

OSI CONTRIBUTION

to the European Parliament debate on the amendment of the Television without Frontiers Directive

This OSI contribution is based on findings and recommendations from the series of monitoring reports, *Television across Europe: regulation, policy and independence*.

Launched in October 2005, this series of reports covers 20 European countries, and includes an Overview report that resumes the main findings from across the countries monitored.

The OSI reports touch upon some of the issues included in the Television without Frontiers Directive and its drafts amendments. OSI would therefore like to take this opportunity to share with the European Parliament the most relevant findings and recommendations from this monitoring.

This contribution is divided in two parts:

1. Selected recommendations related to the issues to be discussed by the European Parliament.
2. A short description of the *Television across Europe* monitoring project.

We hope that this contribution will be useful to the debate.

1. OSI's recommendations to the European Parliament debate on the review of the Television without Frontiers Directive

The OSI reports on *Television across Europe* (see description in the section 2) are unprecedented in the wide range of countries surveyed and perspectives contained, in the commissioning of original local research, and in the focus on how media policy and regulation – both in principle and in practice – support broadcasting independence, as an editorial reality. They provide the first cross-sectional survey of European broadcasting after the historic changes of the 1990s and just before the next wave of technologically-driven changes alter the media landscape forever.

I. On the proposed Directive amendments

The following comments on the proposed amendments to the Television without Frontiers Directive were drafted by the team in charge of the *Television across Europe* Overview report. The following comments, however, also touch upon areas that are beyond the scope of the *Television across Europe* reports.

- I.1. Our view is that the December 2005 draft is both premature – trying to throw a regulatory net over a dynamically changing sector – and at the same time unlikely to bring benefits to the majority of citizens across the European Union who still depend on free-to-air broadcasting.
- I.2. We were glad to see that the draft does not alter the quotas for European and independent broadcasting in articles 4 and 5. Independent research has confirmed that these quotas do contribute positively to European and independent output, and hence to overall diversity, on the primary television channels.¹ Also, the quotas have made most difference in those countries where they have been implemented most rigorously.
- I.3. This revision presents an opportunity that should not be missed to insert definitions of key terms such as “independent producer” and “games”, and especially the loophole term “where practicable”. Such definitions would enable more effective use to be made of these articles.
- I.4. We also believe it would boost television diversity where this is most at risk if the TWF quotas – along with media support programmes – were extended to include programmes originating from accession and pre-accession countries, and even from the European Neighbourhood Policy countries.
- I.5. We share the concern expressed by others that relaxing the rules on product placement, as the draft proposes, will accelerate the broad trend of

¹ See the recent Study on the impact of measures concerning the promotion of the distribution and production of TV programmes (Community and national) provided for under Article 25 (a) of the Directive on Television without Frontiers. Section 10 (“Key findings and conclusions”). Available at http://europa.eu.int/comm/avpolicy/stat/studi_en.htm

commercialisation without significantly boosting the revenue of public service broadcasters.

II. Additional amendments suggestions

OSI wishes to highlight that, according to the conclusions from the 20 *Television across Europe* country monitoring reports, the most urgent challenges to diversity and pluralism for most television viewers in Europe lie outside the scope of the TWF directive.

Here are some of our key findings:

II.1. Broadcasting Regulators

- Political elites are still highly inventive at finding ways to influence national broadcasting regulators unduly. This is most clearly the case in the new democracies, including the newest members of the EU.

II.2. Public Service Television (PSB)

- A ‘dual system’, combining publicly funded and commercially funded channels, is still considered to be – in Europe – an essential element of democracy and an integral part of European political and cultural identity.
- Public service broadcasting (PSB) in Europe faces today challenges that are multiple and profound. PSB’s purpose in a multiplatform world needs to be redefined in ways that are not yet fully clear. The licence fee is becoming harder to justify when fewer citizens value the product. At the same time, PSBs are forced to match the commercial players at the ratings game while also having to fill the non commercial niches in culture, education and minority output.
- As they struggle to keep pace with commercial stations, PSBs are going down-market. The traditional differences between PSB and commercial output are disappearing; and sometime have already vanished completely. This does not mean that less high-end material is available – only that such material becomes less available to the majority of viewers who, by choice or necessity, watch only terrestrial analogue TV.
- PSBs in the new democracies face additional problems. These countries have tried to restructure their former state-owned, politically controlled broadcast networks as PSBs. Even if the international community had provided much more assistance, these transformations would have been extremely difficult. These broadcasters’ most valuable asset was their monopoly, which disappeared when the analogue spectrums were liberalised in the 1990s. Still chronically undercapitalised, professionally demoralised, often technically primitive, unable to regain credibility with their public or to compete with commercial rivals, most of the new PSBs have lost huge numbers of viewers.

- Only in two of the 16 transition countries monitored in our report are PSBs the most viewed channels (Bosnia and Romania – neither of them a model of healthy broadcasting). Also, PSBs in Central and Eastern Europe have generally not carved themselves a niche for quality, or other specific services that commercial stations offer more rarely – such as minority programming. This all increases public reluctance to subsidise channels that carry little distinctive content.

