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to the broadcaster’s informational, educational,

cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria. It must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within 5 years of their production.

It is seen that neither the term ‘where practicable’ nor the amount of 10% percent (the CEPI demanded to be raised up to 25%) was replaced or modified in the new directive. Furthermore and most importantly, the non-linear services (online or on-demand media services) were excluded from the quota application despite it was severely opposed by the CEPI.

Even if CEPI had diverted from the members of Group 1/A and the Commission in regards to quota application, it could not be deemed as a dissident voice in the making of AVMS Directive. Above all, CEPI’s main expectations from the adoption of AVMS Directive was in parallel with the other capital groups and the Commission, which is ‘more and new revenue sources’, indeed. However, the dependence of smaller media companies on the local production markets reflected in CEPI’s position as divergence from large capital groups which did not mention the importance of ‘cultural quota application’.

As for Group 1/C, the group of organizations seeking for general Capitalist interests rather than interests of individual companies, this group seems to produce support for the sub-Group 1/A. AMCHAM EU (American Chamber of Commerce to the European Union) is one typical organization categorized under this group. The focus of the discourse of AMCHAM was on ‘difficulty of regulating new services with traditional methods’. It was said in its position paper that “Recognizing that the value chain for non-linear services is quite different from linear services, AmCham EU believes that self regulatory measures are sufficient and further regulatory intervention is unnecessary.” (From the second consultation, page 1). Another typical member of this group was the Digital Content Forum (DCF) which forms a two-way conduit between industry and government in the UK (whose members were trade associations and

representative organizations from digital and traditional media industries) “to gather views and input into policy-making processes.” In their 1-page paper, DCF’s only ‘worth to mention’ argument was that ‘European Commission did not have competence, nor should it have taken the action for matters concerning media ownership or media content’. The participators of this group mostly presented 1- or 2-page papers.<sup>214</sup> And they generally advocated almost the same interests which were well-articulated by the Group 1/A at the same time. It would not be wrong to claim that Group 1/C is like an extension of Group 1/A in terms of being a ‘discourse coalition’.

Another sub-group, Group 1/D includes organizations like lotteries, sport federations etc., the capital groups which are indirectly related to media industry. European Lotteries and UEFA (Union des Associations Europeennes de Football) are two of those kinds of organizations. Underlining the qualitative difference of ‘interactive television’ (which is vital to develop and sell online gambling over television sets), European Lotteries drew the attention that gambling was not an ‘ordinary economic activity’ and that there was a threat ‘gambling via television’ might be included by the definitions ‘audiovisual content service’ and ‘non-linear audiovisual services’. According to this organization, ‘uncertain definitions’ might have brought ‘gambling services’ under the scope of media directive. This was claimed to have not been compatible with the Electronic Commerce Directive (2000) which regulated gambling and lottery type services as national issues. That was to say ‘country of origin’ principle was not able to be implemented for gambling according to existing *acquis* of the Union. In the Electronic Commerce Directive such activities were considered as under the scope of ‘commercial

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<sup>214</sup> The only exception is the ATVOD (Association for Television On-Demand) which presented 16-page paper for the second consultation. ATVOD is a self-regulatory body for on-demand market representing 7 media companies in the UK. It is classified under G 1/C because it is non-governmental regulatory body directly representing the interests of private firms on-demand market. The only important argument available in their papers is the ‘flexibility’ potential of ‘self-regulatory’ systems.

communications'. Accordingly, in the 'codified version' of AVMS Directive, this demand was completely met.<sup>215</sup>

As for the UEFA<sup>216</sup>, the other typical example, is the biggest 'right holder' for media exhibitions of football matches across the continent. Hence, the organization presented a paper reflecting the 'right holder's concerns about the possible regulations as to 'short reports' and 'access to news'. Naturally, UEFA and other similar organizations want to be the only or major organizer of the rights of access to sports organizations which have had very high commercial value. In terms of 'news reporting', UEFA expressed that the organization had never had an objection for 'bona fide' news activity<sup>217</sup> but they could not see 'how the basic right to information or plurality of media was threatened by the absence of harmonized rules for the short extracts of sports events'. Therefore, UEFA simply demanded the Commission not to "intervene in this sphere". Finally, EU authorities have found a comprising solution for this demand of UEFA: It is said in the Recital 55, "Such short extracts may be used for EU-wide broadcasts by any channel including dedicated sports channels and should not exceed 90 seconds." However, whoever wanted to use this right of short extract would have

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<sup>215</sup> Recital (22) of AVMS Directive (2010 codified: "For the purposes of this Directive, the definition of an audiovisual media service should cover mass media in their function to inform, entertain and educate the general public, and should include audiovisual commercial communication but should exclude any form of private correspondence, such as e-mails sent to a limited number of recipients. That definition should exclude all services the principal purpose of which is not the provision of programmes, i.e. where any audiovisual content is merely incidental to the service and not its principal purpose. Examples include websites that contain audiovisual elements only in an ancillary manner, such as animated graphical elements, short advertising spots or information related to a product or non-audiovisual service. **For these reasons, games of chance involving a stake representing a sum of money, including lotteries, betting and other forms of gambling services, as well as on-line games and search engines, but not broadcasts devoted to gambling or games of chance, should also be excluded from the scope of this Directive**" (Stress added.).

<sup>216</sup> In the position paper for Second Consultation, UEFA stated that organization's concerns are common with other 'sports governing bodies' such as Europenn de Volleyball (CEV), the Federation internationale de Basketball (FIBA), the International Ice Hockey Federation (IIHF), The European Handball Federation (EHF), and the Federation Internationale de Football Association (FIFA).

<sup>217</sup> By 'bona fide news activity', here it is meant that all the channels have the right to report, though shortly, on sports events as they occur. In this sense, news transmitting organizations have exemptions from established rules in terms of short extracts.

to ‘first seek access from a broadcaster established in the same member state having exclusive rights to the event of high interest to the public’. Thus, the interests of the broadcasters who pay huge amounts of money to hold the rights of sports events would be protected to a large extent.

### **3.3.b. Group 2 – Public Institutions**

As for the Group 2 which includes the public organizations (States, Governments, Ministries, Public Authorities, Public Service Broadcasters and other public institutions), it was the second largest group in the consultation processes. This group may be divided into two sub-groups. The first sub-group includes all the governments and governmental organizations which mainly focused on some certain policy issues. Above all, none of the contributions from the members of this sub-group did bring about any significant debate in regards to the revision of existing TVWF Directive.<sup>218</sup> For example, clarification of which member state would have the right of jurisdiction in accordance with the principle of country of origin is one of the important but at the same time and relatively insignificant regulatory issue since it did not produce any significant debate among the member states.<sup>219</sup> The definition of ‘independent productions’ was another issue that the

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<sup>218</sup>The only important objection came from the France government on principal level. In the preambles of both position papers submitted to consultation processes, France government, which was known for its strong commitment to the principles of cultural diversity and protection, the existing TVWF Directive was working well and would be sufficient to deal with future problems of media sector. France especially objected to revise the article 4 and 5 which were regulating the protection of European works due to the fact that France television and cinema industry highly benefitted from this principles. However, when it comes to displaying concrete suggestions for the specific policy issues, the position taken by France government did not create any cleavage to the position taken by the Commission and large capital groups. In comparison to France, Germany and England as the other two big countries in the Union, both welcomed the Commission’s initiative for a broad revision in the media directive.

<sup>219</sup> The issue has been decided in the AVMS Directive (Article 3) as such:

3. For the purposes of this Directive, a media service provider shall be deemed to be established in a Member State in the following cases:

- (a) the media service provider has its head office in that Member State and the editorial decisions about the audiovisual media service are taken in that Member State;
- (b) if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates. If a significant part of the workforce involved in



countries came with some technical suggestions not to worth to deal with for our purposes.

Although there were some minor differences in their approaches and demands as such, the members of Group 2/A comprised a consistent ‘discourse coalition’ in especially terms of general liberalisation and commercialization to be put into practice in new media directive, indeed. For example, in terms of different tiers of regulation (the distinction between linear and non-linear media services), there was a complete consensus. They all agreed that, ‘because of industrial needs’, internet services (non-linear or on-demand services) should not have been regulated in the same way as traditional broadcast services had been regulated. Accordingly, new services should have been subject to minimum regulations and co- and self-regulatory models should be thought for the regulation of this new sector.

Relaxation of the rules for ‘commercial communications’ was another policy issue on which a strong agreement the big member states had. Especially none of the trio (Germany, France, UK) was opposed to the anticipated liberalisation for new advertising techniques that posed serious threats to cultural and educational goals. For example, UK government, in the first consultation, stated , “Viewers do not to be over-protected – technology will increasingly allow them to delete advertising

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the pursuit of the audiovisual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

(c) if a media service provider has its head office in a Member State but decisions on the audiovisual media service are taken in a third country, or vice versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.

4. Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:

- (a) they use a satellite up-link situated in that Member State;
- (b) although they do not use a satellite up-link situated in that Member State, they use satellite capacity appertaining to that Member State.

(though not virtual advertising) and they can make their views known on the intrusiveness of such advertising, including banners, according to the programme content (eg. Sport or film).” In contrast to this argument, however, in the second consultation paper, UK states concerning to “product placement” that ‘there is a risk in abandoning the principle of separation between advertising and content’ and ‘people may not notice the caution that the programme they will watch include product placements’. However, UK abandoned its opponent position in 2009 and started to endorse the implementation (Ginosar, 2012). In contrast, France and Germany and other associated public organizations did endorse allowing the product placement. The compensation for this for the members of Group 2/A was to be putting caution for the viewers of the programme that the programmes would include ‘product placements’. That suggestion was in parallel with the general position of the Commission and of the major members of the Group 1/A. For these reasons all the national governments and affiliated governmental organizations (see Appendices 1 and 2) welcomed the initiative of the Commission for revising the TVWF Directive.

As for the Group 2/B, EBU (European Broadcasting Union) should be picked up as the representative of this group since its weight and prominence in European media environment.<sup>220</sup> It presented 59-page position paper in total for the two public consultations. Especially the paper prepared for the second consultation is more worth to evaluate since it is more concise and succinctly worded. First of all, EBU supported the Commission’s position in general. EBU shared a principal assumption with the Commission that the technological infrastructure was changing and it needed ‘proper’ measures. Furthermore, EBU argued that it was possible and important to balance between the goals of internal market and the free flow of information on the one hand, and ‘public policy objectives such as pluralism and cultural diversity’ on the other hand.

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<sup>220</sup>EBU “is the world's foremost alliance of public service media organization, with Members in 56 countries” (quoted from its official website, [www.ebu.ch](http://www.ebu.ch)).

Its support for the Commission's proposal continued at critical policy suggestions. For example, the two-tier regulation dealing with linear and non-linear separately was strongly approved. Relaxation for the rules of advertisement and new advertising techniques were also endorsed. For example, EBU did not only support the idea but also produced some suggestions concerning to the legitimation of "product placement". It that a 'clarification' was needed for the implementation of "product placement" on European media, which means that "product placement" could be 'allowed provided that it would exclude some certain programme genres such as news, religious and children programmes and excluding advertising of tobacco and alcohol products, as well'.

The only important objection of the EBU was about a possible modification for the rules regulating the implementation and monitoring of 'quota application'. Underlining that there were some suggestions that implementation of 'quota limits' by private broadcasters could be monitored by self-regulatory mechanisms, EBU objected such proposals arguing that 'such a modification should not have involved intervention by private companies due to the fact that in that case the private producers would have then seemed to be simultaneously the judges and the judged.' Apart from these important issues, EBU allocated its position papers about some relatively minors suggestions and comments on relatively less important issues (secondly issues of policy formation process) such as 'right for short reporting', 'right of reply', 'applying country of origin principle', 'incitement to hatred'.

Unlike EBU, the prominent public service broadcasters (PSBs) of European media such as ARD-ZDF<sup>221</sup> (the German PSB networks) and the BBC (British Broadcasting Corporation) conveyed different and in some cases confliction ideas with the Commission's proposal in terms of primary issues of policy. Even so, it

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<sup>221</sup>ARD's full name is *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* – "Consortium of public-law broadcasting institutions of the Federal Republic of Germany" and ZDF's full name *Zweites Deutsches Fernsehen* - "Second German Television". ARD and ZDF, founded in 1950 and 1963 respectively, are the two national public service broadcasters which give place to local and regional broadcasters in their programme.

is hard to claim that these public service broadcasters were ‘dissident’ in terms of their approach to the initiative for general revision of existing media directive. For example, BBC presented a 9-page/59-item position paper for the Second Public Consultation in which the first 7 items presented its support for some certain policy issues such as the timing of revision, the distinction between linear and non-linear media services, the idea that ‘regulation should support the development of new media’, and that ‘new media should not be over-regulated’. BBC also shared an optimistic view which was more peculiar to the members of Group 1/A that “digital technology and the massive proliferation of outlets will benefit the circulation of European works within the European Union”. Hence, no need was seen to take further regulatory measures for promoting co-productions.

However, the tone of the position papers completely changed when it came to issue of commercial communications (relaxation for the rules of advertisement). The critique of BBC concentrated on the permission to “product placement” and was strictly opposed to the amendment. For example, it was said in the position paper that,

30. The BBC is concerned about the proposed relaxation of rules on surreptitious advertising. **Allowing product placement, even under limited and clearly defined circumstances, would entail a major change in the economic and editorial conditions content providers operate in.** The BBC finds that the Commission fails to make a convincing case for such a change. (stresses added)

There had been, as mentioned repeatedly above sections, two main rationales promoted by the Commission to allow “product placement”. Firstly, it had been advocated that some of the imported programmes (especially from US) which had not been produced by transmitting broadcasters might have contained “product placements”. Secondly, it had already been allowed that the sponsor firms had presented their products through their identification. BBC suggested that both of these two rationales were not correct at all. Because first of all, those kind of imported programs could be edited and such product placements were blurred or

totally omitted if necessary through some video editing techniques. Secondly, the identification of sponsorship was completely a different situation since it was not embedded in editorial material, rather it was shown before and after the programs.

A major portion of the items in BBC's position paper, from 29 to 43, were allocated to arguments focusing on the ambiguous distinctive lines between "product placement" and "surreptitious advertising". It was argued that the identification of the television program genres (such dramas, sport programmes and the like) which would be allowed to insert 'product placements' would not be a proper solution because "increasingly, genres are merging and target audiences are changing" (article 39), stated in the position paper. According to this, it had to be bear in mind that, for example, children *did not merely watch children programmes, but they also viewed drama, sport programmes and other entertainment content*. Therefore, it is very well understood from these remarks of BBC, allowing product placement did create also a contradiction to other *ostensibly* main principles like 'protection of minors'.

In accordance with this position, the rest of the articles (from 43 to 48) were allocated to statements emphasizing the public interest in 'improving media literacy', 'extending the principles of protection of minors to non-linear media', and 'regulating right to reply in Internet-based communications'. And lastly the issue of media pluralism was dealt with in the articles between 49-59. In these articles, BBC presented a group of articles that commonly shared the EC's general approach that media pluralism was a matter that should have been regulated within national contexts, rather than at supranational level.

As for ARD-ZDF, together they made one of the largest contributions for the public consultations with more than 50-page position paper in total. It would not be wrong to argue that even though ARD-ZDF's joint position papers produced varied suggestions for the issues such as 'promotion of European works' and 'protecting independent (local) producers', 'protection of minors'. Nevertheless,

none of them are worth to give extra attention for our purposes<sup>222</sup>. However, when it comes to allowing ‘new advertising techniques’, a strong dissident discourse became salient in parallel with the BBC’s position. It was stated, in the first consultation paper, for example, that ‘it has been one essential purpose of the common regulation to safeguard the separation between advertising and editorial content’ (ARD-ZDF, First Consultation Paper, p. 16). In this respect, ARD-ZDF was opponent to revision in advertising related issues.

In short, the German PSBs was of the opinion that existing directive (TVWF Directive) was a proper balance between the public and private broadcasters in especially terms of protection media function in shaping public opinion and that there was a threat to spoil this established balance if advertising rules were to be relaxed in terms of new techniques, duration and breaks. Mentioning the fact that some new advertising techniques such as split-screen, virtual advertising had already been regulated in German national legislation at basic level with some certain principles, ARD-ZDF stated they did not see any benefit to relax these rules. It was especially emphasized that new interactive advertising techniques could be harmful for the editorial content.

The tone of this critical language as to commercial communications got rougher in the second consultation paper. It was defended that same strict rules should have been applied to both linear and non-linear media services in especially terms of ‘commercial communications’. As for “product placement”, ARD and ZDF expressed their “unequivocal opposition to formally permitting product placement”. Allowing product placement was argued to have ‘posed obvious threat’ for both editorial content and protection of minor groups. Finally, it can be said that just like the BBC, ARD-ZDF’s common position was in fierce contradiction with the Commission’s and Group 1A’s general positions as to the revision of TVWF Directive in regards to ‘commercial communications’.

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<sup>222</sup> For example, it is offered in the first consultation paper to change the term ‘television broadcast’ as ‘television service’ which is argued to be more appropriate in converging digital media environment.

### 3.3.c. Group 3 – NGOs

As for the Group 3 which includes NGOs (non-governmental organizations.). The group may be classified into two sub-groups: Group 3/A includes the NGOs with direct and indirect relations with industry supporting self-regulatory systems; consumer rights organizations with complete commitment to the language of consumerism; and religious organizations representing religious radio and television broadcasters; and the like. Whereas the members of group 3/A has a relation to companies and capitalist interests in one way or another, the members of group 3/B consists of those organization which had no relation with private firms and their operations. Accordingly, whereas Media Smart which was “a non profit media literacy programme” for children, was included by Group 3/A, European Heart Network (EHN) based in Brussels was picked as a typical example for Group 3/B.

Media Smart was funded by advertising business groups in Britain. Therefore, it was not a surprise to see that it argued that self-regulatory mechanisms could help developing media literacy programmes for children. In contrast to media smart, EHN argued that self-regulatory mechanisms might not be proper to protect children from harmful effects of some media content, for example food advertisements. It drew the attention to advertisement of unhealthy foods and drinks that likely caused obesity and cardiovascular diseases. It claimed that wording of related articles of the TVWF Directive<sup>223</sup> were open to wrong interpretations. Because if articles had been fully taken into consideration by private media organizations and advertising agencies, according to EHN, food advertising to children would have been subject to strict regulations and sanctions.

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<sup>223</sup> Article 12: Television advertising and teleshopping shall not encourage behaviour prejudicial to health and safety;

Article 16.1: Television advertising shall not cause moral or physical detriment to minors;

Article 16.1 b: ...it (advertising) shall not directly encourage minors to persuade their parent or others to purchase the goods or services being advertised.

However, industry had never been inclined to fully adopt these codes<sup>224</sup>. Therefore, EHN demanded more clarification about the sanctions in related articles and also recommended to consider extending the provisions as to consumer protection to the online media market.

Actually it is neither in the NGOs's position papers scope nor in their interest to make comments about the general position taken by the Commission concerning to new media market. Therefore, NGOs produced position papers which touched only one or two specific subjects mostly about secondary issues in the policy formation process. They mostly agree with the proposal of the Commission and they have nothing to say about contested issues like new advertising techniques. Their stance is passive rather than being active and critical especially when compared to the members of Group 4 almost all of which are also NGOs.

#### **3.3.d. Group 4 – Dissident Group**

As is seen above, sub-group 1/A comprises the key discourse coalition. Despite important frictions among the members of sub-groups in Group 1, they presented a coherent discourse that welcomed the revision and then replacement of TVWF Directive, encouraging the self-regulatory mechanisms, and endorsing both minimum regulations for non-linear media (online or on-demand services) and the permission to new advertising techniques. As for Group 2, they were observed to have produced arguments which did not substantially challenge the position taken by the members of Group 1 and the Commission. Rather, governments' positions were observed to have broadly approved the dominant regulatory approach concerning 'new advertising techniques'.

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<sup>224</sup> Similar ambiguous statements as to the unhealthy food advertising took place in the AVMS Directive, too. In Chapter 3 article 9, it is said, "Member States and Commission **shall encourage** media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended." (stress added). It is nothing but the encouragement of self-regulatory mechanisms which are unequivocally opposed by public interest organizations.



In comparison to these major participants, smaller radio and television producers and public service broadcasters (PSBs) were observed to have been opposed to Commission's proposal in some respects. Smaller radio and television producers demanded the media system to support them financially by strengthening the financial resources of European works and PSBs demanded new advertising techniques to be regulated strictly or to be banned completely. Rest of the contributing parties, in especially Group 3, did not produce any challenging suggestions as to the primary policy issues. Rather, they either endorsed the dominant view in terms of encouraging self-regulatory mechanisms or contended with drawing attentions to some inadequacies in the media system in respect to protecting, for instance, public health through media content without pointing out the reasons behind these kinds of inadequacies.

However, Group 4 presented a quite different discourse coalition whose texts can be read as deconstructive to dominant discourse enforced by Commission and Group 1/A. Group 4 consists of all the opponent and critical groups/parties no matter if they are consumer rights associations, labor unions, art worker federations or independent monitoring organizations and the like. With 34 different submissions, Group 4 is the smallest discourse coalition. However, considering the fact that major consumer rights organizations and labor unions whose main aim was to address the public interests rather than maximizing the private interests, one can claim that members of the Group 4 represented the whole European peoples.

Austrian Federal Chamber of Labour (AK Österreich- participant to the first public consultation) which represented more than three million workers was one of them. The contribution paper starts with the clear statement underlining two interconnected points: Firstly, 'television was not only an economic branch, but at the same time it had to serve very important cultural and socio-political goals; and secondly, European people needed to reach information and more quality

programmes in order to get more cultural and democratic development.’ In the position paper, the Chamber of Labour recognized the importance of technological development in the media environment, however, unlike those who welcomed the Commission’s general approach, its focus was on the possible socio-cultural and political repercussions of the technological change within market conditions. Therefore, it was demanded by Chamber of Labour that the revision had to focus on some certain issues such as *‘unfair commercial revenue applications’*, *‘protection of private information’*, *‘unfair competition’*, and *‘aggressive new advertising techniques.’* It was strongly demanded by the organization that the ‘free to air television’<sup>225</sup> had be protected in the long run. Chamber of Labour emphasized the fact that ‘free access’ to media services was getting more important than before in a commercialized media environment in which ‘past experiences showed that media companies were more powerful in preserving their interests, and within such self-regulatory mechanisms, being strongly backed by private consultant firms. It was therefore urged that those organizations which sought for public interest had to be encouraged and supported to contribute effectively to decision making processes.

Another typical member of the Group 4 is COPERCOM (Coordination Council for Communication Organizations-Italy). It started its 4-page position paper for first consultation stressing the fact that ‘encouraging cultural identity was one of vital interests of a television which claimed to preserve public interest through recognizing cultural issues not only as business’. According to COPERCOM, *‘It was getting important to offer alternatives to value judgments, lifestyles, natural and urban life spaces against a trend with one-dimensionalizing intention’*. About the third discussion papers in the first public consultation which was about rules of advertising, COPERCOM drew the attention to unreliable character of private broadcasters arguing that there had always been ‘systematic infringements made by private broadcasting organizations and emerging illegality due to the lack of

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<sup>225</sup> Free-to-air television is the term used to refer to the traditional television on terrestrial or satellite which is open to everyone who has got simple receiver sets without additional equipments or subscriptions.

sufficient and quality legal monitoring by incumbent public regulatory bodies'.<sup>226</sup> It was said in the paper, 'Italian regulatory authority (which was AGCOM) applied Italian law very insufficiently and superficially.' For this very reason, a series of 'radical' measures were suggested by COPERCOM: For example, it was argued that such common measures like filtering harmful content and putting symbol on TV screens to represent the 'harmful' content for children and youth, could make these programmes more attractive especially when these kind of measures were carried out through not more sensitive and well-considered ways and it would be worse when these programmes were totally banned. To alleviate such side effects of these kind of 'measures', COPERCOM suggested giving "**citizens/users**" (not consumers) the right to be represented in both monitoring and regulatory mechanisms.

One of the most typical representatives and the most prominent participant of the Group 4 is BEUC (The European Consumers' Organization). Its headquarters is based in Brussels where many legal experts for various sorts of policy fields are employed.<sup>227</sup> The organization is one of the regular participators of these kinds of public policy consultations and is among regular invitees to these kinds of organizations (i.e. seminars and conferences) held by lobby organizations and EU authorities. On the other hand, that does not mean BEUC is one of the influential lobby institutions in Brussels. As the current media legal advisor of BEUC said during our interview,<sup>228</sup> that 'they want BEUC to participate does not mean that they want to listen or care about public interest.'

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<sup>226</sup> It was stated that quantitative limitations for advertising breaks have never worked well. Private broadcasters mostly and usually infringed these rules and that was why the total revenues of private broadcasters could hardly be known completely in Italy, according to COPERCOM.

<sup>227</sup> When compared to vast resources of hundreds of lobby organizations which call themselves as 'associations' or 'public consultants', BEUC's facilities look relatively weak. However, among the other Brussels based public interest organizations BEUC is the one which has its own media/communication department. For example, Corporate European Observatory another lobby organization aiming at anti-lobbying for public interest has no special media department.

<sup>228</sup> Interview with Kostas Rossoglou, current media legal advisor for BEUC.

Unsurprisingly, BEUC has produced many position papers (apart from the position papers submitted to consultation processes for new media directive) concerning to AVMS Directive so far. Of the whole papers, second consultation paper and the position paper issued taking places at the BEUC's official website<sup>229</sup> just after the adoption of AVMS Directive in 2007 were chosen to be subject to detailed thematic analysis. As the paper submitted to the consultation process includes the demands of BEUC, the position paper produced in 2007 presents the general interpretation of recently adopted directive. Position paper submitted to second consultation started with a strong statement about the rights of 'users' to be protected from advertising described as 'aggressive'. And it was added that "BEUC strongly opposes any weakening of these rules in terms of quantity or quality."

BEUC actually employed four key themes in its position paper: Firstly, it was expressed that ongoing 'convergence' in the sector of audiovisual media had not to "result in 'lowest common denominator'<sup>230</sup> rules, whereby for example absent or relatively less stringent rules for on demand services become the future yardstick for radio and TV." Secondly, it was said that that the Commission put the "product placement" in the same category with other genres of advertising was unacceptable. Such a conceptualization might have been abused to legitimate what was essentially 'illicit'.<sup>231</sup> For the same reason the Commission's proposal for a redefinition of the concept of 'surreptitious advertising' was rejected because the Commission intended to consider an advertisement as 'surreptitious advertising' only when the broadcaster had an 'intention' to do so. Yet, BEUC underlined that it was very hard in practice to prove that a 'surreptitious element' was put 'intentionally'. Accordingly, BEUC expressed its belief that the freedom of choice

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<sup>229</sup> Official website: <http://www.beuc.org>

<sup>230</sup> The term 'lowest common denominator' is used in a pejorative sense to refer to those kind of programmes designed to appeal as many people as possible.

<sup>231</sup> BEUC drew the attention to the fact that a very few viewers watch a programme from start to finish. That is for this reason, 'unrealistic' to put remarks identifying sponsoring and product placement before and after programming.

was available, only if “advertising content and editorial content are clearly distinguishable from one another”. It was reiterated once in a stronger voice that “BEUC fiercely rejects ‘advertainment’”. Thirdly, the definition of ‘children’s programmes’ was suggested to be “broad enough to take account of all programmes where a significant proportion of the audience is children”. Because it was a common fact that children usually watched the general television content as much as they viewed the programmes particularly for children. Lastly, the issue of the media pluralism was demanded to be dealt with within AVMS Directive. It was said ‘BEUC was of the opinion that increasing transnational media concentration of recent years needs to be addressed’.

As for the position paper which was issued at the website just after the voting and approval of AVMS Directive at the Parliament and Council in 2007, it was actually a reaction to the unsatisfying outcome of the policy formation process. It was said in the first sentence of this position paper that BEUC,

found the proposed new provisions on advertising unacceptable to consumers”....The future landscape for audiovisual media services and advertising is not the landscape that consumers want. It will mean more commercial communications, including hidden advertising in the form of product placement, and less protection of our children.

Rest of the 5- page position paper was allocated to justification of this general conclusion. Shortly, it was argued one again that ‘neither self-regulatory initiatives nor new rules expanding advertising’s impact would serve the public interests’.

To sum it up, the discourse of Group 4 as to the AVMS Directive was qualitatively different vis a vis other three groups. There were some obvious indicators of this discursive distinction. Above all, despite the Commission drew the frame of the possible responses of contributing parties by shaping the questions in Themes of First Consultation and Issues Papers of Second Consultation, in many cases members of Group 4 were observed not to follow the

scope of these questions raised in the Commission's papers. For example, as mentioned above, CoperCom argues that there was a trend in modern life with 'one-dimensionalizing intention' and private broadcasters were not reliable for they insisted on not obeying the rules while it was supposedly responding to the Theme 2 of the First Consultation which entitled "Promotion of the Cultural Diversity and Competitiveness in the European Programme Industry". By the same token, even if it was not asked for a comment on country of origin principle, Mediawatch UK states that it "believes that the country of origin principle is the wrong way round and should be reversed to become the 'country of reception principle'. And GESAC (European Grouping of Societies of Authors and Composers) was of the opinion that while existing rules of TVWF Directive was already insufficient to promote cultural diversity, it was of no use to relax the rules on 'quota application'. Besides, some of them expressed their scepticism about the implications of new technologies rather than a technological-determinist view mixed with optimism about the effects of technology over society. For example, BEUC stated that ongoing 'convergence' in the sector of audiovisual media had not to "result in 'lowest common denominator'<sup>232</sup> rules and Austrian Chamber of Labour underlined the importance of 'protection of private information' and harmful effects of 'aggressive advertising techniques' in the digital media environment.

They all used a deconstructive language that turns the primary set of policy concerns upside down in which cultural concerns are given priority, indeed. In this deconstructive mode, ideological distance from neo-liberal stance and a rhetorical closure around the public interest can readily be found. Besides, the main merit of such a dissident position and associated deconstructive language is to shed light on some critical discursive elements which is not visible in the Commission's and private firms' discourse. For example, the Institute of Information Law of University of Amsterdam (IViR), in its position paper submitted to first public consultation, questioned about "what 'free' access to

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<sup>232</sup> The term 'lowest common denominator' is used in a pejorative sense to refer to those kind of programmes designed to appeal as many people as possible.

information actually” meant. According to IviR what was commonly seen as ‘free’, for instance in the case ‘free website’ was not actually free because some constant spending such as internet subscription payment was needed. Being aware of the fact that mentioning such an issue is outside the scope provided by the Commission, IviR insisted on underlining that the trend of ‘pay-tv’ in Europe should have been carefully considered since ‘the controllers of such pay-based services’ might limit the use of information by those people who could not stand for all the additional (even if the content is ‘free’) payments. This would, according to IviR, have unbearable repercussions for freedom of expression, leading to more “commodification/commercialization of information”. IviR continued as following,

...the problem is not that the audience/consumers do not have the necessary equipment to receive certain contents, or that they have to pay for information; rather, the problem is that electronic access control can be used as a tool to create and strengthen factual information monopolies, irrespective of existing intellectual property rights regimes, media law and all the other instruments that have been developed to balance the interests of all parties involved. What must be of concern is the possible abuse of dominant positions that result from ownership in popular programming and can be exercised to the disadvantage of the consumer. (p.6)

To sum it up, permission to “product placement” was the most contested issue among the contributing parties to public consultations. At the origin of the concern of those objecting participants was the fact that qualitative borders between sponsorship, “product placement” and surreptitious advertising were quite thin. Apart from the issue of “product placement”, many other controversial issues were highlighted especially by the members of Group 4. For example, consumer associations and film makers (artist associations, not producer firms) objected the rules that allowed media service providers/broadcasters to decide, with self-regulatory mechanisms, the proper time to insert the advertising in the program flow. According to these objecting groups there was a threat in this regulation that breached the principle of the continuity and artistic entity of the

film on the screen. In accordance with this view, those who work for in the creation of a film stated that they were opposed to every kind of commercial break during the film's exhibition (Mercado-Kierkegaard, 2006: 469).

Another contentious issue was the 'artificial' distinction between the linear and non-linear services. While linear services were subject to stricter rules, non-linear (mostly internet based) services were free from many strict applications such quota-protection of European works application and advertising time rules. The concern was stemming from the fact that with the two-tier regulation which stricter for linear broadcasting, firms operating at internet industry was given advantage over the traditional broadcasting stations. Furthermore, it was still dubious if the distinction would later work properly as the borders between traditional schedule type media transmission and new forms of internet media were getting blurred.

