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REPORT

on Preparing for a Fully Converged Audiovisual World
(2013/2180(INI))

Committee on Culture and Education

Rapporteur: Sabine Verheyen

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on Preparing for a Fully Converged Audiovisual World (2013/2180(INI))

The European Parliament,

- having regard to Article 167 of the Treaty on the Functioning of the European Union,
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)¹,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)²,
- having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)³ as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009⁴,
- having regard to Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)⁵,
- having regard to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)⁶, as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009⁷,
- having regard to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications devices and the mutual recognition of their conformity⁸,
- having regard to the proposal from the Commission of 11 July 2012 for a directive on collective rights management and multi-territorial licensing of rights in musical works for online uses,

¹ OJ L 95, 15.4.2010, p. 1.

² OJ L 178, 17.7.2000, p. 1.

³ OJ L 108, 24.4.2002, p. 33.

⁴ OJ L 337, 18.12.2009, p. 37.

⁵ OJ L 108, 24.4.2002, p. 7.

⁶ OJ L 108, 24.4.2002, p. 21.

⁷ OJ L 337, 18.12.2009, p. 37.

⁸ OJ L 91, 7.4.1999, p. 10.

- having regard to Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (Copyright Directive)¹,
 - having regard to its resolution of 4 July 2013 on ‘Connected TV’²,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education and the opinion of the Committee on Legal Affairs (A7-0057/2014),
- A. whereas audiovisual convergence means the merging of audiovisual media services previously delivered largely separately, and interlocking along the value chain or the grouping of various audiovisual services;
 - B. whereas convergence means innovation, and whereas this requires new types of cooperation between companies and sectors so that users can access audiovisual content and electronic services everywhere, at all times, and with any device;
 - C. whereas horizontal (sector convergence), vertical (value chain convergence) and functional convergence (convergence of applications/services) all impact on the audiovisual industry;
 - D. whereas technical convergence means that media law and network policy issues are increasingly overlapping;
 - E. whereas access to and findability of audiovisual content are becoming key factors in a converging world; whereas policy should not stand in the way of a self-regulating content labelling system that meets minimum quality standards, and whereas net neutrality is becoming more and more urgent as regards cable and mobile connections;
 - F. whereas technical media convergence has now become a reality – particularly for broadcasting, the press and the internet – and whereas European policies concerning media, culture and networks need to adapt the regulatory framework to the new conditions and ensure that a uniform level of regulation can be established and enforced, including as regards new entrants to the market from the EU and third countries;
 - G. whereas, despite growing technical convergence, experience in relation to the use of linked devices and the expectations and profile of users is still limited;
 - H. whereas digitisation and technical convergence alone are of limited value to citizens, and whereas support for high levels of sustained investment in original European content remains a key priority in a converging media environment;
 - I. whereas growing convergence makes it necessary to develop a new understanding of the way in which audiovisual media, electronic services and applications interact;
 - J. whereas the term ‘content gateway’ describes any entity which acts as an intermediary

¹ OJ L 167, 22.6.2001, p. 10.

² Texts adopted, P7_TA(2013)0329.

between audiovisual content providers and end-users and which typically brings together, selects and organises a range of content providers and provides an interface through which users can discover and access that content; whereas such gateways can include TV platforms (like satellite, cable and IPTV), devices (like connected TVs and games consoles) or over-the-top services;

Convergent markets

1. Notes that the increasing trend towards horizontal concentration in the industry and vertical integration along the value chain can provide new business opportunities but may also create dominant market positions;
2. Stresses that regulation is required where content gateways control access to media and impact directly or indirectly on the shaping of opinion; calls on the Commission and the Member States, therefore, to monitor developments in this regard and to make full use of the possibilities offered by European competition and anti-trust law and, if necessary, introduce measures to safeguard diversity, and also to draw up a regulatory framework for convergence that is adapted to these developments;
3. Notes that market developments indicate that in the future companies will increasingly link network services to the provision of audiovisual content, and that the internet in its current form based on optimum access might as a result increasingly give way to a range of content geared to unilateral company interests;
4. Takes the view that all data packages in the field of electronic communication must as a matter of principle be treated equally, regardless of content, application, origin and destination (the best effort principle), and therefore calls for a free and open internet to be preserved and safeguarded, particularly as regards the development of special services;
5. Stresses the need to align the rights and obligations of broadcasters with those of other market players by means of a horizontal, cross-media legal framework;

Access and findability

6. Stresses that net neutrality, in line with a best-effort Internet and the non-discriminatory access to and transmission of all audiovisual content, guarantees a pluralist supply of information and a diversity of opinion and culture, and therefore represents a key element analogous to the ‘must-carry’ principle of the converged media landscape; calls on the Commission, therefore, to ensure, in a legally binding manner, compliance with the principles of internet neutrality, since this is vital where media convergence is concerned;
7. Calls for non-discriminatory, transparent and open access to the internet for all users and providers of audiovisual services, and opposes any restriction on the best effort principle through provider-specific platforms or services;
8. Reiterates that net neutrality rules do not remove the need to apply ‘must-carry’ rules for managed networks or specialised services such as cable TV and IPTV;
9. Calls for uniform standards for ensuring the interoperability of connected TVs to be

developed by the industry in order not to stifle innovation;

