The country of origin principle and competition among national regulatory régimes in East Central Europe

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ABSTRACT: The cornerstone of European media regulation is the principle of the "country of origin", which makes it possible for broadcasters to establish themselves in any EEA Member State and to broadcast their programmes in another one (CEC, 2006). The less competitive is this regulatory framework when compared with other countries, the greater is the possibility that broadcasters will set up their operation in another state.

Firstly, we shall describe the European legal framework relating to the country of origin principle, including the ECJ's case law. We also propose to show the potential difficulties of interpretation of the new regulation of the AMS Directive concerning this principle.

We will also examine how the country of origin principle affects the media régimes of the East Central European region. We shall compare the Hungarian system with the regulations of Czech Republic and Romania, and we shall show those factors which influence the broadcaster's willingness and motivation to choose a country from which to operate.

KEYWORDS: EC media regulation, country of origin principle, Hungarian, Czech, Romanian media regulation

THE COUNTRY OF ORIGIN PRINCIPLE

One of the most important legislation issues concerning crossover broadcasting and other content services is to decide which national law is the applicable one.[1] The European Union follows the country of origin principle concerning audiovisual

[1] Although the terms "applicable law" and "jurisdiction" have different meaning in international private law, in this essay we use these terms as synonyms. In theory, a national forum or authority which has jurisdiction may apply another state's national law (the applicable law), but this is not the case in the field of our research: the media authority of a Member State, which has jurisdiction over a service applies its own national law, and, in consequence, jurisdiction and the applicable law will be the same.

media services. This is the most effective means of prescribing the applicable law in relation to all services which are in fact available simultaneously in a number of Member States. It simply cannot be expected of a service-provider that he should comply with all national regulations, and so a clear definition of the applicable law is a fundamental requirement for the freedom of services. "The country of origin principle should remain the core" of EU legislation concerning audiovisual media services, "as it is essential for the creation of an internal market" (*AMS* Directive, Preamble, recital (27)). The country of origin principle is also applicable concerning information society services (E-commerce Directive Art. 3.); the characteristic of the regulation is similar to the *Audiovisual Media Services* Directive (about the history of this principle see more in: Farda, 2000).

According to the country of origin principle, audiovisual media service-providers are under the jurisdiction of the Member State in which they are established. The interpretation of "established" is based on the location of the head-office, on the origin of editorial decisions, on the location of a significant part of the workforce involved in the pursuit of the audiovisual media service activity, and/or the use of satellite capacity.[2] If it is impossible to determine the jurisdiction according to the provisions of the Directive, than the general rules of the Treaty of Rome should apply, since these regulate the applicable law concerning the freedom of establishment. The regulation concerning information society services does not define the criteria for establishment, and so this must be interpreted according to the general features of the freedom of establishment. In the course of determining "establishment" purely technical factors (such as the location of the server) are not sufficient: the most important criterion is the location of the economic activity (*E-commerce* Directive, Preamble, recital (19)).

Using any other criteria to determine jurisdiction other than that of establishment, as provided in the Directive, and so applying jurisdiction to broadcasters established in other Member States is contrary to EC law (Case C-222/94. Sec. 76, 78). The criteria of "establishment" are formal criteria: the real origin of the programme and the programme's compliance with the Directive is irrelevant in determining jurisdiction. According to the European Court of Justice the receiving state cannot refuse to apply the criteria, even if the content is produced in a third country and the content does not comply with the provisions of the Directive (Case C-14/96. Sec. 27). If a broadcaster "has more than one establishment, the competent Member State is the state in which the broadcaster has the centre of its activities, regarding in particular decisions concerning programme policy and compiling the programme" (Case C-56/96. Sec. 19). The definition of "establishment" does not depend on the location of the service provision: "the Treaty does not prohibit an undertaking from exercising the freedom to provide services, if it does not offer

[2] See the detailed criteria in *TWF* Directive Art. 2. The essay follows the Article numbers of the consolidated version of the *TWF* Directive (as amended by the *AMS* Directive).

services in the Member State in which it is established." (Case C-56/96. Sec. 22). EU regulations, therefore, encourage media enterprises to act under that jurisdiction which is the most advantageous for them, and this also motivates Member States to establish the most favourable national regulations – naturally, within the framework of European regulation.

