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Platform governance and the politics of media regulation: The review of the European Audiovisual Media Services Directive

ABSTRACT

The rapid expansion of video-on-demand platforms, such as Netflix or Disney Plus, associated with the advance of digital capitalism makes the Audiovisual Media Services Directive (AVMSD) adopted by the European Union a particularly relevant case for understanding the politics of the digital media policy. Based on an actor-centred constructivism, the article seeks to propose a conceptual approach to explore platform governance and highlight the key dynamics through which platform governance related to the media sector is formulated in light of the actors involved. As such, it provides an 'in situ and in action' view on normative building, introducing politics into the analysis of platform governance. The study focuses on the political framing of two key issues related to the crystallization of AVMSD: (1) the financial contribution of online platforms to European and national audio-visual content creation and (2) the presence and prominence of European and national audio-visual works in the online catalogues.

KEYWORDS

VOD platforms
audio-visual regulation
actor-centred
constructivism
media politics
Audiovisual Media
Services Directive
European Union

In November 2018, the European Union adopted an update of the EU audio-visual media rules through the review of the Audiovisual Media Services Directive (AVMSD). The updated legislation (Regulation [EU], 2018/1808) introduces new obligations for providers of on-demand audio-visual services to respect at least a quota of 30 per cent for European works on their online catalogues. The revised AVMSD incorporates also exceptions to the country-of-origin principle in order to tax non-domestic video-on-demand (VOD) players targeting a given member state (MS), but established in another MS. This financial contribution to the production of European and national film contents should be in association with the turnover generated in the country where the audience is targeted. In this regard, the AVMSD generates obligations to online platforms and extends a cultural policy toolkit model to non-EU online services (Vlassis 2021). For example, in July 2021, in the framework of the AVMSD's transposition, the French government implemented a law decree, which will impose financial obligations to non-national VOD platforms such as Netflix or Disney Plus. Their contribution to French and European audio-visual works will be based upon a rate of at least 20 per cent of their net turnover in France. Thus, from a digital media governance viewpoint, a question here arises: why and how did the involved actors in the AVMSD-making process decide to propose new obligations for online platforms?

On the one hand, public policies are a historical feature of the audio-visual industries and of the media sector more broadly – with financial aid, market regulation, intellectual property rights regulation and various support measures for the protection and promotion of cultural diversity as key components of national and EU audio-visual and media action (Iosifidis 2011: 143–65; Calligaro and Vlassis 2017). On the other hand, global VOD platforms have become major enablers of global flow of media contents, with unparalleled gatekeeping powers. They represent an unprecedented change in production, dissemination and consumption of media content (Albornoz and Leiva 2019; Lobato 2018), entailing the rise of the platform as a dominant infrastructural and economic model in the media and cultural industry (Evens and Donders 2018: 4). Therefore, as in the case of AVMSD review, global VOD platforms trigger governance challenges for policy-makers (Vlassis et al. 2020), insofar as the main political issue is about whether the absence of the rules imposed on the online platforms is beneficial or obstructing for the achievement of the EU economic and sociocultural aims (Kalimo and Pauwels 2009).

As such, it is worth exploring the factors that lead different stakeholders to rethink the key norms for the platform governance in the media sector and to impose new obligations for online platforms. The scientific interest to explore the factors contributing to define new governance norms for online platforms becomes even more compelling in the current worldwide trend towards public inquiries into the power of global platforms (Flew and Gillett 2021). Based on an actor-centred constructivism, the article seeks to highlight the key dynamics through which platform governance related to the media sector is formulated in light of the rationale of actors involved. The study will focus on the political framing of two main issues related to the crystallization of AVMSD's Article 13: (1) the financial contribution of online platforms to European and national audio-visual content creation and (2) the presence and prominence of European and national audio-visual works in the online catalogues. The methodological tools deal with primary written sources such as resolutions, reports, minutes, green paper, executive summaries as well

as replies at public consultation.¹ The article also includes numerical data related to media reporting and the resources of actors involved. The analysis focuses in particular on the timeframe from the publication by the European Commission of the Green Paper 'Preparing for a fully converged audiovisual world' in 2013 to the adoption of the revised AVMSD in 2018.

