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JĘDRZEJ SKRZYPCZAK
Poznań

AUDIOVISUAL POLICY OF THE EUROPEAN UNION

Media policy has many different definitions.[1] Most often it is considered to be "the activity of the authorities aimed at providing and shaping conditions for the functioning of a mass communication system constituted mainly by the press, the radio and television".[2] Others claim that it is "an element of public policy [...] that should provide the answer to the question what should be done to shape the media system as desired and achieve its pre-set goals, and how to solve emerging problems, as well as how and why this should be done and via which methods: what actions can be taken, and which cannot".[3] However, it is worth recalling a broader perspective where media regulation refers not only to regulation by relevant bodies of state authorities but also to the possibility of other actors exerting causative influence on the principles of the media system functioning. In this wider perspective, attention has been drawn to the possibility of media self-regulation, i.e. the establishment of rules by the media market players, including owners of communication media and journalists (e.g. in the form of a journalistic code of ethics). Finally, the third source of regulation is constituted by the cultural and political traditions of a given society.[4] This view deserves full approval. It follows that, currently, media policy is composed not only of the actions of the state bodies, but also of other actors. One ought to agree that "media policy encompasses the principles and forms of employing the media not only for political but also cultural, educational and economic goals. Media policy is part of general political communication and contains legal and organisational regulations on the functioning of the media."[5] Nowadays, media policy cannot be limited to the

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[1] For more see: E. Stasiak-Jazukiewicz, M. Jas-Koziarkiewicz (2011), *Polityka medialna w Unii Europejskiej*, Warsaw, pp. 19-30; J. Skrzypczak (2011), *Polityka medialna w okresie konwersji cyfrowej radiofonii i telewizji*, Poznań, pp. 14-17.

[2] B. Mierzejewska, *Polityka medialna, in: Media, komunikacja, biznes elektroniczny*, in: B. Jung (ed.) (2001), Warsaw, p. 227. See also: T. Goban-Klas, *Zygzaki polityki medialnej*, in: G. G. Kopper, I. Rutkiewicz, K. Schliep (eds) (1996) *Media i dziennikarstwo w Polsce 1989-1995*, Cracow, pp. 164-165.

[3] K. Jakubowicz (2008), *Polityka medialna a media elektroniczne*, Warsaw, p. 17.

[4] *Ibid.*, pp. 17-18.

[5] A. Hess, *Polityka medialna*, in: *Słownik terminologii medialnej*, in: W. Pisarek (ed.) (2006), Cracow, p. 151.

sole activity of a state. In the times of global media, it is necessary to adopt a wider perspective, both regional and international. In that approach, the term *media policy* is associated with legal regulations, as the process of establishing legal norms is its most important instrument.[6] Funding and informative-educational activity should be classed as such tools. These platforms for activity are, however, just the outcome of the legal norms adopted earlier on.

Currently, in the doctrine, the media policy is understood as activities concerning the regulation of the social communication process. However, it ought to be observed that until the 1970s[7], the phrases "communication policy", and later on "audiovisual policy" were used in EU documents.[8] This resulted from the fact that the UE was focused mainly on the functioning of television, and less of radio broadcasting. Television had the most powerful impact on public opinion and was, at the same time, the main source of information for citizens as it provided access to public information and cultural heritage. Still, it ought to be admitted that in the doctrine describing these phenomena, such terms as "media policy" and "radio and television policy" were also used.[9] The development of digital technology led to the revision of the adopted terminology (e.g. *radio broadcasting* and *television*). Also in EU documents, the term *television services* is replaced with the phrase *audiovisual media services*.[10]

The approach of the European Communities to media issues in previous decades can be divided into several stages. In the first period, which was relatively the longest, EC bodies were refused the right to interfere in this area. This resulted mainly from the differences in the perception of this incredibly sensitive issue between Member States, but also between EU bodies.[11]

The position presented in the ruling of the European Court of Justice of 30 June 1974 was a breakthrough. The Court explicitly stated that the broadcasting of television programmes should be classed as the rendering of services and all the princi-

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[6] K. Jakubowicz, *Polityka*..., p. 18.

[7] Cf. D. Goldberg, T. Prosser, S. Verhulst (1998), *EC Media Law and Policy*, London, pp. 42-54; A. Harcourt, S. Weatherill, *The Consumer, the European Union, and Media Law*, "Journal of Consumer Policy" 2008, vol. 31, no. 1, pp. 1-4; L. Nyakas, *Między rynkiem a misją*, "Raport o kulturze. Europa w mediach – media w Europie" 2002, no. 2, pp. 130-132 and M. Szewczyk (2002), *Polityka audiowizualna Unia Europejska – Polska. Wybrane zagadnienia*, Warsaw.