The Member State shall ensure that all audiovisual media services transmitted by media service-providers under its jurisdiction comply with the national regulation in that Member State, and that the media service-providers under their jurisdiction effectively comply with the provisions of the *TWF* Directive (*TWF* Directive, Art. 2 Sec. 1, Art. 3 Sec. 6). According to the European Court of Justice, Member States are not able to apply different regulations to broadcasters under their jurisdiction based on different legal grounds. In the case of the Commission v. UK the ECJ found it contrary to EC law that the UK had imposed different obligations on domestic and on non-domestic satellite services. "Broadcasters whose headquarters were in the UK but broadcasting from abroad were only required to obtain a non-domestic satellite licence," and these licences were exempt from many restrictive provisions. The "1990 Broadcasting Act allowed the UK to issue licences to any company which wanted to broadcast via satellite to any country" in the world (Harcourt, 2005, pp. 26–28). This motivates many broadcasters to obtain a licence in the UK and broadcast to other countries, and many ECJ cases concerns this problem (Cases C-56/96.; C-14/96). Due to the favourable regulatory environment concerning satellite-based broadcasting, most of the broadcasters who broadcast via satellite are, at present, established and operate in the UK (Trends in European Television, 2007, p. 134).

The receiving Member State is obliged to ensure the freedom of reception of the audiovisual media service and not to restrict retransmission on its territory for reasons which fall within the fields coordinated by the Directive (*TWF* Directive, Art. 2a Sec. 1). According to the ECJ, it is "solely for the Member State from which television broadcasts emanate to monitor the application of the law of the originating Member State" and to ensure compliance with the Directive, and the "receiving Member State is not authorised to exercise its own control" (Case C-11/95. Sec. 34). A Member State may not "oppose the retransmission on its territory of broadcasts of a television broadcaster over which another Member State has jurisdiction," even when those broadcasts do not comply with the requirements of the Directive; Member States must have mutual trust in each other concerning control of the broadcasters (Cases C-11/95. Sec. 38, 88, C-14/96. Sec. 36). The point of the country of origin principle, therefore, is the prohibition of double control, which can be regarded as one of the most important guarantees of the freedom of media services.

BARRIERS TO THE COUNTRY OF ORIGIN PRINCIPLE

The Member States' scope of action to shape their media systems and implement their media policy is strongly influenced by the scope of the country of origin prin-

ciple's limitation. The *Audiovisual Media Services* Directive modified this issue significantly, and opens up more possibilities for Member States to make exceptions from the country of origin principle. These changes are quite surprising since it is contrary to the general liberalisation tendencies of the media market. According to the preamble to the *AMS* Directive, "technological developments, especially with regard to digital satellite programmes, mean that subsidiary criteria should be adapted in order to ensure suitable regulation and its effective implementation and to give players genuine power over the content of an audiovisual media service" (*AMS* Directive, Preamble, recital (29)).

The country of origin principle shall only be restricted in those cases which are expressly mentioned in the directives. According to the *TWF* Directive, the transmission of television broadcasting may be provisionally suspended or restricted if the television broadcast coming from another Member State manifestly, seriously and gravely infringes the provisions concerning the protection of minors and the public interest (broadcasts which contain any incitement to hatred based on race, sex, religion or nationality), and if, during the previous 12 months, the broadcaster has infringed these provisions on at least two prior occasions, and consultations with the other Member State and with the Commission were not successful (see in detail in *TWF* Directive, Art. 2a Sec. 2). The free movement of information society services can be restricted after a consultation procedure on the basis of the protection of public policy, public health, public security, and of consumers (*E-commerce* Directive, Art. 3 Sec. 4). The 'on demand' audiovisual media services may also be restricted on these bases (*AMS* Directive, Preamble, recital (35), TWF Directive, Art. 2a Sec. 4).