Another important concern was the issue of 'media pluralism' in European media environment. The new directive like the previous one did not mention anything about the increasing media concentration in the industry. Furthermore, the problem was urgent and more serious than it had been in the 1980s. Because, transnational new media firms which were mostly USA-based Internet's giant firms and telecom firms which have been fully commercial since at least the mid 1990s have together created a new fusion in favor of the emergence of mega-media moguls. And these sectorial developments were urging to decide about the nature and aim of new media directive at once.

### **3.4. An Evaluation on Overall Character of AVMS Directive**

What is readily observed in aforementioned arguments is that what are privileged for the members of Group 4 is not economy or industrial infrastructure but cultural protection and diversity, protection of local and independent producers,



ownership in the media sector, consumer rights and more broadly the power relations in information and communications sector and so on. Such a clear distinction between the priorities of Group 1 and Group 4, which is reflected by the language they used, proved that the participants of the consultation processes can be divided into two broad groups depending on their position against the EU authorities and especially in terms of the primary issues within the policy formation. On the one hand were proponent group which largely agreed with the EU authorities about timing and scope of ‘modernization’ of the rules (mostly members of Group 1). On the other hand were opponent group of organizations which considered that there were some threats in proposed regulations in terms of cultural and social value of the media content (members of Group 4).

To bear in mind that the cleavage between these rival groups was actually about the overall aim of the new directive which would determine the rules of new media environment for ‘(European) Information Society’. The question was if more *liberalisation* in the media sector would be put into practice or not. The questioned was answered by the new media directive which is in favor of a new media environment free from almost all the qualitative rules aiming at protection and promoting public interest. In the new media environment, the only regulators would become the *interplay between technological change and competition within market* both of which together cause *fluctuations* in the market.

The studies in the related academic literature dealing with the issue from a critical stance largely support the conclusion we draw here, actually. For many studies, AVMS Directive should be considered primarily as *an economic measure* (Haug, 2008; Nenova 2007; Woods 2008). The steps taken for the liberalisation of advertising on media has far-reaching repercussion for many dimensions of the society. Critics draw the attention to specific parts of the repercussions. For example, Haug (2008) argues AVMS Directive is a missed opportunity for the protection of children and young people who are addressed by the so-called ‘measures for protecting minors’. Drawing attention to the fact that the prior to

AVMS Directive, eleven member states had had stricter codes for the protection of youth and children people against the harmful advertising content, Haug states liberalisation with the AVMS Directive with less qualitative and vaguer rules has made this protection more difficult. In our time, *what is particularly threatening the physical and psychological health of the youth and children is not primarily coming from traditional one-way media but the new one, internet-based*, as pointed out by this study. And AVMS Directive gives a very high immunity to internet-interactive media from the almost all the public interest principles. Furthermore, the quantitative and non-effective limitations over the advertising on traditional media (which is still the dominant) makes the things more complicated. Today, one of the main reasons of the rising obesity among the young generations is the techno-high energy foods ('snack culture') and their over and covert ads on almost every means of media.

Burri (2007) draws the attention another important and related repercussion of the AVMS Directive which is a direct outcome of the reinforced liberalisation. In her article entitled "Television Without Cultural Diversity", Burri questions if the ultimate target of EU policy which is said to be 'balancing the economic and public interests' is achieved with the new directive. Burri states that with the implementation of TVWF Directive, the European media landscape became very rich in quantitative terms like the numbers of the channels offered and content industry which flourished concomitantly. However, accompanying with an increasing concentration in media markets, the quantity of imported programs and their prices soared. This was followed by the radical change in the quality and standards of programs on European media. Based on the principle of being profitable, programs started get similar to each other. News reportings went under the same process and 'tabloidization' became the 'new' standard. Thus, quantitative enlargement did not match with the qualitative extension.

Questioning if AVMS Directive would deteriorate the situation in hand, Burri draws attention to two important regulations in the new directive. First is the

‘cultural quota’ application for non-linear services. ‘Quota’ application would be preserved for linear services but there was a conviction that applying the same principle for non-linear services would be highly burdensome for the development of internet based services. In addition, AVMS Directive would make the member states to ensure that service providers “promote, where practicable and by appropriate means, production and access to European works”. Burri (2007) finds this approach ‘unimaginative’ in addressing the cultural issues. As media environment got ultimately dynamic and complex, preserving the status quo for cultural diversity was futile. She resumes, “Quota mechanisms based on the existing definition of European works are in any case of dubious cultural value.”(Ibid., p. 180).

The second problem in the AVMS Directive, for Burri, originates from the audiovisual commercial communications, liberalisation of the advertising. Despite the opposition was strong, “product placement” was fully legitimized by the Commission. Thus, advertising found the full chance of permeating into the programs itself. Burri thinks it was odd that the Commission though that product placement would help media industry boosted the creative industry which in turn reinforced the cultural diversity (Ibid., p. 183). The problem essentially stemmed from the fact that the Commission never had a sound definition of cultural diversity though it was one of the constituting cornerstones of common European media policy. Burri thus concludes ‘cultural diversity’ has always been a part of ‘lengthy deliberations and handsome rhetoric’ which had no solutions addressing considerations as to it. Therefore, AVMS Directive cannot be deemed an improvement.

Woods (2008) reaches a similar conclusion by following a basic idea that viewer interest is to get ‘editorial content rather than commercial content’. Woods argues European media system has always been broadcaster and advertiser-biased. Despite rules for viewer protection in TVWF Directive, in practice it had been

observed these rules were interpreted in favor of media industry<sup>233</sup>. The ‘flexible’ regulatory environment adopted by the new directive would certainly maintain such biasedness towards commercial content according to Woods. Because, although AVMS Directive clarifies matters to some degree –for example, in the case of the statement ‘product placement shall be prohibited’- in practice it is permitted and moreover legitimized. The problem is deteriorated by the fact that the boundary between surreptitious/subliminal advertising techniques and “product placement” is vague.

According to Pekman (2009), what is actually disturbing about lifting ban on “product placement” is the fact that this action is in clear contradiction with the ongoing efforts of the EU for improving media literacy of European peoples. No matter how much improvement has been recorded in media literacy initiatives in practice so far (and it is not the subject of this study), all these aims, as is seen, are very critical to equip the people against the increasingly effective and harmful commercial media flow. However, Pekman rightly points out a threat that the permission to product placement which is essentially based on the technic of placing advertising in media content, not the intervals, could severely harm the aims as to media literacy.

Shortly, according to critical scholars, the reasons behind such a directive were varied. Whereas Haug (2008) puts the blame on ‘successful lobbyism’ which managed to hold back the issue from the reality of direct correlation between commercials and growing obesity rates among the youth, Woods (2008) thinks that “the vocabulary of consumer choice empowered by technology” is the real agent that makes us assume the consumer has the real ability to choose which is at

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<sup>233</sup> Woods (2008) gives some concrete examples from broadcasting history of the EU which shows that private firms in the media sector have tested their limits as to the advertising codes of TVWF Directive, in many cases. For example, in a case dealt with by European Court of Justice (ECJ), the court decided that advertising time could be taken into account in determining the duration of editorial content before the first commercial brake took place. Woods finds this decision is ‘illogical’ because the commercial content thus became a part of editorial.: “Illegitimate action is here legitimising itself.” states Woods and adds this decision falls victim to focusing on industry needs and the internal market.

the same time a responsibility/freedom given to him/her by technological advancements. However, the overall nature of the AVMS Directive is liberalisation (Geach 2008) and it was not matter how the factors behind the shaping of policy formation process were varied, the ultimate factor of adopting such a media directive was the close relationship between goals of EU Authorities and ambitions of big capitals groups in communications sector merging around the pre-defined market-oriented goals of “(European) Information Society” privileging the technological innovation and competitiveness. Accordingly the close agreement between the capital groups and the EU authorities (especially Commission) led that the conventions and justifications concerning the “(European) Information Society” initiatives could be carried consistently to the field of new media regulation.

### **3.5. The Bias of EU In Favor of Big Capital in the Formation of New Directive**

Concerning to contesting vested-interests, we have taken various responses to our questions during interviews with officials from the European Commission. One said ‘30 in 300 is not a big deal.’, talking about the thirty some members of the dissident group (Group 4) in total number of participators. Another one said, ‘EC cannot make a common argument on which everyone can agree’. He actually meant that ‘The directive does not have to make everybody satisfied!’. For example Mr. Jean Eric de Cockborne<sup>234</sup> stated during our interview that “Sometimes you have black and whites, yes or no answers. Yes there are some groups which are in minority who opposed some codes in the directive.” However, when he was reminded that the dissident group might be seen as majority rather than being minority since they represent major part of societies (labor unions, consumer protection organizations, digital right organizations, academicians from public universities), he replied as following,

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<sup>234</sup> Advisor to the DG Infso and previous head of the unit Audiovisual and Media Policies at DG Infso.

Actually, this is not a reference of doing a policy or a reference to how you calculate the impact of the people....Let's say we have 20 companies and 2000 individuals replying. In that case you cannot say 2000 people are more important than 20 companies since these companies maybe employ more than 2 million people. Therefore we have to look at the different categories of reply in terms of economic and political and cultural conditions. In that sense, consumer group is only the one group among the other.

In accordance with this approach another official from DG Infso called demands of dissident group as 'extremist'. He continued, "There is a possibility that some 30 groups were really dissident in the policy process. It is possible because there were more than hundreds of participants. But this some 30 contributors group was not really excluded. They came with extreme positions."

However, these responses should not be understood as individual responses of the officials. They are rather a reflection of structural bias of the EU which can well be read over the way the policies are done in the Union. In this regards, very much like with Mr. Bangemann in 1990s, the speeches delivered and papers issued by Viviane Reding who personally governed the AVMS Directive policy formation process from 2004 to 2010 are worth to pay more attention. She was actually the first commissioner of the DG Infso (Information Society and Media) and has been very-well known in Brussels for her commitment to neo-liberal political approach.

She had been actually very closely interested in Information Society and Media Policies even before she was appointed as Commissioner to the DG Information Society and Media. The title of her first speech in the office (EC) in 1999 was, "Can the TVWF Directive still be saved?". During her being Commissioner for DG Infso, she delivered countless speeches. In her speeches, her discourse varied depending on the publics she addressed. For example, in a press release for informing general public, she said "*Today the dawn of Europe's convergent audiovisual services industry is breaking,*" and continued underlining the benefits of the new regulatory regime would be both for industry and consumers:

With these modernised rules that improve legal certainty and reaffirm the country of establishment principle, Europe's audiovisual policies will better meet the demands of a fast-moving and dynamic industry while maintaining high consumer protection standards. There will be less regulation, better financing for content and greater visibility to cultural diversity and the protection of minors.<sup>235</sup> (stress added)

However, when it comes to encouraging and inspiring the industry, the tone of her speeches were observed to have changed, substantially. For example, her speech entitled “Business Without Frontiers” (Reding, 2004), gives valuable insights about her views in regards to the regulations in digital media. In the second section of the speech, she explained the rationale behind the ‘modernization’ of the rules: Underlining the ‘Importance of ICT for the European economy’, she reminded the Lisbon Strategy of 2000 and emphasized that ICTs market in the world expanded very rapidly reaching 2.2 billion Euros in which Europe’s share is 30%. She implied to the general aim of increasing EU’s share in ICTs market world wide and she stated what was needed a ‘holistic’ strategy that would not be delimited by ICTs sector. Next section’s title supported this argument: “Simply investing in ICT structure is not enough.” underlining the main reason why media were involved in “Information Society Project”. Accordingly, she put the stress on the increasing importance of media services provided on internet-connected new platforms. Based on the argument that new media platforms were getting more important, what she actually wanted to rationalize was that new platforms (sectors) needed certain set of rules.

She reiterated her views several times during her term as Commissioner for DG Infso. In an another speech she delivered entitled, “The EU Wants to Unleash the Full Potential of Information Technologies” (2005), she drew the attention that in the convergence trend, new kind of policies “must also converge to provide consumers and industry the legal **certainty and confidence or invest in and**

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<sup>235</sup> From the Press Release of the EC-  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1809&format=HTML&aged=0&language=EN&guiLanguage=en> (last visit on September 2012)

**embrace new technologies**” (stress added). The problem she defined was about the threats and opportunities posed by technological and market changes. As for the solution she offered, she told new regulation was to be **“as light and as limited as possible”** to contribute the increasing competition among firms (Ibid.). A very important rationale behind the “modernization” was thus conveyed by Reding: To create a confident environment for investors. She continued in her speech,

The challenge now is to introduce functioning markets without undermining the benefits of an integrated European market in electronic communications. The Commission favors a market-based approach, which stresses the importance of spectrum flexibility (Ibid., p.93).

‘Convergence’, ‘competition’, ‘better services and regulation’, ‘self-governing’, ‘market-based approach’ were other key terms in her speeches and writings. However, it is worth noting, in none of her speeches, cultural and public service dimension of the media is one of primary themes. However, the only issue that the concept of media becomes the main part of discussion is the issue of ‘*integrated approach between IS policies and media policies*’ enforced by i2010, the policy strategy paper prepared under her command. From these statements, it is readily understood what Mrs. Reding and Commission understood from (the) concept of “IS” and media. She said in the introduction of her speech (Ibid., p. 92),

As the first European Commissioner to be responsible for both the Information Society and Media policies – that is for infrastructure and content – I face the challenge and the opportunity of helping to unleash the full potential of sectors that have become increasingly interdependent and have the capability to enrich one another.

Under her administration, DG Info and Media becomes a powerful partner for the private broadcasting industry. Accordingly and unsurprisingly, ACT (Association of Commercial Television) has several times appreciated and welcomed the supporting position taken by the Commission. In a presentation prepared by ACT, it was stated that some early arguments issued by the



Commission under the guidance of Mrs. Reding were ‘inspirational’ or even ‘radical’ for the private sector: To prove this argument two different documents issued by the Commission were cited during the presentation. In one of them published in 2001, the Commission was asking ‘Were detailed rules on advertising still justified in a world where viewers can zap through channels?’ And in the other document, it was asked ‘Why was banner advertising prohibited on television when it was allowed on the internet?’.<sup>236</sup>

Actually, it is understood that since the very onset of (the) concept of “IS” as a key term in communications policies, EU has identified the concept with the technological infrastructure whereas media was largely identified with the content to be transmitted over that infrastructure. This identification has been promoted and reiterated by, overtly or covertly, in almost all the critical documents concerning ‘European Information Society Policy’ such as the Bangemann Report of 1994, 1997 Green Paper of Convergence and i2010. For example, at 1997 Green Paper of Convergence it was officially stated that some concrete examples of the convergence between traditional television media with the Internet such as Web-TV or webcasting of news, sports and the like did “represent concrete examples of an Information Society in Europe.” These innovations were deemed as “significant change in the range and diversity of traditional telecommunications and media services”. However, nothing was mentioned about how to transform this infrastructurally enriching media into the (quality) content. Therefore, it would not be wrong to argue that, from the very beginning, there was a bias for infrastructural goals that discarded the cultural, social and content-related concerns European communications policies especially after “IS” became a key term in those policies. This longstanding biased view was actually stemming from structural bias in the EU politics in favor of industrial and corporatist interests and concerns.

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<sup>236</sup> The presentation is available on the ACT’s official website.  
[http://www.acte.be/EPUB/easnet.dll/execreq/page?eas:dat\\_im=025B3F&eas:template\\_im=025AE9](http://www.acte.be/EPUB/easnet.dll/execreq/page?eas:dat_im=025B3F&eas:template_im=025AE9) (last visit on August 2012)

It may be seen in our study as well as in many other studies on European media policies (e.g. Krebber, 2002; Humprey, 2005; Harcourt, 2005; Michalis, 2007) there has always been a close relationship between some certain discourses which was produced in the Parliament and large capitals groups which has great influence on the politics of nations and EU as well in media sector and in other sectors of economy. Unsurprisingly the biggest political group (EPP-Christian Democrats)<sup>237</sup> with which Viviane Reding was affiliated in the European Parliament have been observed to be at a supporting position shared by the Commission and large firms. For example, after a political agreement was reached about the adoption of AVMS Directive among the Parliament and Council in 2007, it was said at a press release<sup>238</sup> of European People's Party (EPP-Christian Democrats) 'there was a broad consensus about revision of TVWF Directive' and this revision was to bring new mostly 'beneficial' rules. Many points were emphasized in the press release which included 'maintaining country of origin principle as the core of the agreement', 'the extension of protection of minors for on-demand services', 'right for short extracts and the statements concerning to media pluralism and media education' were welcomed. As for "product placement", it was emphasized that 'as this new application was welcomed', it was also stated that 'product placement would only be permitted on the condition of sufficient marking at the beginning'.

In contrast, the approach of S&D Group (Group of the Progressive Alliance of Socialists and Democrats in the European Parliament), the second largest group in European Parliament, was observed to be different from the liberal groups in the Parliament, Commission and large firms when it especially came to the new advertising techniques. In a similar discursive vein with the Group 4, it is said in

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<sup>237</sup> Out of 732 member of European Parliament, the group of Christian Democrats (the group of European People's Party and European Democrats) held 268 members between 2004 and 2009 whereas The Group of European Socialists held 200 and the group of alliance of Liberals and Democrats of Europe held 88 members. Other than these three there were four groups in the Parliament with less than 50 members for each.

<sup>238</sup> This press release can be accessed at <http://www.eppgroup.eu/press/showpr.asp?prcontroldoctypeid=1&prcontrolid=6036&prcontentid=10702&prcontentlg=en> (last visit on November 2012)

press release of European Socialists that “Socialist MEPs regret the introduction of more advertising breaks as ‘a shift towards American-style TV’.”<sup>239</sup> In the press release, for example, Henri Weber who was the spokesperson of the group on the parliamentary report of AVMS Directive, told, ““Viewers will be warned of the use of product placement and its scope will be limited. But we have not yet brought the appetites of advertisers and economic lobbies under control.”

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<sup>239</sup> The press release can be accessed at <http://www.socialistsanddemocrats.eu/gpes/public/detail.htm?id=26639&section=NER&category=NEWS> (last visit on November 2012)

## CONCLUSION

There is no doubt that where information becomes a commodity which is exchanged for a price instead of being a common good to be accessed by everyone by free of charge and/or on an equal footing, the consumption of information would be in parallel with inequality in access to material sources within a society. That audio-visual content (particularly radio/TV programmes) which is the most consumed symbolic/cultural products in modern societies has become increasingly dependent on advertising industry is both an outcome and a factor accelerating this process. Simply and shortly, such tendency causes a conflict between cultural, educational and informational concerns, and commercial performance that is sought for a general improvement in the economy.

As a matter of fact, this conflict is one important issue which is expected to be resolved in “Information Society” we are told we live in. In this sense, that EU has set the “Information Society” as both an economic and a societal goal with a strong commitment to the term in its policy documents has revealed a valuable subject for a theoretical debate. For at least two decades, EU authorities have strived for preparing a legal framework for common policies among the member states in order to put a particular vision of ‘Information Society’, which is biased for *technological convergence* and *competitiveness*, in practice.

As a last phase of these efforts, the Commission took an action in 2002 in order to determine common rules for new media environment and a policy process was initiated to adopt a directive which would be legally binding for member and candidate countries in accordance with the Community acquis. A salient feature of directive formation process was that EU authorities proposed to adapt an

‘integrated’ approach between ongoing “European Information Society” project and new media policy. It was thus aimed to link the policy for digital media environment to “Information Society Project” covering “full liberalisation” of telecommunication and investment into research for ICTs until then. In this thesis, major aims were to shed light on the implications of and vested-interests behind this policy formation for both media environment and “European Information Society”.

To achieve this goal, the text was divided into two parts and six chapters. In the first chapter of thesis of Part I, the historical interconnectedness between (the) concept of “IS” and the transformation of the electronic communication environment in accordance with ‘neo-liberal’ doctrine was explained. It was underlined that (the) concept of “IS” was used as a generic term by both theoretical works of the period and policy documents emphasizing the increasing importance of information and communication sector in overall economy, right in the mid-1970s when capitalism was undergoing a structural crisis. The neo-liberal political doctrine which basically argued that the share and intervention of public institutions in the economies had to be declined prevailed in ideologically and practically in this structural crisis. As an immediate consequence of ‘de-regulation’ (or re-regulation) policies which was seen necessary by the neo-liberal approach in order to re-formulate the economies, a deep and structural transformation took place within communications sectors. It was also underlined that under such circumstances, “Information Society” served as an influential ideological guideline and a useful policy tool that directed such attempts of search for new regulations.

In Chapter II, the EU institutions and their *modus operandi* were dealt with. It was stressed that while the relations between members states had transformed from a mere economic cooperation into a full economic and political union, the goal of building “common market” among the member states remained decisive in the policies carried out by EU authorities. Empowering large firms and their

cooperation with EU authorities, notably with the European Commission through lobbying activities was underlined as a factor to be kept in mind when dealing with “governance” in EU politics.

Chapter III of Part I was about the early steps taken by EU authorities after a need for a common action was manifested in the late 1970s. Technological, industrial and political reasons behind the erosion of public monopoly and public service systems in telecommunication and mass media environment in the EU were discussed. Besides, founding EU policy documents and vested-interests which played key roles in preparing of these documents are also dealt with. It was shown in this chapter that growing fear among European countries about the increasing international competition in information and communication technologies was used as the main justification for EU authorities to operationalize the institutional goal of building a “common market” in the communication environment. In doing this, Commission also sought for motivating large firms to act together in order to create an additional pressure over national governments and institutions which were relied upon traditional protective policies targeting only at national territories. As a result, early steps taken in the late 1970s and early 1980s became a ground for subsequent policies to realize a limited liberalization in telecommunications and mass media sectors. In this period, (the) concept of “IS” became, for the first time, a reference in the policy documents.

In Part II the deepening liberalisation in telecommunications sector was elaborated on as (the) concept of “IS” was placed at the heart of a general project aiming at a societal transformation in the mid-1990s in the EU and its expansion towards content and media policies as of late 1990s. This period marked both a continuity in ongoing liberalisation of communications sector and a rupture for it represented a “full liberalisation” in communications sector with irreversible repercussions on public service principles. In Chapter I of Part II, first of all the principal policy documents characterized by a technological determinist account of social reality and a faith in the free market mechanisms are discussed. In those

strategy documents, new information and communication technologies was argued to be the main drivers of “second industrial revolution”; and it was suggested that the fast adaptation to the emerging “Information Society” was now not only an influential remedy for economic problems (particularly related to employment issues) but also the only way to achieve social and cultural targets for the European societies. In order to complete this adaptation, the improvement of European information and communications sectors was argued to be an obligation. And a ‘market-oriented’ approach was also underlined as a requirement to develop concrete policies to encourage private investors for investing in the infrastructure of new technologies.

As a matter of fact, the ‘market-oriented’ view offered by EU to reach the goal of “IS” was nothing but to carry the ‘privatization’ and ‘deregulation’ policies of 1980s a step further and to implement “full liberalisation” and ‘marketization’ in the communications market. We could observe this fact as the whole exclusive rights of national telecommunication operators were terminated between late 1980s and 1998 and as the technology development programs were increasingly motivated by the commercial purposes by EU authorities, as was discussed Chapter I. It was also underlined in this chapter that EU’s policies for “Information Society” which has become an umbrella term for telecommunication and technology development policies expanded towards the media policies. In the first years of 2000s, EU authorities seemed convinced that “convergence” made it an obligation to include digital media into the “Information Society Project”. Because it was realized that ‘it was not enough simply liberalize communications infrastructure and invest in ICTs, but also it was urgent to produce attractive content for consumers’. Therefore, it was argued that digital media environment had to be regulated with a ‘light-touch’ approach revising the old media directive prepared for the analog era of communication technology.

In Chapter II of Part II, the formative phase of the formation of new media directive of EU (Audio-visual Media Services Directive) was elaborated on. In

doing this, the formation process of new media directive was divided into two. In the first phase covering 2002-2005, major policy events, official documents and emerging set of new vocabulary was tried to be explained. Main interest was to understand what subjects were brought at the forefront and what others were at the background in the formation of the new directive. To differentiate policy subjects, they were divided into two general groups, as **primary and secondary policy issues**, according to the importance attached to them by the participants or vested-interests within policy process. In this grouping, the decisive factors were the ideas presented in the position papers of participant groups in public consultation process and the main themes underlined by the EU authorities in the policy documents (including the reports tendered to consultant firms, press releases and the like).

According to this grouping, **primary or main policy issues** which were subject to harsh disputes and conflicts among the participant groups and EU authorities were as following: how to regulate the ‘cultural quota’ application, which had been implemented since 1980s for protecting local production of cultural content, in the era of digital convergence; whether ‘online’ (on-demand or non-linear) and ‘offline’ (traditional scheduled type or linear) media services would be regulated with same set of rules or not; whether ‘self-regulatory’ mechanisms would be put into effort in the regulation of new media environment or not; and lastly and most importantly, whether new advertising techniques would be permitted or not and whether more relaxed rules for traditional advertising techniques and sponsorship for audio-visual programs would be allowed or not. As for the **secondary or side policy issues**, these included other issues dealt with in the policy formation process of the new directive such as the regulation of ‘right of reply’ for those whose rights were harmed through the audio-visual programmes and/or the regulation of ban on the display of tobacco and alcohol products in the audiovisual content so as not to harm the development and protection of minors and youth.



In the second part of Chapter II, the adoption phase of new directive was examined including the draft proposal of the Commission and its ratification by the Council and the Parliament was discussed. It was seen that neither the Council nor the Parliament significantly challenged the Commission's proposal. Lastly in this chapter, the "codified version of AVMS Directive" was elaborated on. It was shown that a "light-touch" approach was operationalized in this directive: above all the relative importance of measures for the protection of European culture decreased since vague statements in the old directive were not clarified; on-line media services became subject to "minimum set of rules" free from almost all 'cultural quota applications' and advertising restrictions; advertising rules for traditional media got relaxed in terms of breaks and duration; and lastly new advertising techniques, notably the "product placement", got legalized.

However, "product placement" was forbidden for some programme genres like children programmes which were relatively less valuable when compared to sports or entertainment programmes. Some other secondary issues of policy including 'right to reply' and 'right for short extracts' took place in common media rules for the first time; and the total ban on tobacco and limited ban on alcoholic beverages/medicinal products took also place in the directive in the scope of preserved principle of 'the protection of minors from the content harmful for physical, mental and moral development of minors and human dignity'. Nevertheless, it was underlined in this chapter that AVMS Directive brought about a broad liberalisation in the European media environment leaving market forces almost uncontrolled within digital media environment.

In the last chapter, Chapter III of Part II, it was sought to shed light on what vested-interests have played the key role in the adoption of such a new media directive. In order to understand what kind of differences are there between vested-interests, a classification was made among the participant groups. Two criteria were employed in making of this classification: one of two was the difference in organizational identity (e.g. public or private sector) and the other

was that how they approached to primary and secondary issues of policy. It was observed that according to above criteria participants could be categorized into four general vested-interests or discourse coalitions.

Three groups were observed to have endorsed the general approach adopted by European Commission in regards to primary issues of policy in the formation of new directive whereas the fourth group severely criticized the dominant approach. The endorsing groups were those participants which were mainly the private companies and capital groups operating in information and communications and particularly media sector (Group 1). Other three groups were governments and other public organizations including public service broadcasters (Group 2), non-governmental organizations - NGOs (Group 3), and those dissident participant organizations most of which could also be classified under the category of NGOs (e.g. consumer protection organizations, professional associations) (Group 4). The analysis focusing on the discourse presented in the position papers of participant groups showed that the dissident group leaded especially by consumer protection organizations mostly opposed to the arguments of European Commission and capital groups in terms of primary issues, as there was a large agreement among all the participant groups in regards to secondary policy issues. Only disagreements about the secondary policy issues were some technical details about how to regulate, for example, “right to reply”, in cases of the breach of basic rights of an individual or an organization.

Commission’s bias can be inferred by examining the final text of the new directive. Considering the decisions made as outcomes of policy formation, it is our general conclusion is that the integration between EU’s market-oriented Information Society and media policy resulted in a clear infringement for even the most basic principles of broadcasting in regards to the protection of its informational and cultural aspects. All the decisions made in terms of primary policy issues endorse this general inference: Even if it is still forbidden on paper, new advertising techniques (especially “product placement”) are legitimated

thanks to some certain rhetorical covers; that online (or on-demand) media services were decided to be subject to minimum possible rules on the excuse that the locus of audio-visual media sector was shifting to internet-connected platforms; that an appropriate legal basis was employed in favor of carrying out self-regulatory mechanisms instead of public regulations, are the other complementary and supporting developments for the study's main thesis.

As for the ongoing policies for “European Information Society”, it is now better understood that it has been used as a rhetorical destination to cover an implicit purpose of carrying out the deregulatory policies necessitated by neo-liberal approach which aimed at “full liberalisation” within the communications market. This was proved by the facts that after (the) concept of “Information Society” was used as an umbrella term for communications policies as from mid-1990s, the policy logic of protecting public interest was directly replaced by the supremacy of market mechanisms as the sole regulator of sectors guiding the liberalisation and privatization of telecommunications sector, directing public investments to improve the infrastructure of advanced communication and information technologies, and finally giving spirit to the AVMS Directive. As all these market-oriented policies were adopted, “Information Society” was presented by the EU authorities as ‘opportunity’ not to be missed and it was promised that shifting to “Information Society” would be a positive transformation with implications not only for economy but also for all segments of society.

The role attributed to the media in the midst of a digital convergence was a critical one in this rhetoric. Media sector was mentioned as interplay for telecommunications, computer and mass media technologies and industries. Therefore, media was attached a significant importance in order to realize both economic and social goals of “Information Society”. That was to say; new media policy would be a kind of test of the validity of the goal of “Information Society” in which it was said to have promises for both economic/industrial and sociocultural development. Besides, to balance the economic and cultural pressure

of US communications sector over the European local communications industries, a traditional rationale for European common media policies, was also associated with the rhetoric of ‘competition’ reinforced in the formation of new media directive. Nevertheless, new media directive of the Union is proved to be a good example of market-oriented policies biased for private interests instead of balancing economic and sociocultural goals.

Because new media directive has simply legalized the (hidden) presence of advertisements not only before and after a programme or within a programme break but also within programmes themselves. Furthermore, internet-based audio-visual media sector was almost totally freed of regulations for the sake of rejuvenating online media sector enabling the market for private investors. Thus, it is proven that new regulators of the media environment were two interconnected drivers: technological change and market mechanisms. What was actually behind the term of ‘flexible policy’ reiterated by the European Commission in the formation of new directive was the concern of appropriate legal environment for self-regulatory mechanisms based on mutual relationship between technological change and market fluctuations.

As a matter of fact, the reports which had been tendered to private consultant organizations by the European Commission had revealed its view about the new rules even before the process for new directive had been launched. In those reports prepared by consultant firms, the main advice was to shift a more ‘flexible’ policy environment to provide private sector with an appropriate playground, including relaxation on ‘quota application’, minimum rules for online audio-visual sector, encouragement of self-regulatory mechanisms, and finally permission to new advertising techniques. That was why the Commission referred frequently to the “Information Society” suggesting that a strong ‘integration’ between ‘Information Society’ and new media policy. The purpose was to associate the plannings for specific policy changes with a specific vision of

“Information Society” which was biased for technological innovation and free market competition.

This bias of the Commission for a more ‘flexible’ media regulation was strongly supported by the position papers of participants from private sector, unsurprisingly. Some members of the private sector were observed to use the concept of “Information Society” in parallel with the Commission. As for the position papers of governmental instructions and public organizations, it was seen that most of the European governments, especially the big countries and public service organizations, except a few of the leading public service broadcasters, did not oppose to the views of the Commission and members of private sector in regards to primary policy issues. The only objection of leading public service broadcasters (BBC, ARD-ZDF) and EBU was to the Commission’s argument that ‘as long as audience were warned about advertising during the programmes’ flow, the entity of the programmes would be preserved’.

As for the dissident group (Group 4), some of the participants mainly objected to the new advertising techniques and demanded existing ban on these technics to remain, underlining the fact that new mode of advertising would put additional limitation on editorial responsibility and breach the most basic principle of present broadcasting regulations that the programme and advertising had to be clearly separated. Some other participants from the dissident group strongly criticized some concepts such as ‘flexible regulation’ and ‘self-regulation’ frequently used by Commission and private sector. Most of the members of the dissident group demanded that a higher ‘quotas’ for domestic productions (especially those programmes to be produced by local and independent producers) should be implemented in order to enforce a genuine cultural diversity and creativity. And some members demanded new precautions to be taken for the increasing concentration of the ownership within media sector which was then welcoming giant firms from other sectors of electronic communication like telecommunication and informatics. In addition, stricter rules for existing

advertising on audio-visual media both at traditional and online (internet) channels were demanded. Shortly, most of the participants of dissident group denied, overtly or covertly, the ‘money-talk logics’ in the new media regulation. Yet, such demands from dissident group were almost totally ignored by the Commission. In none of the policy documents (including press releases) such objections to the new directive was mentioned neither by the Commission nor by other EU authorities because those demands were completely in contrast to dominant policy concepts and arguments.