[8] E. Stasiak-Jazukiewicz (2005), *Polityka medialna Unii Europejskiej*, Warsaw, p. 17.

[9] K. Jakubowicz (2010), *Unia Europejska a media. Między kulturą a gospodarką*, Warsaw, pp. 10-11.

[10] E. E. Paraschos (1998), *Media Law and Regulation in the European Union. National, Transnational and U.S. Perspectives*, Iowa, p. 24; A. Harcourt, S. Weatherill, *op. cit*.; M. Wheeler, *Supranational regulation. Television and the European Union*, "European Journal of Communication" 2004, no. 19, pp. 349-369; T. Storsul, T. Syvertsen, *The Impact of Convergence on European Television Policy*, "Convergence: The International Journal of Research into New Media Technologies" 2007, no. 13, pp. 275-291.

[11] K. Jakubowicz, *Unia*..., p. 13.

ples binding in this area should apply.[12] This refers mainly to provisions on the free movement of services and goods.[13] Later on, the European Court of Justice reached a similar conclusion in the case *Procureur du Roi vs. Marc J.V.C. Debauve and others* (case file no. 52/70), by ruling that activity consisting in the dissemination and distribution of programmes by cable television can be classified as a service.[14]

The 1980s were characterised by attempts to develop appropriate strategies towards the mass media. In this period, there was much chaos, and varied trends surfaced. Therefore, the activities pursued in the years 1981-1984 are described as aimed at European cultural unity, at the expense of diversity. After 1985, the Community policy took a completely different approach and started to focus on the promotion of diversity over unity.[15] This was expressed in decisions to nourish European identity and stop the "flood" of American productions. In this period, satellite television became more widespread which gave the pretext to concentrate on the media not only at the national but also at the EU level. It was then decided that the policy of European Communities would focus on television, completely disregarding the printed press, and that radio broadcasting would be of minor concern. An appropriate audiovisual policy was supposed to create the feeling of community, strengthen integration trends and emphasise the benefits of such an EU policy.[16]

In those years, the European Parliament repeatedly appreciated the significance of satellite television as a truly global medium. The establishment of a common European satellite programme was strongly promoted.[17] In 1984, two important rec-

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[12] See: judgement of the European Court of Justice in case: *Public Prosecutor v. Giuseppe Sacchi* of 1974 (C155/73, ECR. 1974, p. 426). It was stated that "owing to the lack of an explicit provision that would state otherwise, the transmission of television signals, including those in the nature of advertisements, comes, as such, within the rules of the Treaty relating to services. However, trade in material, sound recordings, films, equipment and other products used for the diffusion of television signals is subject to the rules relating to freedom of movement for goods". More in: C. Mik (1999), *Media masowe w europejskim prawie wspólnotowym*, Toruń, pp. 153-154 and E. D. Sage, *Usługi audiowizualne*, in: J. Barcz (ed.) (2004), *Prawo Unii Europejskiej*, Warsaw, p. 1067, as well as R. R. Bartoszcze, L. Słupek (2001), *Telewizja – dobro kultury czy element rynku. Transformacja telewizji publicznych w krajach Unii Europejskiej*, Rzeszów, p. 182; E. Stasiak-Jazukiewicz, M. Jas-Koziarkiewicz, *op. cit.*, p. 30ff.; J. Skrzypczak, *op. cit.*, p. 132ff.

[13] *Cf.* T. J. O'Dowd, *Broadcasting Policy and European Law,* in: M. McGonagle (ed.) (1997) *Law and the Media. Views of Journalists and Lawyers*, Dublin, p. 276.

[14] K. Jakubowicz, *Unia...*, pp. 12-13.

[15] *Ibid.*, p. 30.

[16] *Cf.* the resolution of the European Parliament of February 1982, the so-called Hahn Act I and the 1983 report of the European Commission *Realities and tendencies in European television: Perspectives and Options* (COM 83, 229 final).

[17] It ought to be noted that in 1982, thanks to the involvement of 15 broadcasting stations, the Eurikon programme was launched. However, it was not universally available. In 1985, the Europa TV channel was created. It ceased to operate after 18 months. It should be noted that the resistance of national broadcasters was strong, and its popularity scarce. See K. Jakubowicz, *Unia*..., pp.43-44.

ommendations based on G. Arfe's report[18] and A. M. Hutton's report[19] were adopted. One should also recall most important theses of the Barzanti Report[20] which was the European Parliament's response to the European Commission's Green Paper "Television without frontiers".[21] In those documents the areas of interest for the EC media policy were specified and the conviction was expressed that liberalisation of the media market and streamlining of cross-border broadcasting would speed up the integration process and that European productions should be supported by introducing appropriate programme quotas, i.e. broadcasting stations would be obliged to transmit a specific number of programmes produced in Europe. It was also considered necessary to counteract the concentration of media companies and ensure appropriate balance between the public and private broadcasters' sectors. Attention was drawn to the problem of public broadcasters by stating that their independence should be guaranteed, *inter alia*, by appropriate financial support. It was acknowledged that European institutions should also contribute funds to establishing the common media market. It was postulated that legal provisions laying down advertisement broadcasting principles and the protection of copyrights and related rights should be regulated and harmonised. European cooperation on implementation of new technologies for transmitting television signals was also recognised as necessary.[22]