From the simple text of the Directive it follows that the free movement of media services and information society services may be restricted by virtue of a reason which falls outside the scope of the Directive (see *TWF* Directive Art. 2a Sec. 1 and *E-commerce* Directive Art. 3 Sec. 2). In the case of the Commission v. Belgium, the Belgian argument, among others, was based on the fact that the Belgian regulation concerns the issue of pluralism, which is not exhaustively regulated by the Directive. The court accepted this argument and applied the general rules concerning freedom of services. The Belgian measures were found to infringe EC law upon the basis of the general rules (Case C-11/95. Sec. 55). The Belgian regulation prescribes compliance with Belgian copyright law, public morality, public security and public order as a condition of retransmission. According to the ECJ, although these issues are not exhaustively regulated in the Directive, "the protection of those interests cannot in any event justify a general system of prior authorisation of programmes coming from other Member States, which would entail abolition of the Freedom to Provide Services" (Case C-11/95. Sec. 92). According to the case law of the ECJ, the Member States' scope of action to restrict the freedom of services for any reason which falls outside the scope of the Directive is restricted. We must also mention that there has been no case in which a Member State has attempted to apply its own

regulation to a foreign media company concerning media concentration, the requirement to provide balanced information or the broadcasting fee.

The *TWF* Directive allows the Member States to "require media service-providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive provided that such rules are in compliance with Community law" (*TWF* Directive, Art. 3 Sec. 1). The Directive provides minimum regulation, but this section raises the question whether more detailed or stricter rules can be enforced against broadcasters who are under the jurisdiction of another Member State. According to the ECJ in the De Agostini and TV Shop joint cases, "if provisions of the receiving state regulating the content of television broadcasts for reasons relating to the protection of minors against advertising were applied to broadcasts from other Member States, this would add a secondary control" (Joint cases C-34/95. C-35/95; C-36/95. Sec. 61).[3] The ECJ's declared obligation for Member States "to ensure freedom of reception" and not to impede retransmission "on grounds relating to television advertising and sponsorship" does not have the effect of "excluding completely and automatically the application of rules other than those specifically concerning the broadcasting and distribution of programmes." Regulation concerning consumer protection against misleading advertising may enact measures against an advertiser if "those measures do not prevent the retransmission, as such, in its territory of television broadcasts coming from that other Member State" (Joint cases C-34/95. 35/95; C-36/95. Sec. 33, Sec. 38).

The *AMS* Directive implements some new provisions concerning the Member States' opportunities to adopt more detailed or stricter rules in the general public interest. The new regulation enacted the prohibition of the circumvention of the law, and assists in the enforcement of the more detailed or stricter national rules against broadcasters who are under the jurisdiction of another Member State. The Directive empowers Member States who have more detailed or stricter regulation to adopt appropriate measures against the broadcaster, after unsuccessful consultation, if a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory and the broadcaster in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules (*TWF* Directive, Art. 3 Sec. 2, 3). The preamble helps the interpretation of the term "fully or mostly directed towards its territory," and refers to indicators such as "the origin of the television advertising and/or subscription revenues, the main language of the service or the existence of programmes or commercial communications targeted specifically at the public in the Member State where they are received." (*AMS* Directive, Preamble, recital (33)). Following this interpretation, the service of the service-provider who broadcasts

[3] In the De Agostini case, the De Agostini publisher challenged the Swedish Consumer Protection Commissioner's decision. The resolution of the Commissioner had prohibited the advertisement of a publication, because it was found to be a misleading advertisement.

the same programme in more countries, usually with different targeted advertising and providing more languages or subtitles, cannot be regarded as fully or mostly directed towards a Member State. Since this is quite usual, the provisions of the Directive probable apply only on a few broadcasters in Europe. The Directive does not empower Member States to hinder the retransmission, but they can adopt objectively necessary, non-discriminatory, and proportionate measures (*TWF* Directive, Art. 3 Sec. 3). These measures are not defined in detail in the Directive. In some other cases, such as the circumvention of the broadcasting fee, these provisions cannot apply,[4] and so potential conflict between the different national media regulation may remain (about the evaluation of the proposed changes see also EPRA, 2006, pp. 2–3).

In connection with the provisions concerning the circumvention of law the Directive refers to the case law of ECJ, and assesses the changes as being the codification of case law (*AMS* Directive, Preamble, recital (32)). The ECJ, in fact, dealt with this issue in general in the case 33/74 (Van Binsbergen) and declared that "a Member State cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by article 59 for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that state." (Case 33/74. Sec. 13). Later, the ECJ applied this principle to media services in some cases (Cases C-148/91, C-23/93.),[5] but the regulation environment which was examined by the ECJ in that cases had been established before the *TWF* Directive came into force. The restrictions of freedom of services were based on the circumvention of law and the establishment of a plural media system. Later, as we indicated earlier, the ECJ took a much stricter approach regarding the restriction of the freedom of media services, which was based on the regulation of the *TWF* Directive (about the case law of ECJ concerning circumvention of law see more Frey, 1999). The ECJ's decisions, which were based on the TWF Directive, did not approve the possible enforcement of the more detailed or stricter rules on broadcasters established in another Member State. The ECJ also clarified that the country of origin principle also applies to those broadcasters who do not broadcast at all in the Member State in which they are established. In our opinion, the argument of the *AMS* Directive which refers to the ECJ case law as a basis for increasing the armoury of Member States against a foreign broadcaster is inaccu-

