

Vienna Media Theses

Facilitate European Investments and Co-productions

Many of the new EU member states in eastern and central Europe are characterised by limited audiovisual markets and scarce financial resources. Critical mass in terms of advertising revenue, viewer ratings, cinema attendance, etc. is not attainable in many of these countries by dint of their own efforts. In order to avoid a downward spiral of scarce resources and ensuing restrictions of content provision, foreign investment and co-operation projects are urgently required in the film and television sectors. At present, US capital and US film productions play a dominant role in the media markets of the new EU member states. Moreover, a noticeable decline of European co-productions is making itself felt. Pan-European measures to support the production and distribution of films must be strengthened in order to encourage the development of an autonomous identity and marketability of European film and television catering to the cultural diversity in Europe. European funding measures, subsidies and tax incentives (albeit not by competing through national tax legislation) are indispensable for this as for any other future-oriented sector, as a stimulus and contribution towards self-help. European co-operation projects can also help to cut costs. National parochialism must be replaced by transparency and European division of labour: who can do what, where, with what quality and at what cost? There is still a lack of European-wide information in this context, which means that potential advantages of specialisation cannot be put to appropriate use.

Private Risk Capital: Develop and Market European Creative Content

State support for the production and distribution of audiovisual products must not result in a European-wide subsidising contest in which individual member states try to compete with each other through disguised business promotion programmes. This would lead to “subsidy tourism” of projects seeking the best funding bids with all the concomitant inefficiencies, which would hardly be useful in the European film industry’s competition with the all too powerful US majors. It must therefore be ascertained that the advantages of the European single market can be harnessed in a relatively unrestricted manner. Care must be taken that support instruments of individual member states are exclusively geared to the preservation of cultural diversity in Europe, i.e. to safeguard the distinctive cultural and content-related character of cinematographic works. Any ensuing budget cuts at regional level would have to be compensated by tax incentive systems aiming at private financial involvement in the form of risk capital. The opportunities of larger markets for the audiovisual sector brought about by EU enlargement will also open up new perspectives for private risk capital. With a view to European-wide marketing, creative content will have to

be provided with new marketing platforms in a unified European context. This relates not only to European-wide marketing during the production phase or to festivals as platforms for content, but also to the involvement of the television sector as an “outreach agency” for European creative content. In order to encourage pan-European marketing, specific support measures such as dubbing grants should also be discussed.

TWF Directive to Be Adapted to Advertising Dynamics

Advertising continues to be a dominant refinancing factor in the audiovisual sector. For this reason, broadcasting and media enterprises are interested in not only stabilising but further expanding the scope of this financing source. Since the possibilities of traditional advertising (e.g. commercial breaks during programmes) are increasingly reaching their limits, new strategic and technical innovations of the advertising industry are trying to open up scope for additional, new forms of advertising. So far, the European ‘Television without frontiers’ (TWF) Directive has provided a well-functioning regulatory framework for the provision of television in all EU member states and served the European states as a model for national regulations pertaining to advertising. Technological and creative developments in recent years have, however, triggered the emergence of new advertising techniques which exceed the scope of existing regulations and make a forward-looking amendment of the TWF Directive seem more urgent than ever. Such amendment would be desirable to provide the necessary legal security for European broadcasters and to ensure the uniform application of the TWF Directive in all member states. In its Interpretative Communication of 28 April 2004 (2004/C 102/02) the Commission has recognised the need to amend the existing provisions of the directive to cater to new advertising techniques. The Communication, however, merely clarifies the interpretation of certain aspects of new advertising techniques and is not designed to review and/or develop new provisions. In view of the ongoing development of new types of advertising (transaction television, virtual advertising, split screen, interactive advertising) this remains a task at hand.

Evaluate and Harmonise Copyright and the Right of Dissemination

The protection of intellectual property and copyrights must be continuously evaluated with a view to the creation of incentives for the development of new works. In view of digital means of storage, copying and universal dissemination, issues relating to the scope and duration of protection must be addressed, just as issues of the maximum admissible transfer period of rights of utilisation. The creation of new works should not be impaired needlessly by inappropriate protection provisions relating to existing works. The creation of an appropriate framework to make rights clearance simple, fast and secure will be an important factor in this context. As regards a common European film and media market, harmonisation of the utilisation and exploitation of rights will be the central task of the future, as it would contribute to greater dynamism in Europe for the entire sector.