As the Commission’s approach was almost in a direct opposition with the demands of dissident group, it was observed that there was a close similarity between the arguments of Commission and participants from private sector. The order of discourse adopted by the Commission, one can argue, was even almost identical with the subgroup consisting of large media firms. When the new directive was adopted, it was seen that, on the one hand, the tension observed between the members of the private sector and the dissident group in regards to primary issues was resolved in favor of the former group. On the other hand, some circumstantial and relatively less important conflicts within the participants of private sector (Group 1), especially between the large media firms and relatively smaller and local ones and between traditional mass media companies and telecommunication and internet (including computer) companies, were alleviated by the Commission seeking for a consensus among the disagreements in the final text of the directive.

Nevertheless, the Commission as main driver of the process reiterated many times that the formation of new directive was welcomed and agreed upon by most of the participators of public consultations. Obviously, Commission wanted to display the participants of the policy process as parts of a homogeneous entity. Therefore, that the policy process of new directive was a successful “governance” was argued by the Commission. All the documents, including press releases and expressions taking place at official websites, supported this argument.

Considering the fact that there was the imbalance between the participants from private sector and dissident group in favor of the former group in terms of number of participants, the argument of the Commission that ‘most of the participants’ welcomed the new directive was not literally wrong.

Accordingly, all the officials from the Commission we interviewed with insisted on the claim that directive was welcomed by most of the participants, suggesting that quantitative majority was sufficient to deem the policy process as successful. Yet, many of the participants involved by the dissident group were consumer protection organizations potentially representing all the European peoples and labour unions representing the worker groups in the societies. That is to say, the claim based on quantitative majority was in fact futile and fragile to any attempt for refutation. This minor fact does actually show that even if the quantitative majority and overrepresentation of private interests may be a strong justification for such arguments of that the rules adopted by new directive were made in great consensus, it should be recognized that the cooperation between EU authorities and capital groups has been focused on a single major goal: restructuring the communications sector in accordance with the necessities of new model of capital accumulation within a fast changing technological environment.

Furthermore, as was seen in the Chapter II of Part I, it was the Commission, the sole initiator of legislations in the Union, which initially instigated and commissioned the cooperations and associations among the companies in private sectors as of early 1980s in order to have more support from the civil society for its market-oriented policies on both national and international levels. It was then revealed that the main intention of the Commission was to distribute an impression of consensus among the EU authorities and the European civil society – the impression of a ‘pluralist’ democracy operational at EU level which is needed mostly by EU itself to compensate the ‘democratic deficit’ originating even from EU’s establishment.

Shortly, all the new media directive formation process can be said to have been designed to legitimate the further liberalisation in the media policy of the Union, in a ‘democratic’ and ‘pluralist’ guise. In doing this, (the) concept of “Information Society” was used to cover the discursive distinctions among vested-interests, as a rhetorical and an ideological tool. At the last instance, following this argument, “Information Society” as an *aphorism*, can be said to have served for the contemporary form of capital accumulation, being a rhetorical tool privileging economic and industrial concerns over social and cultural concerns in regards to media policy. Besides, although some conflicting interests have been observed behind the formation of EU policies, what has always been the main driver of the resolutions in the EU has been Treaty of Rome and other complementing major treaties pertaining to the logic of ‘common and single market’, at last instance. As is discussed in the Chapter II of Part I, that ‘common market’ which stipulated a full freedom in the trade of goods and services among member countries, was applied to media policies as from early 1970s can be seen an evidence for this relationship.

In fact, such a technology and market-oriented communications policy has a natural outcome of a set of interconnected developments taking place since 1980s and the most advantageous stake holders in these developments have been the large firms in communications sector which could not be regarded national anymore. Almost all the ‘national champions’ of media sector, as Harcourt indicates (2008), have been multi-national companies, mostly merged with USA-based firms. The EU’s traditional concern of protecting internal media industry with both economic and cultural motives has therefore been in a contradictory position. That mergers and acquisitions in communications sector were proliferated after the adoption of TVWF Directive proved this contradiction. National media companies have thus transformed into international private organizations. Then, media companies have become parts of larger commercial bodies (e.g. international holdings) with significant investments at various segments of the economies. The commercial pressure which resulted from these



developments forced media companies to have less investment in original and creative content production and to export more cheap audiovisual content. Finally, the share of USA-based firms, the main market from which these cheap material have been exported, have grown instead of declining within European media markets.

Hence, we have enough ground to expect that further liberalisation brought about by the new media directive will be the benefit of especially large media companies and bigger European countries as well. Because these kind of dominant companies are mostly located at big countries of EU, such as Germany, France and England, and they have organic ties with global media firms, mostly USA-originated ones. They are thus dominating the whole media in Europe taking the lion share from the advertising market as well. With a growing commercial power and control over the market and regulatory authorities, there is no doubt that the conditions for the public service broadcasters will be tighter and more formidable in the digital media environment. That protection of cultural diversity was largely ignored and limitations peculiar to EU's traditional advertising rules were almost completely abolished for online (or on-demand) audiovisual sector will also be beneficial to sector's leader global companies mostly USA-originated as well. As a conclusion, these developments have backed up the claim that a certain aspect of 'globalization' has been in favor of multi-national companies.

At this stage of developments, it is assumed by EU authorities that relaxed rules for online (on-demand) sector would encourage media companies to invest in internet, stimulating local audiovisual media producers to balance the leadership of American companies. Yet, one major reason behind the liberalisation of communications market in the EU was to have a non-fragmented and competitive media market to cope with USA-based firms has not resulted in any significant change in trade deficit against US so far. For this reason, a question appears whether this same industrial strategy will bring about different outcome in the new media sector which is led by USA-originated companies with high shares

in and control over internet communication and economy. The first Commission report on the implementation of the new media directive at European countries (European Commission, 2012) actually confirms the question on the effectivity of liberalisation policy for new media sector in terms of competitive capabilities of local producers. According to the report, that internet and television technologies have recently been integrated marked “a new stage in the convergence of Internet and TV” paving way to the growth in EU media market and “several major US operators are in the process of launching their services in the EU and the emergence of those new platforms will undoubtedly increase competitive pressure on the creating, financing and retail of EU works” (Ibid, p.9).

Under such circumstances, it is seen very unlikely that market-oriented policies which are ‘flexible’ will provide European domestic audiovisual sector with an advantage in audiovisual sector neither domestically nor globally. This is naturally the case for other countries like Turkey which regularly adopt their national law to the rules implemented by the EU. However, new academic researches have to be conducted to have more well-grounded forecasting about the future of new media sector in regards to competition among the local producers and multi-national media companies and especially about the tension between economic concerns and sociocultural concerns. In this regard, how the public service broadcasters will endure in such a fragile position within the new media environment will sure be another significant question to be answered in the following studies. Besides, the possible effects of new media environment (particularly new advertising techniques) over the audiences’/users’ usage and perception with possible repercussions on in regards to ‘media literacy’ will be other issues to be highlighted by further studies as well. Moreover, new studies particularly on public policies, which would be more focused on technological infrastructure of communications, are also needed to reevaluate the possible future developments and to understand their implications for media industry and overall economy, for audience/user tendencies, and finally for policies to be adopted. Because in “Information Societies” that we are told we live in, the ways and

conditions of access to the electronic broadcasting as a central part of culture industries will be determined not by sociocultural goals and policies based on public service principles, but by fast changing technology and market variables within their own dynamics.

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## APPENDICES

### APPENDIX 1.<sup>240</sup>

#### Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003)<sup>241</sup> (150 submitters)

Actors	Type of Actors	Vested-Interest (main themes)
Group 1/A  Advertising Association - AA (4)	Private- Advertising Industry- “is a federation of 25 trade associations and professional bodies representing the advertising and promotional marketing industry, including advertisers, agencies, the media and support services in the UK.”	Central arguments are that “more legislation in the broadcasting area is not the answer”. . . the enforcement of Country of Origin control is an industry objective without thought for or consideration of consumer/viewer interests.”
Group 1/D  Amsterdam Group	Private- Alliance of Alcohol Drink Producers	It is argued that “Television Without Frontiers Directive works effectively in the Member States and that self-regulation is an adequate tool for its implementation.”

<sup>240</sup>Below the tables are given information about participants and position papers. In the first left column, the name of participant organizations and the groups we have included them are given. The numbers in parantheses is the number of pages of position papers. In the middle column, the information about the participator’s identity is given. This column shows what vested-interests the participator represent. As for the the right column, it includes the inference we made from the position papers’ concerning the primary theme of the position paper showing the central concern of that participator. If the remarks in the right column is in quotation marks as “...”, then it shows a direct quotation from the position papers submitted by that participator.

<sup>241</sup>The public consultation was opened to all citizens and organizations within the European Union. It runs until 15 July 2003 and covered the following topics:

- Theme 1: Access to events of major importance for the Company.
- Theme 2:Promoting cultural diversity and competitiveness of European industry audiovisual programs.
- Theme 3: Protection of general interests in television advertising, sponsorship, teleshopping and self-promotion.
- Theme 4: Protection of minors and public order - the right answer.
- Theme 5: aspects of implementation.
- Theme 6: Short extracts of events and other items not covered by Directive

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 2/B ARD-ZDF (32)	German Public Service Broadcaster ARD and German TV ZDF	It is said, 'the aim must be to create Information Society for all and new commercial opportunities provided by new technology should be properly exploited'.
Group 1/A ARCA	Private- Association for Audiovisual Communications: "...represents the interests of Romanian broadcasters. ARCA is an extremely active association." ( <a href="http://www.giswatch.org/en/country-report/civil-society-participation/romania">http://www.giswatch.org/en/country-report/civil-society-participation/romania</a> ) <a href="http://www.audiovizual.ro">www.audiovizual.ro</a>	It presents a full support for EC's initiative: "Advertising could be considered as one of the instruments of building up daily civilization values, along with long term ones. Marshall McLuhan wrote: 'The historians and archeologists will one day discover that ads of our times are the richest and most faithful daily reflections than any society ever made of its entire range of activities.'"
Group 1/B ANEPA	Private-An alliance of small firms specialized on audio-visual production	It seeks for protecting commercial interests of the relatively small media firms and for drawing attention to the pressures over the independent producers in an oligopolistic media environment.
Group 1/C AACC	Private- An alliance of marketing firms	It supports the "the views of IAA (US section)".
Group 1/A ACT (33)	Private- Association of Commercial TVs in the EU	It seeks to protect interests of private broadcasters.
Group 1/B AER	Private – Europe Wide Association of Commercial Radios	It is argued that Internet radio is an "Information Society service" and for it is already covered by the e-Commerce Directive, there is no need for further regulation.
Group 1/B SAPOE CEPI (has contribution for Creative Content Online)	Private- Greek Independent Audiovisual Producers (not a member of big capital)	In agreement with CEPI's position CEPI (European Cordination of Independent Producers)
Group 3/A AICAT	Private- Italian Association of Clubs of Alcoholics	It is argued that alcoholics are treated as minors.
Group 2/A AGCOM	Public – Communications Regulatory Authority- Italian	It welcomes revision and sees necessity to make regulations for new advertising technics.



**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 4 BECTU	Union of the technical and creative workers (UK trade union)	It is opposed to 'light-touch' and 'self-regulation' approaches.
Group 2/A Belgium Ministry of Flemish Community (België - Ministerie van de Vlaamse Gemeenschap) – Department of Media and Film	Public Organization for Flemish Community living in Belgium	No need to further harmonization for European products and it is hard for small broadcasters to meet the requirements of high quota application. No more liberalisation and further detailed definitions for new advertising technics are needed.
Group 3/B French Community of Belgium	Public Organization	It welcomes revision and sees necessity in clarifying the concepts of product placements and other new advertising technics.
Group 1/D Brewers of Europe	Private-The Alliance of Beer Producers	It supports 'self-regulation' for commercial communications of beer.
Group 2/B BBC-British Broadcasting Corp.	Public-Public Service Broadcaster of the Britain	It adopts an official stance trying to merge commercial purposes with cultural services.
Group 4 Austrian Federal Chamber of Labour	Public- Union of 3 million workers	It emphasizes the importance of cultural goals.

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

<p>Group 1/C</p> <p>BDU- Federal Association of German Management Consultants</p>	<p>Private- It is a professional and trade association of management and personnel consultants in Germany, “the biggest management consultants association in Europe and member of the European umbrella organisation European Federation of Management Consultancies Associations (FEACO), based in Brussels, as well as member of the International Council of Management Consulting Institutes (ICMCI), the worldwide association for quality assurance in the field of consulting and is based in the USA.” (see <a href="http://en.obie-beratungsforschung.de">http://en.obie-beratungsforschung.de</a>)</p>	<p>It welcomes the revision of established legal order in order to get a clearer legal basis for ‘Business – Company TV’.</p>
<p>Group 1/B</p> <p>BITKOM - Federal Association for Information Technology, Telecommunications and New Media -</p>	<p>Private – “represents 1.300 companies, with 700 as direct members, with 120 billion, € turnover and more than 700,000 employees. These include producers of handsets and infrastructure systems and in software.”</p>	<p>It argues that a flexible, restrained, and thus innovation-friendly regulations is an important prerequisite.</p>
<p>Group 1/D</p> <p>Federal Union of German Associations of Pharmacists – ABDA</p>	<p>Private-</p>	<p>It is recommended that existing rules as to advertising of pharmacy products should be preserved.</p>
<p>Group 4</p> <p>BEUC-The European Consumers’ Organization (28)</p>	<p>Public-</p>	<p>It is opposed to the Commission’s general approach in many ways.</p>
<p>Group 1/A</p> <p>Cable&amp;Wireless plc.</p>	<p>Private- Cable&amp;Wireless is one of the world’s leading international communications companies.</p>	<p>It demands that the meaning of key conceptualizations offered by Commission are clarified.</p>
<p>Group 3/B</p> <p>Censor Watch</p>	<p>Public - Representing Adult Service viewers in Uk (Adult content)</p>	<p>It demands freedom of reception and freedom for adult content.</p>

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 1/B Center for Justice and Liberty	Private- An alliance of 29 Religious Broadcasting and Production Companies in UK and Ireland	They hope that free market ideals can continue with TVWF Directive and with freedom of religious expression.
Group 3/B CGSP-RTBF	Trade union sector representing workers of Belgium's French speaking radio and television service - Radio-Télévision Belge de la Communauté Française	It is surprised by the insufficient representation of workers in the public consultation. 10%percent quota application should be preserved in favor of small broadcasters.
Group 2/B Channel 4	Private (public)- Public service broadcaster funded by commercial means-UK	It is said, "As the channel's future strategy is based partly upon establishing new pay and free-to-air channels and developing ancillary on-line services, all complementary to the main Channel 4 service, we would like to see the evolution of broadcast media in the EU be as open and flexible as is compatible with responsible regulation."
Group 3/B CARE- Christian Action Research and Education (8 pages)	Public- Association of individual christians and churches	It argues that the codes which seek to protect 'the physical, mental or moral development of minors' must be protected (especially for pornograhpy and gratuitous violence).
Group 1/A Cinema Exhibitors Association- CEA	Private- "represents the interests of around 90 per cent of UK cinema operators by number and market share".	It is of the opinion that movie piracy should be avoided.
Group 1/B European Producers' Club	Private- Audio-visual material producers.	It demands more clarification at definition of 'artistic work' and 'independent producer'.
Group 3/B CIEM- Interassociatio n of Children and Media Collective	Public- children education (for the thema of protection of minors)	It argues that it is hard to propose a new language vocabulary.

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 3/B  Consultation Committee of the Centre of Cinema and Audiovisual of the French Community of Belgium	Non-commercial	It focuses on the interests of independent producers
Group 3/B  COMECE- Commission of the Bishops' Conferences of the European Community	Public	It welcomes revision and graduated levels of regulation. Supports to maintain main principles of protecting cultural diversity, children protection and strict regulation of religious broadcasting.
Group 1/D  CEPS	Private- association of spirits drinks producers	It welcomes the concept of "self-regulation".
Group 2/A  Higher Audiovisual Council French Community of Belgium (12 pages)	Public Authority	It welcomes the expanded scope of directive and supports developing new concepts. New advertising technics are industrial facts, but should be cautious about the balance between economic and cultural concerns. Media pluralism should be addressed.
Group 2/A  CSA – High Council of Audiovisual – France (37)	Public Authority	It welcomes the revision attempts in general, but puts stress on the importance of quota application and draws attention to the possible threats intrinsic into the new advertising techniques.
Group 3/B  CASH- Consensus Action on Salt and Health (1)	Public-	It focuses on advertisements promoting high salt usage.

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 2/B Consiliul National Al audiovisualului - The National Audiovisual Council of Romania	Public Authority	It argues percentage of quota could be increased. For new advertising technics, the principle of separation must be preserved.
Group 4  CA – Consumers Association- UK	Public- NGO More than 700000 thousand individual members	It welcomes the revision from the perspective of BEUC. It is opposed the dominant position in many respects.
Group 4  CoperCom- Coordination of associations for communication -Italy	Public Service Organization	It argues ‘the promotion of cultural identity is more and more as a confirmation of the vital interests of a television to be understood as a common good of all, not only as an arena of business.’
Group 1/B  CEPI- European Coordination of Independent Producers	Represents 15 national associations of cinema and TV producers equivalent to 95% of industry.	It seeks for protecting commercial interests of the members.
Group 2/B  Council for Broadcasting and Retransmission - Slovakia	Public Authority	It is of the opinion that ‘new advertising technics may breach the principle of separation between content and advertising.’ However, ‘mechanisms of co-regulation and self-regulation can be thought concerning to protection of minors.’
Group 2/A  Denmark- Ministry of Culture	Public- Government	It is of the opinion that TVWF works well in particularly terms of quota application. Self and co-regulation mechanisms are worth to consider.
Group 2/A  Federal Republic of Germany (67)	Public- State	It supports to enable global competitiveness of EU audio-visual.
Group 3/B  Diabetes UK-	A health organization	It feels “that a ban of advertising of unhealthy food. . .” would be appropriate.

### Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)

Group 2/A Direktorenkonferenz der Landesmedienanstalten - DLM - The Directors' Conference of the State Media Authorities (26)	Public- General conference of regulatory authorities responsible for media in German States.	It states that despite convergence television would save its position as the main audiovisual media: new regulations are needed because of convergence; quota application is applied well in Germany; lifting of all restrictions on advertising is unacceptable but rules concerning advertising should be simplified.
Group 1/A Discovery Networks Europe (DNE) (9 pages)	Private- The biggest company in factual pay TV in Europe	It generally welcomes the revision of TVWF Directive.
Group 1/D Electronic Retailing Association- ERA (6 Pages)	Private- Trade Association of seller companies	It emphasizes on commercial interests of its members.
Group 1/A Endemol (4)	Private- A company based on content developer – Telefonica Group	It emphasizes on commercial interests of its members.
Group 2/A Republic of Estonia- (1)	Public- State	It argues that 'review of the directive should take into account of the needs of smaller countries to protect their cultural identity.'
Group 3/B Eurocare (6)	Public- NGO -	It thinks that prevention of consumption of alcohol drinks should be paid attention.
Group 1/B Eurocinema (16)	Private - Producers Association Film and Television – Small Producers	It supports protecting commercial interests of small producers.
Group 4 Euro mei Uni (12)	EURO-MEI is the European region of UNI-MEI, the media, entertainment sector of Union Network International –(UNI) – UNI represent over <b>140</b> unions and guilds and <b>250,000</b> workers worldwide.	It argues that TV's regulation should be distinguished from other audiovisual forms. It is opposed to Commission's approach in many respects.

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 1/A  European Advertising Standarts Alliance (9) – EASA	Private- Representative of advertising capital groups	It says “There should be no extension of broadcasting regulation to new media.”
Group 3/B  European Alliance of Listeners' and Viewers' Associations - EURALVA (10)	Public- NGO – “an independent non-sectarian alliance of national associations, representing the interest of listeners and viewers of broadcasting and new media services, which can be received in member states of the Council of Europe.” (website)	EURALVA considers that ‘the concepts and definitions of ‘television advertising’, ‘surreptitious advertising’, ‘sponsorship’ and ‘teleshopping’ should be broadened to take account of new technological and market developments.
Group 1/A  European Association of Communications Agencies - EACA (13)	Private - “represents the views of advertising, media and sales promotions agencies across Europe”	It emphasizes on commercial interests of its members.
Group 2/A  EBU- European Broadcasting Union (41)	Public- Union of European National Broadcasters with a special commitment to Public Service Broadcasting	It requesting for further clarification in Commission’s approach concerning to revision.
Group 1/A  ECCA- European Cable Communications Association (4)	Private- Association of Cable Broadcasters	It recommends that “new EC television regulation does not undermine existing EC rules such as the new Telecom Package and the e-Commerce Directive”
Group 3/B  ECA- European Council of Artists (4)	Private- (non-big capitals)- association of art makers, but not a union	It welcomes that Commission focuses on ‘employment’. It recommends to omit the term of ‘where practicable’ concerning ‘quota’ application.
Group 3/B  EFCA – European Film Companies Alliance (8) _	Private- “founded in Brussels in September 1995, is a non-profit organisation with a scientific and artistic purpose”	It feels discomfort with the term ‘where it is practicable’ concerning ‘quota’ application.

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 1/D EFTA- European Free Trade Association (4)	Private- General Capitalist Interests	It is a proponent of the minimum regulation.
Group 1/A EGTA- European Group of TV Advertising (40 pages)	Private-Association of Advertisers-Big Capital	It is in favor of flexible rules for 'commercial communications'.
Group 3/B EHN- European Heart Network (4)	Public-NGO	It pay attention to protect heart health –The protection of minor's health. It recommends a specific ban on unhealthy food is needed.
Group 1/A European Information Communicatio ns and Consumer Electronics Technology Industry Association - EICTA (2)	Private- "represents the interests of both national associations and corporations operating in the information technology and <u>consumer electronics</u> sector in Europe. It is composed of 62 major multinational companies and 42 national associations from 29 European countries"	It focuses on commercial interests of its members. It thinks that 'TV broadcasting and online media (E-commerce) should be separately regulated'.
Group 1/D European Lotteries –EL (6)	Private- Alliance of Lottery Companies	"EL proposes to exclude iTV gambling services from the scope of the TWF Directive."
Group 1/A The European Newspapers Publishers Association (ENPA)(2)	Private-	It does not want to be effected by a new directive. Therefore, it thinks media ownership rules should not be included by the directive.
Group 1/D European Publishers' Council (5)	Private - "(EPC) is a high level group of Chairmen and CEOs of European media corporations actively involved in multimedia markets spanning newspaper, magazine and on-line database publishers."	It supports some critical concepts to be employed in the new directive such as 'free flow of content', 'flexible regulation', and 'self-regulation'.



**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 3/B  European Research into Consumer Affairs - ERICA (12)	Public – “Its main aim is to improve life for Europe’s more vulnerable consumers including children, ethnic minorities, women, those with low literacy, with disabilities, the unemployed, pensioners and those in debt.”	A voice of common sense from a non-politically opponent stance. It is not talking for citizens, rather for consumers...
Group 1/B  European Sponsorship Consultants Association - ESCA (5)	Private- “(ESCA) is the trade organisation of the sponsorship industry in Europe. It was founded in 1990 and now comprises over 50 members from the leading consultancies.”	More clarity is requested concerning ‘tv programme sponsorship’.
Group 1/A  European Telecommunications Network Operators' Association - ETNO (7)	Private- “ETNO represents the voice of 39 of Europe’s largest and most established telecom operators in 35 countries.”	It “recommends that the existing strict separation between television (TVWF) and Information Society services (e-Commerce Directive) rules be maintained. The revised directive should not apply to Internet-based services.”, and “...future TV broadcasting rules should be lighter than they currently are to stimulate competition in the television market.”
Group 4 CFDT – Federation for Culture	Public- Federation for Communication and Culture	It defends ‘media ownership should be considered carefully and prohibition for subliminal tecnics.’
Group 1/A  Federation of Spanish Audiovisual Producers Associations – FAPAE (5)	Private – “consists of almost all companies and film production Television of Spain”, founded in 1991	It proposes to increase domestic production quotas for European companies and it is against US domination.
Group 4  Federation of European Film Directors- FERA (10)	Private- represents 30 independent producers' associations in 27 countries.	It underlines US domination over local markets and cultural goals. It is in favor of “active promotion of cultural diversity”.
Group 4  INTERNATIONAL FEDERATION OF ACTORS- FIA (5)	Private – “(EuroFIA) gathers the trade unions representing actors in theatre, film, television, dancers, singers, circus and variety performers in all European countries”.	It is interested in ‘employment’ potential but very discomfort with the term “where practicable”. It thinks that on-demand media should be subject to ‘quota’ application. It says, “new advertising techniques, such as split-screen and virtual advertising, are unacceptable and should be expressly banned by the new Directive”.

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 1/A 1/B  International Federation of Associations of Film Distributors – FIAD (4)	Private – Represents 13 national associations of film distributors including the biggest ones.	It emphasizes on commercial interests of its members. However, it feels discomfort concerning the term ‘where practicable’ is problematic.
Group 1/A  International Federation of Film Producers Associations – FIAPF (5)	Private – “is a global producers’ federation with a membership comprising 30 film and television producers’ associations from 25 countries worldwide, including the majority of EU countries.” (Big Capital) – “FIAPF’s mandate is to represent the economic, legal and regulatory interests which film and TV production industries in four continents have in common.” US big film companies are among its members.	It has a market logic demanding more competition. It thinks “giving SMEs in the audiovisual sector a chance to compete”.
Group 4  Federation of Scriptwriters (5)	Private- representative of screenwriters (labourers of the culture industry)	It thinks ‘media concentration should be considered.’
Group 4  Film- og TV-arbejderforeningen (FAF)(6)	Public – workers, “is the national trade union for film- and television workers in the independent production industry in Denmark.”	It “supports without reservation the position paper drawn up by EURO-MEI”
Group 2/A  Finnish Ministry of Transport and Communications (4)	Public-Government	It thinks new directive needs conceptual clarification in digital age; regulation should be at national level. It also agrees with EBU about ‘graduated regulation’ (which means distinct regulations for traditional media and on-demand media).
Group 1 /D  Football Association of Ireland (2)	Private-	It requests Commission to adopt a regulation to reduce uncertainty for contracts with broadcasters to exhibit sports.
Group 2/A  French Republic (12)	Public – State	It is said “the French authorities did not deem it useful to revise the directive”. It is thought that ‘the economic significance of new media forms is still minor and should be decided whether a broad revision is needed or not.

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Individual participation – uncategorized  Dr. Ingrid Geretschlaeger (4)	Individual - Department of Communications, University of Salzburg	She is in favor of “responsible ‘self-regulation’.
Individual participation-uncategorized  Terry Gillespie (5)	Individual -	It draws attention to violence on media.
Group 4  European Grouping of Societies of Authors and Composers – GESAC (2)	Public- Private 2 – workers of culture industry.	It feels discomfort with the lack of effect of TVWF Directive on promoting cultural diversity. It is a proponent for the increased ‘quota’ application.
Group 3/B  Groups for Solidarity (4)	Public- NGO-	It emphasizes the prevention of alcohol related problems.
Group 1/D  Home Shopping Europe (4)	Private - is the first broadcasting company in Germany for home shopping.	It is mainly argued ‘1997 amendment was for strengthening home shopping, and previous distinction between traditional and new forms should maintain.’
Group 2/A  Independent Television Commission (ITC) (21)	Public- Regulatory Authority -UK	It puts stress on some concepts such as ‘legal certainty, co-regulation and e-commerce’.
Group 4  Institute for Information Law (IViR) - University of Amsterdam (8)	Public- Academic	“In the process of implementing Article 3a into national lists of important events it became apparent that there is no consensus about what ‘free’ access to information actually means, that is, whether this notion refers to free in the sense of free from additional costs or free in the sense of transmissions that are not encrypted and can be received by means of normal television equipment.”

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

<p>Group 2/A</p> <p>Media Institute-ICS-Portugal (6)</p>	<p>Public- Assistant Regulatory Authority- “GMCS - OFFICE FOR THE MEDIA</p> <p>The Office for the Media began operations on June 1, 2007, replacing the Media Institute, in its duties and responsibilities. This change falls within the Programme for Restructuring the State's Central Administration (PRACE).</p> <p>The Office for the Media (GMCS) “is a direct central administration of the state, endowed with administrative autonomy.”</p>	<p>It is said ‘new definitions are needed’.</p>
<p>Group 1/A</p> <p>International Communications Round Table A.S.B.L. - ICRT (4)</p>	<p>Private – “a cross sectoral group of about 25 leading publishing, media, internet financial services, computer, and communications companies” – Big Capital</p>	<p>It is said “From the beginning of the discussion on a possible revision of the TVWF Directive, ICRT members suggested shaping a regulatory framework that would permit the elimination of unnecessary regulations within the European audiovisual sector.” “self-regulation” – ‘need for modernized rules’ . . .</p>
<p>Group 1/A</p> <p>International Union of Cinemas - UNIC (3)</p>	<p>Private - “is the union of national associations of cinema owners of fourteen mainly European countries”</p>	<p>It demands the protection of cinema theaters against new forms of exhibition and supports ‘self-regulation’.</p>
<p>Group 1/A</p> <p>International Video Federation - IVF (4)</p>	<p>Private- “represents national video associations and their members= interests as publishers and distributors of pre-recorded video cassettes and Digital Versatile Discs (DVDs)”</p>	<p>It emphasizes on commercial interests of its members.</p>
<p>Group 2/A</p> <p>Republic Of Ireland (20)</p>	<p>Public-State</p>	<p>It thinks EU regulation is necessary and it “supports the country of origin principle, but contends that the criteria for establishing jurisdiction need to be re-considered.”</p>
<p>Group 1/A</p> <p>Irish Rugby Football Union - I.R.F.U. (2)</p>	<p>Private -</p>	<p>It emphasizes on commercial interests of its members as to contractual agreements with national legislator.</p>

### Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)

Group 1/A  ISBA - The Voice of British Advertisers (4)	Private – Advertisers’ Lobby –“ISBA is the representative body for British Advertisers. The membership, of more than 300, ranges from the largest companies, through many small and medium sized enterprises (SMEs), public bodies and charities.”	It is of the opinion that “interactive advertising, virtual advertising and split screen should be made possible.”
Group 1/A  ITV- Independent Television (25)	Private- UK’s largest commercial network	“Commission’s five principles for good regulation – namely that regulation must be the minimum necessary to achieve clearly-defined policy goals, guaranteeing legal certainty and technological neutrality and enforced as locally as possible.”
Group 1/D  Kellogg’s (5)	Private – “With 2009 sales of nearly \$13 billion, Kellogg Company is the world’s leading producer of cereal and a leading producer of convenience foods, including cookies, crackers, toaster pastries, cereal bars, fruit-flavored snacks, frozen waffles and veggie foods.” US origin.”	“Kellogg’s believes that Article 10.1 on the separation of advertising and programme content is an important principle underpinning the Directive and must be maintained, so that viewers, including children, can make the distinction. Given that this principle is more difficult to enforce in the case of new advertising techniques, we believe that the way adverts are separated from editorial content (e.g. time, space, logo) should be subject to EU-wide harmonised regulation. However, the emphasis must be on light touch regulation.”
Group 2/A  Kommunikationsbehörde Austria (KommAustria) (9)	Public-Austrian Communications Authority	It argues that broadcasting and advertising must be separated. Apart from that no important objection was observed.
Luxembourg - Grand Duché de Luxembourg Group 2/A	State	It argues that relaxation over rules is needed for advertising regulation and screen symbols can be thought for marking harmful content; besides, principle of country of origin should be protected.
Individual Participation – uncategorized  Prof. Roberto Mastroianni (2)	Individual Contribution	It states: “To avoid abuses, virtual advertising should be allowed only in order to substitute advertising message already present on the screen.”