[4] Since it is not regulated by the Directive.

[5] In the TV10 case the ECJ stated, that the "Treaty provisions on Freedom to Provide Services cannot, therefore, be interpreted as precluding a Member State from treating as a domestic broadcaster a broadcasting body constituted under the law of another Member State and established in that state but whose activities are wholly or principally directed towards the territory of the first Member State, if that broadcasting body was established there in order to avoid the rules adopted by the first Member State as part of a cultural policy intended to establish a pluralist and non-commercial radio and television broadcasting system."

rate. The *AMS* directive retreated in connection with the freedom of media services and widened the power of Member States to enforce they own media policy. Since media services are in fact available simultaneously in a number of Member States, and since it cannot be expected of the service-provider that he comply with all the national regulations, in our view, the previous regulation was more effective and found a balance between the freedom of media services and the possibilities for Member States to enforce their own media regulation. Individual and collective interests (such as the protection of minors) can be guaranteed by competition between the national media regulations (about the criticism of the *AMS* Directive see more Polyák, 2006).

The possible enforcement of any measures regulated in Art. 3 Sec. 3 is also questionable. Any means other than the restriction of the retransmission could not be likely achieved without the assistance of the (media) authorities of the Member State which has jurisdiction on the broadcaster who circumvents the more detailed or stricter national law. An unsuccessful consultation, which is one of the conditions laid down for adopting appropriate measures, does not promise an effective cooperation between the media authorities concerning such measures.

COMPETITION AMONG NATIONAL MEDIA REGULATIONS

In the past few years a number of Hungarian broadcasters have moved to other Member States. These include HBO, Minimax, Cool TV, Film+. Many broadcasters do not even start an operation in Hungary, although it is obvious by virtue of the language and the programmes that they target a Hungarian audience, and the ownership structure also overlaps with that of Hungarian broadcasters – for example, Zone Reality, Zone Europe and AXN. The most popular target states for this "migration" are the Czech Republic and Romania.

The motivation of the broadcasters is not based purely on imperfections in Hungarian media regulation, but also on more general economic issues – taxes and other costs, which are better in the two countries mentioned. Copyright royalties and the activity of collective rights management organisations are also important factors, but in this essay we shall focus on national media regulation as the main factor in respect of establishing an operation and so we shall compare the relevant provisions of the Hungarian, Romanian and Czech Media Acts.

One of the most controversial elements of Hungarian media regulation concerns the issue of a broadcasting fee. This fee can be regarded as a special kind of tax which has to be paid by commercial broadcasters regardless of their method of transmission. This fee is the financial resource of the Broadcasting Fund which is a financial fund designed to provide support for public service broadcasting, for broadcasters of public programmes, non-profit broadcasting companies, public service broadcasts and programmes, to preserve and enhance the cultural heritage and to provide diversity of programming (Hungarian Media Act, Sec. 77 (1)). The

broadcasting fee cannot be regarded as a frequency fee, since it also has to be paid by broadcasters who do not use any frequency to disseminate their programme, and there is, moreover, a separate frequency fee to be paid by broadcasters who do use a frequency.[6]

The basis of the calculation of the fee is not the annual financial result or any other economic indicator of the broadcasting organization; it depends on the potential number of households and not those actually reached. The amount of the fee can be decreased if the broadcasters undertake to broadcast public service programmes and works originally created in the Hungarian language. The Hungarian Media Act does not regulates the method for calculating the broadcasting fee; this comes within the Media Authority's scope (Gálik, Polyák, 2005, p. 268). In April 2008 these provisions of the Media Act were found unconstitutional by the Constitutional Court (ABH 37/2008). According to the Court's decision, the regulation involves too wide a scope of action for the Media Authority, and even the possibility of challenging the Media Authority's resolution in a court is lacking, since there is no legal basis for the method of calculation. So far no legal changes have happened since the Constitutional Court's decision.