It should, however, be observed that mass media are approached in various ways in the EU policy. If they are classified as business entities, it is because they are examined from the perspective of the competitiveness policy and the principles of the internal market. It is also possible to discern a trend where the media are perceived as an element of democratic and cultural infrastructure of the European societies and an important component in building the information society. In general, the EU approach to mass media has leaned more toward treating them as business entities than elements of culture. This is best illustrated by the division of competences in the structures of the European Commission. Initially, the Directorate-General III dealt with the media issue. That DG covered also the internal market and economy and

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[18] *Report drawn up on behalf of the Committee on Youth, Culture, Education, Information and Sport on a policy commensurate with new trends in European Television. Working Documents 1983-84, Document 1-1541/83, 16 March 1984,* http://aei.pitt.edu/3118/.

[19] *Report drawn up on behalf of the Committee on Youth, Culture, Education, Information and Sport on broadcast communication in the European Community (the threat to diversity of opinion posed by the commercialization of new media). Document 1-1523/83, 15 March 1984*, http://aei.pitt.edu/3119/01/000056.PDF.

[20] *Report on the proposal from the Commission of the European Communities for a directive on the coordination of certain provision laid down by broadcasting activities. Rapporteur R. Barzanti*. Doc. A2-246/87. See: K. Jakubowicz, *Unia*..., pp. 41-42.

[21] *Television without Frontiers. Green Paper on the Establishment of the Common Market for Broadcasting, especially by Satellite and Cable. Annex. COM (84) 300 final/annex, 14 June 1984*. http://aei.pitt.edu/1155/.

[22] K. Jakubowicz, *Unia*..., pp. 42-43.

prepared the abovementioned Green Paper. The functioning of the media was also a domain of Directorate-General IV which dealt with competition on the internal market, and Directorate-General X, which was tasked with supervising such fields as communication, information, culture and the media. The MEDIA programmes were among the flagship projects of DG X. The mass media was also of interest to Directorate-General XIII which dealt with telecommunication, IT and innovation.[23] Later on, competences in this area were granted to the Directorate-General for Information, Communication, Culture and the Media, and then to the Directorate-General for Education and Culture. Since 2004, the Information Society and Media Directorate-General has been responsible for the audiovisual policy.

It needs to be underlined that the object of the EC audiovisual policy is firstly to design legal regulations on the functioning of this sector within a common framework, and secondly to ensure the implementation of technical and social infrastructure necessary for the functioning of the media[24]. Hence the strategy for regulating the principles of media functioning is double-track. One track covers the contents of the transmitted information, and the other covers technical infrastructure and the ways of transmission.

To the first track, the fundamental regulation that governs the EU media market is the Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.[25] This document marks the beginning of liberalisation of the European television market and was basic for cross border television services. It was decided to introduce minimum standards. This mainly refers to protection of underage viewers, advertising rules, guaranteeing access to especially important programmes[26] and the right to reply. Moreover, the provision to protect European productions was introduced.[27] This document was revised under Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997[28]. It was decided that the existing solutions were not efficient enough and that the definitions given in Directive 89/552/EEC should be redefined. It was also agreed that minors should be protected more effectively.

Ten years later, due to advances in digital technology, another thorough revision of the legislation was necessary, *inter alia*, owing to the dynamic development of the media market. The data presented by the European Commission in its communication

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[23] *Ibid.*, p. 13.

[24] E. Stasiak-Jazukiewicz, *op. cit.*, p. 17.

[25] Published in the "Official Journal" (hereinafter "OJ") L 298 of 17.10.1989, pp. 23-30; Polish special edition: Chapter 06, vol. 01, pp. 224-231. This document is usually referred to as the "Directive on television without frontiers". More: O. Castendyk, L. Woods, *Comments on Article 1 TWFD*, in: O. Castendyk, E. Dommering, A. Scheuer (eds) (2008), *European Media*, The Hague, pp. 273-279.

[26] A. Jaskiernia, *Ewolucja standardów europejskich relacjonowania ważnych wydarzeń przez media elektroniczne*, "Studia Medioznawcze" 2007, no. 2, pp. 12-18.

[27] D. Goldberg, T. Prosser, S. Verhulst, *op. cit*., pp. 56-68 and C. Mik, *Media*..., pp. 241-256.