10. Calls for the diversity of cultural and audiovisual work in a converged world to be accessible to and findable by all Europeans, in particular where the content on offer to users is prescribed by device manufacturers, network operators, content providers or other aggregators;
11. Believes that, in order to safeguard the diversity of products and opinions, searching for and finding audiovisual content should not be determined by economic interests, and that regulatory measures should only be taken if a platform provider exploits a dominant position in the market or gatekeeper function in order to favour or discriminate against particular content;
12. Calls on the Commission to check the extent to which operators of content gateways tend to abuse their position in order to prioritise their own content, and to develop measures to rule out any future abuse;
13. Calls on the Commission to define what a platform is and to establish, if necessary, regulation that also covers technical networks' transfer of audiovisual content;
14. Considers that open network platforms which do not occupy a dominant market position and do not hamper competition should be excluded from the regulation of platforms;
15. Believes that the creation of applications ('apps') should be encouraged given that it is a growing market; stresses, however, that 'appisation' can lead to market access problems for producers of audiovisual content; calls on the Commission to investigate where measures to secure the accessibility and findability of audiovisual media are needed and how they can be enforced, while recalling that regulatory measures should only be taken if a platform provider, by means of apps, exploits a dominant market position or gatekeeper function in order to favour or discriminate against particular content;
16. Believes that Member States should be able to take specific measures to provide a reasonable level of findability and visibility for audiovisual content of general interest, in order to guarantee diversity of opinion, while users should be able to sort the offers themselves in an uncomplicated manner;

Safeguarding diversity and funding models

17. Calls on the Commission, against the backdrop of media convergence, to determine how the refinancing, funding and production of quality European audiovisual content can be secured in a future-proof and balanced manner;
18. Calls on the Commission to examine the extent to which market distortions as regards quantitative and qualitative bans on advertising have arisen as a result of the unequal treatment of linear and non-linear services under Directive 2010/13/EU;
19. Emphasises that new advertising strategies that use new technologies to increase their effectiveness (screenshots, consumer profiling, multi-screen strategies) raise the issue of protecting consumers, their private lives and their personal data; with this in mind,

emphasises that there is a need to come up with a set of consistent rules to apply to these strategies;

20. Calls on the Commission, by removing regulation in quantitative advertising provisions for linear audiovisual content, to ensure that the aims of Directive 2010/13/EU are accomplished more successfully by increasing flexibility and strengthening co- and self-regulation;
21. Considers that new business models under which unauthorised audiovisual content is marketed represent a threat to high-quality journalism, public service media and broadcasting funded by means of advertising;
22. Takes the view that linear and non-linear offers from broadcasters or other content providers must not be altered in terms of their content or technology, and that individual content or parts thereof must not be included in programme packages or otherwise used for payment or free of charge without the consent of the broadcaster or provider;
23. Considers that, in view of convergence, the accreditation procedure for electronic information and communication services funded by means of a licence fee – insofar as these are public service audiovisual offers – must be adapted to the digital reality of media competition;
24. Emphasises that, in order to retain its independence, the public sector must continue to be shielded from the constraints of advertising-based financing, and calls on Member States to support the sector's efforts in relation to financing;

Infrastructure and frequencies

25. Notes that widespread coverage of the most powerful broadband internet connections is a basic requirement for convergence and innovation in the media industry; stresses that such broadband networks need to be developed still further, particularly in rural areas, and calls on the Member States to rectify this problem by means of short-term investment campaigns;
26. Regrets there are still vast areas across Europe with limited internet infrastructure, and reminds the Commission that in order to unlock the potential of a converged audiovisual world, it is vital for consumers to have access to high-speed internet;
27. Urges industry actors, in anticipation of a more converged future, to work together on a voluntary basis in order to ensure that there is a common framework for media standards, so that a more consistent approach applies across different media, and also to ensure that consumers continue to understand what content has been regulated and to what extent;
28. Stresses that open and interoperable standards offer the guarantee of free and unimpeded access to audiovisual content;
29. Notes that emerging self-regulation initiatives have a crucial role to play in establishing uniform standards for user technologies and for developers and producers;

30. Stresses that DVB-T/T2 offers excellent long-term opportunities for the joint use of the 700 MHz frequency band by broadcasting and mobile communications, in particular when using promising hybrid mobile devices and by integrating TV receiver chips in mobile devices;
31. Advocates the development of a technology mix that makes efficient use of both broadcast and broadband technologies and intelligently combines broadcasting and mobile communications ('smart broadcasting');
32. Considers it important to have a roadmap for digital terrestrial radio in order to provide investors from both the broadcasting and mobile telephony sectors with the certainty needed for long-term planning;