Following the Hungarian media authority's method of calculation, the satellite-based broadcaster has to pay 41 million forints (ca. €165 000) broadcasting fee annually. This can be reduced by up to 25% of the original amount, if the broadcasters agree to broadcast certain types of programme. However, such commitments have a negative effect on the competitiveness of commercial broadcasters and any check or review of the agreements usually leads to some legal dispute between the broadcasters and the Media Authority. In Romania there is no broadcasting fee. Broadcasters who provide terrestrial broadcasting services and so use frequency have to pay the frequency fee (Romanian Media Act, Art. 62) which is imposed by the Romanian Telecommunications Authority. In the Czech Republic there is no broadcasting fee for the operation of broadcasting if disseminated through satellite and cable systems, but there is a one-off registration fee of 50 000 CZK, ca. €2000 (Act on the amendment of the Czech Media Act, Art. 5 point 1).

The national regulation concerning media concentration has a significant effect on the economically potential scope for action and growth of the media companies. The Hungarian regulation is very strict concerning this and, according to the Media Act, a broadcaster may at one time be entitled to operate no more than one national programming service, two regional and four local services, or twelve local programming services. This means that a national broadcaster, or a broadcaster who has a controlling share[7] in a national broadcaster, cannot have more than one

[6] The broadcasters pay the frequency fee indirect; they pay it to the company (Antenna Hungária) who disseminates their program on terrestrial frequency.

[7] Controlling share means "a direct and indirect share in a company, the total of which provides control in excess of twenty-five percent of the company's assets or voting rights," or "any situation which makes a controlling influence in the company possible on the basis of a contract, the deed of

national programming service. This restriction does not apply to specialised broadcasting, and in such a case, the specialised broadcaster's advertising time is limited to the 0.3 time in accordance with the general rules – which produces a maximum of 3.6 minutes of advertising per hour (Hungarian Media Act, Sec. 86. (5), (6)). The Hungarian regulation clearly hinders the common business model of broadcasters, according to which the most valuable part of the purchased content-package is broadcast on the main channel(s), whilst other parts of the package and replays are broadcast on the broadcaster's minor channels. In Hungary the larger commercial broadcasters, including the market leader RTL KLUB started their new channels through broadcasters who are established in another Member State but broadcast to Hungary.

According to the Romanian Media Act, similarly to the German regulation (about the German regulation see more: Polyák, Szőke, 2007, pp. 24–28), concentration control is mainly based on the broadcasters' market share – in order to protect pluralism and cultural diversity. The definition of "market" is based on the audience, and a broadcaster may have no more than a 30% share of the market. There is a further limitation: a company shall have no more than two licences for a specific type of broadcasting on the same geographical territory (Romanian Media Act, Art. 44–46). The Czech regulatory method regarding media concentration is similar to the Hungarian, in that the number of licences which can be acquired is limited. Nevertheless the regulation is much more accommodating since the restrictions, under which one single legal entity or natural person cannot hold more than one nationwide analogue television broadcasting licence and must not hold more than two nationwide digital television broadcasting licences, do not apply to television broadcasting via cable and satellite systems. This strict limitation, therefore, only concerns terrestrial channels.

The provisions relating to advertising also have a direct effect on the financial health of broadcasters. This issue, in contrast to the issue of the broadcasting fee and concentration control, falls within the scope of the *TWF* Directive. In the course of implementation, the Member States had some scope for action to establish more detailed and stricter rules. The Member States could decide whether to accept the "net" or "gross" calculation of the programme time in connection with the advertisements inserted. The "net" calculation method is based on the length of the programme without advertisements, whilst, according to the "gross" calculation method, the length of the programme is calculated including the advertisements inserted. Secondly, Member States could decide to allow a maximum of twelve minutes of advertising in every "clock hour" or in "every hour, calculated in any way or form" (Case C-6/98). The Hungarian legislator chose the stricter way of implementation in connection with both issues. The Hungarian Media Act states that "within

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foundation or preference shares, through the appointment or removal of the decision-making or supervisory bodies, or in any other way" (Hungarian Media Act, Sec. 2 point 3).

a given clock hour of transmission time, calculated in any way or form, the time devoted to conventional advertising may not exceed twelve minutes," and follows the "net calculation" of the programme in the course of the advertisements inserted (Gálik, Polyák, 2005, pp. 356–357).