[28] Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997, OJ L 202 of 30.07.1997, pp. 60-70. Polish special edition: OJ of the EU, Chapter 06, vol. 02, pp. 321-331.

on the application of Council directive 89/552/EEC on television without frontiers[29] demonstrated that the number of television programmes went up from 584 in 2003 to 6,067 in 2008.[30] As a result, it was decided that it was necessary to adopt a directive on audiovisual media services.[31] The Commission's communication underlined the special significance of audiovisual media services for democratic societies, if only because of information provision. An important role of those services in shaping such values as freedom of expression and information was recognised, as well as their role in promoting political and linguistic pluralism and diversity of world views. In terms of approach, it was important that not only the economic value of this sector was noticed, but also its impact on culture, art and education.[32]

The definition of "audiovisual media services"[33] deserves special attention here, as it embraces traditional television broadcasting (so-called linear services[34]),

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[29] Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions of 22 July 2008. Eighth communication on the application of Articles 4 and 5 of Directive 89/552/EEC "Television without Frontiers". Amended by directive 97/36/EC in the years 2005-2006, Brussels, 22.07.2008, COM(2008) 481, final version, (SEC(2008) 2310), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0481:FIN:PL:PDF. and Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. Ninth communication on the application of Articles 4 and 5 of directive 89/552/EEC "Television without Frontiers". Amended by directive 97/36/EC in the years 2007-2008, Brussels, 22.07.2010, COM(2010) 450, final version, (SEC(2008) 995), text available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?u-ri=COM:2010:0450:FIN:PL:PDF.

[30] *Ibid.*, p. 3.

[31] Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Audiovisual Media Services Directive). Consolidated text published as Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. (OJ of the EU L 95 of 15.04.2010, p. 1 and next). More: W. Kołodziejczyk, P. Stępka, *"Stare" i "nowe media". Dyrektywa "O audiowizualnych usługach medialnych" jako próba odpowiedzi na wyzwania rynkowe i technologiczne*, "Studia Medioznawcze" 2008, no. 1, pp. 13--16; A. Matlak, *Dyrektywa o audiowizualnych usługach medialnych*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Prawa Własności Intelektualnej" 2010, vol. 2 (108), pp. 127-147.

[32] More: A. Matlak, *Dyrektywa*..., p. 129.

[33] It is worth mentioning that under Article 1, Par. 1, Point a of Directive 2010/12/EU, the term "audiovisual media service" means " a service as defined by Articles 56 and 57 of the Treaty on the functioning of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph; or an audiovisual commercial communication".

[34] In compliance with Article 1, Point e of Directive 2010/13/EC, "television broadcasting" or "television broadcast" (i.e. a linear audiovisual media service) means an "audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule".

Video-on-Demand services[35] and commercial communication.[36] In result, the normative scope of Directive 89/552/EEC was extended to cover many varied forms of television activity available in the digitising era. Thus the new definition of audiovisual media services would encompass both traditional analogue and digital television, and various modes of broadcasting: terrestrial, cable, satellite and the so-called mobile or portable television. It includes also the Internet transmission both online and in the form of live streaming, i.e. webcasting and *Near-Video-on-Demand*, i.e. copies of a programme broadcast at short time intervals.[37] The common feature of VoD services is that they are available at any time and place selected by the recipient. Currently, the significance of these services keeps growing. They resemble traditional television broadcasting and are targeted at the same media market sector. However, it is the catalogue of exclusions that deserves outmost attention. The digitising era is characterised by a multitude of broadcasting options and thus exclusions, *de facto*, delineate the applicability or scope of the Directive. Among exclusions are audio transmissions, i.e. radio programmes, as well as electronic versions of newspapers and magazines. Moreover, the Directive excluded non-commercial broadcasts addressed only to selected persons, not for public viewing. To this group belong websites that are not profit oriented and e-mail. The same applies to services whose main objective is not to provide an audiovisual programme and where audiovisual elements are only complementary, e.g. short advertising spots. The abovementioned definition also excludes games and Internet browsers.[38]

It is worth discussing one more issue connected with the functioning of the said Directive. This act of law also applies to Internet transmissions. The issue was to

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[35] In accordance to Article 1, Point g of Directive 2010/13/EC, "on-demand audiovisual media service" (i.e. a non-linear audiovisual media service) means an "audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider".

[36] In compliance with the quoted Directive, the "'audiovisual commercial communication' means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement".

[37] A. Matlak, *Dyrektywa*..., p. 130. See also: R. Chavannes, O. Castendyk, *Directive 2007/65/EC Audiovisual Media Services' Directive*, in: *European Media Law*..., p. 806.

