



**Organization for Security and Co-operation in Europe
Office of the Representative on Freedom of the Media**



**Center for Media and Communication Studies
(CMCS), Central European University (CEU)**



THE RAFTO FOUNDATION

The Thorolf Rafto Foundation for Human Rights

Recommendations¹ to the European Parliament on the draft Audiovisual Media Services Directive

The draft Directive on Audiovisual Media Services (AVMS) carries with it unintended harmful effects on the exercise of the right of freedom of expression. The consultation process so far has not given appropriate attention to these freedom of speech issues.

Accordingly, we urge the members of the European Parliament to further debate the report of the Committee on Culture and Education in its current form and to take into account the following recommendations:

1.

The AVMS Directive should be anchored in the fundamental rights of freedom of expression and information as protected by article 10 ECHR and as interpreted through the jurisprudence of the European Court of Human Rights. This should be expressively reaffirmed also in the recitals of the preamble to the Directive.

The harmonization of the internal market and the intended protection of human dignity should take into account the principle of subsidiarity and the already existing legislation of member states. Where sector specific content-based regulation is established this should be specifically justified on the basis of the technological features of the respective sector and done through minimum standards only and within the limits of article 10 ECHR.

2.

No derogations from the country of origin principle should be allowed other than those recognized by the European Court of Justice, as excessive derogations undermine both the main aim of the directive to create an internal market as well as the free flow of information. The 'country of origin' principle should be guaranteed at least for non-linear services without exception.

One of the driving motivations to modernize the existing TVWF Directive was to harmonize the internal market especially for new and emerging audiovisual media services in order to allow for the unhindered distribution of these services of the information society throughout the member states, which was not yet guaranteed by the eCommerce Directive. The current CULT report, however, again proposes to allow derogations from the country of origin principle and thus establishes obstacles for the free flow of information and legal uncertainty for these audiovisual services.

¹ On 1 December 2006 the OSCE Representative on Freedom of the Media and the Center for Media and Communication Studies of the Central European University Budapest with support of the Rafto Foundation for Human Rights hosted a workshop on 'non-linear audiovisual media services' and the draft EU audiovisual media services directive (AVMS). Following this workshop these recommendations have been developed by the signatories.

3.

The platform-neutral approach of the draft AVMS Directive targets a vast area of new and yet to be developed services, including those that differ considerably from 'classic' broadcast. This goes beyond regulatory necessities and the scope of the Directive should be limited and not include new media services.

The Directive for the first time on the European level permits content-based restrictions of speech outside traditional broadcast, including content on the Internet, so called 'non-linear audiovisual media services'. This poses enormous regulatory challenges. The debate until now has shown that there is no sufficient level of common understanding on how to address this rapidly changing communication environment. Also, unlike in classic broadcast, audiovisual content delivered through services of the information society ('pull' media) offers the user a high degree of choice and control and thus requires a different regulatory approach.

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