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 3/A Media Smart (7)	Public- – NGO- “is a non profit media literacy programme for UK primary school children, initially focused on advertising. Media Smart is a proactive initiative funded and managed by the advertising business in the UK.”	It is said, “New technologies and media innovation make it essential to develop citizens who use the media effectively. A media literate society knows where to find the information it needs and how to identify the economic, political, social, commercial and cultural interests behind it.”
Group 4 Mediawatch-uk (4)	Public- NGO- “mediawatch-uk actively campaigns for socially responsible broadcasting and against content that is offensive and harmful, for example violence, swearing and pornography.” <a href="http://www.mediawatchuk.org.uk">www.mediawatchuk.org.uk</a>	It is said, “We are aware of the drift towards 'self-regulation' in broadcasting but currently this appears to mean that broadcasters regulate themselves and can do what they like. There is no reference to responsibility or to any mechanism of redress for an aggrieved viewer or listener.”
Group 1/A MTV Italia & TV Internazionale (19)	Private- “position paper is on behalf of MTV Italia s.r.l. and TV Internazionale, companies of Telecom Italia Group”	It is said, “we suggest to make the application of the rules of TVWF Directive more flexible and lighter for small-sized broadcasters, which could be defined on the basis of audience levels/ total revenues .”
Group 1/A Multichoice Hellas (5)	Private- (Greek) Pay-TV platform originally founded in South Africa in 1986.	It is said, “Consequently, the organizations of subscription services should be excluded from the application field of article 4 of the Directive.”
Group 2/A - National Broadcasting Council of Latvia	Public Authority	It argues that there is ‘no need for further detailed definitions for new advertising technics such as spot advertising, but split-screen and interactive advertising should be regulated; existing provisions for durations of advertising should be preserved; the ten percent minimum quota should be retained.’
Group 2/A National Film Agencies in the European Union (7)	Public-...“are responsible for the bulk of public funding of the production of feature films in Europe. They have collaborated in preparing this submission which sets out a common position; individual film agencies in their separate submissions to the Commission may raise additional issues.”	The organization states that it is ‘not very happy with the TVWF in terms of promoting cultural diversity.’
Group 3/B National Heart Forum-NHF (9)	Public – “is the leading alliance of over 40 organisations working to reduce the risk of CHD (coronary heart disease in the UK.”	It states that there is a need for “ <i>precautionary principle</i> for the marketing of foods to children”

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 2/A National Radio and Television Commission (Romania) (4)	Public Authority	As regards product placement the ORTT proposes the formulation of a rule, which would prohibit product placement in case of programmes (e.g. reality shows, own production, or entertaining series made on order) upon which the broadcaster has editorial influence.
Group 2/A Dutch Government (15)	Public- Government	Dutch government argues that the extent to which new advertising techniques are compatible with the directive ought to be clarified. In the Netherlands' opinion, this does not necessitate any amendment to the Directive.
Group 4 Nordic Council (3)	Public - The Culture, Education and Training Committee of the Nordic Council	It is said, "it is impossible to control all channels in a digitalised world of television in which pay-per-view channels are a reality. In the opinion of the Committee the Directive should be drafted so as to allow for new and better methods of control."
Group 2/B Nordic Public Service Broadcasters (4)	Public- PSBs	It argues 'all forms of advertising should be subject to same regulation. New forms of advertising should not be introduced.'
Group 1/C Observatório de Comunicação - OBERCOM (34)	Private-NonProfit Observatory for the Media- "The OberCom - Communication Observatory is a private association, nonprofit, whose central objective is the production and dissemination of information, as well as carrying out studies and research that will contribute to better knowledge in the field of communication "	It is said, the definitions and concepts of advertising, especially television, should be generic enough to allow various forms of advertising. It continues as such: "Given the unpredictable and ever-changing technologies and new advertising techniques (split screen, interactive advertising and virtual), the directive must be guided by the principles of independence from technological progress and the flexibility to allow for adaptation of technology to the regulatory provisions of the Directive and to encourage the emergence of regulatory mechanisms, co-and self-regulation."
Group 2/A Office fédéral de la communication suisse - OFCOM (7)	Public - Federal Office of Communication Switzerland – OFCOM	It is said, "Virtual advertising will also soon be permitted in some member countries (eg. Germany)."

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 3/B  Office of Tobacco Control (1)	Public – nonprofit NGO	It is said, “It is clear from the foregoing that the objective was to prohibit all forms of tobacco advertising promoting cigarettes or other tobacco products, including indirect advertising. However, it is equally clear that this objective has not been realised in practice. Indirect tobacco advertising on television continues to be a major element in the tobacco industries marketing strategies. Two key elements of these indirect advertising strategies are product placement and sponsorship.”
Group 2/A  Hungarian Advertising Self Regulatory Board - ÖRT (2)	Private- Advertising alliance	It supports self-regulatory mechanisms for advertisement regulation.
Group 1/A  Organization of Advertisers within the Association of Manufacturers of Branded Goods - OWM (16)	Private- Advertising alliance- “represents the interests of businesses that advertise in Germany vis-à-vis those responsible for media policy at national and European level.”	It supports fair regulatory environment for advertising; modernization and de-Bureaucratization. It thinks no special regulations governing these new advertising techniques are required and it considers a reinforcement of national self-regulation a good idea.
Group 2/A  Republic of Austria (18)	Public-State	“It would be welcome, in the Television without Frontiers Directive, the definition of include product placement and separate it from the surreptitious advertising.”
Group 2/A- Österreichische n Rundfunk - ORF	Public Broadcaster	It argues ‘more flexible definition for ‘European works’ is needed.’ The principle of separation of advertising and content is fundamental.
Group 1/B  PACT (9)	Private – “Pact is the UK trade association that represents the commercial interests of independent feature film, television, animation and interactive media companies.”	It is said ‘quota’ application should be protected and “the removal of the words “where practicable”, in relation to delivering on from the current text of the TVWF Directive is important.”
Group 1/A  ProSiebenSat. 1 Media AG (48)	Private – “is Germany's largest television corporation.”	It is said, “The existing quota system is therefore in our Visibility is not required. - we emphasize again the importance of Formulation "in the context where practicable"



**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

<p>Group 1/A PT Multimedia (4)</p>	<p>Private – “a private Portuguese company quoted on the Lisbon Stock Exchange in which the Portugal Telecom Group has a majority holding” additional information available on <a href="http://www.reuters.com/finance/stocks/">www.reuters.com/finance/stocks/</a></p>	<p>It is said, “the rules on advertising time must be sufficiently flexible to allow technology and services to evolve and to give viewers freedom of choice.”</p>
<p>Group 2/A Publieke Omroep (NL) – Public Broadcasting Board of Directors (12)</p>	<p>Public – Public Authority member to EBU</p>	<p>It is stated that commission should demonstrate that the current principles of the Directive (TVWF Directive) concerning to the separation between commercial and editorial content, and measures for the protection of consumer viewers will apply to new techniques.</p>
<p>Group 1/A QVC-Deutschland (5)</p>	<p>Private – Online shopping company- US origin (1986)- “is Germany's biggest production teleshopping channel.”</p>	<p>It argues ‘regulations should be relaxed’.</p>
<p>Group 2/A Radio Telefis Éireann (RTÉ) (15)</p>	<p>Public -Public Service Broadcaster of Ireland</p>	<p>It is said, “A certain degree of flexibility is required and it is important that the wording “where practicable” is retained within the wording of the Directive... “Although new forms of advertising such as split screen advertising, interactive advertising and virtual advertising are as yet largely uncommon, they are not in RTÉ’s view incompatible with the Directive”</p>
<p>Group 2/B RTBF</p>	<p>Public- A public broadcaster for French Community of Belgium</p>	<p>RTBF ‘supports obligation to reserve a majority proportion of transmission time for European works’. It argues ‘the economy of the sector, the public interest, the integrity and value of the programs should be taken into account. The adoption of a gradual proportionate regulation based on new ways of advertising seems to be the appropriate means to reconcile the interests involved.’</p>
<p>Group 1/A Reuters (3)</p>	<p>Private- News Agency</p>	<p>It is interested in copyrights for news. It said, “it is not an attractive position to be in from a commercial perspective, if one’s business model is predicated on infringing copyright but hoping that one falls within a defence to copyright infringement.”</p>

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 3/B  Royal National Institute for Deaf People - RNIB (13)	Public- NGO	It suggests to require “national governments to provide information of the levels of audio description, audio subtitling, subtitling and sign language available to TV viewers.”
Group 1/A  Satellite and Cable Broadcasters’ Group - SCBG (4)	Private – “The SCBG comprises the major satellite and cable broadcasters licensed in the UK.” BskyB and Turner Broadcasting System are among the members. Big Capital	It is said, “At a time of unprecedented technical developments in communications technology, and the attendant liberalisation of both services and infrastructure, it would be unfortunate in terms of industry development to require broadcasters to meet increasingly inflexible European content regulations. Such requirements would stifle the growth of the European audiovisual industry by, inter alia, preventing the establishment of new channels and place in danger existing channels, thereby calling into serious question the ability of European broadcasters and others to contribute to the digital revolution and the Information Society.”
Group 4 –  Society of Drama Authors and Composers – SADC (8)	Private -- Creators “SADC is a collecting society of copyright which has 30,000 members worldwide and represents several categories of beneficiaries”.	It demands new measures for quotas for European works.
Group 3/B  Stichting Alcoholpreventie - STAP – National Prevention of Alcohol Prevention – Netherlands (8)	Public. – Non-commercial-	It suggests ‘necessary further measurements should be taken against alcohol promotion in media.’
Group 2/A  Sweden - Ministry of Culture - Regeringskansliet (7)	Public – Ministry	It expresses some concerns about the protection of European culture and mentions about vagueness of the language that Commission use when addressing culturally important issues. It is also underlined that Sweden is in favor of stricter rules for advertising on a European level.

### Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)

Group 4  Swedish Authors and performing Artists - KLYS(3)	Private-Public- Authors and Performing Artists in films	It is said 'new forms of advertising put into screens during the films being played is in conflict with the moral rights granted to authors in Berne Convention'.
Group 4  Swedish Film Institute (3)	Public - Sweden's national film agency	It focuses on cultural goals: "certain parts of the Directive need clarification. The first concerns the requirements on advertising, the second the role and obligations of 'general interest' broadcasters with regard to film." It is said that 'not only is it necessary to reconsider a relaxation of traditional advertising rules but also is it beneficial to reconsider existing rules for commercial breaks during film exhibitions.'
Group 2/A  Swedish Radio and TV Authority - RTVV (2)	Public Authority	It is argued that new services must be defined, clarified and regulated.
Group 1/B  Symah Vision (3)	Private –"the company offers now a wide range of virtual imaging solutions to answer the needs of Virtual Sponsorship, Editorial Enhancements, Virtual Studio and Video content description. Symah vision is headquartered in Paris-Vanves, France."	It is stated, "Virtual Sponsorship should have a <b>minimum legal certainty</b> so that televisions can enter into agreements with Rights- Holders and advertisers/sponsors to implement Virtual Sponsorship, respecting the general interest objectives of the TWF Directive"
Group 1/A  Syndicat National de la Publicité Télévisée - SNPTV (4)	Private- National Union of television advertising -	It is stated, "Interactive advertising follows this work around confidence in the digital economy. Self-regulation is more effective to clarify certain issues like the protection of young viewers (see double-click) a Directive at European level."
Group 1/B  TV4 AB (S) (3)	Private - "TV4 AB is a Swedish private commercial television company."	It is stated, "we are in a situation where nothing can be done about the fact that interactive television is prohibited in Sweden, unless the Directive gives a clearance for national regulation on this."
Group 1/A  Telefonica (5)	Private- "Telefónica is one of the world's largest telecommunications companies by market cap." Big Capital	It is stated, "The new regulatory framework for e-communications is about to be fully transposed within the EU."..."Do not contaminate its economic aspects with intrusive rules originating from other sector regulations."

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

Group 1/A Telewest Broadband (5)	Private- One of leader cable tv and internet operators in the UK. Big Capital.	It argues that split-screen application is positive and interactive advertising regulation is not necessary in ‘non-linear’, since ‘non-linear’ is viewer’s choice. Linear is passive, whereas ‘non-linear’ is active.
Group 1/A/D Toy Industries of Europe (TIE) (6)	Private – Advertisement Givers- Big Capital	It is said, “there should be more of a move towards simpler and less prescriptive provisions, backed up by industry self-regulation.” “a flexible approach will allow for the new techniques to develop and for the market to decide which ones will stand the test of time.”
Group 2/A United Kingdom (16)	Public-State	It argues technology and market is transforming; market players has played a indispensable role in developing new services; for this reason new Directive should adopt a flexible regulation so not to stifle these economic developments. “where practicable” and “over time” <b>must be</b> retained; quotas <b>must not</b> be increased; the protection of minors <b>must</b> retain.
Group 3/A UK Film Council (8)	Public- National Film Agency	It is said “in many EU member states, the requirement to broadcast a majority proportion of European works is met principally by national works.” (Non-cross border). It is added, “The obligations laid on the broadcasters – arising from “the dual aim of promoting cultural diversity and the competitiveness of the European programme industry” – must incorporate and reflect the vital role of supporting and promoting European film.”
Group 1/A Union des Annonceurs - UDA Union of Advertisers (France) (6)	Private- “is in France the sole representative organization of advertisers, that is to say over 400 businesses of all sizes and in all sectors, who use different techniques communication to promote their business, their products or services”	It is stated “...the flexible solutions that test the changes brought by progress technology...Experience has shown that when the television offer is growing, competition is more acute and contributes to a natural regulation.... This self-regulation is a safeguard that is in addition to rules and codes already existing against possible abuses.”
Group 1/D Union des Associations européennes de Football - UEFA (5)	Public-- Governing Body of European Football.	It argues, it is necessary to find a balance between right to freedom of information (free tv) and the opportunity to commercialise sports rights (pay tv)— copyrights and related rights in the Information Society (the Copyright Directive)

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

<p>Group 1/A</p> <p>Verband Privater Rundfunk und Telekommunikation - VPRT-- Association of Private Broadcasting and Telecommunications – VPRT (48)</p>	<p>Private- “VPRT, the German Association of Private Broadcasters and Telemedia, represents approximately 160 commercial broadcasters such as television and multimedia companies, radio and audio services, operating in Germany and other European countries. VPRT promotes the interests of private broadcasters and multimedia companies in national and international bodies that deal with the elaboration of an economic and technological framework and of conditions for electronic media services.”</p>	<p>It is stated, ‘Quota’ application is inappropriate; flexible rules for advertising; qualitative rules rather than quantitative rules; no need to extension of the rules.</p>
<p>Group 3/A</p> <p>Verbraucherzentrale Bundesverband - VZBV--- Consumer Federation (7)- --</p>	<p>Public- the language of consumership</p>	<p>It is said, “We do not agree with the Commission that the application of these provisions can be ‘generally satisfactory’ means.” There must be a consistency in dissemination of culturally, politically important events. The other attractive content may be payable.</p>
<p>Group 4</p> <p>United Services Union Ver.di (6)</p>	<p>Public - “Its approximately 2.1 million members make ver.di one of the largest independent, individual trade union in the world. As a multi-service trade union we look after people employed in over 1.000 different trades and professions, making us fit for the challenges of the 21st century.”</p>	<p>It states“Commission should monitor the Concentration in the media as a priority for the European Audiovisual Policy Watch.” Self-regulation, user-control are extremely disputable concepts.</p>
<p>Group 1/B</p> <p>Virtual Imaging Alliance - VIA (1)</p>	<p>Private- Virtual Image Companies</p>	<p>It argues, “self-regulation in today's global economic environment is a reliable and efficient way to ensure that the industry meets high standards.”</p>
<p>Group 2/B</p> <p>WDR Broadcasting (2)</p>	<p>Public - is a German public-broadcasting institution</p>	<p>It argues, ‘different rules for TV and new services is anachronistic.</p>

**Position Papers Submitted to the 1<sup>st</sup> Consultation Process (2003) (continued)**

<p>Group 1/A  World Federation of Advertisers - WFA (4)</p>	<p>Private – “represents some 50 National Advertiser Associations worldwide and around 30 of the world’s largest corporate advertisers.”</p>	<p>It argues, a flexible definition of advertising is needed since new forms are developing all the time. Self-regulation is needed. New services are information Society Services as defined in e-commerce directive.</p>
<p>Group 1/A  German Advertising Federation (ZAW) (5)</p>	<p>Private -</p>	<p>It is stated that “The wording of the definitions is sufficiently clear. ...The German advertising industry calls the complex rules on insertion of advertising and teleshopping spots under Article 11(1) to 11(4) to be abolished.”... “ZAW calls for greater flexibility...”</p>

## APPENDIX 2.

### Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005)<sup>242</sup> (197 submitters)

Actors	Type of Actors	Vested-Interest(main themes)
G3/B  Action on Smoking and Health - ASH Ireland (1)	Public-	It is stated that ‘tobacco industry should be avoided with legislation.’
G1/A  Advertising Association – AA (3+3)	Private – “is a federation of 25 trade associations and professional bodies representing the advertising and promotional marketing industry, including advertisers, agencies, the media and support services in the UK.” Big Capital	“The broadcast industry in Europe is a good example of the dynamic, knowledge-based industry which is essential to the growth and development of the European economy.... Television Without Frontiers Directive should be a ‘light touch’ legislation which fully respects the subsidiarity principle and encourages the use of effective selfregulation by Member States, allowing room to grow without restricting freedom to innovate.” “A strong Country of Origin Principle is at the heart of this Directive and has made an important contribution to the opening of the internal market for television.”

<sup>242</sup> Titles of the “Issues Papers” and the number of submissions to these “Issues Papers” are as follows:

- IP 1 - Rules applicable to Audiovisual Content Services: 109
- IP 2 - Rights to Information and Short Extracts: 54
- IP 3 - Cultural Diversity and Promotion of European and Independent Audiovisual Production: 90
- IP 4 - Commercial Communications: 108
- IP 5 - Protection of Minors and Human Dignity, Right of Reply: 71
- IP 6 - Media Pluralism: 48
- General comments: 13

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/A  Advertising Information Group – AIG (3)</p>	<p>Private - “Members of the Advertising Information Group are national advertising tripartites with substantial representation amongst advertisers, agencies and the media.”</p>	<p>“A strong Country of Origin Principle within the Directive will ensure that there is no threat to the internal market.”</p>
<p>G1/A  AFDESI - Association for the Development of Enhanced TV Services (4)</p>	<p>Private – Association of companies operating in the field of enhanced TV</p>	<p>Qualitative restrictions should be imposed on linear and especially non-linear broadcasting, rather than quantitative rules. “objective is to stimulate growth of the interactive TV sector by gathering and disseminating information and enabling knowledge sharing”</p>
<p>G1/C  American Chamber of Commerce to the European Union - AmCham EU (2)</p>	<p>Private – “is the voice of companies of American parentage committed to Europe towards the institutions and governments of the European Union.”</p>	<p>“. . . believes that self regulatory measures are sufficient and further regulatory intervention is unnecessary.”</p>
<p>G1/A  AOL Europe Services (11)</p>	<p>Private- No need to specify- Big Capital</p>	<p>“An extension of externally imposed regulation, even covering the so-called basic tier of obligations, would stifle innovation, would be costly to implement and enforce, would be damaging to the EU’s competitiveness and would serve to raise entry barriers to non-linear markets.”</p>
<p>Group 2/B  ARD-ZDF (4+4+3+5+3)</p>	<p>Public- German Public Broadcasters</p>	<p>It is said “the scope of application encompasses the possibility of establishing a fundamental strategy for the development of a knowledge-based and mobile information society.” “ICTs are more than engine of growth; they are key to social cohesion. . . it is urged that the relationship to related bodies of regulations, in particular the Directive on electronic commerce, has to be clarified.” “ARD and ZDF express their <b>unequivocal opposition</b> to formally permitting product placement.” “ARD and ZDF see it as imperative that steps be taken to better ensure the preservation of media plurality.”</p>



**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/A</p> <p>Asociación para la Autorregulación de la Comunicación Comercial – AUTOCONTROL - Association for the Self-Regulation Commercial (21)</p>	<p>Private -the Spanish advertising self-Regulation organization</p>	<p>“Self-regulation is the best way to deliver effective consumer protection in the ‘new media’”</p>
<p>Group 1/A</p> <p>Association des Chaînes Conventionnées éditrices de Services - A.C.C.e.S. - Channel publishers association agreement day of services – Access (2+3)</p>	<p>Private – “combines the channels established in France and under agreement with the Council Higher Audiovisual for broadcast on cable, satellite, ADSL, digital radio and, in general, for all communications networks.” (Canal Plus, Lagardere. . . )</p>	<p>Quantitative rules on advertising is an handicap to the development of channels and should be reconsidered.</p>
<p>Group 1/A</p> <p>Association des Fournisseurs d’Accès et de Services Internet – AFA - Association of Access Providers and Internet Service (5)</p>	<p>Private – “companies based in France, whose activity is the provision of access internet to the general public or professionals, hosting services line, IP networks and portals.”</p>	<p>It argues imposing rules would only effect their growth.</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/B</p> <p>Association européenne des radios – AER - Association of European Radios (9)</p>	<p>Private – “is a Europe-wide trade-body of private and commercial radio broadcasters in France, Germany, Italy, the UK, Greece, Spain, Portugal, the Netherlands, Denmark, Finland, Sweden, Switzerland and Romania. As such, AER represents the interests of over 4.500 radio operators, of all shapes and sizes, broadcasting to millions of listeners across Europe every day.”</p>	<p>It is said “it is still too early to envisage the switch off of analogue terrestrial radio broadcasting in the immediate future.... “Country of Origin” principle as being the only – and increasingly crucial - viable principle for broadcasting services in the Internal Market and encourages the European Commission to enforce it in all EU legislation affecting broadcasting.... In such a competitive business environment, AER fully supports the measures taken by the Member States to ensure that media pluralism is guaranteed.”</p>
<p>Group 1/A</p> <p>Association Française des Opérateurs Mobiles – AFOM - French Association of Mobile Operators - SWOT(6)</p>	<p>Private - The SWOT lists all French mobile operators Bouygues Telecom, Orange France and SFR</p>	<p>“Minimum obligations in qualitative respect Marketing Communications”</p>
<p>Group 1/A</p> <p>Association française des opérateurs de réseaux multiservices – AFORM - French association of operators of multi-service networks – AFORM (2)</p>	<p>Private – “the association of French operators services audiovisual and electronic communications cable.”</p>	<p>“we are opposed to any extension of the services directive "not linear.”</p>
<p>Group 1/C</p> <p>Association for Television On-Demand – ATVOD (4+4+5+3)</p>	<p>Private – “is the self-regulatory body for Television On-Demand services in the UK and represents 7 communication companies (Video Networks, The On Demand Group, NTL, Telewest Broadband, Kingston Interactive Television, Blockbuster and BT).”</p>	<p>“The flexibility delivered by self-regulatory organisations is far greater than could be achieved by a centralised regulatory framework faced with the need to apply with equal relevance and efficacy to a broad range of old and emerging media throughout the European Community.”</p> <p>“Member State legislation, in combination with existing directives such as the E Commerce Directive, already provide a fabric of legal certainty for such services.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/A</p> <p>Association of Commercial Television in Europe – ACT (6+3+6+9+2+2)</p>	<p>Private- no need to specify- Big Capital</p>	<p>“linear - (non) linear distinction is supported – “Media convergence is now an everyday reality for European business. We welcome the acknowledgment of these challenges in the i2010 Communication, and hope to play a full role in delivering the Commission’s vision of an Information Society based on consumer choice and high-quality, diverse media content. ”. “The David Graham Report confirms that it is viewer demand, rather than regulation, which drives commercial broadcasters to reinvest high levels of advertising and subscription revenues in original content.” ‘Quota is a restriction.’</p>
<p>Group 3/B</p> <p>Association of European Journalists (7)</p>	<p>Public- Non-profit - “Across Europe, the AEJ brings together individual journalists through their membership of the national sections.”</p>	<p>They are against the extension of control field towards Internet media.</p>
<p>Group 1/A</p> <p>Association of On-line Publishers – AOP (5)</p>	<p>Private – “is an industry body representing online publishing companies that create original, branded, quality content.”</p>	<p>“AOP does not believe there are grounds for any extension to a Directive” (e-commerce is sufficient). “AOP believes that broadcast services, which are licensed, enjoy a unique position in our information society. The TVWF Directive and Regulations that apply to such push-services are proportionate and necessary solely within that context. Such a regulatory regime does not incorporate unlicensed pull-media, and should continue not to do so.”</p>
<p>Group 3/A</p> <p>Associations Familiales Catholiques - Confédération Nationale française (2+2)</p>	<p>“FAFCE several of whose members are also consumer organizations...”</p>	<p>“FAFCE supports to combine self-regulation, co-regulation and technical means.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

Group 3/B  Associazione Italiana dei Club degli Alcolisti in Trattamento (2) - Italian Association of Clubs of Alcoholics in Treatment	Public – Non-Profit	‘supports the view that alcohol advertisements on TV, Internet, teleshopping, and sponsorships should be banned’
Group 3/B  Austrian Council on Smoking and Health c/o Wiener Medizinische Akademie (1)	Public- Non-Profit	“the same rules of banning direct and indirect tobacco advertising should apply to TV and non-linear services such as video-on-demand and the internet.”
Individual participation  BATZ Jean-Claude (3)	Individual – Cultural goal	He says ‘quota’ protection should not mean the protection of American origin European works.
Group 2/B  BBC (10)	Public Broadcaster – UK	The distinction between broadcast and on-demand ‘information society’ services blurred. “In the field of new media, regulation should exclusively take the form of self- or co-regulatory measures.” Quota should be inappropriate for new media, for at least now. Product placement should be allowed. No need specific EU regulation over the media pluralism.
Group 3/B  Belgique - Communauté Française de Belgique – French Community of Belgium (2+2+3+4+2+2)	Public- Community	Flexible regulation- virtual advertising can be allowed for sport programmes. Self-regulation is supported. On the other hand, the problem of media pluralism should be discussed in the process.

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

Group 1/A  Bertelsmann (11)	Private- media mogul-Big Capital	“Bertelsmann supports Commissioner Viviane Reding in her commitment to maintain a solid, forward-looking regulatory scheme for cross-border TV.” order to enable European companies to compete globally, it would be a wrong approach to take protectionist measures, such as quotas.” Flexible rules and better regulation... Technological neutrality. . . “The distinction between linear and non-linear services is hardly feasible. . .”
Group 4  British Screen Advisory Council – BSAC (8)	Public-	“BSAC considers extremely regrettable that such an important consultation should have fallen over the summer, making it difficult to accomplish the work.” If regulatory change is needed, it must be subject to full regulatory assessment with the net benefit to citizens measured. The Directive needs to recognise the respective roles of regulation, co-regulation and self-regulation.
Group 3/A  British Music Rights (2)	Private – “composers, songwriters, music publishers and their collecting societies in the UK”	“we are not convinced of the need of any extension of scope to encompass non linear services.” (copyright and e-commerce directives are sufficient)
Group 1/A  British Telecommunic ations – BT (9)	Private – Big Capital	It endorses country of origin principle. “BT doubts the practicality of applying EU regulation to non-linear content providers established outside the EU.”
Group 1/A  Broadband Stakeholder Group (5)	Private – “acted as a key advisory group on promoting the roll out and take up of broadband services since 2001”  They are artificial, because now the reality is unfettered capitalist interests’ oppression on the all other stances.	“Convergence is being driven by a combination of consumer demand, advances in the capabilities in consumer equipment and content development.” “International experience suggests that the development of <b>artificial definitions</b> is fraught with problems. The Digital Millennium Copyright Act (DMCA) in the US was not able to achieve a sustainable, satisfactory definition of ‘digital’ music. . .” A new market-led approach. . . less prescriptive/more flexible approach.”
Group 4  - BAG Medien -Federal Association of Media Alliance 90/The Greens - BAG Media (5)	– Public (2) “The <b>Alliance '90/The Greens</b> is a green political party in Germany which originated from the merger of the German Green Party and Alliance 90 in 1993.”	It is against ‘product placement’ in the program. It is against the journalists can be bought. It thinks, ‘there is enough pressure on editorial content.’

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 2/A Bundesrepublik Deutschland- Germany (20)</p>	<p>Public- State</p>	<p>It generally welcomes the revision. It welcomes that new definitions would be included. The notifications for advertising technics are seen sufficient.</p>
<p>Group 1/A Bundesverband Informationswirtschaft, Telekommunikation und neue Medien – The German Association of Information Technology, Telecommunication and New Media - BITKOM (8+3+6+3+3)</p>	<p>Private – “represents 1,300 companies, around 700 of which are direct members, generating an approximate total turnover of €120 billion and employing some 700,000 <b>jobholders.</b>”</p>	<p>It “supports Commissioner Viviane Reding in her commitment to maintain a solid, forward-looking regulatory scheme for cross-border television. BITKOM generally favours a liberal approach to the future regulation of audiovisual services.” TVWF is high-degree regulation.</p>
<p>Group 3/A Bureau de Vérification de la Publicité – BVP - Audit Bureau of Advertising - (3)</p>	<p>Private – “The Audit Bureau of Advertising - Professional Association for Responsible Advertising (BVP) has, since June 25, 2008, the ARPP (Regulatory Authority for professional advertising), is a private self-advertising France.”</p>	<p>It defends ‘Co and self-regulation for the new media.’</p>
<p>Group 4 Bureau Européen des Unions de Consommateurs – BEUC - European Bureau of Consumer Unions (12)</p>	<p>Public- Consumer Language. .</p>	<p>It is said, “Surreptitious advertising in television, as well as product placement of an advertising nature must remain banned. The ban needs to be extended to other audiovisual media, in so far as TV services are offered there ” . “We believe that it is necessary to create a single legal framework for audiovisual electronic media as far as this is possible.” What is unacceptable, however, is the EU Commission’s proposal that product placement be placed on the same footing as other advertising when it comes to redefining the concept of “audiovisual commercial communication”.</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Individual participation</p> <p>A dissident voice</p> <p>CADIMA Francisco Rui (6)</p>	<p>Individual Contribution - University Professor (Department of Communication Sciences – FCSH-UNL - www.fcsh.unl.pt)</p>	<p>He says, ‘In general, we also consider that the media sector - and most particularly the Audiovisual - can not be regulated as a more economic activity, tout court. We think that the media is much more than that.’</p>
<p>Group 4</p> <p>Campaign For Press and Broadcasting Freedom – CPBF (5+2+3)</p>	<p>Public – “It is the leading independent membership organisation dealing with questions of freedom, diversity and accountability in the UK media. It is membership based, drawing its support from individuals, trade unions and community based organisations.”</p>	<p>It is said, “We oppose relaxation of rules prohibiting product placement.” “Deregulation has boosted both the commercial power of global corporations. . .”</p>
<p>Group 1/A</p> <p>Canal+ (groupe) (17)</p>	<p>Private – one of first and largest pay tv operators in Europe – Big Capital- Owned by Vivendi</p>	<p>It demands that the definitions about linear and non-linear services which are deemed information society services are clarified to impose relaxing rules to linear and non-linear services. Do not affect market access of linear broadcasters for advertising etc. Country of origin is good etc...Media Pluralism is not the job of EU but protect media pluralism by protecting linear broadcasters whose position has become fragile.</p>
<p>Group 1/A</p> <p>Channel 5 Broadcasting Ltd (Five) (3+3+4+10)</p>	<p>Private -based on Private Finance Sources- Terrestrial Broadcaster in UK- Owned by RTL Group.</p>	<p>It is said ‘The concerns of free-terrestrial tv channels should be regarded. Country of origin is good. The distinction between linear and non-linear and their regulatory bases are not clear.’ It asks ‘Is it possible to regulate TV on Internet? Quotas is good but is it realistic for non-linear?’ It suggests allowing product placement!</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 3/B</p> <p>Comité de Concertation du Centre du Cinéma et de l'Audiovisuel de la Communauté Française de Belgique - Consultation Committee of the Centre of Cinema and Audiovisual of the French Community of Belgium (2)</p>	<p>Public –Community</p>	<p>It thinks ‘quota should be extended to non-linear.’</p>
<p>Group 3/A</p> <p>Committee of film and audiovisual industries of EU and European non-EU – CICCE (4)</p>	<p>Private-EU’s domestic cinema industry.</p>	<p>It think, “It is therefore urgent, and proactively provides a framework for EU action to promote European content in the context of the revised directive.” “The IAMB request that the Commission does not discriminate between movies and other programs in the implementation of commercial breaks. The IAMB is in favor of authorizing the placement of products into European law”</p>
<p>Group 1/B</p> <p>Commercial Radio Companies Association – CRCA (7)</p>	<p>Private – “is the trade body for UK Commercial Radio.”</p>	<p>It “strongly supports the ‘country of origin’ principle being applied to consumer and citizen protection across Europe.” “We are sceptical about the value of any “certainty” in the contents of a regulatory code agreed at a time when the effect of today’s and tomorrow’s digital developments on Europe’s audiovisual ecology are anything but certain.” Self-regulation for advertising.</p>
<p>Group 3/A</p> <p>Commission des Episcopats de la Communauté Européenne – COMECE - Commission of the Bishops’ Conferences of the European Community (3+1+2+2+2+2)</p>	<p>Private- They are contributing for their radio and if there are, television broadcasts.</p>	<p>It is said ‘the definition of commercial communications should be that used in the e-commerce Directive’. It supports the idea of a technologically neutral concept of audiovisual commercial communications to include advertising, sponsorship, teleshopping etc: “A strong and independent public broadcasting sector is a cornerstone of media pluralism.”</p>



**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

Group 4  Community Media Forum Europe – CMFE (3)	Public- NGO	“Simultaneously we express our concern that during the process of revision until now there has been no explicit and adequate inclusion of the community media sector.”
Group 1/D  Confédération Européenne des Producteurs de Spiritueux – CEPS (2)	Private – “The European Spirits Organisation is the representative body for the spirits industry at the European level.”	It agrees with the principle of extending the concept of commercial communications to a wider spectrum of communications. believes that self-regulation is an adequate instrument
Group 1/B  Confédération Européenne des Radios et Télévisions Indépendantes et Locales - European Confederation of Independent Radio and Television and Local –CERTIL (7)	Private-	It “considers that non-linear services are defined as services request for which users are able to choose the content in any time, regardless of the transmission mode.”
Group 1/D  Confédération Européenne de Volleyball – CEV (1)	Private- European Confederation of Volleyball	in full agreement with the views expressed by UEFA
Group 1/B  Confianza on-line (24)	Private – “In February 2008, the two main self-regulatory systems on the Internet, IQUA and, have been integrated into a non-profit Association called Spanish Internet Quality Agency-IQUA and has Confianza Online’s Trustmark.” Related to e-commerce directive...	“Indeed, in recent years we have witnessed a process of unprecedented <b>technological revolution</b> for the speed of its spread among users. Both businesses and consumers are now widespread use of what has become known as "new technologies" Internet is possibly the most visible example of the same characteristic.”