The article proceeds in three steps: first, I seek to provide a mapping of the ongoing, interdisciplinary research landscape regarding platform governance, and I introduce an alternative framework based on an actor-centred constructivist approach by describing the research assumptions I developed to explain the article's central question. Second, I delve into the AVMSD-making process, focusing on the argument that regulatory outcomes depend on the specific alliances between national governments and interest groups in the European context on the role of institutional actors, such as the European Commission and European Parliament, as well as on the ways in which struggles over platform governance are framed by the political context and the interaction among the actors involved. A final section summarizes the main arguments and develops broader lessons this analysis holds for exploring the politics of platform governance in the media sector.

PLATFORM GOVERNANCE: TOWARDS AN ACTOR-CENTRED CONSTRUCTIVIST APPROACH

In order to explore the analytical importance of an actor-centred constructivist framework, it is necessary to highlight how the existing academic literature might account for platform governance. The emerging platform governance literature brings together scholars from various disciplines such as media and communication studies, law, sociology and political science. It has produced a long list of thoughtful studies, and its key arguments can be articulated around three categories: the normative approach, the institutionalist perspective and the structuralist one.

First, the normative approach deals with how current policy proposals should reframe the platform power (Dijck et al. 2019) and in which ways public authorities should update the governance norms for online platforms (Poell 2020). The goal of this approach is to propose and develop a new framework for governing digital platforms (Bamberger and Lobel 2017) and the key concepts on which the platform governance should be built. In this regard, Helberger et al. (2018) recommend platform governance will achieve the realization of public values provided that it would be articulated around the concept of 'cooperative responsibility' and on the dynamic interaction between platforms, users and public institutions. In a similar vein, platform governance should expand the notion of consumer welfare to citizen well-being, considering platform companies as part of an integrated platform ecosystem (Dijck et al. 2019). From a democratic viewpoint, Commaerts and Mansell (2020) consider a 'radical democratic framing' of the dominant digital platforms, relying on new deliberative process that would denaturalize the prevailing logics of commercial datafication. In this respect, the normative approach argues the need to establish an index of 'the legitimacy' of platform governance, ranking the policies and practices of online platforms and considering core human rights values of legitimate governance (Suzor et al. 2018).

Second, the institutionalist perspective is concerned with the architecture and the functioning of the platform governance and whether the existing regulatory instruments are sufficient to promote public interests (Nooren et al.

1. The analysis focuses on key official documents issued by the European Council, the European Commission, the European Parliament as well as by key associations of business actors and culture professionals, such as Association of Commercial Television in Europe (ACT), Netflix International, DOT Europe (previously European Digital Media Association), DIGITALEUROPE, European Coalitions for Cultural Diversity, EURO CINEMA, European Broadcasting Union, Federation of European Film Directors, Computer and Communications Industry Association.

2018). It focuses on the policies that have emerged for regulating the activities of online platforms, but also on self-restrictions implemented by platforms in order to govern their activities for meeting market and consumer requirements (Gillespie 2018; Flew et al. 2019). In addition, this perspective aims to explore the institutional role of different actors involved – states, non-governmental organizations, firms – in the platform governance (Gorwa 2019a) and to highlight the different modes – self-governance, external governance, co-governance – of regulating online platforms (Gorwa 2019b). Thus, several scholars seek to compare regulatory frameworks towards online platforms and their effects on crucial issues for the media industries, such as the role of the AVMSD about the functions of data for advertising (Micova and Jacques 2020) or the impact of Netflix taxes in developing sustainable audio-visual policy toolkits (Albornoz and Leiva 2021; Kostovska et al. 2020).

Third, the structuralist approach looks at the dominant corporate action and to understand the platform governance as a political epiphenomenon in a technological environment dominated by global platforms. This literature treats the online platforms as industrial and economic players (Jin Dal 2015; Smyrniaios 2017) rather than as political ones. In this view, this approach analyses the overwhelming action of these actors and their tremendous economic and industrial impact, disrupting the state prerogatives and its institutional mechanics (Owen 2015). This literature emphasizes the effects of global online platforms in journalism, politics and society (Srniczek 2017; Moore and Tambini 2018), and it assumes that these actors accumulated growing structural power in ways that existing regulatory regimes struggle to comprehend.