[38] It is worth noting that similarly as Directive 89/552/EEC, this document hails the principle of the country of origin. Let us recall that this provision allows for resolving jurisdiction issues. Including Internet transmissions into the normative scope of this Directive, however, required a new approach as the data available online are in fact globally available information. Of course, this issue was touched upon earlier in the context of satellite television and its international nature. However, in the times of the *World Wide Web* a new perspective on national jurisdiction was needed. When the above provision was made more specific, it was decided that the national system of law of each Member State would apply to entities whose head offices are located in that Member State territory or which use a terrestrial and satellite broadcasting station located in that Member State or which use a satellite link-up that belongs to that Member State. This issue was described in detail in Article 2, Par. 3 of Directive 2010/13/EU

what extent the legislator can interfere in this area. In the legislative tradition up to that point, this field of human activity was relatively neglected by regulators. This resulted, *inter alia*, from the specific nature of this type of communication, i.e. communication of global character, or communication reaching beyond the frontiers of a given country. Moreover, communicating via the Internet gives the feeling (now may be illusory) of full freedom, anonymity, and exemption from legal responsibility. The approach of legislators had to take all concerns into account. In Directive 2010/13/EC, it was underlined that introduction of any forms of licensing or administrative approval of any entity intending to provide audiovisual services on the Internet is unacceptable.[39] It is also worth taking a closer look at the structure of that Directive. The first part consists of common provisions referring to both linear and non-linear services.[40] The second part concerns solutions for VoD services solely.[41] This part is characterised by a very liberal approach and regulation is reduced to a minimum. Those services can be self-regulated or co-regulated. Finally, the third part refers to linear television broadcasting and its provisions are most demanding.[42]

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[39] A. Matlak, *Dyrektywa*..., p. 130.

[40] Their providers have been obliged to make public such data as the name of the company, the address of its head office, e-mail address, as well as information about the relevant regulatory or supervisory body. Communications inciting to hatred on grounds of race, sex, religion or nationality have been prohibited. It is also prohibited to broadcast cinematographic works outside periods agreed with the rights holders, transmit surreptitious audiovisual commercial communication, use subliminal techniques, prejudice respect for human dignity, include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation, encourage behaviour prejudicial to health or safety, encourage behaviour grossly prejudicial to the protection of the environment, present any forms of audiovisual commercial communications for cigarettes and other tobacco products, broadcast audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls, cause physical or moral detriment to minors. Audiovisual commercial communications for alcoholic beverages cannot be aimed specifically at minors and cannot encourage immoderate consumption of such beverages. They cannot directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised. Such communications cannot exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations. It is also postulated that Member States encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.

[41] The parties concerned were also obligated to limit minors' access to communications that might affect their physical, psychological and moral development. At the same time, it was postulated that the production and distribution of European works be promoted. It was suggested that such support for European works should, for example, take the form of financial contributions to the production of and acquisition of rights in European works, placing European works in video-on-demand catalogues or attractive presentation of European works in electronic programme guides.

[42] These provisions concern, among others, the so-called exclusive rights and short news reports. On the one hand, these provisions are aimed at ensuring the protection of the held exclusive rights to the broadcasting of significant events, e.g. sport events. On the other hand, they strive to ensure that all viewers have access to most important items of news. It is the duty of the Member State to draw up a list of designated events, national or non-national, which it considers to be of major importance for society,

The technical and organisational structure of the functioning of the media has been dealt with in EU regulations separately. The relevant catalogue of acts of law contains many documents that touch upon very detailed technical issues.[43]

The European audiovisual policy also covers public media. Of particular importance was the Amsterdam Protocol on the system of public broadcasting in the Member States, which constitutes an Annex to the Amsterdam Treaty.[44] The authors of this Protocol expressed the conviction that "the system of public broadcasting in each Member State is directly related to the democratic, social and cultural needs of each society" and it contributes to media pluralism. The provisions of the Treaty establishing the European Community should be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as it supports broadcasting organisations in the fulfilment of the public service remit as defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest.

In the Commission's Communication of 15 November 2001[45], a more capacious definition of public service mandate was proposed. The Communication reads: "a wide definition, entrusting a given broadcaster with the task of providing balanced and varied programming in accordance with the remit, while preserving a certain level of audience, may be considered, in view of the interpretative provisions of the Protocol, legitimate (under applicable provisions). Such a definition would be consistent with the objective of fulfilling the democratic, social and cultural needs of a particular society and guaranteeing pluralism, including cultural and linguistic diversity".[46] As Member States were entrusted with the power to specify the public service mandate, it was demanded that the terms of the public service remit should be precise, so that the European Commission could effectively monitor compliance with EU provisions. Member States may adopt the *single-funding system* or the *dual-funding system*. The first system assumes that the media are financed solely from public funds while the second system allows to combine public funding with com-

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and determine whether these events should be available by complete or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage. In the case of such transmissions, the requirements concerning advertising and telemarketing are much more stringent.