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 2/A</p> <p>Conseil National des Programmes du Grand-Duché de Luxembourg - National Council of Programs of the Grand Duchy of Luxembourg (3)</p>	<p>Public- Advisory Board for Government</p>	<p>Welcomes the revision and initiative launched by EC.</p>
<p>Group 2/A</p> <p>Conseil supérieur de l'audiovisuel de la Communauté Française de Belgique - Higher Audiovisual Council of the French Community of Belgium (4)</p>	<p>Public Authority</p>	<p>Vagueness over the concepts should be discarded by the EU: What is “general public and editorial responsibility”</p>
<p>Group 2/A</p> <p>Conseil supérieur de l'audiovisuel français- High Council of Audiovisual CSA (7)</p>	<p>Public Authority</p>	<p>Generally welcomes the efforts for revision. It is in favor of a relaxation for the advertising rules. It argues European works should be supported by non-linear media but the regulation of online media should be realistic considering the state of development of these services.</p>
<p>Group 1/A</p> <p>Co-ordination Européenne des Producteurs Indépendants (European Coordination of Independent Producers) – CEPI (4)</p>	<p>Private – Represents 15 national associations of cinema and TV producers equivalent to 95% of industry.</p>	<p>Exclusion of the independent production quota is not good. The term ‘where practicable’ is not good. Competitive environment should be built up for every type of transmission.</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 3/A</p> <p>Christian Action Research &amp; Education – CARE (4+8)</p>	<p>Public –NGO “is a registered charity and ethical campaigning association supported by 100,000 individual Christians and churches of all denominations, the greatest concentration of these being in the United Kingdom.”</p>	<p>It “heartily” endorses the country of origin principle. It is also said “However, we are not satisfied that the Commission’s current proposals for allocating regulatory responsibility to Member States for non-linear services originating outside the EU are adequate and feel this issue needs further investigation, with other legal models such as the Council Decision to combat child pornography on the internet being worthy of serious consideration.” They are not happy with the wording of protection of minors.</p>
<p>Group 2/A</p> <p>Danish Radio And Television Board (1)</p>	<p>Public Authority</p>	<p>“Radio and Television Board agrees that the current provisions continue also for non-linear services.”</p>
<p>Group 1/A</p> <p>Deutsche Telekom (7+5+4+5)</p>	<p>Private- German Telecom Operator-Big Capital</p>	<p>It defends the new directive should be “as flexible as possible”; the distinction between linear broadcasting and Information Society Services must be clarified; country of origin must be maintained.; quota means unnecessary constraints. “New and innovative services require freedom in programming allowing to offer services tailored to customers’ demand.” ‘better regulation agenda’, ‘light-touch regime’. “Business environment: emerging markets should not be hampered.” “strongly oppose the extension of the scope of the TVWF to all audiovisual services.” “New techniques do not require specific regulation. And if they are not subject to specific regulation, they need not be defined.”</p>
<p>Group 1/A</p> <p>Deutscher Journalisten-Verband - German Journalists' Association (3)</p>	<p>Public- “represents the professional and trade union Interests of nearly 41,000 full-time journalists in Germany”</p>	<p>“the concentration of ownership Media companies is progressing rapidly.” Editorial independency should be protected. “Broadcasting is not only service but primarily Cultural property”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/C</p> <p>Digital Content Forum (1)</p>	<p>Private – “forms a two-way conduit between industry and government in the UK to gather views and input into policy-making processes.” Its “membership includes trade associations and representative organisations from digital and traditional media industries whose business interests lie in the creation and commercial exploitation of digital content.”</p>	<p>It was said “it would be detrimental to the UK digital content industries to extend the current regulation to on-line” and “the commission does not have competence, nor should it take action on, matters concerning media ownership or media content.”</p>
<p>Group 2/A</p> <p>Direktorenkonferenz der Landesmedienanstalten in der Bundesrepublik Deutschland – DLM -Directors' Conference of State Media Authorities in the Federal Republic of Germany (4+1+11+5)</p>	<p>Public Authority-Germany</p>	<p>“The regulatory framework should not be according to formal criteria (linear / nonlinear), but according to content criteria”. The need of legal clarity should be met. Concerns about Product Placement. “is in favor of the model of co-regulation, ie, that Self-regulatory bodies of government oversight.”</p> <p>“DLM also agrees that the new directive encourages Member States to put the protection of minors on the forces of self-regulation. This should not happen by pure self-regulatory systems.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/A  Discovery Communication s Europe – DCE (11)</p>	<p>Private- Discovery Channel’s Europe Section...Owned by David Zaslav, an ex-executive of NBC universal.</p>	<p>It is said, “The Commission, in making the case for the extension of TVWF content regulation to all linear content services, believes that ‘<i>increased legal and economic certainty will encourage new services and more content</i>’. This is true, but only if the legal and economic certainties that companies face deliver a competitive and vibrant market in the first place. There is no value in certainty if the only certainty is intrusive, burdensome regulation.” “The COO principle remains at the centre of the pay-TV business model in Europe, and has facilitated an efficient and cost-effective distribution of channels across the EU. Without the COO principle, it would be far more difficult for broadcasters to achieve their current level of channel distribution in Europe. An erosion of the principle risks creating greater regulatory uncertainty, and will add additional burdens to broadcasters’ business compliance costs.”</p>
<p>Group 1/A  EICTA(6) - the European Information &amp; Communication s Industry Association</p>	<p>Private – “represents the interests of both national associations and corporations operating in the information technology and consumer electronics sector in Europe. It is composed of 62 major multinational companies and 42 national associations from 29 European countries”</p>	<p>It “fears that the introduction of any new regulatory requirements would create regulatory uncertainty, raise costs, and thus negatively impact the investment climate for new services,” and “According to these principles, regulation must be the minimum necessary to achieve a clearly defined policy goal, guaranteeing legal certainty and technological neutrality, and be enforced as locally as possible to the operators concerned”.</p>
<p>Group 1/A  Endemol (3+2)</p>	<p>Private – “is a leading international developer and producer for television and online platforms. The company, headquartered in The Netherlands, has subsidiaries and joint ventures in 23 countries. Endemol is part of the Telefónica Group.”</p>	<p>It said, “In order to guarantee legal coherence and clarity in a future framework, Endemol would therefore like to express its support for the adoption of a new definition of “audiovisual commercial communications”. “Endemol calls for a <b>relaxation</b> of the rules on <b>product placement</b>.”</p>
<p>Group 1/A  ENPA (6+6+10+2+5)</p>	<p>Public – Private -is a non-profit organisation of 5100 titles from 24 European countries (plus one observer member), representing the interests of newspaper publishers to the European Institutions.</p>	<p>It demands the excluding of newspaper online content from the directive. “The Directive must leave it to Member States to decide about product placement – in particular Member States”, for pressure from advertisers asking weakening editorial and advertising is increasing for news production’. “Regulation of media pluralism is a matter for the Member States.... Media consolidation can bring many benefits.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/B Eurocinéma (5)</p>	<p>Private- “Association of Producers of Film and Television, has an essential function intended to assert the fundamental role of the industry of entertainment in a politically and economically integrated Europe.” www.eurocinema.eu</p>	<p>It ‘approves all recommendations made by the paper public consultation and in particular the principle of identifying communications trade should cover the split screen, interactive advertising, placement products and future forms of marketing communications.’; ‘welcomes support for expanding the scope of Directive Television without Frontiers for online services (since these online services are designed to distribution of audiovisual programs.’</p>
<p>Group 4 EURO-MEI (4)</p>	<p>Public – “EURO-MEI is the European region of UNI-MEI, the media, entertainment and arts sector of Union Network International (UNI)”. UNI represent over <b>140</b> unions and guilds and <b>250,000</b> workers worldwide.</p>	<p>It argued that ‘the Commission should regard the Media concentration as one of the priorities’. “self-regulation would lead to a minimum protection of general-interest objectives and sanction the primacy of commercial over cultural aims. We would like to emphasise that the “user control” criterion to justify a lower level of regulation (e.g. in respect of TV advertising) is dangerous.” Employment dimension should be dealt with carefully.</p>
<p>Group 1/A European Advertising Standards Alliance – EASA (4)</p>	<p>Private – “is the single authoritative voice of advertising self-regulation. EASA comprises 27 national advertising Self-Regulatory Organisations (SROs), including those of 19 Member States of the European Union, and 14 industry organisations representing advertisers, agencies and the different parts of the media”</p>	<p>It suggests, “Self-regulation is the best way to deliver effective consumer protection in the ‘new media’. We urge the maintaining of the country of origin principle.”</p>
<p>Group 4 European Alcohol Policy Alliance – Eurocare (14)</p>	<p>Public- “is a European not for profit, ongovernmental organisation that draws together networks and organisations from the 25 countries of the European Union dedicated to the prevention of the harm done by alcohol.”</p>	<p>“Eurocare notes that, so far, the Commission has emphasised the need for more flexibility for broadcasters so that they could finance their activities and cope with future challenges related to the new technologies as well as the diversification of services and channels. It is crucial that the Commission achieves the right balance between commercial freedom and protection of general interests.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 3/B</p> <p>European Alliance of Listeners' &amp; Viewers' Associations – EURALVA (11)</p>	<p>Public- NGO- “which has member organisations in Denmark, Finland, Germany, Norway, Portugal and the United Kingdom.” “an independent non-sectarian alliance of national associations, representing the interest of listeners and viewers of broadcasting and new media services” <a href="http://www.euralva.org/">www.euralva.org/</a></p>	<p>It is said, “this would best be achieved by EU-wide co-regulation between all Member States and the relevant trade associations.” “A problem has arisen however, when the broadcasting rights to an event in a given Member State are held by a broadcaster registered in another Member State.” “the European Union’s role in the protection of media pluralism is unclear.”</p>
<p>Group 1/A</p> <p>European Association of Communications Agencies – EACA (3)</p>	<p>Private – “is the Brussels-based organisation that represents full-service advertising and media agencies as well as agency associations in Europe. Our members include 29 national associations (covering all EU members and candidate states) and all the major creative and media agency networks”</p>	<p>It has “full support to the country of origin principle”; ‘further rules should be set by self-regulation’ and flexible rules are needed. ,</p>
<p>Group 2/A</p> <p>European Broadcasting Union – EBU (18)</p>	<p>Public- Supranational Authority</p>	<p>It “strives for a more consistent and technologically neutral regulatory framework” “We are convinced that it is possible to develop a regulatory framework for audiovisual services which is both coherent and balanced, and which achieves important public policy objectives without impeding the dynamic development of new audiovisual media, to which EBU Members are strongly committed.” “the EBU asks the Commission to take full account of the principle of media pluralism when applying competition law and State aid law, as well as any other European legislation related to the media sector.”</p>
<p>Group 1/A</p> <p>European Cable Communications Association – ECCA (5)</p>	<p>Private -“is an association of cable operators and their national associations active in Europe.”</p>	<p>It has got support for “the creation of such a level playing field by extending the current Directive to new services such as non-linear services.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

Group 1/D European Casino Association – ECA (2)	Private – “represents the interests of over 800 casinos and approximately 62,000 employees across Europe.”	It is said “The establishment of a comprehensive framework for any form of electronic delivery of audiovisual content with a two tier system, linear and non-linear audiovisual services, seems a sensible approach... the ECA strongly advocates to limit the application of the country of origin principle within the Directive in order to take into account national restrictions on the provision of casino services.”
Group 1/D European Club Forum (2)	Private- UEFA Football Clubs Association	It demands of giving third parties (mobile applications) a right to broadcast short reports may devalue the rights enjoyed by clubs themselves.
Group 1/A European Competitive Telecommunications Association – ECTA (8)	Private – “the European Competitive Telecommunications Association, is a trade association representing over 150 EU communications companies, delivering innovation, competition and choice to Europe’s businesses and citizens.” Big Capital	It asks, ‘Why is further regulation needed? E-commerce directive already covers many issues’. ECTA does not ‘believe that the E-Commerce Directive has proved inadequate and that a parallel regulatory regime needs to be introduced to these operators.’
Group 4 European Federation of Journalists – EFJ (1+1+2)	Public- Nonprofit organization	It argues, product placement “is a form of censorship by commerce to go for contemporary rather than historical themes. developing product placement in the audiovisual sector would create a pressure on print media, which would see their income decrease” “is opposed to any deregulation of media ownership rules, as suggested in paragraph 7 of the Issue Paper.”
Group 1/B European Film Companies Alliance – EFCA (7)	Private-- European Cinema Industry	It demands increasing these quota requirements to a minimum of 25% and encouraging the production and distribution of European co-productions



**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/A</p> <p>European Group of Television Advertising – EGTA (4)</p>	<p>Private- Association of advertising time salers. . . 51 TV members (30 independent and/or private sales houses) based across 26 European countries + Canada, Korea, Iran, Morocco, New-Zealand and South-Africa. All together, the egta TV members collect € 19.1 billion (consolidated turnover) through more than 100 mainstream TV channels almost equally public and private. That amount of money represents 65% of the TV advertising investments in Europe</p>	<p>It is advocated that there is the need for greater flexibility in advertising rules. It welcomes the option of authorizing product placement and urges the Commission to introduce more flexibility in the system.</p>
<p>Group 1/D</p> <p>European Handball Federation – EHF (1)</p>	<p>Public-Private the governing body of Handball in Europe and representing 47 member federations.</p>	<p>It is said that it “would like to express its serious concern on specific details published in the issues papers regarding “news access” and ‘short reporting’ that have been presented prior to the Liverpool Conference.”</p>
<p>Group 3/B</p> <p>European Heart Network – EHN (5)</p>	<p>Public- Health NGO</p>	<p>It demands prohibiting “product placement in programmes that are likely to be viewed by children.”</p>
<p>Group 1/A</p> <p>European Internet Services Providers Association – EuroISPA (5)</p>	<p>Private – “the main EU level representative of the Internet service provider (ISP) industry- the world's largest association of Internet Service Providers, representing around 900 ISPs across the EU.”</p>	<p>It “questions the need to include all audiovisual commercial communications within the scope of a revised TVWF Directive.” E-commerce is adequate.</p>
<p>Group 1/D</p> <p>European Lotteries (5)</p>	<p>Private – “brings together most of the State Lottery and/or Toto companies of the EU Member States as well as the lottery/Toto companies of several non-EU Member States.”</p>	<p>It is said ‘iTV gambling services are only accessible on individual demand of the consumer. Consequently, iTV gambling services are not covered by the concept ‘television broadcasting’ and fall outside the scope of the current TVWF Directive.’</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/D European Publishers Council – EPC (8)</p>	<p>Private – “is a high level group of leading European media corporations whose interests span newspapers, magazines, books, journals, online database and internet publishing as well as in many cases significant interests in private television and radio.”</p>	<p>It supports country of origin principle – “this review should focus on how best to de-regulate and modernise the framework for licensed broadcasting services, with greater reliance on self-regulation to give effect to newly aligned objectives.”</p>
<p>Group 1/A European Telecommunications Network Operators' Association – ETNO (3+3+3)</p>	<p>Private – “the principal policy group for European electronic communications network operators.... is to establish a constructive dialogue between its member companies and decision-makers” <a href="http://www.etno.be/">/www.etno.be/</a></p>	<p>It is said ‘the development of the market itself is the main instrument to promote European cultural diversity. Increasing competition within and between the audiovisual markets and the development of the new advertising techniques allow for advertising rules to be more flexible.’</p>
<p>Group 1/B Eurosport (4)</p>	<p>Private- Pan-European Sport Broadcaster</p>	<p>It demands that ‘commission should consider allowing transfrontier access to programme extracts.’</p>
<p>Group 1/D F.A. Premier League – FAPL (9)</p>	<p>Private – English Football League</p>	<p>It is said, “access to material for legitimate news reporting as envisaged under the existing framework must not be confused with commercial short extract or clip licensing.” It has got same concerns with the other sports organizations.</p>
<p>Group 1/B FASTWEB (2+1+2+1+1+2)</p>	<p>Private – “is the main alternative broadband telecommunications landline in Italy. And now also on mobile networks, thanks to an innovative agreement with H3G.”</p>	<p>It is said, “the new TVWF Directive must pay more attention than today to market conditions, otherwise it will be useless to talk about “technological convergence”, without taking into consideration the “convergence of markets”. No quantitative rules for non-linear communication is supported.</p>
<p>Group 3/B Fédération des Associations Familiales Catholiques en Europe – FAFCE - FEDERATION OF CATHOLIC FAMILY ASSOCIATIONS IN EUROPE (2)</p>	<p>Public - community</p>	<p>It is said ‘EC should pay more attention to the protection of minors in pay-per-view and Internet area as well as traditional television.’</p>

### Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)

<p>Group 1/A</p> <p>Fédération Européenne d'Éditeurs de Périodiques (European Federation of Magazine Publishers) – FAEP (3+3)</p>	<p>Private - “a non-profit organisation currently representing some 15.000 magazine publishers in the EU, publishing 50.000 magazine titles with 20 billion copies read by 300 million Europeans per year.”</p>	<p>FAEP opposes an extension of the TVWF Directive to non-linear audiovisual services. E-Commerce Directive covers all relevant online-activities of the press. FAEP welcomes the deregulation of advertising in general (Qualitative Rules)</p>
<p>Group 1/D</p> <p>Fédération Internationale de Basketball – FIBA (1)</p>	<p>Private – Representative for commercial interests of basketball world.</p>	<p>It is said, “we wish to express our serious concern in respect of recent developments on “news access” and “short reporting” in the context of the review of the “Television Without Frontiers” Directive by the European Commission.” It supports UEFA and FIFA, apparently,</p>
<p>Group 1/D</p> <p>Fédération Internationale de Football – FIFA</p>	<p>Private - Representative for commercial interests of football world.</p>	<p>It is said “we wish to express our serious concern in respect of recent developments on “news access” and “short reporting” in the context of the review of the Television without Frontiers Directive by the European Commission.”</p>
<p>Group 4</p> <p>Fédération Internationale des Acteurs – The European Group of the International Federation of Actors - FIA (1+1+4)</p>	<p>Private – Cultural and artistic goals - FIA represents performers’ unions in more than 30 countries. “ . . . gathers the trade unions representing actors in theatre, film, television, dancers, singers, circus and variety performers in all European countries, including the European Economic Area and, as observers, several countries next to EU accession.”</p>	<p>EuroFIA strongly opposes any endeavour to weaken the current rules on advertising. . . Commercial breaks during films encroach on performers’ moral rights and should be limited as far as this is possible. Quotas application should be preserved. Private and public broadcasters should be equally concerned. The words “where practicable” should therefore be deleted.</p>
<p>Group 1/A</p> <p>Fédération Internationale des Associations de Producteurs de Films – International Federation of Film Producers Associations - FIAPF (6)</p>	<p>Private- FIAPF's members are 26 producers' organization from 23 countries on four continents, FIAPF is the only organisation of film and television producers with a global reach. Associations controlled by small capital groups or by ‘independent’ organizations.</p>	<p>“FIAPF has been consistent in calling for a higher base of 25% of independent production. welcomes the recognition by the Commission that secondary rights’ retention is an essential requirement for the growth of the independent production sector in Europe.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/D  Federation of European Publishers (1+1+1)</p>	<p>Private - “FEP is an independent, non-commercial umbrella association of book publishers associations in the European Union. FEP represents 26 national associations of book publishers of the European Union and of the European Economic Area.”</p>	<p>So FEP as for instance newspaper associations don’t wish online services to be covered by this Directive. FEP insists on the importance to maintain the country of origin principle. – “FEP supports the clear distinction between the commercial content and the editorial content.”</p>
<p>Group 4  Fédération Scénaristes Europe – FSE (5)</p>	<p>Private- Cultural goals. The Federation for Screenwriters in Europe is a European non-profit organisation. Its aims are: 1] The defence of freedom of expression and artistic creation within the audiovisual field.</p>	<p>It is argued ‘TVWF should be extended to all audio-visual media.’ It is asked, ‘how will it be possible to monitor ‘where practicable and appropriate’ . It is also suggested Simplification of advertising rules should not mean self-regulation.’</p>
<p>Group 1/A  Federazione Italiana Editori Giornali - The Italian Federation of Daily Newspaper and Periodicals Publishers (FIEG) (9)</p>	<p>Private – “is an umbrella organization for the Italian daily newspapers and periodicals, representing che interests of a total of 73 daily newspapers and 288 periodicals, in addition to the 9 national, based information and press agencies. The associated members represent roughly 95% of Italy’s paid circulation of the daily newspapers and 76% of the periodical press.”</p>	<p>It is said, “In rapidly changing times, the tensions of the information society are inherent conditions within which the tasks of governing institutions is to find the proper balance.” Further, relaxing in tv advertising may deteriorate the advertising imbalance against press.</p>
<p>Group 1/A  Federazione Radio Televisioni - Federation of Radio Television (1)</p>	<p>Private – Association of broadcasters representing over 95% of the private television sector and about 60% of the radio in Italy.</p>	<p>It “welcomes the introduction of simplified, light-touch provisions, i.e. a basic regulatory tier applicable to all audio-visual content services, irrespective of the trasmission mode. FRT supports the Directive to apply also to non-linear services provided that only basic rules shall be provided for them.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/A</p> <p>FIAD - International Federation of film Distributors Associations (8)</p>	<p>Private – “gathers the national organisations having as members film distribution companies. . . It plays an active part in the important field of the MEDIA program of the European Commission to support the circulation of <b>European films</b> throughout Europe, particularly in the <b>Europa Cinemas network.</b>”</p>	<p>It suggest, “to distinguish for counting quotas between flow programs and stock programs”.... ‘the term audiovisual commercial communications may cause increasing advertising time and put pressure over the cultural products like films’. “It is there that rules safeguarding media pluralism must be established.”</p>
<p>Group 1/A</p> <p>FOX International Channels (2+4+2)</p>	<p>Private- American television network group owned by News Corporation.</p>	<p>It “must be necessarily ruled by the country of origin principle. This implies that the State which shall be competent for the regulation and control over radio and television broadcasts must be the State in which the programme/channel is created and where editorial control and decisions take place.” “it is of primary importance to maintain the current structure of the directive text, which states that Member States monitor “whenever possible and using appropriate means.” Flexibility for quotas. . . Product placement be allowed.</p>
<p>Group 2/A</p> <p>France - République française (2+2+2+4+2+2)</p>	<p>Public- State</p>	<p>It demands ‘qualitative rules for both linear and non-linear. Self and co-regulation do not replace regular regulation but it is fact that they provide some flexibility’: “it is essential to leave the national authorities flexibility to take measures appropriate to the variety of national situations found in this area” of media pluralism.</p>
<p>Group 1/A</p> <p>France Télécom (13)</p>	<p>Private - is the major telecommunications company in France</p>	<p>It is said, “it is more recommendable to trust the market than to try to regulate technology.” “We deemed the Information Society framework sufficient to deal any questions pertaining to this market.”</p>
<p>Group 2/A</p> <p>Greece - Department of Media (4)</p>	<p>Public Authority</p>	<p>It is “in favor for supporting public service broadcasting in order to promote media pluralism actively. competition should be encouraged in the electronic communications markets, and also in that competition is not the complete answer. Hence, the EU regulatory framework quite appropriately includes safeguards to guarantee basic user interests that would not be guaranteed by the market forces.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/B</p> <p>Gruppo Editoriale L'Espresso (2)</p>	<p>Private – “is an Italian company listed on the Italian stock exchange, operating in the media sector and proactive in the areas of dailies and weekly magazines, radio broadcasting, advertising, the Internet and television.”</p>	<p>It argues telepromotion should be a part of ‘audio visual communications’.</p>
<p>Group 1/A</p> <p>GSM The Europe Interest Group – GSME (6+2+3+2+2)</p>	<p>Private – “is the European Interest Group of the GSM Association, the premier global body behind the world's leading wireless communications standard. Today GSM Europe represents around 148 operators in 50 countries/areas in Europe.”</p>	<p>It “suggests that it may be necessary to impose minimum quotas for European and independent content”. It opposes “any extension of the basic obligations to include cultural diversity obligations - such as quotas or financial contributions.” “important to ensure that there is no contradiction between the new TVWF Directive and the existing e-commerce Directive.”</p>
<p>Group 1/A</p> <p>Hutchison 3G companies - H3G (5+4)</p>	<p>Private – “is a leading player in 3G mobile multimedia telecommunications operations at the global level.”</p>	<p>It is seen necessary “to increase legal and economic certainty with a view to encouraging new services and more content.” “linear and non-linear distinction should be clarified. . . “is particularly supportive of self-regulatory measures already undertaken by industry to protect minors.” “here is a real risk of duplication with existing regulation such as the eCommerce Directive and the Framework Directive which may well undermine the i2010 objective of an open and competitive market for digital content services in Europe)</p>
<p>Group 1/C</p> <p>Institute for the Management of Information Systems – IMIS (3)</p>	<p>Private – “is the UK-based professional body for the management of information systems, including the multi-media systems that are beginning to transform education, training and research, as well as entertainment and retailing, around the Pacific rim.”</p>	<p>It presented a 3-page provocative text with ‘liberal’ tones. It is not directly related to the urgent issues of the AVMSD. Rather the text is related to “a letter from the future”.</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 3/A</p> <p>Instituto da Comunicação Social – ICS (3+2+3 +3+3)</p>	<p>Public - supports the Government in designing, implementing and evaluating public policies for the media, searching for the classification of industry and new media services in order to safeguard freedom of expression and other fundamental rights, as well as pluralism and diversity..</p>	<p>It demands, "High level" of consumer protection. It should be noted that the universe covered by the term "communications commercial audiovisual "to include large segment of self-promotions,</p>
<p>Group 1/B</p> <p>Intellect (6)</p>	<p>Private – “is the UK trade association for the Information Technology, Telecommunications and Electronics industries. Intellect works to influence policy, improve markets and enhance business performance for its members.”</p>	<p>“We urge the European Commission to withdraw this commitment and work with all of the relevant stakeholders across the full value chain to develop an alternative approach to addressing the legitimate policy issues at hand.” “Industry takes concerns about the ‘dark side of globalised media’ seriously. However, we believe that it would be wholly inappropriate to extend broadcast regulation, developed for the analogue era, to the new emerging audio-visual content market. If pursued, this policy approach could severely inhibit the development of this potentially rich new sector.”</p>
<p>Group 1/A</p> <p>Interactive Software Federation of Europe – ISFE (3+1+1+2)</p>	<p>Private- has more than 15 national-international digital entertainment company including Sony Computer Entertainment and Vivendi Universal Games, Nintendo and Microsoft.</p>	<p>It is said, ‘directive should propose 3-tier instead of 2tier. Online interactive environment (game), non-linear and linear. the self-regulatory approach is again preferred by the industryb’</p>
<p>Group 1/A</p> <p>International Advertising Association – IAA (3)</p>	<p>Private - is a global partnership of advertisers, agencies, media and marketing communications professionals.</p>	<p>It defends the wider approach of “commercial communications” that would include most advertising and marketing disciplines,. . . The proposed formula of the “basic tier”,. . . approve the “technology neutral” approach. . Product placement is clearly to be accepted as a legitimate means of commercial communication... meaningful and effective self-regulation, consistent with the Codes of the International Chamber of Commerce</p>
<p>Group 1/D</p> <p>International Ice Hockey Federation (1)</p>	<p>World governing body of Hockey</p>	<p>Their concern about ‘short extracts’ is same with the UEFA</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/A</p> <p>International Video Federation – IVF (3+3)</p>	<p>Private – “The members of the International Video Federation (IVF) comprise companies, which are involved in all areas of the audiovisual industry as well as entities dedicated to, and specialized in, the distribution of audiovisual content on physical carriers and/or over digital networks, including the Internet.”</p>	<p>It “supports the Commission’s proposal to proceed with a lighter and modernized approach to both linear and non-linear services.... to a knowledge-based economy, such as the need to establish a secure, legal environment for business through stakeholder cooperation, to maintain technological neutrality and to fight rampant piracy. . . “information society services”, as defined by the Electronic Commerce Directive. supports maintaining the “country-of-origin” principle.”</p>
<p>Group 2/A</p> <p>Ireland - Department of Communications, Marine &amp; Natural Resources (2)</p>	<p>Public – Government</p>	<p>“It would be reasonable to conclude that the intent of this provision was that while there should be a common minimum set of rules that would apply to all broadcasting services in the EU that it should be open to each Member State to determine whether it wished to have more detailed rules for “its own” broadcasting services.”</p>
<p>Group 1/A</p> <p>ISBA - The Voice of British Advertisers (2)</p>	<p>Private – “is the single body representing the interests of British advertisers in all areas of commercial communications”</p>	<p>“Support for the maintenance of the Country of Origin principle as the only working basis for the Directive. Advertisers expect commercial communications to be subject to <b>good regulation</b> that provides consumer protection, business certainty and proportionality.” “product placement should be allowed” “support the UK self-regulatory systems”.</p>
<p>Group 2/A</p> <p>Japan - the Government of Japan (4)</p>	<p>Public - State</p>	<p>It is said, ‘the possibility of adopting a new regulation about the registration of ‘non-linear communication provider’ established outside EU can hinder the development of new tech. and cultural exchange.’</p>
<p>Group 1/A</p> <p>Kabel Deutschland – KDG (9+2)</p>	<p>Private – “is the largest cable network operator in Germany and Europe.”</p>	<p>“An extension of the regulatory framework would be in conflict with the stated policies of the European Union.... The E-Commerce Directive creates an adequate regulatory framework for non-linear audiovisual services. . . . Maintaining the country of origin principle.... a cable-regulation of the media law ensuring diversity at European level is only one add value if they are also having a <b>reduced regulation</b> at the level the Member States”</p>



**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 4</p> <p>KLYS - The Swedish Joint Committee for Artistic and Literary Professionals (3)</p>	<p>Private- Public – Cultural and Artistic Goals- “17 member organisations of KLYS (The Swedish Joint Committee for Artistic and Literary Professionals), representing some 30.000 individual Swedish artists”</p>	<p>It is argued ‘films should not be spoiled with ‘during’ advertisements.’</p>
<p>Group 4</p> <p>Know What You Buy (2)</p>	<p>Private- Public (cultural and environmental concerns), “is the campaign to give people more information about the impact that goods and services have upon the environment and human rights.” But more than human rights, it is look like a lobby company creating base for those companies claiming that they produce environment-friendly products.</p>	<p>We call on the Commission to amend the TWF to give citizens and consumers this vital information (environment), when it counts, in advertising.”</p>
<p>Group 2/A</p> <p>Krajowa Rada Radiofonii Telewizji (National Broadcasting Council of Poland) – KRRiT (5+2+ + 6+3+3)</p>	<p>Public- Regulatory Agency</p>	<p>It defends an integrated approach to the Information Society and to audiovisual media services is necessary: “Foreign programs include contents that do not comply with the regulations of the receiving country (under Art. 3 of the Directive a Member State may introduce more. . .” EC should consider the issue of product placement very carefully.</p>
<p>Group 1/C</p> <p>Kultur + Werbung GmbH (4)</p>	<p>Private – “Product Placement and communications agency for audiovisual media, focusing on cinema and television.”</p>	<p>It is said, EC should allow ‘product placement’ even for “In the subcategory "drug" we are of the opinion that, provided the clear labeling of a product placement for so-called-the-counter products should be allowed.”</p>
<p>Group 1/A</p> <p>Lagardère (Groupe) (3+2+1+1)</p>	<p>Private - French-based multinational media firm.</p>	<p>It is said, ‘linear and non-linear distinction and the situation for press should be clarified’, product placement should be controlled by broadcasters themselves. To become globally competitive requires economic capacity. There is enough measure against media pluralism. Towards these ends, it is necessary to force national governments to modernize their rules.</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

Group 2/A  Lithuanian Ministry of Culture and Radio and Television Commission of Lithuania – RTCL (1+2)	Public-Government	It argues the specific rules applying to non-linear services must be lighter. “the possibility of authorising product placement is an option”. On the other hand, “It would be highly unwelcome if the relaxation of advertising rules.”
Group 1/A  Liberty Global Europe (7)	Private – “is an indirect subsidiary of Liberty Global Inc (LGI). LGI is Europe’s largest multi-service cable operator and has interests in both content and distribution mechanisms across its footprint.”	“We believe that many of the original drivers behind the TV without Frontiers Directive (TVWF) no longer exist (spectrum scarcity and lack of cross – border services).” Supports ‘country of origin’. “We reject any proposals to extend the scope of content quotas.” “We do not support the extension of Right of Reply to non-linear services”.
Group 1/B  Makingprod	Private – French based tv production company. (a new company)	It is said, ‘there is an insufficient funding for audiovisual production for independent companies in the EU. For ex, product placement can be a tool of financing only if it is carefully regulated, otherwise it is hard to compete with American origin productions. Instead of quotas, or add to this tax incentive can be considered.’
Group 2/A  Malta - Ministry of Tourism & Culture (1+1)	Public-Government	It asks “Should there be different directives for different media? There should be more flexibility in advertising regulations in view of the fact that broadcasters have to compete with new media. There is room for flexibility but this should be done in total respect of the rights of consumers.” It is demanded ‘product placement can be allowed as soon as consumer is aware of what’s happening.’
Group 4  Mediawatch-uk (2+2+3)	Public- NGO- mission is to encourage citizens to participate, protest and praise the issues related to the media.	It “believes that the country of origin principle is the wrong way round and should be reversed to become the ‘country of reception principle’. agrees with the adoption of a new definition of audiovisual commercial communications to cover all kinds of advertising. Product placement and, more importantly, product integration in programmes should be specifically excluded within the terms of the TVWF Directive.”

### Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)

Group 1/A Mediaset (9+6)	Private – “an Italian-based media company which is the largest commercial broadcaster in the country.”	It is said, “the technological and economic context which influenced at the time the adoption of the Directive has undergone many important changes. . .” “to decide how best to regulate audiovisual services, the Commission should adopt a competition law-based approach”,. . . “Digitisation is not an option, but an obligation for all Italian broadcasters.”
Group 1/A Microsoft (5)	Private- US origin world’s biggest software company - Big Capital-	It is argued ‘the e-commerce directive is not superfluous. It already addresses many of the issues raised in the consultation. The valuable contribution of self-regulation must also be recognised.’
Group 2/A Nederland - Koninkrijk der Nederlanden – Kingdom of Netherlands (4+2+3+2+1)	Public-State	It is said ‘it is not the task of EU to impose further regulations as to pluralism. Distinction between ‘linear and non-linear’ is good, but it may be invalid in near future. It is needed to carefully reconsider the principle of country of origin.’
Group 1/B Newspaper Society (3+1+1+2+2)	Private – “represents the regional newspaper industry. Its members publish around 1300 regional and local newspaper titles throughout the United Kingdom.” (‘happy with the consolidation of ownership’ means they are controlled by Big Capital)	“The UK industry also opposes the introduction of any statutory right of reply for online and print versions of the press into domestic law. The European Union does not have competence to regulate the content of newspapers.”. . . “Media pluralism is a matter for Member States alone.”
Group 2/B Nordic Public Service Broadcasters - Nordic PSB (2+1+2+1+1+1)	Public Broadcasters	“The Nordic PSBs support the inclusion of radio broadcasting in the directive. From a cultural standpoint it would be unfortunate if parts of radio activities were to be regulated according to technical, consumer, trade or other directives.” “it is important to maintain an effective country of origin principle.” “there is a need for clarification on a European level regarding rules on product placement.” There is no need that EC puts new rules for pluralism.
Group 1/B NRJ Group (1)	Private - A leading French radio company. Has stations at other EU countries.	Principally, it is accepted that the common rules will be imposed on radio at EU level.

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

Group 1/A NTL (8)	Private – “is the UK's largest cable company with 3.3 million residential customers and offers a wide range of communications and content distribution services.”	“The current E-Commerce Directive already provides a comprehensive regulatory framework. a self-regulatory approach is most likely to address the relevant market issues”
Group 1/c Ofwatch (4+3)	Private – “is an organisation that represents the interests of adult service consumers in the United Kingdom.”	“It is neither desirable nor practical to continue with strict regulatory controls on audiovisual content.”
Group 4 Open Channels for Europe(11)	Private – “is a European wide association established in 1997 to represent the interests of local, community and open access channels in Europe”	It “believes that there is no true democracy without media democracy. We call upon the EU to ensure equality of provision for local, community and open channels across Europe.... VIEW the ongoing pursuit of deregulation and liberalisation policies in media and communication; the continued growth of poverty, unemployment and exclusion as the increasing risk for reinforcing nontransparent, elitist and undemocratic trends in Europe.”
Group 1/A Orange (6)	Private- France-based telecom operator, “comprises member companies in eight EU Member States: Austria, Belgium, France, the Netherlands, Portugal, Poland, Slovakia and the UK.”	It argues ‘as the development of information society and electronic communications services are so crucial to Europe’s economic and social development, the Commission should therefore be extremely cautious in its approach.’ It is of the opinion of allowing the audiovisual market to develop before introducing regulation.’
Group 2/B ORF (4+3+2)	Public - Austrian Broadcasting is the Austrian national public service broadcaster.	It is said ‘convergent regulation always means (administrative) simplification. Sector is not merely a technical field of the internal market. Therefore, the aspect of cultural diversity should be taken into account.’
Group 2/B ORF- Publikumsrats - ORF Audience Council (1+1+2+1)	Public -	It is said, ‘scope of these rules should in any case on non-linear be extended.  The definitions of the terms ‘advertising’ and ‘commercial communications’ are very narrow. They are applied only to the sale of goods etc.. But advertising is stg. Beyond.

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 2/A</p> <p>ORTT - Hungarian National Radio and Television Commission (6)</p>	<p>Public- Authority</p>	<p>It is said "A lighter set of de-minimis rules could also secure the prevalence of the content service requirements." "An important point of distinguishing between the legitimate product placement and prohibited surreptitious advertising is the examination of the editorial influence." Media pluralism is the taks of member states.</p>
<p>Group 2/A</p> <p>Österreich – Bundeskanzlera mt - Austria - Federal Chancellery (8+4+5+7+3+2)</p>	<p>Public- State</p>	<p>It is said "Audio-visual content services" in the literal sense of the definition proposed in doubt about the actual feasibility of regulation." E-commerce directive may need amendment... "(media pluralism)In the light of globalization and the rise of international Competition seems a Community measure in principle but worthy of consideration." Necessary to find a balance between concentration and global competitiveness. "The Austrian law requires the existence of product placement, that a minimum visibility of the product, service, name, brand or activities is given."</p>
<p>Group 1/A</p> <p>Periodical Publishers Association – PPA (4)</p>	<p>Private – "is the trade body for UK magazine publishers."</p>	<p>It is said, 'Issues Paper contains no rationale as to why its scope should be extended to services that are provided "on request" - an area already reserved to the E-Commerce Directive believes that broadcast services, which are licensed, enjoy a unique position in our information society.'</p>
<p>Group 1/A</p> <p>ProSiebenSat.1 Media AG (5)</p>	<p>Private – "is a European media conglomerate, operating commercial television, premium pay channels, radio stations and related print businesses."</p>	<p>It is said, "The creation of a comprehensive legal framework must not lead to the very extend detailed specifications of the existing Directive to other areas". "Facilitate the development of an internal market for television services, not lose the benefit of a pure content regulation in the eye." "The distinction between linear and non-linear, however, appears very limited sense. It is already flowing and often blurred." "The country of origin principle is essential..." "Control mechanism at national and European level in terms of Co-regulation is not required..."</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/B</p> <p>Radio Nazionali Associate - The Association of National Radio Broadcasters RNA - Italy(3+5)</p>	<p>Private- “is certainly the most representative national association, thanks to the reputation of its associates, who belong to the major Italian media groups (RCS Media Group, L’Espresso, Il Sole 24 Ore, Mondadori), to independent publishers and to religious and political bodies.”</p>	<p>It is said, “The information society and the convergence of the media are a reality which must not be underestimated and which needs clear rules.”</p> <p>It is also argued TVWF can be extended to radio.</p>
<p>Group 1/A</p> <p>Reuters (2+2)</p>	<p>Private – “is the world’s principal supplier of information to the global financial markets and print and television media.”</p>	<p>It “opposes the extension of the TVWF to online audiovisual services”.... such offerings are already covered by e-commerce directive.</p>
<p>Group 3/B</p> <p>RNID, RNIB (for deaf and hard of hearing people), EBU(european blind union), EFHOH, EUD, FEPEDA and SOAP (10)</p>	<p>Public- An association between associations for the interests of disabled people.</p>	<p>They defend that ‘access service requirements for disabled people should be included in the provisions’.</p>
<p>Group 2/B</p> <p>RTÉ – (4+2+5+4)</p>	<p>Public -Ireland’s public service broadcaster</p>	<p>“RTÉ recognises that this internal market objective – the free circulation of services - lies at the heart of the directive and needs to be achieved” (country of origin). “it may be appropriate to extend qualitative rules to non – linear services.” “Greater consideration needs to be given to the role of co-regulation in such a rapidly changing marketplace.... sees no problem in relaxing the rules on insertion provided the clear identification of advertising is maintained.”</p>
<p>Group 1/A</p> <p>RTL Group (5+3+6)</p>	<p>Private – “RTL group is European largest TV and radio company.... The media company Bertelsmann has a 90.4 % interest in RTL Group.”</p>	<p>It is said, “The revision of TVWF Directive should primarily focus on how best to modernise the existing regime to face technological and market developments.”</p> <p>“regulation should be consistent with technological neutrality and similar services be regulated the same way.” “Simplify and modernise current complicated and over-detailed quantitative rules on advertising.”</p> <p>“The new regime should provide for consistent regulation of product placement.”</p>

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

Group 1/A  Satellite and Cable Broadcasters' Group – SCBG (7)	Private – “is the trade association for satellite and cable programme providers. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond.”	It “does not support the principle of creating a new framework including all forms of audiovisual content delivery and we suggest that self-regulation (or co-regulation) is a valid regulatory tool.... Facilitates effective competition.... The country of origin principle is crucially important.... SCBG strongly supports the authorisation of product placement.”
Group 1/A  Sky Italia (3)	Private – “is an Italian digital satellite television platform owned by News corporation”	It supports the flexible regulation; and the term ‘commercial communications’.
Group 3/B  SOCIDROGAL COHOL (4)	Public- “is a Spanish scientific organization, devoted to the study of alcohol and other drug dependences”	It is also in favour of having the same rules for linear and non-linear services.... A further concern is about sponsorship and legitimate product placement. . . welcomes that a “legitimate product placement”, included in the Directive of “unfair commercial practices”, adopted on 11 May 2005, takes over from the current chaos in product placement”
Group 4  Société des Auteurs et Compositeurs dramatiques – SACD (4+5+4)	Private- Cultural goals/- “an organization Representative of the authors (40,000 members) including the authors audiovisual writers and directors.”	It is said “This new regulation would relegate cinema films in the cultural ghetto of public television who are not allowed to advertise.”
Group 4  STAP (National Foundation for Alcohol Prevention) (12)	Public Interest Organization -	It defends ‘there are numerous ways of alcohol advertising and <u>self-regulation</u> mechanisms are insufficient’: “Advertising Code Committee only provides Recommendations”
Group 2/A  Sweden - Ministry of Education, Research and Culture – Regeringkansliet (2+1)	Public- Ministry	It welcomes “the Commission’s focus on different tiers of regulation for linear and non-linear services respectively.”

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

Group 1/A Syndicat des Entreprises de Distribution de Programmes Audiovisuels - Union of Local Distribution of Audiovisual Programs – SEDPA (4)	Private – “is a trade association, established in 2005, representing the rights and material and moral interests of distributors of television programs at the national level, French, European and international levels.” (sedpa.org)	It suggests adding a remark in article 4a about a sub-quota of programming in order to facilitate the flow of rights, the rights of broadcasters (terrestrial, cable, satellite, etc.).
Group 1/A Syndicat National de la Publicité Télévisée - SNPTV National Union of television advertising (5)	Private - The professional organization of French advertising agencies	Self-regulation is supported. It argues, ‘product placement echoes the definition of sponsorship as a contribution to the financing of television. The authorization of this technique of communication must be framed in the same way that the regulation of sponsorship.’
Group 1/A Telefónica (5)	Private – “is a Spanish broadband and telecommunications provider in Europe and Latin America.”	It is said “this distinction between broadcasting services and services of the information society, remains valid in a world of convergent services.... believes that the current rules on advertising should be limited to linear services.”
Group 1/A Telenor (8)	Private – “is the largest provider of telecommunications services in Norway.”	It is in favour of technology neutral regulations. it is neither necessary nor appropriate to extend the Directive. The existing exceptions from the freedom of reception principle should not be expanded.
Group 1/A Television Broadband (5)	Private – “provides multi-channel television, telephone and broadband internet services to 1.8 million UK households.”	It is said, “only a ‘light touch’ approach, which fully respects the subsidiarity principle and which encourages the use of effective self-regulation.” “the proposed linear/non-linear distinction is already difficult to apply in relation to current technology.” “consider that in the 21st century only self-regulatory initiatives have the inherent flexibility to successfully regulate such a dynamic and fast-changing sector.” “consider the E-Commerce Directive already provides an effective and appropriate ‘light touch’ regulatory regime. ”
Group 1/A Télévision française 1 - TF1 (11)	Private – “is a national French TV channel, controlled by TF1 Group, whose major share-holder is Bouygues.”	It is said, “approval of product placement should be preceded by the definition of this type of marketing communication is under the advertisement, or under the sponsorship or under to create a new category.”
Group 1/D The Brewers of Europe (1)	Private- An Association of Brewing Sector	It is said, “In many countries, self-regulation is key”



**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

Group 1/A  THUS (4)	Private- “is a leading provider of Internet, data and telecoms services in the United Kingdom.”	It is said, “it is difficult to see how increasing the regulatory burden on hosting and content providers will meet the i2010 criteria of providing “economic and legal certainty”. “If the intention is to regulate all audiovisual content then it is essential to limit the burden on hosting providers and not to drive content providers outside Europe”
Group 1/D  Toy Industries of Europe – TIE (3)	Private -	It demands directive to “have some reservations that extending broadcasting regulatory rules to sectors where business models are still evolving and where self-regulation has proved to be an effective tool”
Group 1/D  Union des Associations Européennes de Football – UEFA (4)	Private – The representative of Football Clubs and related interest groups	It suggests, ‘news access rules should not harm the commercial interests of the sport clubs.’
Group 1/B  Union des Producteurs de Films Francophones- Union of French Film Producers – UPPF (2)	Public-Private- Cultural Goals	It is said, “In a context where the European audiovisual market is overwhelmed by the dominance of a few multinationals, it is important to consider quotas as a tool to promote and ensuring cultural diversity and not as restrictive measures.”
Group 2/A  United Kingdom (7+3+1+2+2+1)	Public-State	It is said, “extending regulation to Internet content is not an appropriate course of action. ‘do nothing’ option might be the best solution.... urge caution in abandoning the principle of separation so as to allow product placement.... does not suggest that any specific action is necessary to protect media pluralism”
Group 1/A  UK Film Council (9)	Private – An association of UK film industry. “has a direct stake are the encouragement of the circulation of European works, media literacy and the development of on-line services.”	It is said, “the Directive presents an important opportunity to ensure that broadcasters give greater salience to film; to encourage broadcasters across Europe to improve the range and diversity of film being made and being transmitted on TV”

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/A</p> <p>Verband Deutscher Zeitschriftenverleger – VDZ (3+12)</p>	<p>Private – “is the umbrella organization of German magazine publishers and their online services.”</p>	<p>It is argued, the expansion of the scope of the Directive beyond broadcasting to include other audiovisual media, which was also discussed, does not hold any recognisable potential to promote a flourishing European media landscape.... Even the assumption that the advertising industry would increase its advertising expenditure as a consequence of product placement approval is not plausible.”</p>
<p>Group 1/A</p> <p>Verband Privater Rundfunk und Telekommunikation e. V. – Association of Private Broadcasting and Telecommunications e. V. VPRT (3+3+ +8+ +2)</p>	<p>Private – “represents the interests of around 150 companies from the fields of television, radio, multimedia and telecommunications communication.”</p>	<p>It is said, “country principle should not be undermined... is committed to the abolition of quantitative advertising rules, ie the advertising time limits, the insert and the block advertising... Product placement must be permitted under certain conditions... Rejection of a European media concentration regulation.”</p>
<p>Group 4</p> <p>Verbraucherzentrale Bundesverband – Consumer Federation (7)</p>	<p>Public- “is a non-governmental organisation acting as an umbrella for 42 German consumer associations.”</p>	<p>It is argued, “product placement on TV or product-placement of an advertising character must remain prohibited. The ban should be extended to other audio-visual media be. Advertising and editorial content must - regardless of the medium - be clearly separated from one another.”</p>
<p>Group 1/A</p> <p>Vereniging voor Satelliet Televisie en Radio Programma Aanbieders – VESTRA (3)</p>	<p>Private – “is the Dutch branch organisation for commercial television and radio in the Netherlands. Its members are SBS Broadcasting, RTL NL, Jetix/Fox Kids, Canal +, MTV NE and Turner Broadcasting System.”</p>	<p>It is “in favour of a technologically neutral definition of audiovisual services, to which a minimum of qualitative rules apply that are guarded by self regulation.... The role of the EU regarding the protection of media pluralism doesn’t need to be accomplished by more regulations.” Product placement should be allowed.</p>
<p>Group 1/A</p> <p>Versatel Deutschland (5+2+2+4+3+3)</p>	<p>Private – “one of the leading telecommunications provider in Germany”</p>	<p>It favours a liberal approach to the future regulation of audiovisual services which supports and fosters the development of new innovative communication services and products.... Versatel generally opposes new definitions. New forms of advertising should not become subject of specific regulation. Instead, the existing rules should become more flexible to remain workable on new advertising techniques.</p>

### Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)

Group 1/C  Video Networks Limited – VNL (4+3)	Private- “is a broadband platform operator, which supplies a new DSL-Cable service banded ‘Homechoice’. . . . is a member of the Association for Television on Demand (“ATVOD”), the self-regulatory body for television on demand services in the UK.”	It is said “legal and economic certainty help provide fertile ground for growth.... does not recognise a need for centralised regulation – particularly in relation to the content-on-demand industry. . . believes that the imposition of constraints on the trading structure of the non-linear market would therefore be counter-productive. . . “
Group 1/B  Viestinnän Keskusliitto (The Federation of the Finnish Media Industry) (7)	Private-	It is said ‘there are no grounds for European regulations concerning media concentration. The scope of application of the Directive should not be broadened to include, for example, newspapers’ and magazines’ online services or radio. The country of origin principle guarantees media companies that operate internationally certainty about the legislation applicable.’
Group 1/A  Vodafone (7)	Private- One of the Biggest GSM operators.	It “fully supports technology-neutral regulation. . . Regulation of non-linear audiovisual content should exclude non-commercial content.”
Group 3/A  Voice of the Listener & Viewer (10)	Public -	“We agree that the term “audiovisual content services” should be technologically neutral and it would therefore include radio broadcasts.... we agree that the definition of audiovisual commercial communication should be the same as that in the e-Commerce Directive.... We agree that the European Union’s role in the protection of media pluralism is unclear.” No clear statement about product placement.
Group 1/A  Wirtschaftskammer Österreich - Commerce Austria (5)	Private - The Economic Chamber of Austria	It welcomes a clear definition of the non-linear content services is necessary and principle of country of origin. It is argued that regulation should be extended to non linear services.
Group 1/A  WorldDAB (The Forum for Digital Audio Broadcasting) (2)	Private – “The WorldDAB Forum includes in its membership many manufacturing, broadcasting and other businesses and interests.”	It is said, “if digital radio was to be included in a European regulatory Directive, any regulation would be checked for relevance and kept to a necessary minimum to encourage the flexibility and opportunity for lateral thinking and development that will enable Eureka 147 technology to provide compelling benefits to citizens.”

**Position Papers Submitted to the 2<sup>nd</sup> Consultation Process (2005) (continued)**

<p>Group 1/A  World Federation of Advertisers – WFA (5)</p>	<p>Private - is the voice of advertisers worldwide representing 90% of global ad spend, roughly US\$ 400 billion ad spend per annum, through a unique, global network: 50 national advertiser associations on five continents as well as direct multi-national corporate members.</p>	<p>It is argued that it is unclear to what extent such audiovisual content services in the revised TVWF Directive would overlap with the ‘information society services’ regulated by the E-Commerce Directive. . . WFA strongly supports the light-touch regulation of on-demand services under the E-Commerce Directive.... welcomes the proportionate proposals for a specific reference to product placement in the new Directive.</p>
<p>Group 1/A  Yahoo! Europe (4)</p>	<p>Private – “a leading provider of comprehensive online products and services to consumers and businesses worldwide and is the No. 1 Internet brand globally.”</p>	<p>It is not convinced of the need for an extension of the current TVWF Directive to cover any element of the online sector and is not convinced of the need for an extension of the current TVWF Directive to cover any element of the online sector.</p>
<p>Group 1/A  Zentralverband der deutschen Werbewirtschaft - Central Association of German Advertising Industry ZAW</p>	<p>Private - “The ZAW represents the advertising economy in all fundamental Positione] outward and forms the "round table" for the formulation of the common policy and the reconciliation of interests of all at the advertising business took part. This is noticed by the committees of the ZAW.”</p>	<p>It is said thad, “considered by the Commission on the intended expansion of the scope of the TWF Directive, non-linear content services, respetive the concept of audiovisual commercial communication, with scepticism.... limitations on commercial communications would impair the economic base of broadcasters and the media so much diversity.”</p>

## **APPENDIX 3.**

### **THE LIST OF INTERVIEWS REFERENCED IN THE TEXT**

13.10.2011

Kostas Rossoglou – Advisor (Media and Culture)

BEUC- European Consumer Organization

e-mail: [digital@beuc.eu](mailto:digital@beuc.eu)

26.10.2011

Jean-Eric de Cockborne

Advisor-Former Head of Unit

Information Society and Media Directorate General

European Commission BU 25 4/121 avenue de Beaulieu

e-mail: [jean-eric.de-cockborne@ec.europa.eu](mailto:jean-eric.de-cockborne@ec.europa.eu)

21.11.2011

Marietje SCHAAKE, Member of Parliament, ALDE Group

e-mail: [marietje.schaake@europarl.europa.eu](mailto:marietje.schaake@europarl.europa.eu)

## **APPENDIX 4.**

### **TURKISH SUMMARY**

#### **AB'nin “Yeni” Medya Siyasetinin Dayanađı Olarak “Enformasyon Toplumu” Kavramı: Eleştirel Bir Deđerlendirme**

##### **GİRİŞ**

Geleneksel kamu siyasetleri yerlerini neo-liberal doktrine uygun siyasetlere bırakırken 1990'ların başlarından itibaren “Enformasyon Toplumu” kavramı etrafında kurulan toplumsal dönüşüm hedefi siyasetlerdeki bu yapısal dönüşümün başat söylemsel dayanađı haline gelmiştir. Yeni bir dizi iletişim siyasetinin uygulanmasında AB kurumları tarafından “Enformasyon Toplumu” kavramının söylemsel bir hedef olarak kullanılması bu dönüşümü anlamak ve açıklamak açısından yerinde bir inceleme konusu sunmaktadır.

Bununla birlikte, AB otoritelerinin 1990'ların ortalarında bu hedefe ulaşmak için bir strateji ortaya koymayı amaç edinen siyaset belgelerinde toplumsal ve kültürel kaygılar ile teknolojik altyapı ile ilgili hedefler arasında bir denge kurmakta yetersiz kalmışlardır. Bu nedenle siyasetlerin iletişim altyapısı ile ilgili konulardan toplumsal boyutla ilgili konulara genişlemesi gerektiğine karar verilmiştir. Buna uygun olarak medya siyaseti “Enformasyon Toplumu portfolyosunu”na 2000'li yılların başında dahil edilmiştir (Harcourt, 2005). Bu genişlemenin bir sonucu olarak yeni bir medya direktifi – Görsel İşitsel Medya Hizmetleri (GİMH) Direktifi – yakın zamanda AB'de yeni medya ortamında geçerli olacak kuralların belirlenmesi amacıyla yürürlüğe konmuştur.

İlgili akademik literatür yeni medya direktifi ile AB'nin "Enformasyon Toplumu Projesi" arasındaki bağlantıya işaret etmekte yetersiz kalmıştır (bkz. Burri, 2007; Haug, 2008; Woods, 2008; Geach, 2008; Pekman, 2009). Bu çalışma ise işaret edilen bağlantıyı kurmaya çalışmakta ve "Enformasyon Toplumu"na ilişkin siyasalarla medya siyasasının bütünleşmesinin gerisindeki çıkar ve çıkar grupları ile bu siyasaların sonuçları üzerinde bir tartışma yürütmektedir.

Siyasa süreci incelendiğinde görülmüştür ki, AB'nin yeni medya düzenlemesi bir taraftan 1980'lerden beri devam eden liberalizasyon sürecinde bir devamlılığı temsil eder; diğer taraftan ise internet tabanlı medya hizmetleri için farklı kurallar getirmesi ve reklam ile editöryal içerik arasındaki ayrımı ortadan kaldıracak yeni reklam tekniklerine izin vermesi açısından da bir kopuş olarak görülebilir. Böylece yeni görsel-işitsel medya siyasasının serbest piyasa sistemi içinde firmaların birbirleriyle olan rekabetini artırmaya yönelik ve sonunda da iletişim alanında daha fazla ticarileşmeye neden olan siyasaların bir uzantısı haline geldiği söylenebilir. Sonuçta, Venturelli'nin (2001) de öne sürdüğü gibi, "Avrupa Enformasyon Toplumu"nun medya alanında kamu yararına ilişkin siyasaların açık bir reddi olduğu ve sadece tüketiciye odaklanan bir ekonomik büyümenin teknolojiye dayalı bir model getirdiği ortaya çıkmıştır.

Bu tezi net bir biçimde ortaya koyabilmek için, yeni medya siyasasının şekillenmesi sürecinde ortaya çıkan söyleme odaklı bir eleştirel siyasa analizi yapılmaktadır. Bu analizin amacı basitçe ortaya çıkan hakim söylemi deşifre etmek değildir. Daha ziyade bu söylemsel yaklaşım, siyasa süreci ve siyasa metinlerinde ilişik bulunan söylem ile siyasal güçler ve çıkar grupları arasındaki ilişkiyi ortaya koymak amacındadır.

Çalışma Brüksel'de 2011 sonbaharında yürütülen üç aylık bir saha araştırması ile desteklenmiştir. Çalışma iki kısma ayrılmıştır: İlk kısımda "Enformasyon Toplumu" kavramının siyasalarda kullanıma sunulmasının geri planı ve AB'de ortaya çıkan ortak iletişim siyasaları içinde kullanılmasına ilişkin tarihsel ardalın

incelenmektedir. İkinci kısımda ise iletişim ve medya sektöründe 1980’lerde başlayan liberalizasyon eğiliminin derinleşmesi sürecinde “Enformasyon Toplumu” kavramının AB otoritelerince telekomünikasyon sektörü için başlatılan “tam liberalizasyon” siyasası için bir şemsiye terim olarak kullanılması ve bu siyasaların 1990’ların sonlarından itibaren ise medya siyasasını içine alarak genişlemesi ve bu genişlemenin sonucu olan yeni medya direktifi ele alınmıştır. Çalışma “Enformasyon Toplumu” kavramının altyapısal kaygıları öne çıkaran bir medya siyasasına söylemsel bir zemin olduğunun altını çizen sonuç tartışması ile sonlanmaktadır.

## **KISIM I**

### **“ENFORMASYON TOPLUMU” VE AVRUPA BİRLİĞİ**

Çalışmanın bu bölümünde Avrupa’da yürürlüğe konan ortak iletişim siyasalarının 1990’lara kadar olan ilk dönemi ele alınmaktadır.

#### **BÖLÜM I – “ENFORMASYON TOPLUMU”: BAĞLAM VE TARİHSEL ARDALAN**

“Enformasyon Toplumu” kavramı ile temel olarak anlatılmak istenen enformasyon ve iletişim teknolojilerindeki ilerlemenin toplumlara kaçınılmaz biçimde olumlu etkilerde bulunacak bir dönüşüm getireceğidir. Terim esas olarak 1970’lerdeki Kapitalizmin yapısal krizi ardından yaygın olarak kullanılmaya başlanmıştır. Bu yapısal dönüşüm bir ‘neo-liberal dönüm’ olarak adlandırılabilir ve bu süreçte “Enformasyon Toplumu” uygulanacak siyasalar için hem etkili bir ideolojik kılavuz hem de yeni düzenlemeler geliştirmek için kullanışlı bir siyasa aracı olarak işlev yapmıştır.

Bu bağlamda, özellikle 1980’lerden başlayarak geldiğine inanılan enformasyona dayalı ekonomi, medya ile ilgili yeni siyasalarda belirleyici bir faktör olarak



ortaya çıkmıştır. (Kaya, 1997). Yine bu bağlamda teknolojik ilerlemenin olumlu bir gelişme olarak görülmesi sonucu hemen tüm ülkelerde “Enformasyon Toplumu”nun bir resmi ve ulusal hedef olarak belirlenmesine yol açmıştır. AB, kavramı özellikle 1990’larda sahiplenerek sonraki dönemde iletişim ve enformasyon sektöründe izlenecek siyasalar için bir şemsiye terim olarak kullanmıştır. Fakat AB’nin bu siyasasının geri planında neler olduğunu irdelemeye geçmeden önce Birliğin bir ekonomik-siyasal ve kültürel bütünlük olarak işleyişini anlamak gerekmektedir.

## **BÖLÜM II – ULUSÜSTÜ BİR SİSTEM OLARAK AVRUPA BİRLİĞİ**

“Özgün bir deney” olarak görülebilecek AB ne bir devlet ne de sıradan bir uluslararası örgüttür (Hix, 1999; Peterson and Shackleton, 2006). Görünürdeki amacı üye ülkeler arasında bir ‘ortak/tek pazar’ kurarak küresel ticarete rakiplerine karşı rekabet gücü kazanmaktır. AB’nin geçmişi İkinci Dünya Savaşı sonrasındaki ilk yıllara uzanır ve başlangıçta salt bir ekonomik işbirliği örgütü olarak kurulmuştur. 1957 tarihli Roma Antlaşması, 1952’de kurulan Kömür ve Çelik Birliği’ni bir adım ileriye taşımış ve AB’nin temel siyasal meselesi olan ‘ortak pazar’ amacını merkeze alarak Avrupa Ekonomik Topluluğu’nu kurmuştur. “Ortak Pazar” amacı 1987 yılında imzalanan “Tek Avrupa Senedi” ile pekiştirilmiştir. Bununla, Birlik otoriteleri ortak siyasaları yeni siyasa alanlarına genişletme amaçlarını – özellikle mallar yanında hizmetlere de ortak siyasaları genişletmek şeklinde- belirginleştirmiştir. Harcourt (2005) bundan sonra iletişim alanını düzenleyen direktiflerin “tek pazar” amacına bağlandığını söyler.