For understanding why the updated AVMSD included obligations to online platforms, the present article aims to provide an alternative approach. The explanation offered here brings in conversation political analysis with media policy perspective; it suggests that the normative, institutionalist and structuralist assumptions leave little space for the discussion of politics in platform governance and are too distant from the actors making digital media policies. Thus, they study platform governance ‘from afar’, removing governance from the political context (Jenson and Mérand 2010: 74–79) and underestimating how a changing political situation and technological context can open political possibilities for actors to ‘modify the rules and institutions in which they act’ (Saurugger 2016: 71–74). The article considers that the existing literature would benefit from a dose of thinking in terms of politics. It argues that platform governance is a dynamic development linked to power relations and can be understood as a political process for organizing the relations of power and of regulation with respect to activities of online platforms at multiple levels (Weiss and Wilkinson 2019). Platform governance is composed of informal and formal ideas, norms, procedures and institutions (Karns et al. 2015: 2), allowing the actors involved to identify and address problems related to the activities of online platforms, as well as to coordinate their practices in a context of polyarchic authority (Avant et al. 2010) and of absence of global government (Rosenau 1997). As such, the platform governance is seen as a continuous political process within which a constant game of bargaining, exchanges and confrontations is made (Puppis 2010). What can be derived from this is that platform governance does not emerge spontaneously from deterministic logic of digital technologies, business plans of global platform corporations or path-dependence decisions, but it is a political act, shaped by conflict and competing political world-views that aim to promote their own values and objectives (Freedman 2008:

1–4; Iosifidis 2011). Opting for an actor-centred constructivist approach (Saurugger 2013), the article assumes that the platform governance is not a static and harmonious approach for today's policy-making process. Instead, it is a continuous and multiplex process (Acharya 2017) within which an institutionalized game of political framing is made.

To elaborate further, the goal is to analyse the AVMSD's review 'in situ and in action' (Guiraudon 2000), exploring on how the actors involved shape specific views on problems and solutions. The platform governance is the result of a multiplex political process marked by formulation of views, expressed by multiple actors that adhere to a certain logic about the scope and objectives of this governance in the media sector, and that engage in debate and negotiation within specific institutional frames. In other terms, neither norms nor ideas float freely (Risse 1994). The actor-centred constructivism assumes that actors can use material or ideational factors strategically, and it concentrates on how to understand the framing of problems through actor interaction (Vlassis and De Beukelaer 2019; Saurugger 2016). The aim is to introduce politics into the emerging platform studies literature (Thelen 2018), stressing the key role of actors in the spread of ideas that are strategically used in order to reform public policy instruments, such as the AVMSD. With this in mind, the AVMSD's review is associated with a variety of actors who exercise power across borders, mobilize strategies and promote their set of ideas and norms.

Thus, the article treats the platform governance as a political process rather than as a structure. If the AVMSD is a process, it is worthwhile to ask ourselves who are the actors involved at the European level, which kind of views these actors promote regarding the nature and objectives of platform governance in the media sector, as well as the perspectives that remain at the margins of this process.

FRAMING THE AVMSD'S REVIEW: ISSUES AND ACTORS

The EU audio-visual policy has experienced 'a period of continuous shift from the 1980s onwards' associated with changes in European political landscape and 'a series of technological developments, which have, either directly or indirectly, had an influence on policy choices' towards the audio-visual sector (Papathanassopoulos and Negrine 2011: 1). In other terms, the EU audio-visual policy has not been static, but evolving and several EU policy tools, such as the Television Without Frontiers Directive (TWFD) and the AVMSD, have been designed for going hand in hand with technological transformations (Collins 1994). The balances of interests and objectives have varied, from cultural and democratic objectives to economic and industrial ones (Iosifidis 2011: 143–65), struggling between an interventionist policy model and an economic regulation rationale (Littoz-Monnet 2007). In fact, in its contested position between national and supranational interests, the process of Europeanization of audio-visual policy can be seen to mirror central debate related to the future of European project, 'namely to negotiate and reconcile the desires of cultural specificity and national identity with the larger ideal of supranational community' (Bergfelder 2005: 315).

The review of the AVMSD gave rise to divergent approaches towards the two key issues that the article emphasizes. The approach defending the status quo was promoted by the business associations of the digital and communication sectors, as well as by the Netherlands, Czech Republic, Ireland, Denmark,

Finland, Luxembourg, and the United Kingdom within the European Council. Instead, the policy change approach was defended by France, Germany, Italy, Spain, the associations of culture professionals and public broadcasters, followed by smaller countries such as Belgium, Austria, Romania, Portugal, and Greece.