[43] One should mention Council Directive 86/529/EEC on the adoption of common technical specifications of the MAC/packet family of standards for direct satellite television broadcasting, Council Directive 92/38/EEC of 11 May 1992 on the adoption of standards for satellite broadcasting of television signals (i.e. the so-called HD-MAC Directive), OJ L 137 of 20.05.1992, pp. 17-20.

[44] More: H. Ungerer (2003), *Legal and Regulatory Aspects of Public Service Broadcasting*, Bucharest, p. 6ff.; idem (2003), *Impact of Competition Law on Media – some comments on current development*, Brussels, p. 2.

[45] *Communication from the Commission on the application of state aid rules to public service broadcasting,* OJ C 320 of 15.11.2001, pp. 5-11.

[46] *Ibid*.

mercial activity, e.g. broadcasting advertisements.[47] The latter, however, cannot have a negative effect on the market and competition in the media sector. Thus transparent rules need to be introduced that allow for differentiating between the sources and goals of financing. It is therefore necessary to keep separate accounts for resources from public funds and commercial revenues. Public funds can be allocated solely to the implementation of tasks specified in the public service mandate. The above was confirmed in the next Communication of the Commission.[48]

The EU's activity in the area of the so-called "new media" deserves special attention. One ought to mention the Green Paper of 6 April 1994[49], which reflects the fact that the telecommunications and media sector draw closer to each other.[50] One should also appreciate the significance of the next Green Paper of 3 December 1997[51], which concerned the future of the EU's audiovisual policy. Three variants of the policy for audiovisual and telecommunications services were put forward. The first assumed that a separate regulatory approach would be maintained toward television and radio services and telecommunications. The second approach postulated that a new law on convergent services be adopted, however, the approach to the sectors should remain varied. The third proposal was the most far-reaching one as it proposed a completely new coherent and uniform regulation on the new media.[52] In the next Communication from the European Commission of 14 December 1999[53],

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[47] *Ibid*.

[48] Communication from the Commission on the application of State aid rules to public service broadcasting (2009/C/257/01), OJ of the EU C 257 of 27.10.2009, pp. 1-14..

[49] *Strategy Options to Strengthen the European Programme Industry in the Context of Audiovisual Policy of the European Union – Green Paper*, (COM (1994)96 Final).

[50] See also *Digital Video Broadcasting Council Resolution of 27 June 1994 on framework for Community policy on digital video broadcasting,* OJ C 181 of 2.07.1994, p. 3-4. It is also worth mentioning Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals, which introduced technical standards, among others, in the scope of the scrambling algorithm and the CAS interface. See: *Directive 95/47/EC of European Parliament and of the Council of 24 October 1995 on use of standards for the transmission of television signals*, OJ L 281 of 23.11.1995, pp. 51-54.

[51] *Green Paper on the Convergence of Telecommunications, Media and Information Technologies*, COM 97/623, December 1997. See also: D. Goldberg, T. Prosser, S. Verhulst, *op. cit*., pp. 114-117.

[52] K. Jakubowicz, *Unia Europejska*..., p. 50. In the 26 October 1998 report of the High-level Group on audiovisual policy, the so-called Orejo Group, titled "The Digital Age: European Audiovisual Policy", it was once again underlined that the media play an important role in contemporary European democratic societies, but at the same time it was recommended to take actions aimed at increasing the competitiveness of this sector in the digital era, enabling a notable increase in the number of transmitted programmes. In these circumstances, it was underlined that a new legal order was to be introduced. K. Jakubowicz, *Unia Europejska*..., pp. 50-51; E. Stasiak -Jazukiewicz, *Polityka*..., p. 29. It is also worth consulting the Action Plan of the European Parliament and EU Council on promoting safe use of the Internet by combating illegal and harmful content on global networks.

[53] *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, Principles and Guidelines for the Community's Audiovisual Policy in the Digital Age*, COM (1999) 657 final. Brussels, 14.12.1999, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1999:0657:FIN:EN:PDF

the principles of developing an audiovisual policy in the digital era were outlined. These included, *inter alia*, the principle of proportionality which consists in ensuring that the regulation intervention scope adopted at the EU level should enable the achievement of the set goals. It was decided that it was necessary to keep regulations on contents and technical infrastructure separate. It was recommended that such instruments as self-regulation and co-regulation be used, and to safeguard such social values as freedom of expression, media pluralism, right to reply, protection of copyrights and related rights, the rights of minors and respect for human dignity, as well as the promotion of cultural and linguistic diversity. In the document, the role and significance of public media in the information society was also noted.[54]

During its meeting held in Lisbon on 23-24 May 2000, the EU Council underlined the potential for growth, competitiveness and job creation of the shift to the knowledge-based digital economy.[55] It pointed to the necessity of ensuring inexpensive access to information at all levels and decided that the MEDIA Plus programme would also cover European productions created by means of new technologies.[56]

In 2002, the so-called Telecommunications Package was adopted. The following Directives formed part of it: Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)[57], Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)[58], Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). The above package was amended in 2009.[59]

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[54] *Cf.* T. Kowalski, *W poszukiwaniu nowej struktury regulacyjnej sektora mediów w Polsce – aspekt europejski*, "Studia Medioznawcze" 2003, no. 5, pp. 18-20 and K. Jakubowicz, *Unia Europejska*..., pp. 52-53.