Bu süreçte bir başka belirgin eğilim, Avrupa Parlamentosu’nun diğer AB kurumlarına olan göreceli gücünün artırılması olmuştur. 1993’te imzalanan Maastricht Antlaşmasında, 1997’de imzalanan Amsterdam Antlaşmasında ve 2001’deki Nice Antlaşmalarında Parlamento karar süreçlerinde öne çıkan bir kurum olmuştur. Ve herbir yeni antlaşma ile AB daha sıkı bir ekonomik ve siyasal bütünlük haline gelmektedir. Bu süreçte AB üye ülkelerin ulusal hükümetleri

üzerinde üstün bir müdahale gücüne sahip olmuşlardır. Sonuç olarak, günümüzde AB hemen tüm kamu siyaseti alanlarında üye devletler için bağlayıcı kararlar alabilmektedir. Bu müdahale gücü Kapitalist operasyonların Birlik kapsamında kolaylaşması lehine işleyen bir güçtür ve iletişim siyasaları söz konusu olduğunda ise “Enformasyon Toplumu” kavramının kilit önemde olduğu görülür. Ancak buna geçmeden önce kendine has bir işleyişi olan AB sistemine bakmak gerekir.

## **2.1. AB Kurumları ve Bunların Çalışma Sistemi**

AB'nin kurumsal yapısı birbirleriyle bağlantılı dört ana kurum üzerine kuruludur: Avrupa Parlamentosu, Avrupa Birliği (Bakanlar) Konseyi ve Avrupa Adalet Divanı. Bunlar arasında Parlamento gittikçe gücünü artıran karar sürecindeki en kilit kurum olarak öne çıkmaktadır. 1979'dan önce sadece bir danışma kurumuyken, bu tarihte yapılan ilk doğrudan seçimlerle birlikte göreceli gücü ve etkinliği artmıştır; 1979 öncesindeki en önemli karar organı olan Avrupa Birliği (Bakanlar) Konseyi ile arasındaki yasamadaki güç dengesi yeni antlaşmalarla lehine dönmüştür. Parlamentoda üyeler geldikleri ülkelere göre değil üye buldukları siyasal gruba göre dağılırlar. Bu dağılıma göre Avrupa Parlamentosundaki en büyük grubu Avrupa Halk Partisi (Hristyan Demokratlar) oluşturmaktadır. Parlamentoda neo-liberal siyasaları destekleyen siyasal grupların hakimiyeti vardır.

Yasama sürecindeki diğer önemli kurum olan Avrupa Birliği (Bakanlar) Konseyi parlamentodan farklı bir karar kurumudur. Farklı siyaset konularında görevli pekçok farklı Bakanlar Konseyi vardır ve bu konseyler yılda iki kez toplanarak Komisyon tarafından önerilen siyaset konularında görüşmeler yaparak önerilerin reddi, kabulü ya da yeniden görüşülmesi yönünde karar alırlar. Alınan bu kararların uygulama bulması için Avrupa Parlamentosu ile ortak-karak süreçleri içinde alınması gerekir.

Avrupa Komisyonu ise yasama ve yürütme sürecindeki Birliğe özgü ve en kilit kurumlardan biridir. Özellikle yasama sürecinde yasa ve direktif önerilerinin hazırlanmasında Komisyon adeta bir tekel olma özelliğine sahiptir. Ancak siyasa önerileri çoğunlukla Konsey ve Parlamento'nun çağrısı ile yapılmaktadır. Ayrıca Komisyonun hazırladığı öneriler siyasi desteğe sahip değilse reddedilir. Komisyon pek çok farklı siyasa alanında uzmanlaşmış Genel Müdürlüğe (Directorate-General) ayrılmıştır. Bu genel müdürlüklerde her biri bir üye ülkeden gelen ve ulusal hükümetlerce onanan Komisyonerler bulunur. Komisyonun da başında Parlamento tarafından atanmış bir Başkan vardır. Komisyonun teorik olarak AB'nin çıkarını bir bütün olarak temsil etmesi beklenir. Komisyon genellikle sivil toplumdan geniş katılımın hedeflendiği ve detaylı siyasa süreçleri sonunda öneriler hazırlar.

Avrupa Adalet Divanı ise çıkarılan yasa ve direktiflerin Avrupa Birliği hukukuna uygunluk açısından yorumlanmasında en üst yargı organı olarak öne çıkmaktadır. Üyeleri ulusal hükümetlerin onayı ile atanır. Divan'ın aldığı kararlar üye devletler için tamamen bağlayıcı olduğundan Divan'a başvurmak etkili bir yürütme yöntemi olarak kullanılmaktadır. Özellikle ikincil düzeyde bağlayıcı konumda bulunan direktiflerin üye devletlerce uygulanmasında Komisyon bu kanalı kullanmaktadır. Divan'ın aldığı kararlar zaman içinde iletişim alanının deregülasyonunda belirleyici olmuştur.

AB'de karar verici konumdaki kurumların oluşumunda üye devletlerin dengeli bir şekilde temsil edilmesi önemlidir. Aynı şekilde özellikle AB'de varlığından söz edilen 'demokratik açığın' kapatılabilmesi için sivil toplumun karar süreçlerine katılımına da verilen önem artmaktadır.

## **2.2. 'Yönetişim' ve AB Sisteminin bir Parçası Olarak Lobicilik**

'Yönetişim' son dönemde AB siyasalarında öne çıkan bir kavram olmuştur (bkz. European Commission, 2001a). Kavram en basit anlamıyla, siyasal erkin

oluşumunda hükümetler ve sivil toplum arasında daha fazla bir işbirliği kurulmasını ifade eder. Fakat pratikte, ‘yönetişim’in devletler içindeki neo-liberal projeksiyonun işlevsel hale getirilmesinde kullanılmakta olduğu ileri sürülebilir (İnsel, 2001). Zira sivil toplumun karar süreçlerine katılımında sivil topluma dahil gruplar arasındaki Kapitalist bir toplumsal formasyondan kaynaklanan eşitsizlikler çoğunlukla gözardı edilmektedir.

Mesela, büyük çoğunluğu ulus-ötesi şirket niteliğindeki 50 büyük medya şirketinin yüzde 90’ından fazlası hali hazırda birkaç büyük Avrupa ülkesinde yerleşik bulunmaktadır. Bu şirketler ve bunların oluşturdukları birlikler, üye ülkeler nezdinde ve Brüksel nezdinde kendi çıkarları doğrultusunda lobi faaliyetleri yürütmektedirler. Özellikle bir ‘lobi cenneti’ (CEO, 2011) konumundaki Brüksel’de bu türlü şirket faaliyetleri karar süreçlerinde etkin konumdadır. Sermaye gruplarının sivil toplumun temsili konusundaki baskınlığı bizzat ilgili siyasetçiler tarafından da kabul edilen bir durumdur. Görüşme yaptığımız Parlamento üyelerinden Marietje Schaake, ‘oldukça endüstri dostu bir Parlamento olduğu’ gerçeğini kabul ederken, ‘lobiciliğin AB sisteminin bir parçası olduğunu’ da savunmaktadır. Karar süreçlerinde lobi kuruluşlarının sağladığı bilginin gerekli olduğunu düşünen Schaake yine de parlamenterlerin ilişkilerde dikkatli olması gerektiğini düşünür.

Çalışmanın ikinci kısmında, yeni medya direktifinin oluşum süreci içinde kendilerine ‘danışmanlık şirketi’ denilmesini yeğleyen bu türlü kuruluşların süreci nasıl etkiledikleri ve aslında bazı çıkar grupları ve bunların söylemleriyle nasıl ilişkili oldukları gösterilmeye çalışılacaktır. Fakat buna geçmeden önce, AB’nin iletişim siyasasına ilişkin öncül gelişmelere bakmakta fayda vardır.

### **BÖLÜM III- AB’DE ORTAK BİR İLETİŞİM SİYASASINA İHTİYAÇ DUYULMASI: ÖNCÜL ADIMLAR**

AB’de ortak iletişim siyasalarına ilişkin öncül adımların atıldığı safha 1970’lerin sonlarında başlayıp 1990’ların başına kadar devam etmiştir ve kamu tekelleri, kültürel koruma ve kamu hizmeti değerlerinden yana olan ulusal hükümet ve kamu kuruluşları ile sınırlı biçimde de olsa sektörün serbestleştirilmesinden yana olan AB kurumları ve büyük şirket birlikleri arasında bir mücadele dönemi olmuştur. Aşağıda bu gelişim dört altbaşlıkta ele alınmıştır.

### **3.1 Ortak Pazar Amacına Uygun Olarak Ortak İletişim Siyaseti Arayışı**

1970 öncesinde ortak bir iletişim siyasasından söz etmek güçtür. Daha ziyade bu konudaki üye devletler arası işbirliği teknik düzenlemelerin (örn., frekans tahsisi) ötesine gitmemiştir (Michalis, 2007:32). Buna uygun ilk örnekler 1950 yılında EBU’nun (Avrupa Yayın Birliği) kitle-iletişim alanında, 1959 yılında ise Posta ve Telekomünikasyon İdareleri Konferansı’nın (CEPT) noktadan-noktaya iletişim alanında kuruluşlarıdır. 1970 öncesi dönemin bir özelliği olarak hükümetler ve ilgili kamu kurumları arasında zayıf işbirliği niteliği taşıyan her iki kurum da bağlayıcı kararlardan çok tavsiye niteliğinde kararlar alabilmiştir.

1960’lar ise ortak iletişim siyasaları açısından oldukça kritik bir onyıllı olmuştur. Bu dönemde enformasyon ve iletişim teknolojilerinde ileri uygulamalar ortaya çıkmaya başlamıştır. Bu sektörde ABD lider ülke konumundadır ve ABD ile birlikte daha sonradan yükselişe geçen Japon elektronik sektörünün Avrupa endüstrisi üzerinde baskısı artmıştır. Avrupa’nın bu dönemde Amerika ve Japonya ile kıyaslandığında iletişim ve enformasyon teknolojilerinde ‘geride kaldığı’ düşüncesi geçerlilik kazanmaya başlamıştır. Sonuçta, bu gelişmeler karşılığında Avrupa Topluluğu yeni bir endüstriyel strateji geliştirmek zorunda kalmıştır denilebilir (Michalis, 2007: 70-72).

Ayrıca 1970’lere gelindiğinde iki önemli faktörün de öne çıkmasıyla yeni bir siyaset ikliminin habercisi olan gelişmeler yaşanmaya başlamıştır. Bunlardan birincisi uydu ve kablo iletişiminin daha önce ulusal sınırlar içinde kalan ve kısıtlı

bir iletim kapasitesine sahip olan iletişim sistemini deęiřtirmeye başlamasıdır. İkincisi ise Kapitalizmin bu dönemde geçirdiđi yapısal kriz neticesinde iletişim ve enformasyon sektörünün geleneksel sektörlere göre ekonomide öne çıkacağıının özellikle siyasa aktörleri tarafından öngörülmektedir. Avrupa Adalet Divanı tarafından 1970'lerin ortasında İtalya'daki yayıncılık sisteminde deregülasyonun önünü açan kararlar alması iletişim alanında liberalizasyon yönünde yeni bir döneme girildiđinin işareti olmuştur.<sup>243</sup>

### **3.2. İletişim Sektöründe Liberalizasyon Yönünde Geçiş Dönemi**

1970'lerin sonlarından itibaren üzerinde çalışılmaya başlanan ortak iletişim siyasalarında 'liberalizasyon' 1980'lerin ortalarına kadar başat bir referans olmamıştır (Michalis, 2007: 101). Bu süreçte, Komisyon esas olarak iç pazarı korumaya yönelik olarak üye devletler arasında ortak teknolojik standartlar ve araştırma-geliştirme projeleri geliřtirmek gibi konulara odaklanmıştır. Bu dönemin bizim amaçlarımız açısından önemi "Enformasyon Toplumu" kavramının ortak iletişim siyasalarına ilişkin belgelerde ilk kez görülmeye başlanmasıdır.

Kavramın yer aldığı ilk resmi belgede (European Commission, 1979) geleneksel sektörler gerilerken iletişim ve enformasyon teknolojilerinin ekonomide öne çıkmaya başladığıının ve bu bağlamda "Enformasyon Toplumu"nun 'kaçırılmaması gereken bir fırsat' olduđunun altı çizilir. Bu tema sonraki AB belgelerinde sürekli tekrar edilecektir. Ancak belge, yeni sektörün örgütlenmesinde özellikle özel sektöre bir liderlik rolü biçmemesi ve yeni teknolojilerin 'merkezi siyasi otorite ve şirket iktidarının artışının' toplum açısından olası kötü etkileri olabileceğinin altını çizmesi açısından kendisinden sonra gelen aynı konudaki AB belgelerinden ayrılır. Bu anlamda belgenin siyasa paradigmaları açısından bir geçiş dönemine ait olduđu iddia edilebilir.

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<sup>243</sup> Bkz. Avrupa Adalet Divanı, vaka C-155/73 – Italia vs. G. Saachi

Zira takip eden dönemdeki gelişmeler neo-liberal bir siyasi iklimin hakim hale gelmesini sağlayan yapıların güç kazanmasına yol açmıştır. Özellikle iletişim ve enformasyon sektöründeki özel şirketlerin Avrupa Komisyonu'nun da çabalarıyla örgütlenmeye başlamaları bu yeni sürecin önemli köşe taşlarından olmuştur. Örneğin, 'devlerin kulübü' olarak da bilinen ERT (European Round Table) bu konuda bilinen örneklerdendir. Avrupa Komisyonu ve büyük şirketler arasındaki işbirliğinin bir sonucu olarak görülebilecek AB kurumları içinde oluşturulan Enformasyon Teknolojileri Görev Gücü (ITTF) daha sonradan Birliğin ortak siyalarının temellerini atmıştır. Örneğin Birliğin 1984'te uygulamaya konan ilk ileri teknolojiler araştırma ve geliştirme programı olan ESPRIT bu görev gücünün çalışmaları sonu sonucu olarak ortaya çıkmıştır.

### **3.3. İletişim Sektöründe Sınırlı Liberalizasyon Dönemi**

1980'lerin ilk yıllarından itibaren kamu tekelleri tarafından yürütülen elektronik iletişim altyapısının kısmen serbestleştirilmesi yönünde ilk somut adımlar atılmaya başlanmıştır. Bu adımların ilk ve en belirgin hedefi telekomünikasyon alanıdır. Üyeleri üye devletlerin ilgili bakanları, ulusal PTT'lerin temsilcileri ve sektörlerdeki özel şirketlerin yöneticilerinden oluşan Avrupa Komisyonu bünyesinde kurulan SOGT'un (Senior Official Group of Telecommunications) öncülüğünde hazırlanan AB belgeleri bu yöndeki siyasalara zemin hazırlamıştır (Bkz. European Commission, 1984a; European Commission, 1987). Bu belgelerde ortak olarak öne çıkarılan temalar şunlardır: 'Telekomünikasyon iletişim altyapıları açısından kilit öneme sahiptir'; 'bu nedenle telekomünikasyonun gelişmesi için uygun koşullar yaratılmalıdır'; 'ancak geleneksel telekomünikasyon siyasaları bu yöndeki gelişmelere izin vermemektedir'; 'dinamik ve açık bir telekomünikasyon pazarı kurulması için yeni siyasalar ihtiyaç vardır'.

Bu belgelerdeki öneriler ulusal hükümetler tarafından kabul görmüştür ki sonraki yıllarda telekomünikasyon alanındaki kamu tekelleri çözülmeye başlamıştır.

(Humpreys: 2005). Bunun bir sonucu olarak 1988 yılından başlayarak serbestleşme yönünde ilk AB direktifleri yayınlanmaya başlamıştır.

### **3.4. Ortak Medya Siyasaları: Endüstriyel ve Kültürel Kaygılar Arasındaki Çatışma**

1970’lerde yayıncılık teknolojisindeki ilerlemeler AB’de hem ekonomik/endüstriyel hem de kültürel kaygıların fitilini ateşlemiştir. Öncelikle Avrupa Parlamentosu’nda öne çıkan bir Pan-Avrupa televizyon kanalı kurma fikri ortaya çıkmış ancak üye devletlerin ve yayın kuruluşlarının yeterli desteği olmaması nedeniyle bu fikir hayata geçirilememiştir. Sonra yayıncılık teknolojisinde Japonya’nın yüksek tanımlamalı televizyon standardını önermesi ve Amerika’nın uydu yayıncılığı sayesinde Avrupa medya içerik pazarında gücünü artırması AB’yi yeni adımlar atmaya yönlendirmiştir.

Atılacak yeni adımların hazırlayıcısı olarak ‘1984 Yayıncılıkta Ortak Pazar İçin Yeşil Doküman’ (European Commission, 1984b) yayınlanmıştır. Bu belgedeki ilk tema yayıncılığın *‘hem ekonomik hem de kültürel bir fenomen’* olduğudur. Daha sonra yeni teknolojilerin yayıncılık sektöründe bir “Medya Devrimi”ne yol açtığı ve medya ortamını zenginleştirdiği vurgulanmıştır. Bununla birlikte, geleneksel finans kaynaklarının bu ortamda yayıncılara fayda sağlamadığı ve özel yatırımcıları alana yatırım yapmaya teşvik edecek medya siyasalarının hayata geçirilmesi önerilir. Paralı televizyonu özendirmek ve reklam uygulamaları üzerindeki sınırlandırmaları gevşetmek (örneğin, yayın süresinin yüzde 20’sinin reklama ayrılması) ve ‘kaynak ülke’ ilkesinin benimsenmesi bu önerilerin bir parçası olarak sunulur. Sonuçta, esas olarak özel yayıncılığı izin veren bir düzenlemenin uygulanması önerilir.

Yukarıda sayılan öneriler, aslında AB’nin yayıncılık siyasasında **öncelikli, ana siyasa konularını** oluştururken, Yeşil Belge’de **ikincil önemdeki siyasa meselelerine** de değinilir. İkincil konular arasında, siyasa sürecinde çıkarı olanlar



açısından en az tartışmalı ve işin ticari boyutuyla en az ilgili konular vardır. Esasen bunlar tütün ürünlerinin reklamlarda yer alıp almaması, zararlı yayınlardan ‘küçüklerin korunması’ müstehcenlik meselesi ya da devlet sırlarının yayın yoluyla ifşası ve cevap hakkının düzenlenmesi gibi konularla ilgilidir.

Ana siyasa meselelerine odaklanıldığında görülmektedir ki, Yeşil Belge temelde yayıncılık alanı için bir serbestleşme önermektedir (Orf, 1990). Bu öneri AB otoritelerince benimsenmiş ve 1989 yılında Sınır Ötesi Televizyon Direktifi (89/552/EEC) yürürlüğe sokulmuştur. Direktif yukarıda anılan Yeşil Belge’deki önerileri büyük çoğunlukla hayata geçirmekle birlikte, Avrupa’da kültürel içeriğin korunması için ise ‘kültürel kota’ olarak anılan bir uygulama da getirmiştir. Buna göre yayıncıların yayın içeriklerinin önemli bir kısmını Avrupa’da üretilen içeriklere ayırması istenmiştir. Ayrıca yayıncılıkta reklam yoluyla finansmanın önü tamamen açılırken ‘reklamın editoryal içerikten net bir şekilde ayrılması’ ilkesi de benimsenmiştir. Bu direktif 1997’te küçük çaplı bir revizyona tabi olmuştur. 1997’deki revize edilmiş direktif metninde bir ‘(Avrupa) Enformasyon Toplumu kurma amacı’na gönderme yapılmış ve ilk kez “Enformasyon Toplumu” kavramı medya siyasasına ilişkin bir metinde yer almıştır.

## **KISIM II**

### **“ENFORMASYON TOPLUMU SİYASALARI”: TELEKOMÜNİKASYON SİYASASI VE “YENİ” MEDYA SİYASASININ YÖNDEŞMESİ**

Tezin ikinci kısmında telekomünikasyon sektöründeki ‘tam serbestleşme’ için bir şemsiye terim olarak kullanılan ‘Enformasyon Toplumu Siyasaları’ ile medya siyasası arasındaki bütünleşme ele alınmaktadır. Üç bölümden oluşan bu kısımda önce ‘Enformasyon Toplumu Projesi’ nin medya siyasasına doğru genişlemesi ve daha sonra ise yeni medya direktifinin oluşum süreci irdelenmektedir.

# BÖLÜM I

## SERBEST PİYASAYA İNANÇ VE “AVRUPA ENFORMASYON TOPLUMU”NUN İNŞASI

1990’ların ortasında bir yandan uluslararası ticarete yeni bir serbestleşme döneminin önünü açan Uruguay Yuvarlak Masa Müzakereleri bir yandan da ABD’nin Ulusal Enformasyon Altyapısı projesini 1992 yılında başlatması gibi etkenler neticesinde AB de 1993 yılından başlayarak bir dizi belgede “Avrupa Enformasyon Toplumu”nun kuruluşuna ilişkin temel stratejisini ortaya koymuştur (bkz. European Commission, 1993; European Commission, 1994a; European Commission, 1996a; European Commission, 1997d ). Bu belgeler içinden en önemlisi Bangemann Raporu olarak da bilinen, başkanlığını neo-liberal doktrine yakınlığıyla tanınan Komisyoner Martin Bangemann’ın yaptığı ve içinde pekçok sektör temsilcisinin olduğu bir grup tarafından hazırlanan belgedir.

### **1.1. Bir Siyasa Hedefi Olarak “Avrupa Enformasyon Toplumu”nun İnşasına Yönelik Başlıca İnisiyatif Olarak Bangemann Raporu**

Bangemann Raporu AB’nin “Enformasyon Toplumu”na yaklaşımını belirler ve kendinden sonra gelen tamamlayıcı belgelerin hemen hepsi üzerinde belirleyici bir etkiye sahiptir. Bu belgede, temelinde teknolojik gelişmelerin olduğu bir “Enformasyon Devrimi”nin beraberinde toplumlar ve ekonomiler için ‘fırsatlar’ ve ‘riskler’ getirdiğinden bahsedilmektedir. ‘Riskleri’ berteraf edip, ‘fırsatları’ yakalamak için ‘pazar mekanizmalarına güven duyulması’ gerektiği ve ‘girişimci bir ruhu kılacak özel sektör liderliği için uygun ortamın yaratılması’ gerekliliği vurgulanmaktadır. Bu uygun ortam içinde yeni siyasalar geliştirilmesi gerektiği savunulur. Özellikle iletişim ve enformasyon sektöründe ortaya çıkan bu değişimin yarattığı ‘fırsatlardan’ yararlanmak için bu sektörlerde (özellikle telekomünikasyon sektöründe) bir ‘tam serbestleşme’ belgedeki temel somut önerilerden biridir.

Bu belge teknoloji ve toplum arasındaki ilişkiye teknolojik belirlenimci bir açıdan yaklaşılmasının ve neo-liberal doktrine uygun siyasaaların hayata geçirilmesini öneren piyasa merkezli bakış açısının söylemsel düzeyde üretilmesinin güzel bir örneğidir. Goodwin ve Spittle'ın (2002) çalışmalarında da görüldüğü gibi “Avrupa Enformasyon Toplumu” projesine ilişkin AB söyleminin temel özelliklerini bu metinde görmek mümkündür. Ancak metnin önemli bir eksiği, ekonomik ve endüstriyel kaygılara fazlaca değinirken “Avrupa Enformasyon Toplumu”nun ‘toplumsal’ boyutuna ilişkin stratejik bir yaklaşım geliştirmemesidir. Sonraki strateji belgeleri ile AB bu eksikliği gidermeye çalışmıştır.

## **1.2. Sosyal Boyutun “Enformasyon Toplumu Siyasaalarına” Dahil Edilmesi**

Bangemann Raporu'nun ardından gelen bir dizi belgede Komisyon'un “Enformasyon Toplumu”nun kuruluşuna ilişkin sosyo-kültürel hedefleri tanımlamayı amaçladığı görülmektedir. Bu belgelerden en tipik olanı “Yeşil Belge – Enformasyon Toplumu'nda Yaşama ve Çalışma: Önce İnsanlar” başlıklı belgedir (European Commission, 1996a).

Bu belgeye göre, ‘yeni bir endüstriyel ve girişimci kültür gelişmektedir ve bu kültürde başarılı olmak için değişime ayak uydurmak, enformasyon teknolojisi okur-yazarı olmak, geleneksel çalışma yöntemlerini değiştirmek gereklidir’. Bunun için de, insanları yeni teknolojiyi kullanmada cesaretlendirmek, yeni iletişim sektörlerinde çalışacak ‘insan kaynaklarını’ eğitmek için kamu yatırımlarını yönlendirmek gerekmektedir. Bu belgede, sosyal boyutun aslında insanların içinde yeni teknolojiler için talep yaratacak ve yeni teknolojinin yoğun kullanıldığı sektörlerde verimli biçimde çalışacak bir ‘insan kaynağı’ olduğu bir ortam olarak görüldüğü ortaya çıkmaktadır. “Enformasyon Toplumu”nun demokrasi, insan hakları ve kültürel çeşitlilik gibi konulardaki sonuçları ise

belgede kısaca değinilen konular arasında kalmıştır. Bu belgenin yayımlanması sonrasındaki somut gelişmelere bakarak zaten sosyokültürel kaygılardan ziyade AB'nin kaygısının Bangemann Raporu'nda önerildiği üzere iletişim ve enformasyon sektöründe, başta telekomünikasyon olmak üzere bir 'tam liberalizasyon' olduğu anlaşılmaktadır.

### **1.3. Tam Liberalizasyon ve Bunun Elektronik İletişim Üzerindeki Etkileri**

1990'lara gelindiğinde, kısıtlı ve bir serbetleşme ve üye ülkeler arası uyum sağlamaya odaklı siyasaaların dönüşmeye başladığı gözlemlenir. 'Yöndeşme' bu dönemin dikkat çeken olgularından biridir. Bu dönemde ardarda çıkarılan iki ayrı direktif tüm uydu ve kablo altyapısını telekomünikasyon altyapısına bağlamış ve böylece onları aynı siyasalara tabii kılmıştır (European Commission, 1994b; European Commission, 1995). Hemen bunların ardından ise tüm telekomünikasyon altyapısında 'tam liberalizasyon' öngören "Telekomünikasyonda Tam Rekabetin Uygulanması" başlıklı bir direktif (European Commission, 1996b) yürürlüğe konmuştur. Bu kararların alınmasında ve üye devletler tarafından uygulanmasında Avrupa Rekabetçi Telekomünikasyon Birlikleri (ECTA) gibi şirket örgütleri önemli rol oynamıştır (Bartle, 2005).

Bu süreç sonucunda pekçok Avrupa ülkesinde ulusal tekel konumundaki telekomünikasyon kurumları hisseleri borsada işlem gören, ulusötesi şirketlerle işbirliklerine giden, 'verimliliği' temel amacı haline getirirken çalışan sayıları gittikçe azalan özel işletmelere dönüşmüşlerdir. Bu süreçte telekomünikasyon hizmetlerinde belirleyici ilke olan 'evrensel hizmet' ilkesi de zeminini ve işlerliğini kaybetmiştir (bkz. Marino 2007a; Knieps, Müller and Heuermann, 2007; Thatcher, 2008). Yayıncılığa gelince, 1980'lerden 2000'lere gelirken en önemli değişimin kamu hizmeti modelinin yerini ticari yayıncılık modeline bırakmış olmasında olduğu gözlemlenmektedir. Bu ortamda Sınır Ötesi Televizyon Direktifi'nin (TVWF) yürürlüğe girmesini takiben özel medya

şirketlerinin sayısı ve etkinliği artmıştır. Artan bir başka şey de Avrupa Adalet Divanı'na götürülen yayıncılıkla ilgili davalardır. Bu davalarda Adalet Divanı yayıncılık alanında 'tek pazarın' kurulması amacına yönelik kararlar almıştır (Harcourt, 2005).

Rekabet ve liberalizasyonu artıran siyasa çerçevesi yayıncılıkta serbest pazar ilkelerini beraberinde getirmiş, program akışlarının, içeriğin ve yayıncılık değerlerinin değişmesine neden olmuştur. Bunun bir doğal sonucu eğlence içerikli yayınlar program akışı içinde daha fazla yer bulmaya başlamıştır (Souchon, 1992). Buna uygun olarak, ekonomik ve ticari değerleri benimseyen bir siyasa söyleminin hakim hale geldiği bir yaklaşım ortaya çıkmıştır (Cuilenburg and McQuail, 2003).

Ayrıca, artan ticarileşme ve rekabet, denenmiş formlara ve ucuz içeriğe bağımlılığı artırmış; bunun sonucunda da Amerikan medya endüstrisinin Avrupa piyasalarındaki hakimiyeti artmıştır. Buna bir de internet tabanlı bilgisayar teknolojilerinin medya ortamında yol açtığı dönüşümü eklemek gerekir. Artık izleyici kendine belli bir paket içinde sunulan içeriğe istediği zaman ulaşabilen bir 'kullanıcıya' dönüşmüştür. Yine de yeni medya ortamında 'kullanıcı' basitçe hakim konumda değildir; çoğunluğu yine Amerika merkezli donanım/yazılım şirketleri ile (Apple Inc., Microsoft vb.) içerik üretici ve yönlendirici platformların (Youtube, Facebook vb. şirketler) sunduğu hizmetlere bağımlı hale gelmiştir. Yeni medya ortamı yöndeşme eğiliminin somut bir sonucudur ve bu Amerika'nın hakimiyetini artırmaktadır. Aslında medya endüstrisinin bu yönde gelişeceği 1990'ların sonundan itibaren görülmeye başlanmış ve AB kurumları tarafından buna uygun adımlar atılmaya çalışılmıştır.

#### **1.4. “Enformasyon Toplumu Siyaseti”nin Medya Siyasetine Doğru Genişlemesi**

AB'nin “Enformasyon Toplumu”na geçilirken sadece altyapıya yatırım yapmasının yeterli olmayacağı, bu altyapı üzerinden ulaşılacak içeriğin de geliştirilmesi için gerekli adımların atılması gerekliliği görülmüş ve 1990'ların sonlarından başlayarak bir dizi araştırma ve geliştirme programı yürürlüğe sokulmuştur. 2001-2008 yıllarını kapsayan ‘E-içerik’ ve ‘E-içerik artı’ olarak adlandırılanlar bu programlardan öne çıkanlardır. Bu programlara ilişkin belgelere bakıldığında kültürel çeşitlilik ve demokrasinin geliştirilmesi gibi retorikte altı çizilen konulardan ziyade yöndeşme içindeki enformasyon ve iletişim sektörünün ekonomik sömürsünün esas amaç olduğu göze çarpmaktadır.

Bu yaklaşım 2000 yıllarda yayınlanan strateji belgelerinde de korunmuştur. E-Europe 2002 (European Commission, 2001b) ve E-Europe 2005 (European Commission, 2002b) önceki programlarda ortaya konulan ana hedefleri bilgisayar ve internetin toplum içinde kullanılmasının geliştirilmesi hedefine yoğunlaşarak büyük ölçüde tekrar etmişlerdir. Ancak takip eden i2010 strateji belgesi (European Commission, 2005) diğerlerinden **medyayı** süregelen “Enformasyon Toplumu Siyasetlerine” açıkça dahil etmesi ve bunu yeni ve “bütünleşik” bir strateji olarak tanımlaması açısından ayrılır. Böylece sadece içerik geliştirilmesi değil, mevcut içerik endüstrisinin de “Enformasyon Toplumu” amacı ve buna uygun siyasetlere göre şekillendirilmesinin önü açılmış olur.

## **BÖLÜM II**

### **“Yeni” Medya Direktifinin Kabul Edilmesi**

Yeni milenyumun ilk yıllarında, AB otoriteleri o zaman yürürlükte olan medya direktifinin yetersiz kaldığı ve yeni medya ortamına uyarlanması veya tümüyle

değiştirilmesi konusunda ikna olmuş durumdaydılar. Başlatılacak olan yeni medya siyaseti sürecinde, öncelikli ve ikincil medya siyaseti konuları yeniden tanımlanacak ve kabul edilmesi amaçlanan kuralların meşrulaştırılması için yeni bir söylem geliştirilecektir.

## **2.1. Şekillenme Safhası (2002-2005): Revizyonun Savunulması**

Sınır Ötesi Televizyon Direktifinin dördüncü ve son kez gözden geçirilmesi ve daha sonrasında da tümüyle değiştirilmesine giden süreç 2002 yılındaki Komisyon belgesi ile başladı (European Commission, 2002). Bu belgede, görsel-ışitsel medya sektöründe ‘rekabetçi’ ve yeni teknolojik yapıya uygun bir düzenleyici çerçevenin adapte edilmesi savunuldu.