Defending the status quo

The legislative proposal about the AVMSD's update was opposed by the large majority of business actors and the coalition of MSs mentioned above, which faced a defensive battle from the moment the Commission put forward a new legislation. Their goal was to not lose compared with the status quo and to keep some issues off the legislative agenda (Dür et al. 2015). In this respect, what kind of arguments did these actors develop in order to defend the status quo?

Their arguments were articulated around the 'self-regulation' and 'economic regulation' principles. First, according to these actors, the instruments of the analogue content governance were not compatible for the digital content governance, which should be free of state regulation, underpinned by fear of inappropriate or untimely intervention (Simpson et al. 2016; Vlassis et al. 2020). As such, any legislative change imposing obligations to technology platforms was likely to be confronted with the nature of the open internet discouraging innovation and media pluralism (European Digital Media Association 2015: 11).

Second, the idea about self-regulation was associated with the free trade norm, which assumes that welfare would be maximized by the liberalization of trade exchanges and investment, by restructuring national economies to provide an enabling environment for facilitating and increasing cross-border flows of capital, goods and services. This assumption entails that platform governance follows the underlying principle that 'human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade' (Harvey 2005: 2).

The Netherlands sees the upcoming revision of the AVMSD as an opportunity to try and reduce the rules applying to linear services thus bringing them more in line with the lighter non-linear regime in the AVMSD [...] Innovative audiovisual media services need less detailed rules to be able to adjust to this changing landscape.

(Ministry of Education, Culture and Science 2015: 2)

It goes without saying that the application of quotas and the obligation for financial contribution were opposed by these actors, which advanced a twofold argument: (1) rationality of consumers and (2) platforms as tool for promoting cultural diversity.

First, the mixture of foreign and local cultural content is driven by competition to deliver the best service possible, rather than by public regulation. In a world of increasing choice, the services best positioned to respond to consumer demand will continue to distribute a certain amount of local cultural content. 'The market provides users a wealth of choice' (DIGITALEUROPE 2015: 7). Put differently, the defence of the status quo means more choice for consumers, who have multiple platforms for consumption of audio-visual content.

1. If our consumers feel we are offering the wrong mix of content, they
2. will migrate to another platform or service with a different content offer.
3. If there were such evidence, it would be for the market, not the regula-
4. tor, to correct the market failure.

(ACT 2015: 17–19)

6. In this respect, quotas for local content are inadmissible, and the EU has
7. 'neither the legal competence nor the administrative capacity to seek to
8. harmonize the daily operational practices of broadcasters to this extent' (ACT
9. 2015: 17–19). Quotas are thus detrimental to the personalization practices
10. developed by algorithmic systems. When watching content via an online plat-
11. form, subscribers control their own viewing experience, and the titles surfaced
12. to them are highly personalized (European Digital Media Association 2015:
13. 21).

14. Second, platforms are changing the way content is produced, distributed
15. and marketed. Creators can reach a global audience, on multiple devices, in
16. a much easier way that it was not possible with limited analogue channels.
17. Accordingly, regulations that have suited the analogue content governance
18. may not be suitable today, insofar as 'digital services and devices have contrib-
19. uted to drive cultural diversity by making European content widely available
20. and discoverable' (DIGITALEUROPE 2015: 18).

21. As a result, prescriptive quotas endanger a sustaining business model
22. based on consumer personalization, which achieves public goals of EU govern-
23. ance, allowing more European works to be available in Europe and 'European
24. consumers to access a wide variety of European and international content'
25. (Netflix 2015: 16). Interestingly, based on the principles of consumer welfare,
26. these actors combined together arguments for ensuring socially agreed values,
27. such as the promotion of cultural diversity.

28. Quotas have indeed pervasive consequences, and instead of being free
29. to invest as they see fit in good quality European content (which then
30. could easily be exported across the world), on-demand companies may
31. have to license lower quality content, with a focus on quantity.

(Computer and Communications Industry Association 2015: 26)

32. Finally, these actors stressed that the 'country of origin' principle was the
33. cornerstone of the AVMSD. Weakening the principle would lead to a refrag-
34. mentation of the European audio-visual market, and broadcasters and other
35. audio-visual service providers would limit distribution within national borders
36. to the detriment of European citizens and of 'the promotion of European
37. works' (European Digital Media Association 2015: 23).

Fighting for policy change

38. The second approach pushed for policy change, arguing that even though
39. public intervention is fairly common in the audio-visual sector, the existing
40. measures enhance the power of global online platforms. The interventionist
41. approach was marked by an energetic defence of the cultural policy toolkit
42. model, which was under pressure due to the action of global platforms and
43. referred to 'cultural exception' and 'diversity of cultural expressions' principles.

