



# UNEXPLOITED EUROPEAN LAW OPPORTUNITIES FOR SAFEGUARDING MEDIA FREEDOM

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# No media competences of the EU?

## media as economic service

- freedom of establishment, freedom of services
- audiovisual media services → legal harmonization
- competition law
- state aid rules

## media as part of the culture

- no legal harmonization

## media and fundamental rights

- limitations on freedom of services „must be appraised in the light of the general principle of freedom of expression” (Case ERT)
- Charta on Fundamental Rights Art. 11

## Avoiding conflicts

- at the level of market players
- at the level of political decision-making

# Legal harmonisation

- AVMS Directive
  - partial harmonisation
  - importance of fundamental freedoms and human rights as interpretation frames
- Case of Hungary
  - balanced coverage, registration: disproportionate restrictions to the freedom of establishment and the free provision of services as well as to the freedom of expression and information
  - Charter of Fundamental Rights: bolder interpretation of AVMS?

# Discriminative restrictions

- General frames of restricting the freedom of establishment and freedom to provide services
  - discriminatory restrictions only on the grounds of public order, public safety or health
- Discrimination by taxation
  - ECJ: MSs must refrain from any open or hidden discrimination by exercising tax competence
  - steep progressive tax: can disadvantage enterprises linked with a company whose registered office is in a different member state
  - urgent public interest?
- Case of Hungary
  - advertising tax: progressive tax rates based on turnover give a selective advantage to companies with low advertising revenues

# State aid rules

- Public service media
  - definition of public service remit
  - effective supervision carried out by a body effectively independent from the management
  - transparency, etc.
- State advertising
  - „the beneficiary undertaking has received an economic advantage which it would not have obtained under normal market conditions” (European Commission) →
  - allocation of state advertisements must not be independent of their performance
- Loans and guarantees granted by public entities
  - access capital at a rate of interest that would be unavailable in the market without these guarantees, or to receive capital in situations when the market would not provide credit at all

# Frequency allocation

- Licensing procedures limit fundamental freedoms
  - awarding broadcasting licenses must „comply with the principle of non-discrimination and the ensuing duty of transparency”
- Regulation of electronic communications (Case Centro Europa 7)
  - allowing measures adopted to pursue general interest objectives, in particular relating to content regulation and audiovisual policy
  - frequencies must be awarded based on objective, transparent, non-discriminatory and proportionate criteria



# Development of the competencies

- Report of the High Level Group on Media Freedom and Pluralism (2013)
  - monitoring activity
  - continuing harmonisation of media law
- Review of AVMS Directive (2016)
  - broadening competencies?



Thank you for your attention!

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