The Romanian regulation contains similar rules as the Hungarian Act in respect of calculating an hour, and stipulates that the duration of advertising and "teleshopping" spots may not exceed 12 minutes of the time of any given hour (Romanian Media Act, Art. 35 (2)). The Czech regulation is not so strict according to Art. 50 of the Czech Media Act: "During each hour of television broadcasting by a broadcaster the time reserved for advertising and teleshopping spots shall not exceed 12 minutes."

According to the Hungarian Media Act, national and regional television broadcasters, with the exception of broadcasters specialising in programmes other than cinematographic works, shall appropriate 6% of their advertising revenues for the creation of new Hungarian motion pictures (Hungarian Media Act Sec. 16 (7)). The amount of money may be decreased to half if the obligation is satisfied by financial contributions made to public foundations or state funds subsidising the local film industry. Neither in Romania nor in the Czech Republic is there any such obligation.

In the Hungarian Media Act there are number of provisions concerning the broadcasted content itself. According to Section 8, national and regional broadcasters (except specialised broadcasters) shall broadcast public service programmes during no less than 10% of their daily transmission time, and the public service programmes shall be broadcast during prime time hours (06.30–09.30 o'clock on radio, and 18.30–21.30 o'clock on television) for not less than 25 minutes. Public service programme is a programme serving the informational, cultural, civic and lifestyle needs of the audiences, for instance, news, artistic works or works concerning Hungarian culture and the culture of national and ethnic minorities, educational works, religious and children programmes, etc. There is a further duty imposed on the national television channels and national radio channels: they shall broadcast no less than 20 minutes and not less than 15 minutes, respectively, of independent and uninterrupted news broadcasts during prime time hours (Hungarian Media Act Sec. 8). According to the case law of the media authority, this obligation does not concern specialised broadcasters.

These provisions are quite problematical. They have a negative effect on the competitiveness of commercial broadcasters, they are not very effective and lead to disputes between the broadcasters and the media authority. The broadcaster has to broadcast public service programmes which usually do not match their profile, and they have to allocate financial resources to produce or purchase these programmes. The regulation is not very effective since the broadcasters broadcast these programmes at times when almost no-one watches them. Since the definition of the public service programme is not precise in the Act, there are frequent disputes be-

tween the media company and the media authority concerning the classification of a programme (that is, whether it is or is not a public service programme). The news bulletins of the commercial broadcasters can usually be regarded as masterpieces of "infotainment."

Another problematic point of the regulation is that the range of broadcasters who can be regarded as national broadcasters is too wide due to the imprecise definition provided by the Act. A broadcaster who potentially (not actually) can be received on a territory where more than 50% of population is Hungarian is regarded as a national broadcaster.[8] According to the definition, most of the broadcasting disseminated via a cable network, and all broadcasting disseminated by satellite, can be regarded as national broadcasting, irrespective of the actual number of subscribers to the service. Hungary's third largest commercial broadcaster was classified by the media authority as a national broadcaster in 2007, and a court action against the decision of the authority is currently in progress. If the broadcaster were to lose the case, this would entail many new obligations: he would have to broadcast news in prime-time hours and also a specific amount of public service programmes; he would have to pay a much higher broadcasting fee and stop publishing his free national daily paper due to cross-ownership restrictions. In this case the broadcaster will probably be motivated to establish himself in another Member State where no such obligations exist.

Both the Romanian and the Czech regulation prescribe only general expectations concerning the content of the broadcasting. These include the provision of objective and balanced information, the separation of evaluative comment and news, and the promotion of political and social pluralism and cultural, linguistic diversity.[9] In contrast to the Hungarian rules, neither the Romanian nor the Czech regulations impose any obligation on commercial broadcasters to provide public service programmes.

The *TWF* Directive does not regulate the issue of the protection of minors in any detail, and the wide range of possible implementation has led to very different national regulations in individual Member States. The Hungarian Media Act contains quite strict rules. The broadcasters have to classify all their programmes according to the categories established by the Act, except previews, news programmes, current affairs programmes, sport events and advertisements. Programmes which are "not

[8] "National broadcasting shall mean the broadcasting of programmes covering an area of at least fifty percent of the country's population," "area of reception" in the case of cable network, shall means "the inhabited territory in which the cable network was developed and in which the population of the territory has the possibility of establishing connection." The regulation is similar in case of satellite-based broadcasting (Hungarian Media Act, Sec. 2 points 36, 47).