44. 'Cultural exception' focuses on the distinctive nature of audio-visual
45. goods and services and on the importance of public intervention. As stressed

by France, which exhibited a particularly strong commitment to a distinctive cultural policy toolkit (Gibbons and Humphreys 2012: 85), the 'cultural exception' is linked to the obligation that providers of audio-visual services, whatever they may be, must participate in financing national and European audio-visual production, bringing the actors of the industry to work in symbiosis. The 'cultural exception' is associated to the UNESCO Convention on Diversity of Cultural Expressions (CDCE), which recognizes the specificity of cultural goods and services and the legitimacy of public policies for the protection and promotion of cultural diversity (Vlassis 2015). The main purpose of these actors was to apply these principles regardless of the technological means (analogue or digital) used for the production, distribution and consumption of audio-visual content. As argued by the Lescure report to the French Ministry of Culture, the distinction between 'traditional cultural services' and 'new (online) cultural services' is 'artificial' and its use would mean 'the death sentence of EU cultural and audiovisual policies, which would be confined only to traditional cultural services' (Lescure 2013: 170). Thus, the arguments of these actors focused on the fact that the global platforms are a threat to these principles (European Broadcasting Union 2015: 16) and to the carefully established equilibrium among the different actors involved in the value chains.

It is revealing that under the Italian presidency of the Council of the EU in 2014, the audio-visual policy became a key area in the EU agenda. In November 2014, the Council produced the *Conclusions on European Audiovisual Policy in the Digital Era*, mentioning that the blurring of lines between linear and non-linear audio-visual media services raises the question as to whether existing EU legislative provisions remain appropriate. The Council concluded to the need for policy change and invited the Commission to 'urgently' review the AVMSD (Council of the European Union 2014: 2).

The level-playing field became the cornerstone goal in order to call for a policy change. The tax and regulatory asymmetries between MSs encouraged 'forum shopping' from extra-European companies; media operators established in some MSs were in unfair competition with global VOD platforms that were not subject to the same rules, whereas they generated further externalities for society at large. Therefore, the EU, through the review of AVMSD, should guarantee some room for manoeuvre to MSs in order to maintain and create policy instruments for ensuring a level-playing field.

By allowing these services to by-pass national rules on mandatory contribution to national production would dangerously hinder the willingness of national operators to respect the rules and endanger the very principle of such essential mechanisms to cultural diversity in the EU audiovisual sector.

(Federation of European film directors 2015: 21)

Thus, it was necessary to ensure that each relevant player in the value chain invests a share of the turnover of the service concerned in the production and rights acquisition of European works (Federation of European film directors 2015: 16). As EURO CINEMA (2015: 12) mentioned, the financial contribution and quantitative promotion, such as a majority of European works in catalogues, could create 'a level playing field offering conditions of fair competition and ensure appropriate means of promotion of cultural diversity of European content'.

In this respect, the country-of-origin principle has become a controversial issue, and these actors have complained the principle would trigger a dumping context.

The EU legislation [...] is a form of cultural dumping: like Netflix will set up their headquarters in countries where the laws are more beneficial, to then emit to other European countries.
(European Coalitions for Cultural Diversity in Euractiv 2014)

The country-of-origin principle generated unfair competition between services and a race to the bottom for audio-visual policies of MSs. Hence, this situation put the whole audio-visual sector under high pressure in countries with more protective policies, as online players can settle in countries with the least stringent rules on the promotion of European works.

EUROPEAN COMMISSION AND EUROPEAN PARLIAMENT BETWEEN POWER AND INFLUENCE

The Commission is a technical agenda-setter, with almost exclusive, treaty-based power to initiate and draft legislation (Nugent and Rhinard 2016). However, this technical monopoly does not necessarily mean political influence on policy outcomes (Kreppel and Oztas 2017). In 2013, the Commission's Directorate General (DG) CONNECT published the Green Paper, 'Preparing for a fully converged audiovisual world: Growth, creation and values', and invited stakeholders to share their views on the changing media landscape. The Green Paper mentioned that the consultation – which received 236 replies showing a real interest from the different actors involved – did not 'presuppose any specific outcome' (European Commission 2013: 4). The Commission also acknowledged that there were no clear tendencies among respondents, and the views were quite split on most of the areas touched in the Green Paper (European Commission 2014). Insofar as there was no common pattern or clarity amongst stakeholders as regards the way forward, the launch of drafting and proposing an update of the AVMSD has been shaped by three factors related to strategies of different actors involved and their interaction.