- Probably a dozen PSBs in Central and Eastern Europe are trapped in a crisis, with the risk that some important programme strands may become soon unavailable to those viewers who only watch terrestrial analogue television. The European conventions and protocols that uphold PSB cannot, however, do much in these situations: they only regulate existing universal, free-to-air content, but have no power to protect it when it is in danger.

II.3. Commercial Television

- Television markets are extremely concentrated in terms of both ownership and viewership. It was striking that in all but two of the 20 countries monitored by OSI, the top three TV channels enjoy combined audience shares over 50 per cent of the total. In most countries, indeed, this share was 60 per cent or more.

- Regarding ownership, there is a pattern of poor transparency. Ownership concentration cannot be monitored without transparency, which is vital if accountability of broadcasters is to be real and living, involving the national regulators as well as civil society. Foreign investment is already significant in the Baltics and much of central Europe, and is expected to increase in south-eastern Europe. Our reports indicate that transnational and national concentration of ownership impacts on diversity. Unless such ownership structures are open to view, this threat to diversity will not be adequately addressed.

II.4. Recommendations

The report *Television across Europe* includes a number of feasible recommendations addressing some of the problems identified. The three recommendations most relevant to TWF revision are:

1. There is a need for European legislation to ensure the transparency of broadcaster ownership.
2. The EU should establish an independent agency mandated to monitor media markets and concentration. This proposal – which also appeared in your admirable 2004 resolution² – is timely and realistic. We hope the European Parliament will continue to press it.

² European Parliament resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information. Adopted 22 April 2004. Article 79(g) calls on the European Commission to consider “a requirement that information on media ownership collected in the national markets be sent for comparison to a European-wide body”. 4

3. The EU should do more to ensure that candidate countries fulfill the Copenhagen Criteria with respect to the stability and transparency of the broadcasting regulatory environment before they accede to the EU.

2. ABOUT THE MONITORING REPORT “TELEVISION ACROSS EUROPE: REGULATION, POLICY AND INDEPENDENCE”

The Open Society Institute (OSI) has produced a series of reports monitoring public service broadcasting, commercial television, broadcasting regulatory systems and new technologies, in 20 European countries, combining EU members, candidate and potential candidate countries:

Albania; Bosnia and Herzegovina; Bulgaria; Croatia; the Czech Republic; Estonia; France; Germany; Hungary; Italy; Latvia; Lithuania; Poland; the Republic of Macedonia; Romania; Serbia; Slovakia; Slovenia, Turkey; and the United Kingdom.

In each country the monitoring assesses media policy and regulations established in particular to secure the political and economic independence of television across Europe. A regional overview assesses the trends across the region.

Monitoring reports

At 1662 pages, the complete three-volume set of reports is the largest ever comparative survey of its kind. It consists of 20 country reports plus an overview report, which resumes the main findings across all the countries monitored.

The 20 country reports were drafted by local experts with the support of partner NGOs. In each country, the initial findings were discussed during roundtable meetings with stakeholders including Government representatives, civil society organisations and media experts. The reports are presented to the public, to governments and to the media in each country, and are also available on the web. All country reports are based on the same methodology, thus allowing for a comparative analysis. The reports are divided into the following sections:

1. Executive Summary
2. Context
3. General Broadcasting Regulation and Structure
4. Regulation and Management of Public Service Broadcasting
5. Regulation and Management of Commercial Broadcasting
6. European Regulation
7. Conclusions
8. Recommendations

The overview report was drafted by media experts who also edited the single country reports. It includes a comprehensive annex section, with tables of comparative data. Both the country reports and the overview report include concrete recommendations to governments, international organisations and regulatory bodies aimed at ensuring that television can play its democratic role.

The complete three-volume report - as well as a one-volume summary report - are published in English. Each country report is included in the English volumes and is also published in translation, together with the regional overview.

Main regional recommendations

On media policy:

- National governments and international organisations should live up to their commitments to the dual system of public and private broadcasters as an essential element of democracy. Market forces alone must not determine broadcasting policy.
- Governments and parliaments should ensure the political and operational independence of broadcasting regulators. The regulators must have the resources and powers to monitor broadcasters, and their compliance with legislation and licence conditions.
- The European Union should establish an independent agency to monitor media markets and media concentration in the EU and on global markets.

On public service broadcasting:

- Broadcasting regulators should ensure that the public service broadcasters' programming complies with a clear public service remit.
- Governments and parliaments must ensure that the funding of public service broadcasters is transparent.
- National media policy should include strategies for the development of local television stations and community media.

On commercial broadcasting:

- Governments and parliaments should adopt legislation ensuring transparency of ownership of all media outlets, including external investors.
- The EU should introduce legislation to ensure transparency of media ownership.
- Commercial broadcasters should be encouraged or obliged to broadcast public service programmes.

On digitalisation:

- Public service broadcasters should automatically receive licences for digital broadcasting.
- Regulators should allocate digital licences to a diverse range of operators to ensure that dominant positions in analogue broadcasting are not extended.
- Parliaments should adopt legislation to prevent the emergence of monopolies of operators involved in the digital chain - such as digital multiplex operators, television stations, programme packagers and software providers.