[9] See in detail Act No. 231/2001 of 17 May 2001 on Radio and Television Broadcasting Operation (consolidated version, 2005, hereinafter: Act on Radio and Television Broadcasting Operation), Art. 31, and the Romanian Law on Radio and Television Broadcasting, Art. 3. Similar provisions are also enacted in the Hungarian Media Act.

recommended under the age of sixteen" shall be broadcast only between 21.00 and 05.00 o'clock and programmes "not recommended under the age of eighteen" shall be broadcast only between 22.00 and 05.00 o'clock.[10] The classification of the programme must be displayed at the beginning of the broadcast, and, in addition, the correct distinguishing symbol of this programme rating must be displayed in one corner of the screen throughout the entire duration of the broadcast (Hungarian Media Act Sec. 5/D (2), (3)).

Romanian legislation is even more detailed than the Hungarian. There are more categories and more restriction concerning possible broadcasting times. Audiovisual productions prohibited to children under 12 shall be broadcast only after 20.00 o'clock, and audiovisual productions prohibited to children under 15 shall be broadcast between 22.00 and 06.00 o'clock (the detailed rules can be found in Romanian Decision on the Content of Audiovisual Programme Services, Art. 19–23). Romanian regulations concerning categories and time restrictions are stricter than the Hungarian. The warning signs for the "prohibited below 15" and "prohibited below 18" categories are to be displayed permanently, whilst the signs relating to other categories must be shown for 10 minutes at the beginning of the programme. The Czech regulations concerning the protection of minors are very different from the Hungarian and Romanian rules. The Act does not contain detailed rules and categories, and Art. 32 prescribes that a broadcaster shall not include in the broadcasting any programme units which may seriously affect the physical, mental or moral development of minors by, in particular, involving pornography and gross violence as an end in itself. The broadcaster shall avoid including in the programme during the period of 06.00 to 22.00 o'clock any programme units and announcements which might endanger the physical, mental or moral development of minors. The media authority applies these general rules on an individual case basis and has accumulated a wide range of considerations in the course of interpretation (for some of aspects of interpretation see the CRTB Report, 2007). The Act also prescribes prior verbal warning and a symbol to be continuously shown during programmes which might endanger the physical, mental or moral development of minors.

CONCLUSIONS

In our essay we first examined the European regulation concerning the country of origin principle, the principle which ensures that all media enterprises (many of which usually provide services in more than one Member State at the same time) shall not have to apply more than one set of national legislation. We do not think that the amendments of the *TWF* directive by the *AMS*, which provide a greater (although not clearly defined) scope of action for Member States, are justified.

[10] There are, in total, 5 categories, but these are the most important ones. For detailed regulation see Hungarian Media Act, Sec. 5/A-5/F.

We also drew the conclusion that the EC regulation encourages media enterprises to act under that jurisdiction which is the most advantageous for them. The motivation of choosing a Member State to establish is usually based on economic factors, however political motivation is also possible. The Romanian media authority informed the Hungarian authority in 2008 that a Hungarian broadcaster had infringed the regulation concerning political campaign.[11] Since the requirement of impartial information is not regulated by the *TWF* Directive, the possible restriction of the freedom of services (restraining the retransmission) would be judged on the basis of the general rules of the Treaty of Rome and not on the Directive.

Because of these reasons the Member States are also motivated to establish the most favourable national regulation, since, otherwise, media enterprises will move to another Member State. This also means that the means of Member States to implement their own national media policy is restricted. Hungary can be regarded as a bad example since too many obligations are prescribed, so creating a tendency for broadcasters to move to another Member State. Both the Romanian and the Czech regulations are much more flexible and accommodating concerning broadcasting fees, media concentration and the public service duties of commercial broadcasters. We should, however, also mention that the Hungarian Media Regulation is currently under review. Due to the strong political influence surrounding legislation concerning the media in Hungary, it is hard to foresee the outcome, but we hope that the legislature will face, among other issues, the issue of migration and will enact a more competitive Media Act.

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