First, the Commission does not operate in a vacuum (Dür et al. 2015). Indeed, the Commission does not initiate legislative proposals solely on the basis of its own priorities, but the European Council's *Conclusions* give directions and are used as endorsements from governments to trigger a political momentum for a new legislation. Legislation about audio-visual media services could only be passed if the proposal found support in the Council of Ministers and the Parliament. As analysed above, the increasing pressure exerted by several MSs played a key role in launching the AVMSD's review. In other terms, the Commission's monopoly over formal agenda-setting was used in the service of policy-making actors of the EU governance, such as the Council or the European Parliament (see below).

Second, already since July 2013, the Parliament has called on the Commission to evaluate the extent to which 'it is necessary to revise the Audiovisual Media Services Directive' (European Parliament 2013: 5). In January 2014, following the Green Paper from the Commission, the Parliament regretted the Paper's lack of a specific reference to the dual nature of audio-visual media as cultural and economic assets, reminding that the EU is

committed to the UNESCO CDCE. It also emphasized the need to pay special attention to companies offering audio-visual content online that try to evade taxation in certain MSs by basing themselves in countries with a very low tax rate (European Parliament 2014). The Commission proposed a change to the status quo, insofar as there was enough political support to make a positive response by the Council and the Parliament.

Third, the Barroso Commission – whose term was due to end in October 2014 – was reluctant towards the ‘cultural exception’. In March 2013, the Commission decided to incorporate the audio-visual services in its draft mandate for the negotiations on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the United States. The inclusion of a cultural exception in the negotiating agenda triggered a strong controversy, and in June 2013, J. M. Barroso stressed cultural exception was a ‘reactionary position’ (Le Monde 2013). The arrival of the Juncker Commission had an accelerating effect in the policy-making process. The anti-competitive and anti-tax practices of global tech companies, such as Google and Apple, became a key policy priority of the Juncker Commission, and since 2016, the latter has imposed fines to these companies for abusing their dominant position in the European market.

In this respect, the first proposal of the AVMSD elaborated by the DG CONNECT and published in May 2016 included both a derogation to the country-of-origin principle and a more level-playing field by obliging on-demand services to reserve at least 20 per cent share for European works in their catalogues. Regarding quota percentage, the Parliament played a key role. Indeed, delegating to a particular Parliament’s committee and by extension the rapporteur, the drafting of a legislative report entails favouring a certain policy option (Thierse 2017). The fact that Parliament’s Culture and Education (CULT) committee was responsible for the report on the AVMSD’s proposal also shaped the way in which the issue was framed. The two co-rapporteurs of the CULT Committee, who co-authored the report, suggested to introduce a minimum 30 per cent of European content – more than the Commission’s 20 per cent quota. Interestingly, the co-rapporteurs, Petra Kammerevert (Socialists and Democrats – S&D, Germany) and Sabine Verheyen (European People’s Party – EPP, Germany), were both on the broadcasting board of German public broadcaster Westdeutsche Rundfunk Köln, presupposing to be familiar with the claims of the public broadcasting sector and of the policy change approach. In addition, the quota proposed by the Commission and the Parliament was strict rather than flexible. The proposal did not incorporate phrases such as ‘by appropriate means’ or ‘where practicable’, included in the TWFD, all of which gave the MSs a broad degree of flexibility in implementing the quota obligations. Finally, the Parliament’s report was adopted by the CULT Committee with seventeen votes in favour (mostly from the two major Parliament’s parties EPP and S&D, as well as from Greens), nine against (from liberal party ALDE, far-left party GUE/NGL and the Eurosceptic parties ECR and EFDD) and four abstaining.

CONTEXTUALIZING ISSUES AND RESOURCES

The above analysis shed light on the political dynamics and on the different coalitions. However, these dynamics were also central during the negotiations on the AVMSD in 2009, and the regulatory outcomes were different (Kalimo and Pauwels 2009). In order to deliver an overall picture about the

1. process tracing, it is crucial to contextualize the issue, considering four additional factors.