[55] *Cf.* the preamble to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive). OJ L 108, 24/04/2002 P.0033-0050, pp. 349-366.

[56] E. Stasiak-Jazukiewicz, *Polityka*..., p. 105. See: Commission's Communication of 10 February 2004 "Building our common future – Policy challenges and budgetary means of the enlarged Union 2007-2013", which extended the duration of the MEDIA Plus programme until 30 June 2007, *ibid*.

[57] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24/04/2002 P.0033-0050, pp. 349-366.

[58] OJ L 108 of 24.4.2002, pp. 21-32, Polish special edition: Chapter 13, vol. 29, pp. 337-348.

[59] Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on

On 21 June 2002 at the Seville summit, the European Commission presented the document titled "eEurope 2005 action plan. An information society for all".[60] This comprehensive paper on the functioning of electronic media contained the postulate that Member States implement clear switchover rules, i.e. introduce transparent regulation on the conversion to digital television. It was considered indispensable that EU Member States adopt appropriate strategies that specify the intentions of Member States in this area, and that Member States would present a schedule of activities including switch-off, i.e. the itinerary for switching off analogue communications.[61]

The above guidelines were reiterated in the Communication of the European Commission of 17 September 2003.[62] The document did not contain a proposal of some single pan-European model of the switchover strategy, but it did oblige Member States once again to draft individual switchover schedules. [63] It contained the guidelines that should be taken into account when drafting the documents. It was recommended that when outlining this policy, not only technical, but also social, cultural, political and economic aspects should be taken into account. Another recommendation was to introduce transparent rules of radio spectrum management.

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cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ of the EU L337 of 18.12.2009, pp. 11-36) and Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (OJ of the EU L 337 of 18.12.2009 pp. 37-69). Under the above acts and Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ of the EU L337 of 18.12.2009, pp. 1-10), among others *BEREC* was established which replaced the so-called European Regulators Group (ERG). Other amendments concerned the management of radio spectrum. Also the necessity to respect the principle of technology and service neutrality was underlined, and secondary trading in the frequency market was permitted. See: F. Kamiński, *Charakterystyka pakietu regulacyjnego 2009 dla sektora komunikacji elektronicznej*, "Telekomunikacja i Techniki Informacyjne" 2010, no. 1-2, pp. 4-15.

[60] *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. eEurope 2005. An information society for all. An Action Plan to be presented in view of the Sevilla European Council 21/22 June 2002, COM (2002) 263*, Brussels, 28.05.2002, http://eur-lex.europa.eu/LexUriServ/LexUri- Serv.do?uri=COM:2002:0263:FIN:EN:PDF

[61] See also: *Digital Switchover Broadcasting. A BIPE study for the European Commission, Directorate General Information Society (Executive Summary)*, 12 April 2002. http://www.krrit.gov.pl/bip/Portals/0/radiofonia%20i%20telewizja%20cyfrowa/cyfr–bipe–a.pdf and *Digital Switchover Broadcasting. A BIPE study for the European Commission, Directorate General Information Society (Final Report)*, 12 April 2002. http://www.krrit.gov.pl/bip/Portals/0/radiofonia%20i%20telewizja%20cyfrowa/cyfr–bipe–b.pdf.

[62] *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the transition from analogue to digital broadcasting (from digital "switchover" to analogue "switch-off")*, COM (2003) 541, (SEC (2003) 992). http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0541:FIN:EN:PDF.

[63] K. Jakubowicz, *Polityka*..., p. 192.