Dikkat çekici bir unsur belgenin hazırlanmasına yardımcı olan danışmanlık şirketleri tarafından hazırlanmış bir dizi raporun belgede çokca referans edilmesidir (Bird&Bird Brussels, 2001; Carat Crystal, 2002; Andersen, 2002). Komisyon tarafından 2001 ve 2002 yıllarında hazırlattırılan bu raporlarda ortak olarak yayıncılığın ekonomik öneminin gelecekte gittikçe artacağına, teknolojik gelişmelerin yayıncılığın özellikle finansmanında yeni yollar yarattığına, fakat geleneksel yasal düzenlemelerin bunlardan faydalanmayı engellediğinin altı çizilmiştir. Ortaya çıkan ‘düzenlemedeki boşluğun’, ‘esnek’ bir düzenleyici çerçeve ile – özellikle ‘öz-denetim’ yöntemlerini de cesaretlendirerek doldurulması gerektiği savunulur. Bu raporlarda yeni reklam tekniklerine (etkileşimli reklam, sanal reklam ve vb.) izin verilmesi, çevrimiçi (online) medya hizmetlerinin geleneksel yayıncılıktan ayrı bir şekilde düzenlenmesi gibi temalar ilk defa AB’nin mevzuatında ifade bulmuştur. Ayrıca ‘doğrusal olmayan’ (non-linear) medya hizmetleri ve ‘ürün yerleştirme’ (product placement) gibi kavramlar da ilk defa bu raporlarda yer alır.

Bu raporların öneri ve öngörülerini ışığında Komisyon bir yol haritası sunar (European Commission, 2002). Buna göre önce altı farklı siyaset teması

tanımlanmış ve bu temalarla eşleşen tartışma metinleri hazırlanmıştır. Bu temalardan ikincisi ve üçüncüsü ana veya öncelikli siyasa meseleleri olarak anılabilecek yeni medya ortamında ‘kültürel kota’ uygulamasının nasıl olması gerektiği ve reklam yayınlarında yeni bir liberalizasyona gidilip gidilmeyeceği ile ilgilidir. Diğer temalar ‘küçüklerin korunması’, ‘cevap hakkı’ ve ‘önemli olaylarla ilgili kısa haber yapma hakkı’ gibi yan veya ikincil olarak anılabilecek siyasa konularına ayrılmıştır.

Bu temalar ve tartışma metinleri aracılığıyla 2003 yılında bir kamu istişaresi yapılmıştır (bkz. Appendix 1). Daha sonra 2005 yılında da yine benzer temalar etrafında ikinci bir kamu istişaresi yapılmıştır (bkz. Appendix 2). Bu kamu istişarelerine 290’a yakın farklı katılımcı (özel şirketler ve birlikler, tüketici örgütleri, hükümetler ve ilgili kamu kuruluşları vb.) pozisyon kağıtları sunmuşlardır. Her iki kamu istişaresinden sonra AB kurumları katılımcıların büyük oranda Komisyonun yaklaşımını destekler nitelikte bir oydaşma içinde olduklarını iddia etse de pozisyon kağıtları incelendiğinde özellikle ana siyasa konularında önemli görüş farklılıkları olduğu görülmüştür.

Bu kamu istişarelerine ek olarak Komisyon 2003-2005 yılları arasında odak ve uzman grup toplantıları organize eder, bir konferans düzenler ve özellikle öncelikli siyasa konularındaki tartışmalarla ilgili hayati öneriler içeren çeşitli belgeler yayınlar. Örneğin, bunlardan bir tanesi olan Komisyonun 2004 yılında yayınladığı “interpretive Communication”da (European Commission, 2004) ilk defa yeni reklam tekniklerine (öncelikli olarak “ürün yerleştirmeye”) ‘izleyicilerin uygun işitsel ve görsel yöntemlerle uyarılmaları halinde’ izin verilebileceği ifadesi yer almıştır. Bunu takip eden odak ve uzman grup toplantılarında da destekleyici bazı öneriler ortaya çıkmıştır.

Aynı söylemsel strateji, yani Komisyonun kendi hazırladığı raporlarda ve kendi belgelerinde öne sürülen iddiaları verili kabul edip ulaşılması istenen liberalizasyonu meşrulaştırma stratejisi, yeni reklam teknikleri dışındaki



konularda da (çevrimiçi ortamlardaki yayıncılığın mümkün olan en az kurala tabii olması gerektiği savında olduğu gibi) uygulanmıştır. Böylece, bir revizyondan ziyade, tamamen ‘esnek’ bir siyasa örneği olacak yeni bir medya direktifinin temelleri atılmıştır.

## **2.2. Yeni Direktifin Yürürlüğe Konması Safhası (2005-2007): GİMH Direktifi**

Komisyon 2005 yılında çalışmalarını nihayete erdirip yeni medya direktifi’ne ilişkin öneriyi (COM 2005/646) Bakanlar Konseyi’ne ve Parlamento’ya iletmiştir. Her ne kadar Parlamento’da öze ilişkin olmayan bazı değişiklikler yapılması istense de öneri, hem Konsey hem de Parlamento’da onanmış ve 2007 yılında yürürlüğe girmiş, ulusal mevzuatlara geçirilmesi için üye ülkelere önce 2010 sonra 2012’ye kadar süre tanınmıştır. Yeni direktife ilişkin Parlamento’daki genel eğilim ve Komisyon’un tutumunun aslında aynı yönde olduğu Parlamento’da çoğunluğu elinde bulunduran liberal Avrupa Halk Partisi’nden bir üyenin hazırladığı Parlamento raporunda yer alan şu ifadelerden anlaşılmaktadır:

i2010 hedefine ilke olarak, deregüle edilmiş bir pazarda istihdam yaratacak, yenilik getirecek, canlanma sağlayacak küçük yeni işletmelerin ortaya çıkmasına ve endüstrilerin minimum düzenleme ile büyümesine izin vererek ulaşılabacaktır (resital 7).

Sonuç olarak GİMH Direktifi AB medya ortamı için pekçok yeni kuralı beraberinde getirir. Direktif metninde önce ‘medya hizmetlerinin hem bir ekonomik hem de kültürel bir faaliyet’ olduğuna değinilir. Daha sonra i2010 belgesine gönderme yapılarak “Enformasyon Toplumu” amacının gerektirdiği ‘yenilikçi’, ‘yeni iş ve istahdam’ yaratıcı bir serbest piyasa ortamının kurulması gerektiğinden bahsedilir. Yani, aslında kültürel amaçların da önemli olduğu retoriksel olarak belirtilir ama esas olarak ekonomik kaygılar ve serbest piyasa yanlılığı öne çıkarılır.

Bu yaklaşıma uygun olarak ve siyasa sürecinin en başından beri tasarlandığı üzere, yeni direktif istek üzerine ulaşılan (on-demand) internet tabanlı medya ortamının çok gevşekçe düzenlenmesini ve yeni reklam tekniklerine izin verilmesinin önünü açar, aynı zamanda geleneksel reklam uygulamalarında yeni bir serbestleşme sağlar. Bunun bir sonucu olarak özellikle çevrimiçi medya hizmetleri alanında ‘kültürel kota’ uygulamasının pratikte devam etmesinin zor olduğu bir yasal çerçeve ortaya çıkar. Sonuçta, GİMİH Direktifi Avrupa medya siyasasında çok geniş çaplı bir liberalizasyon getirmiştir.

## **BÖLÜM III**

### **Yeni Direktifin Şekillenmesi Süreci İçinde Çıkarı Olan Gruplar**

GİMİH Direktifi ile getirilen liberalizasyonun geniş çaplı bir katılım ve oydaşma süreciyle gerçekleştiği AB kurumları tarafından birçok kez altı çizilen bir konu olmuştur. Ancak süreç daha yakından incelendiğinde bir oydaşma olmadığı, özellikle öncelikli siyasa konularında katılımcılar içinde farklı çıkar ve söylem gruplarının olduğu ve bunlar arasında derin görüş ayrılıkları olduğu görülebilir.

#### **3. 1. GİMİH Direktifinin Şekillenme Sürecinde Çıkarı Olan Grupları Tanımlamak**

Siyasa sürecine katılanların kamu istişarelerine sundukları pozisyon metinlerine bakarak bu katılımcıların örgütsel kimlikleri ve öncelikli siyasa konularına yaklaşımları açısından dört gruba ayrılacakları görülmüştür. Bu gruplar şöyledir: Medya ve iletişim sektöründe faaliyet gösteren veya bu sektörle ilgili özel şirket ve birlikler (Grup 1); ulusal hükümet, ilgili kamu kuruluşları ve kamu hizmeti yayıncıları (Grup 2); sivil toplum kuruluşları (STK’lar) (Grup 3); ve aslında temelde çoğunluğu STK’lar içinde de sayılabilecek ama ana siyasa konuları açısından Komisyon’un yaklaşımına muhalif olan katılımcılardır (Grup 4). Bu grupların her birinin farklı bir ‘söylem koalisyonu’ oluşturduğu yapılan

incelemede gözlemlenmiştir. Aşağıda, önce bu grupların görüşleri tematik bir boyutta incelenmiş ve temel karşıtlıklar saptanmaya çalışılmıştır, daha sonra ise grupların içinden seçilen tipik örneklerin siyasa sürecine yaklaşımları irdelenmiştir.

### **3.2. Çıkar Gruplarının Söylemlerinin Tematik Analizi**

Kamu istişaresinin katılımcılarının pozisyon metinleri üzerinden yapılan inceleme sonucunda tanımlanan gruplar içinden Grup 1'in yaklaşımı ile Grup 4'ün yaklaşımları arasında ciddi bir uyuşmazlık ve hatta zaman zaman tezatlık olduğu görülmüştür. Grup 1'in çoğunlukla Komisyon'un yaklaşımına ve siyasa önerilerine destekleyici bir şekilde yaklaştığı, Grup 4'ün ise özellikle ana siyasa konularında yapılması planlanan değişikliklere büyük ölçüde karşı çıktığı görülmektedir. Bu gruplar arasındaki tartışmanın üç noktada toplandığı görülmektedir: Bunlar yeni direktifin kapsamının internet tabanlı hizmetlere de genişleyip genişlemeyeceği; 'kültürel kota' uygulamasının sayısal ortamdaki geleceği; ve en önemlisi yeni reklam tekniklerine izin verilip verilmeyeceği.

Bu tartışmada Komisyonun "Enformasyon Toplumu" hedefine de yaslanarak yapmış olduğu internet tabanlı medya hizmetleri sektörünün (çevrimiçi) mümkün olan en az kuralla düzenlenmesi, 'kültürel kota' uygulamasının yeni hizmetlere genişletilmemesi ve yeni reklam tekniklerine izin verilmesi önerisi Grup 1'in üyeleri tarafından büyük oranda desteklenmiş, Grup 2 ve 3'ün üyeleri tarafından da reddedilmemiştir. Grup 1'in üyelerinin bu desteği verirken Komisyon'un söylemine paralel biçimde 'teknolojik gelişmelerin yeni fırsatlar yarattığı', 'bu fırsatlardan yararlanmak için özel sektörün önünün açılması gerekliliği' temalarını fazlaca kullandıkları görülmüştür. 'Esnek düzenleme', 'öz-denetim' gibi yeni direktifte öne çıkarılan kavramların da Grup 1'in üyelerince sıklıkla kullanıldıkları gözlemlenmektedir. Buna karşın Grup 4'ün üyeleri 'yeni medya ortamının sıkı kurullarla düzenlenmesi', 'kota uygulamasının ve kültürel çeşitliliğe desteğin genişletilmesi' ve 'yeni reklam tekniklerine, özellikle ürün

yerleřtirmeye' izin verilmemesi temaları üzerinde yoęunlařtıkları gözlenlenmiřtir. Ayrıca, Grup 4'ün Komisyon tarafından gündeme getirilen tartiřma konularının da ötesine geçerek 'demokrasinin geliřtirilmesi' ve 'medya mülkiyet yapısının da direktif kapsamına' alınması gereklilięi gibi temaları seslendirdikleri görölmüřtür.

### **3.3 Seçilen Pozisyon Metinlerinin Detaylı Analizi**

Bu kısımda yukarıda tanımlanan gruplardan seçilen bazı katılımcıların pozisyon kaęıtları irdelenerek gruplar arasındaki söylemsel farklılıklar daha iyi anlaşılmasına çalışılmıřtır.

#### **3.3.a. Grup 1 – Medya Sektöründeki Özel Firmalar**

Hernekadar yöndeřme neticesinde medya sektöründe faaliyet gösteren özel firmalar arasına telekom operatörleri ve bilgisayar dünyasının řirketleri katılmıř olsa da, hala bu grubun en tipik temsilcileri özel yayıncılar ve reklamcılardır. Örneęin, Avrupa'da faaliyet gösteren Ticari Televizyoncular Birlięi (ACT) ve Dünya Reklamcılar Federasyonu (WFA) bu grubu temsilen incelenebilir.

Bu iki katılımcının gerek direktif hazırlanırken sundukları pozisyon kaęıtlarına gerekse süreç öncesi ve sonrasındaki faaliyetlerine bakıldıęında bu katılımcıların yaklaşım ve söylemleri ile Komisyonunkiler arasında bir paralellik göze çarpmaktadır. Zira özellikle ACT'nin yetkililerinin Komisyon'a, özellikle Enformasyon Toplumu ve Medya'dan sorumlu Komisyoner Viviane Reding'in řahsında, yeni direktifin hazırlanıřı için defalarca teřekkür edip desteklerini sundukları görölmüřtür. Bu katılımcılar ortak olarak yeni teknolojik ve endüstriyel geliřmelerin Avrupa medya ortamını daha 'rekabetçi' olmaya zorladıęını ve yeni direktifin bunun için uygun finans kaynakları ve 'esneklik' sağladıęının altı çizilmiřtir. Bu açıdan medya alanında faaliyet gösteren özel řirketler, özellikle büyük sermaye gruplarına dahil řirketlerin, tüm önemli konularda Komisyon'u destekledikleri savunulabilir. Komisyon ile büyük medya řirketleri arasındaki paralellik o boyuttadır ki yeni medya ortamında Avrupa'lı

içerik üreticilerine daha fazla destek olunmasını talep eden küçük ölçekli medya şirketlerinin istekleri büyük medya şirketeri ile çakıştığından yeni direktifte kendilerine yer bulamamışlardır.

### **3.3.b. Group 2 – Kamu Kurumları**

Hükümetler, ilgili kamu kuruluşları ve kamu hizmeti yayıncılarının çoğunlukla Komisyon'un yaklaşım ve söylemine muhalif bir tutum içinde olmadıkları gözlemlenmiştir. Bu gruptaki katılımcılar arasındaki tartışma daha çok ülke sınırlarını aşan yayınlarda ulusal hükümetlerin nasıl karar alacaklarına ilişkin belirlenen mekanizmalara ilişkin teknik denebilecek düzeydeki tartışmalardır. Kamu kurum ve kuruluşları yeni medya ortamında kültürel amaçların gerçekleştirilmesi ve korunması ile ilgili kaygıların altını retorikte çizseler de, bu konuda alınacak kararların ortaya çıkarabileceği sorunlarla ilgili belli bir muhalif söylem geliştirmemişlerdir.

Bunun istisnası yeni reklam tekniklerine, özellikle “ürün yerleştirme”ye izin verilmesi konusunda ortaya çıkan muhalefettir. Bunun tipik örneği, İngiliz kamu hizmeti yayıncısı BBC ve Alman ARD-ZDF kanallarının sert biçimde “ürün yerleştirme”nin bir finans yolu olarak yasallaştırılmasına karşı çıkmalarıdır. Kamu hizmeti yayıncıları böyle bir düzenlemenin Sınır Ötesi Televizyon Direktifi ile belirlenen en temel ilkenin, yani reklam ile editoryal içeriğin kesin olarak ayrılması ilkesinin, sonu anlamına geleceğini belirtmişlerdir.

### **3.3.c. Grup 3 – STK'lar**

Grup 3'ün üyeleri diğer gruplarla kıyaslandığında ana siyasa konularında en pasif konumdaki üyelere aittir. Bu gruptaki katılımcılar ya sermaye gruplarıyla bağlantılı olup da medya sektörünün düzenlenmesinde ‘öz-denetim’ gibi mekanizmaları destekleyen görüşler üretmişlerdir (örn. Media Smart) ya da belli bir sağlık konusu üzerine uzmanlaşmış dernek, forum vb. kuruluşlar olarak sadece bu

konulara odaklanmışlardır (örn. Avrupa Kalp Ağı-EHN). Bu gibi katılımcılar, genelde birkaç sayfalık pozisyon kağıtları sunmuşlar ve bu kağıtlarda da son derece sınırlı - ‘küçüklerin zararlı yayınlardan korunması’ ya da ‘sağlığa zararlı ürünlerin reklamı’ gibi - konularda direktifte daha açık ve koruyucu hükümler konulması dışında bir talep veya görüş bildiriminde bulunmamışlardır.

### **3.3.d. Grup 4 – Muhalif Grup**

Grup 4’ün üyeleri çoğunlukla tüketici örgütleri, sanatçı birlikleri, emek örgütlenmeleri gibi kuruluşlardır. Sayıca diğer gruplarla karşılaştırıldığında en küçük gruptur. Ancak tüm Avrupa halklarının elektronik iletişim ortamında haklarını savunmaları açısından aslında en geniş temsil gücüne sahip gruplardan biri olarak da görülebilir. Bu grubun söylemi sermaye gruplarının (Grup 1) ve Komisyonun ortaklaştığı siyasa söylemine zaman zaman tamamen zıt bir söylemdir.

Bu grubun üyelerinin kamu istişarelerinde sundukları görüşler çoğunlukla Komisyon tarafından çizilmiş sınırların ötesindedir. Örneğin, Avusturya Federal Emekçiler Birliği (AK Österreich), demokrasinin ilerlemesi ve daha kültürlü hale gelmek için Avrupa halklarının enformasyona ve daha nitelikli programlara ihtiyaç duyduğunu vurguladıktan sonra ‘adil olmayan ticari kazanç uygulamalarının’, ‘adil olmayan rekabetin’ ve “saldırgan” diye nitelediği yeni reklam tekniklerinin engellenmesini talep eder. Benzer şekilde İtalya’da İletişim Organizasyonlarının Kordinasyonu Konseyi (COPERCOM), çağdaş toplumlarda ‘tek-boyutlulaştırıcı bir eğilim’ olduğunu ve buna karşı ‘alternatif değer yargıları, yaşam tarzları, doğal ve kentsel yaşam alanları’ oluşturmanın önemine değinerek medyanın toplumsal işlevinin bu olması gerektiğine işaret eder.

Avrupa’nın en büyük tüketici koruma örgütü Brüksel merkezli Avrupa Tüketiciler Örgütü (BEUC) de bu grubun en aktif üyesi olarak benzer söylemleri süreç içinde tekrar etmiştir. BEUC ilgili siyasa süreçlerine aktif olarak katılan örgütlerden

biridir. Ancak örgütün yetkililerinin de belirttiği gibi ‘BEUC’un ilgili toplantılara çağrılı olması sözünün dinlendiği anlamına gelmemektedir’. Daha ziyade BEUC ve benzeri katılımcılar varlıklarıyla benzer siyasa süreçlerine demokratik bir görünüm kazandırmaktadır. Bunun yerinde bir kanıtı BEUC’un yeni medya direktifine ilişkin siyasa sürecinin en başından itibaren yeni reklam tekniklerine, özellikle “ürün yerleştirme”ye karşı olan muhalefetinin yeni direktifte karşılık bulamaması ve neredeyse tamamen görmezden gelinmesidir. BEUC, Komisyon’un “ürün yerleştirmeye” izin verilmesi için geliştirdiği söylemin aslında tamamen “gayrimeşru” bir durumun meşrulaştırılması olarak görülmesi gerektiğinin altını çizer. BEUC, bunun “advertainment”<sup>244</sup> anlayışının bir ürünü olduğunu, pratikte “gizli reklam” ile “ürün yerleştirmenin” farkının ortadan kalktığının ve bu durumun da AB’nin kültürel gelişim ve zararlı içeriğin engellenmesine yönelik siyasasına tamamen aykırı olduğunu belirtir.

Tüm bu muhalif katılımcıların söylemlerinde ticari kuruluşlara ve medya ortamının ticarileşmesine derin bir kuşkuyla yaklaşıldığı ve bunlara karşı insanların eşit biçimde ulaşabilecekleri nitelikli medya içeriğinin korunması ve geliştirilmesinin savunulduğu gözlemlenmektedir. Yeni direktifte medya mülkiyetinin ele alınması gerektiği, kültürel çeşitliliğin korunmasının yeterince gözetilmediği ve “öz-denetim” gibi kavramların kabul edilemez olduğu, ödemeli medya hizmetlerine karşı bedava erişimli medya hizmetlerinin korunması gerekliliği de bu grubun üyeleri tarafından altı çizilen konular arasındadır.

### **3.4. GİMİH Direktifinin Genel Karakterine İlişkin Bir Değerlendirme**

GİMİH Direktifinin genel doğası liberalizasyondur (Geach 2008). Bunun kamu çıkarının korunmasına ilişkin bir takım sonuçları vardır. GİMİH Direktifine ilişkin literatürdeki eleştirel çalışmalar özellikle bu sonuçlara odaklanmaktadır. Örneğin, Haug (2008) yeni direktifin ‘çocukların ve gençlerin korunmasına’ ilişkin

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<sup>244</sup> “Reklam” (advertisement) ve “eğlence” (entertainment) kelimelerinin bileşiminden oluşan ve ticari yayıncılık ortamındaki reklamlarla karışık eğlence içeriği üretmeye dayalı anlayışa gönderme yapmak için kullanılan bir terim.

kaçırılmış bir fırsat olduğunu belirtir. Burri (2007) ise dinamik ve karmaşık bir medya ortamında kültürel kota uygulamasının olduğu gibi korunmasının boş bir çaba olduğunu ve yeni bir yaklaşıma ihtiyaç duyulduğunu vurgular. Woods (2008) dikkatleri ‘gizli/bilinçaltı reklam’ ile “ürün yerleştirme” arasındaki farkın belirsiz olduğu olgusuna çeker. Pekman’a (2009) göre ise yeni direktifteki esas olumsuz yan AB’nin üzerinde durduğu medya okur-yazarlığının geliştirilmesi ile ilgili çabalarla çelişki içinde olmasıdır.

Eleştirel açıdan konuyu ele alan yazarlara göre “başarılı lobi faaliyetleri” böyle bir sonucun ortaya çıkmasında temel etkenlerden biridir. Ancak lobi faaliyetleri yanında bu türlü faaliyetleri izin veren ve destekleyen AB’nin yapısal yanlılığına da değinmekte fayda vardır.

### **3.5. AB’nin Yeni Direktifin Şekillenmesinde Büyük Sermaye Lehine Yanlılığı**

AB’nin “Enformasyon Toplumu”na ilişkin siyasalarında en belirgin söylem “rekabetçiliğin” ve “teknolojik inovasyonun” öncelikli olarak vurgulandığı bir piyasa ortamının oluşturulması gerekliliğine ilişkin savunudur. Bu temel amaç ve buna uygun söylem medya siyasası söz konusu olduğunda hem Komisyon yetkilileri hem de Parlamento’da çoğunluğu elinde bulunduran liberal gruplar tarafından sürekli olarak onanmış ve desteklenmiştir. Örneğin, Martin Bangemann’ın “Enformasyon Toplumu Stratejisi” oluşturulurken neo-liberal görüşleri ile bir siyasi figür olarak öne çıkması gibi, yeni medya direktifinin hazırlanış sürecinde Enformasyon Toplumu ve Medya Genel Müdürlüğü’nün (DG Info) Komisyoneri Viviane Reding belirleyici bir rol oynamıştır. Reding 1990’ların sonunda itibaren Komisyon nezdinde eski medya direktifinin değiştirmesi gerektiğini savunmuştur. “Modernize edilmiş” kurallar ve “dinamik bir sektör” kurmanın gerektiğini savunan açıklamaları özel yayıncılar tarafından “ilham verici” ve “radikal” olarak tanımlanmıştır.



Aynı yaklaşımın bir uzantısı olarak saha araştırması sırasında yaptığımız görüşmelerde Komisyon'daki yetkililerin özel yayıncıların çıkarına olacak şekilde altyapısal kaygıların öne çıkarıldığı bir yeni medya direktifine muhalif olan katılımcıları görmezden gelme gayreti içinde oldukları gözlemlenmiştir. Örneğin, Enformasyon Toplumu ve Medya Genel Müdürlüğü'nün Görselişitsel ve Medya Siyasetleri Birimi'nin eski direktörü Jean Eric de Cockborne, bizim muhalif grup içinde değerlendirdiğimiz katılımcıların yüzlerce katılımcı içinde ancak küçük bir grup olduğunu ve diğerlerinden önem açısından bir farkları bulunmadığı savunarak, bu katılımcıların pozisyonlarını “aşırı uç” olarak nitelemiştir.

Aslında Komisyon yetkililerinin bu yaklaşımı Parlamento'ya da hakim bir yaklaşımdır. Parlamento'daki siyasi partilerin kompozisyonuna bakıldığında bu anlaşılmaktadır. Avrupa Halk Partisi (Hristiyan Demokratlar) ve Liberaller ve Demokratlar İttifakı (ALDE Grup) Parlamento'daki birinci ve üçüncü sıradaki partiler olarak çoğunluğu ellerinde bulundurmaktadırlar. Bu Partilere üye parlamenterlerin yeni medya direktifinin onanması sürecinde Komisyonun ve büyük şirketlerin ortak yaklaşımına yakın görüşler ürettikleri görülmüştür. Parlamento'daki sol eğilimli partilerin üyelerinin ise genellikle hakim yaklaşıma muhalif ve Grup 4'ün üyelerininkine benzer görüşler öne sürdükleri görülmüştür. Yani aslında tartışma temelde bir siyasal ayrıma işaret etmektedir ve özel sektöre liderlik verilmesi misyonu ile yakından ilgilidir. Parlemonun ikinci büyük grubu olan Sosyalistler ve Demokratlar Grubu (S&D Group) sözcüsü Henri Weber'in sözleri yaklaşım farkını çok net biçimde ortaya koymaktadır. Weber “ürün yerleştirmeye” izin verilmiş olmasına rağmen, “biz hala reklamcılarını ve ekonomi lobilerinin iştahını kontrol altına alamadık” demektedir.

## SONUÇ

En azından son yirmi yıldır, AB otoriteleri *teknolojik yenilik ve rekabetçiliği* öne çıkaran bir “Enformasyon Toplumu” anlayışını ortak iletişim siyasaları içinde

hayata geçirmek için uğraş vermektedir. Bu çabaların son bir safhası olarak, Komisyon, milenyumun ilk yıllarında yeni bir medya direktifini yürürlüğe sokmak için çalışmalar başlatmıştır. Bu tezde ana amaçlar yeni medya direktifinin oluşumunun hem medya ortamı hem de “Avrupa Enformasyon Toplumu” için sonuçlarını tartışmaya açmak ve bu siyasa sürecinin gerisindeki çıkar ve çıkar gruplarına ışık tutmaktır.

Bu amaçlara ulaşmak için tezin ilk kısmında önce “Enformasyon Toplumu” kavramının tarihsel geri planı özellikle neo-liberal doktrin ile ilişkisi açısından tartışılmıştır. Daha sonra ise AB’de iletişim alanına ilişkin ortak siyasaların başlangıcı ele alınmıştır. İkinci kısımda ise önce AB’de “Enformasyon Toplumu”nun 1990’larda genel bir toplumsal dönüşüm hedefi olarak belirlenmesi ve bunun için ortaya konan “tam liberalizasyonu” hedefleyen siyasaların hayata geçişi tartışılmış, sonra ise yeni medya direktifinin hazırlanması süreci gerisindeki çıkar ve çıkar grupları üzerine yoğunlaşarak irdelenmiştir. Yeni medya siyasasının oluşum süreci incelenirken özellikle yeni medya siyasasında ortaya çıkan hakim söylem ile AB’nin “Enformasyon Toplumu Projesi”nde ortaya konan ve altyapısal/endüstriyel kaygıları sosyo-kültürel kaygıların önüne koyan söylem arasındaki bağların ortaya çıkarılmasına yoğunlaşmıştır.

Sonuçta görülmüştür ki, AB’nin “Enformasyon Toplumu”nu sadece ekonomik açıdan değil toplumlara her açıdan ‘olumlu’ katkı yapacak ‘kaçırılmaması gereken bir fırsat’ olarak savunması medya siyasası açısından sadece retorikte kalan ve gerisindeki çıkarları gizleme işlevi gören bir söylemdir. Zira son kerte AB’nin yeni medya direktifi ticari yayıncılık ortamında kamusal çıkarın korunmasına ilişkin en temel ilke olarak görülebilecek ‘editorial içerik ile reklamın birbirlerinden ayrılması’nı bile pratikte ihlal eden bir düzenlemeyi beraberinde getirmektedir. Bu da bir “Enformasyon Toplumu’nda yaşamının yurttaşlar açısından maliyetinin esasında ne olduğunun sorgulanmasını gerektirecek bir durumdur.

Yeni medya siyasasında internet tabanlı medya hizmetlerinin nasıl düzenleneceği ya da yeni reklam tekniklerine izin verilip verilmemesi gibi ana siyasa konularında katılımcı gruplar arasında bir görüş ayrılığı ortaya çıksa da görülmüştür ki AB'nin en başından beri temel amacı olan “ortak pazar” yaratılması amacı en nihayetinde belirleyici olmuştur. Bu amaca yönelik hareket eden Komisyon'un ve Parlamento'daki siyasi dengelerin endüstri dostu bir medya siyasasının yürürlüğe konmasında da oynadığı rol belirleyici olmuştur. Sonuçta da yeni medya ortamının özellikle büyük medya şirketlerinin lehine işlemlerini beklemek en matıklısı olur. Bu noktada ortaya çıkan bir başka soru AB'nin iletişim ve enformasyon siyasalarını serbestleştirmedeki temel hedefinin AB'nin yerel ekonomisini “rekabetçi” hale getirmek olmasına rağmen yeni medya direktifinin yarattığı ortamdan daha çok hemen hepsi çok-uluslu şirket hüviyetindeki büyük medya şirketlerinin faydalanacak olmasıdır.

Bu da ‘küreselleşmenin’ bir yönüyle büyük sermaye lehine işleyen bir süreç olduğu olgusunu birkez daha akla getirmektedir. Ancak yine de yeni medya direktifinin üye ülkelerde nasıl uygulanacağı ve sonuçlarının ne olacağını görmek gerekmektedir. Üstelik bu yeni ortam hem endüstrinin alacağı şekil hem de siyasalar açısından teknolojik gelişmelerin son derece belirleyici olduğu bir ortamdır ve iletişim teknolojilerinin de dönüşümü hala alabildiğine hızlı bir biçimde devam etmektedir.

## APPENDIX 5

### CURRICULUM VITAE

#### PERSONAL INFORMATION

Surname, Name: Taşdemir, Babacan  
Nationality: Turkish (TC)  
Date and Place of Birth: 21 September 1981, Konya  
Marital Status: Married  
Phone: +90 312 256 81 54  
e-mail: ilef65@yahoo.com

#### EDUCATION

Degree	Institution	Year of Graduation
MS	METU Media and Cultural Studies	2006
BS	Ankara University Faculty of Communication	2003
High School	Süleyman Demirel Anadolu Lisesi, Ankara	1999

#### WORK EXPERIENCE

Year	Place	Enrollment
2004- Present	METU Media and Cultural Studies	Research Assistant

#### FOREIGN LANGUAGES

Advanced English

## APPENDIX 6

### TEZ FOTOKOPİSİ İZİN FORMU

#### ENSTİTÜ

- Fen Bilimleri Enstitüsü
- Sosyal Bilimler Enstitüsü
- Uygulamalı Matematik Enstitüsü
- Enformatik Enstitüsü
- Deniz Bilimleri Enstitüsü

#### YAZARIN

Soyadı : TAŞDEMİR

Adı : BABACAN

Bölümü : BİLİM VE TEKNOLOJİ POLİTİKASI ÇALIŞMALARI

TEZİN ADI (İngilizce) : (THE) CONCEPT OF “INFORMATION SOCIETY” AS THE BASIS OF EU’S “NEW” MEDIA POLICY: A CRITICAL APPRAISAL

TEZİN TÜRÜ : Yüksek Lisans  Doktora

1. Tezimin tamamından kaynak gösterilmek şartıyla fotokopi alınabilir.
2. Tezimin içindekiler sayfası, özet, indeks sayfalarından ve/veya bir bölümünden kaynak gösterilmek şartıyla fotokopi alınabilir.
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