2. First, the debate towards the AVMSD's review occurred in a political
3. context where a normative shift in why and how to regulate online platforms
4. started taking place slowly. As mentioned above, internet governance has
5. been built on a deep scepticism towards the controlling capacity of the state,
6. and digital content governance has advocated for industry self-regulation as
7. the appropriate way to deal with platforms and their externalities. However,
8. since mid-2010s, self-regulation has come under increasing pressure following
9. negative externalities produced by social media, such as the illicit harvesting of
10. personal data in the Facebook–Cambridge Analytical political scandal and the
11. use of social media to share violent online material in the terrorist attack in
12. Christchurch, New Zealand. In addition, policy-makers started watching with
13. concern the disruptive consequences of platforms such as Airbnb and Uber in
14. terms of competition, employment and housing policy (Nieuwland and van
15. Melik 2020; Thelen 2018). Even though these negative externalities are not
16. related to the audio-visual sector, since mid-2010s, public authorities have felt
17. the urge to regulate online platforms, multiplying straightforward discussions
18. about the effectiveness of self-regulation.

19. Second, the policy-making on the AVMSD's review is a bottom-up
20. process, since several governments have intended to create obligations for
21. non-EU online platforms before the drafting of the AVMSD's proposal. Global
22. VOD platforms generated wholly new audio-visual market beyond the reach
23. of current policies, putting pressure on policy-makers. Since 2014, following
24. similar levies imposed on cinema and media operators, France has imposed a
25. tax on online platforms, targeting audience in France, whereas they are estab-
26. lished in another MS. At the same time, Germany introduced an amendment
27. to aid scheme aimed at funding – through a special levy – the national film
28. industry. That amendment extended liability and eligibility to VOD service
29. providers established outside Germany receiving revenue from customers in
30. Germany. Against this backdrop, reviewing the AVMSD was a crucial way for
31. several MSs in order to get necessary legitimacy for adopting public measures.

32. Third, within the European arena, the United Kingdom adopted a pro-
33. market orientation in European audio-visual debates and lobbied energeti-
34. cally against extending prescriptive EU-wide television rules to digital media
35. content. In previous negotiation processes about the adoption of TWFD in
36. 1989 and of the AVMSD in 2010 (Gibbons and Humphreys 2012), UK policy-
37. makers argued for promoting liberalization and competition in the audio-
38. visual sector and resisted constantly the proposals in favour of including rigid
39. quotas and investment obligations. In this respect, the withdrawal of the United
40. Kingdom from the EU and the fact that, since 2016, the United Kingdom has
41. been negotiating its future relationship with the EU undermined the coalition
42. for defending the status quo and the UK leadership against including obliga-
43. tions for VOD services and weakening the country-of-origin principle.

44. Fourth, the endowment of business associations defending the status quo
45. with resources could further their capacity to shape policy outcomes regard-
46. ing the AVMSD's review (Table 1). These actors are better resourced than
47. other organized interests, and their resources include money, size, information
48. and dynamic access to executive and legislative bodies. Despite the resources
49. they possess, the fact that the interest groups defending the status quo were
50. unsuccessful in achieving the desired policy outcome can be explained by
51. three factors (Dür 2008; Dür et al. 2015): first, non-business actors such as
52.

Table 1: Interest groups: resources 2016–18.³

Interest groups	Lobbying costs (annually) in million euros	Lobbyists declared (in FTE)	Lobbyists with European Parliament's accreditation	Meetings with European Commission
ACT	0.7–0.85	4.5–5.5	7	10
Computer and Communications Industry Association	0.35–0.5	4	3–4	35
DIGITALEUROPE	1.7–1.9	9.75–12.25	13–16	86
EUROCINEMA	0.15–0.17	2	1	2
European Broadcasting Union	1.0–1.25	7.5–7.75	6–7	23
DOT Europe	0.35–0.55	3–4	3	12
Netflix	0.8–0.9	2.75–3.5	2	10

Source: Lobbyfacts.eu.

2. To assess the relative public salience of this issue, it would be interesting to deal with articles reporting on AVMSD. Between 2016 and 2018, three major outlets – Euractiv, *Politico* and *The Parliament Magazine*, with focus on European political debates – included 25 articles capturing published coverage of AVMSD's negotiations. The data come from author's analysis. The limited space does not allow me to include a detailed table mentioning the titles of articles, date and relevant website.