The document also contained a description of the role and competences of the market regulator and the principles of licensing the activity of market participants. It was necessary to specify the switch-off calendar and undertake actions that would encourage consumers to purchase appropriate equipment (either a set-top box or a digital television set) that enable viewing digital television. Member States, when achieving the above goals, were obligated to adhere to such principles as transparency, interoperability, technical neutrality, prohibition of discriminating against any media market participant, proportionality of policies and redefinition of the must-carry regulation. At the same time, the Commission reserved its right to supervise and monitor the implementation of national policies in this area.[64]

Two years later, on 24 May 2005, the European Commission expressed a much more definite opinion on the acceleration of the conversion from analogue to digital broadcasting.[65] It was underlined that the faster the EU switches from analogue to digital, the faster it will be capable of reaping the benefits of this process. It was argued that analogue transmission, which requires high-power transmitters, uses radio spectrum which could be put to better use in digital broadcasting. Digitalisation also offers the opportunity to make better use of the digital dividend, i.e. released radio frequencies could be re-used for different purposes. It was suggested that the valuable resources recovered in this process should be employed to render EU-wide services and various additional services (e.g. traffic information, mobile communications), other than television and radio broadcasting. At the time, it was postulated that the switch-off should take place at the beginning of 2010.

The opinion of the European Commission on the state financial aid which the Federal Republic of Germany has implemented for the introduction of digital terrestrial television (*DVB-T*) in Berlin-Brandenburg was a good example of the Commission's view on the state involvement.[66] It was stated that EU Member States have various possibilities of providing financial support to such projects, the more so because they enhance competitiveness and deepen social ties. In the said region, it was discussed whether to subsidise the purchase of needed equipment by citi-

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[64] In the *Communication from the Commission* of 15 December 2003 on the future of the EU audiovisual policy, the need for close monitoring of the digitalisation process was reiterated, and this concerned especially the outcomes of this process and changes in the market. See: *Communication from the Commission to the Council, The European Parliament, the European Economic and Social Committee and the Committee of the Regions "The Future of European Regulatory Audiovisual Policy"*, 15.12.2003 r.; COM(2003)784 final. Text available at www.eur-lex.europa.eu/LexUriServ/.

[65] Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on accelerating the transition from analogue to digital broadcasting, COM (2005) 204, (SEC (2005) 661). http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005–0204en01.pdf. See also: *Radio Spectrum Policy Group, Opinion on the World Radio Conference 2007 (WRC-07) FINAL – November 23, 2005*. http://rspg.groups.eu.int/—documents/documents/opinions/rspg05–103–op–wrc07.pdf.

[66] Commission Decision (2006/513/EC) of 9 November 2005 on the State Aid which the Federal Republic of Germany has implemented for the introduction of digital terrestrial television (DVB-T) in Berlin-Brandenburg (OJ of the EU L 200 of 22.07.2006, pp. 14-34).

zens with low income, and whether to compensate broadcasters for costs generated by the so-called simulcasting, i.e. simultaneous analogue and digital broadcasting. State aid in this case did not disturb market competitiveness and did not discriminate against any market participant. The Commission decided that similar projects serve the purpose of catering for general public interests, and that this allows for the introduction of some subsidy mechanisms. However, one ought to take the technology neutrality principle into account. This means that one cannot give preference to one communication platform e.g. favour terrestrial transmission over satellite and cable broadcasting. It is also necessary to meet the interoperability requirement in relation to the implemented services. This means that one should employ open application interfaces that allow for using the equipment of various producers and technical standards. Moreover, the funds allocated to broadcasters can only lower the incurred loss and cannot constitute any privilege. In the case of Austria, on the other hand, the EU consented to the allocation of specified public funds to research and pilot projects connected with the introduction of digital technologies, as well as to subsidies to individuals for the purchase of set-top boxes.[67]

To conclude, the rapid development of media law commenced upon the granting of the mandate to regulate the functioning of the media to institutions of the European Community. This has been especially visible since audiovisual media went global. The introduction of satellite television was the first event of the kind. Establishment of international communication networks only intensified this process. However, media law was long limited to television, and only later embraced audiovisual media services. As much as interfering in the contents of media transmissions has been already limited, actions directed at the development of technical and organisational infrastructure have been broad spectrum.

ABSTRACT

The article provides a provisional systematisation of EU policy on mass media. The approach of the European Communities to the issue of mass media in the last decades can be divided into several stages. In the initial period, relatively the longest one, EC bodies were denied competences to interfere in this area. The 1980s and 1990s were characterised by an attempt on the part of the EU to work out adequate and distinct strategies regarding mass media. The moment the EC bodies "gained" the competences to regulate the principles underlying the functioning of the media, a boisterous development of the EU media law started and became especially conspicuous with the emergence of global media. Regulations on mass media initially pertained to television but then expanded onto audiovisual media services followed by a growing significance of the so-called "new media". EU policy deals with the media in three different contexts: firstly, in the context of competition policy and principles governing the functioning of the internal market; secondly as an element of democratic and cultural infrastructure; and thirdly, on the level of building the so-called information society. A hypothesis is put forward that the EU audiovisual policy is dominated by a two track strategy of regulating the functioning of the media.

[67] This is a reference to the Commission's decision of 16 March 2005, http://europa.eu.int/comm/competition/state–aid/decisions/additional–docs.html.