Promote the Digitalisation of Broadcasting

It is to be assumed that the migration from analog to digital broadcasting in Europe will not be exclusively market-driven. The introduction phase, in particular, will require additional funding given the higher expenditure to be expected in the areas of planning, testing, test operation, public awareness-raising and implementation of the more expensive “simulcast operation”. For the successful digitalisation of broadcasting channels, member states will require the possibility to grant, within the framework of European and national competition law, financial subsidies to compensate for extra costs. Consideration should also be given to the provision of funding accessible to end users/consumers for the purchase of digital terminals, both for social reasons and to accelerate the migration process. In the process, European provisions on the notification of grants must be complied with in order to ensure a coordinated approach in all member states.

Support Digital Broadcasting Services Through European Standards

A successful European digitalisation strategy requires the promotion of harmonised technical standards at European level (especially in connection with additional digital services), in order to prevent any fragmentation of the European digital broadcasting market through the introduction of proprietary systems in the individual member states and to facilitate speedy introduction of digital services by creating a consistent digital broadcasting market in Europe. 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) takes account of this circumstance in its provisions on the creation and application of harmonised standards and specifications.

Strengthen the Perspectives of the Dual System

The development of dual broadcasting systems has taken different routes in the EU member states and has not yet been completed – particularly in several central and eastern European member states. Media legislation should take care to provide greater development opportunities for private broadcasters without weakening public-service providers in the fulfilment of their special tasks. In this context an examination of the public-service mandate, without jeopardising it, must be admissible. Consideration must be given to the fact that, especially in the new member states, public-service broadcasting providers are confronted with historically rooted problems of stability and legitimacy.

Improve the Transparency of Regulatory Yardsticks

All participants are confronted with a market characterised by entry barriers and a lack of resources. Mitigation of resource constraints can be achieved by digitalising the dissemination channels, which will give regulatory questions of access heightened importance. The European Union and its member states must pay increasing attention to the development of harmonised and/or comparable regulatory yardsticks for public-service providers and commercial broadcasters. The participants in a common market should be confronted with comparable regulatory requirements.

Safeguard Media Pluralism

Irrespective of the diversity of national media systems and political contexts, the member states of the European Union and the member countries of the Council of Europe have committed themselves to protecting media pluralism in their national systems. The diverse initial conditions and contexts in the European media markets, the sector-specific peculiarities and the different territorial radius of media services offered (at local, regional, national and European level), make the implementation of this normative goal extremely difficult. In case of mergers and acquisitions in the media sector, member states need to pay particular attention to a balance between economic necessity and plurality of opinions, in order to ensure that the greatest possible diversity and plurality of opinions will be preserved in the media landscape. This raises the question as to whether competition-law regulations alone will be appropriate to ensure media diversity. Many EU countries have no specific media policy provisions on this issue. With a view to the future development of the digital television scene, the lack of vertical concentration restrictions in most member states requires particularly careful watching of vertical media concentration in order to ascertain that content providers and broadcasting providers find equal access to digital platforms. In general, a heightened transparency of interest holdings is desirable.

Preserve Cultural Identity and Strengthen European Identity

From a European perspective it is necessary to find the right balance between international compatibility and marketability on the one hand, and cultural diversity and autonomy on the other. It would be too easy simply to complain about the dominance of US films. The specific audiovisual dilemmas of the European film and television sector are obvious: owing to different cultural traditions there is no common European audiovisual idiom. The different audiovisual traditions make access to the films of other European countries difficult. In most cases there is a lack of common themes, lively narrative and European stars for viewers to identify with. But: there is, in Europe, curiosity with regard to other European countries and there are internationally successful European film productions. These individual success stories must proliferate. Apart from personal experiences, it is mainly films that can fill the abstract structure of Europe with life through telling emotional stories with mass appeal and thus contribute to a strengthening of European identity.