3. In the period 2016–18, the resources such as lobbying costs or number of lobbyists are expected to vary from one year to another.

public broadcasting and culture professionals' associations were strong allies to several MSs, the Parliament and the Commission providing them societal support and pushing for policy change. It is indicative that in November 2016, the European Coalitions for Cultural Diversity organized a conference at the Parliament titled *Digital World: An Opportunity for Creation?* with the participation of Günther Oettinger, Commissioner for Digital Economy and Society; Viviane Reding, former Commissioner for Education and Culture (1999–2004) and for Information, Society and Media (2004–10); as well as Jean-Marie Cavada, Member of the Parliament. Second, the academic literature (Dür 2008; Dür et al. 2015) showed that business actors can defend their political interests better in areas in which the role of the European Parliament is limited to consultation. As such, based on co-decision procedure, the AVMSD's negotiating process gave the Parliament the power of a co-legislator alongside the Council of Ministers; the fact that the Parliament promoted policy change weakened the competitive edge of business actors vis-à-vis other interests. Third, 'business actors are more successful in lobbying on EU legislation the less conflictual a policy episode is' (Dür et al. 2015: 959). The issue regarding quotas and investment obligations from online platforms became publicly salient, and the newspaper reporting was attentive during the negotiations on AVMSD from 2016 to 2018.² In other terms, the negotiating process was open involving a larger number of participants and getting place in publicly visible arenas.

CONCLUSION

The rapid expansion of platforms such as Netflix or Disney Plus associated with the advance of digital capitalism made the AVMSD a relevant case for understanding the politics of the digital media policy. Clearly, the platform governance in the media sector does not drop from the sky, neither emerge in some deterministic and organic way from the political debates. In this sense, embracing an actor-centred constructivist perspective unfolds its potential.

1. The AVMSD-making process saw the confrontation between two coalitions of actors, developing contrasting arguments about the role of online platforms in media sectors and the objectives of platform governance: on the one hand, a 'defending the status-quo' coalition focused on the norms of self-regulation and economic regulation, emphasizing arguments about the rationality of consumers and the importance of platforms in ensuring public objectives. On the other hand, for the coalition favouring the policy change, it was necessary to adapt the principles of 'cultural exception' and 'diversity of cultural expressions' in the digital environment and to establish a level-playing field for the actors involved in the media economy in order to integrate platforms into the regulatory frameworks for analogue content governance. The framing of AVMSD was shaped by a number of factors such as the dynamic role of MSs promoting a cultural policy toolkit in platform governance and their need for getting legitimacy from the EU, the societal support from public broadcasters and culture professionals, the institutional contribution of the Parliament, the arrival of Juncker Commission, the Brexit as well as the failure of business associations to influence the process.

2. The foregoing analysis is a first investigation into the politics of platform capitalism in media industries. Much research remains to be done (Thelen 2018) on the way in which, at the international level, platforms promote their world-views about media governance and forge alliances with other actors involved, such as national governments, experts and secretariats of international organizations. The ongoing plurilateral negotiations on electronic commerce within the World Trade Organization or those on a multilateral recommendation on ethics for artificial intelligence within UNESCO are relevant cases of analysis. A second important line of research would explore in which ways platforms promote their ideas and norms in different institutional contexts at various levels and the factors that are beneficial or obstruct the achievement of their aims. The issues of liability for platforms in relation to media content and of the remuneration by online platforms of content creators are crucial cases. Finally, it is worth investigating how the framing of issues in platform governance comes from in the first place. It is necessary to understand when and how specific ideas emerge (or not) in the debate about platform governance in the media sector, by which kind of actors these ideas are developed and promoted, and in which ways they are diffused. For instance, regarding the AVMSD framing, a debate about boosting discoverability (McKelvey and Hunt 2019; Vlassis 2021) of European content in the VOD platforms' catalogues did not emerge, and it is worth exploring why the debate was not framed in that way.

3. Overall, the actor-centred constructivist approach is not a static and harmonious perspective about digital media policy. Instead, it provides an 'in situ and in action' view on norms that aim to organize the power relationships of online platforms with other involved actors. It allows for discussing the interplay between the normative outcomes and the political framing, exploring the competitive coalitions, their arguments, interactions and strategies. The actor-centred constructivist approach promises to be fruitful for exploring the regulatory outcomes and understanding why and how the normative frameworks are built under specific institutional and political conditions. Scholars in platform governance and digital media policy can truly benefit from this approach in order to view regulation as political process, which is composed of bargaining, persuasion and framing between actors involved.

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