Values

33. Regrets the Green Paper's lack of a specific reference to the dual nature of audiovisual media as cultural and economic assets;
34. Reminds the Commission that the EU is committed to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
35. Stresses that protecting media freedom, promoting media pluralism and cultural diversity and the protection of minors remain relevant values in an era of convergence;
36. Calls on the Commission, in the context of a possible revision of Directive 2010/13/EU, to continue its efforts to safeguard press freedom;
37. Calls on the Commission and the Member States to step up application of Article 13 of the AVMS Directive on promoting production of European works and access to those works through on-demand audiovisual media services;
38. Draws the Commission's attention to the fact that including audiovisual culture and media in international free trade agreements represents a contradiction of the EU's commitment to promote cultural diversity and identity and to respect Member States' sovereignty over their own cultural heritage;
39. Encourages Europe's audiovisual industry to continue to develop consistent, attractive services, especially on-line, so as to enrich the range of European audiovisual content on offer; stresses that content must remain the prime consideration; emphasises that the greatest threat comes from new platforms which recycle huge volumes of content, and that new thinking is therefore required about what is on offer, because having a large number of platforms is no guarantee of diversity of content;
40. Highlights that youth protection, consumer protection and data protection are absolute objectives of regulation and must apply uniformly to media and communications providers throughout the EU;
41. Calls on the Commission to step up its efforts to enforce youth and consumer protection provisions; calls for the same data protection requirements to apply to all media and

communications service providers in the territory of the EU; stresses that consumers must be able to alter their privacy settings easily and at any time;

42. Stresses that global competition in converged markets makes it essential to draw up appropriate co- and self-regulation standards for youth and consumer protection at international level;
43. Calls on the Commission and the Member States to enhance and expand the existing range of activities aimed at imparting digital media skills, and to develop a methodology for the evaluation of media skills teaching;

Regulatory framework

44. Considers that European media and internet policy should aim to remove barriers to media innovation and, at the same time, not lose sight of the normative aspects of a democratic and culturally diverse media policy;
45. Stresses that similar content on the same device requires a uniform, flexible, user-friendly and accessible legal framework which is technology-neutral, transparent and enforceable;
46. Calls on the Commission to ensure that platforms are operated in a way which accords with market conditions, entailing fair competition;
47. Calls on the Commission to conduct an impact assessment so as to look into whether, in the light of developments in all audiovisual media services accessible to European citizens, the scope of the AVMS Directive is still relevant;
48. Calls on the Commission to examine to what extent the linearity criterion is preventing the regulatory objectives of Directive 2010/13/EU from being attained in many areas of the converged world;
49. Recommends deregulation for the areas of Directive 2010/13/EU in which the aims of the legislation are not being achieved; believes that, instead, European-level minimum requirements for all audiovisual media services should be put in place;
50. Stresses the importance of technology-neutral rights clearance systems in order to facilitate services of media service providers being made available on third-party platforms;
51. Stresses that the country of origin (or country of broadcasting) principle enshrined in the Audiovisual Media Services Directive is still a significant prerequisite for the provision of audiovisual content across borders and a milestone on the way to a common market in services; emphasises, however, the need to adapt EU law to the realities of the internet and the digital environment, and to pay special attention to companies offering audiovisual content on-line which try to evade taxation in certain Member States by basing themselves in countries with a very low tax rate;
52. Calls on the Commission to examine whether copyright law needs to be adapted to enable linear and non-linear content on the various platforms and their cross-border accessibility

to be appropriately evaluated;

53. Calls on the Commission to enforce the principle of technology neutrality consistently and, where appropriate, to review European copyright law accordingly;
54. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

On 24 April 2013, the Commission presented a consultation paper which aimed at triggering broad public debate on the impact of the current transformation of the audiovisual media landscape. The green paper on 'Preparing for a Fully Converged Audiovisual World: Growth, Creation and Value' focused on how future-proof the Audiovisual Media Services Directive (AVMSD) was, but also contained considerations regarding infrastructure, frequencies and funding models of audiovisual content as well as market considerations on the vertical and horizontal integration of the media and ICT industry.

At the moment, media policy in Europe is largely a matter for Member States. However, not all areas of media policy can be dealt with at national or federal level. Aspects related to the ongoing merging of conventional broadcasting services with the internet, in particular, need to be dealt with more than hitherto at European level as a result of changing market structures.

The problems

Convergence means the merging of linear and non-linear audiovisual media services which have in the past largely been considered separately from one another. New providers from the telecommunications industry and over-the-top (OTT) service providers are joining the market alongside traditional media institutions. The graduated regulatory system provided for under the AVMSD Directive has until now laid down a certain minimum standard for classical (linear) television content and for non-linear information and communication services and online content. With the digitalisation of broadcasting and media technologies, the convergence of technical transmission paths and the ongoing development of mobile and hybrid devices, classically regulated broadcasting and on-demand services suddenly find themselves competing on the same screen with previously unregulated content from the open internet.

This raises questions about consumer, youth and data protection, but also about safeguarding diversity and the dual nature of the media as a cultural and economic asset.

The rapporteur therefore focuses on market considerations on the one hand and models of funding and access in converged markets on the other. The rapporteur welcomes the main thrust of the Commission's green paper, since it moves away from a one-dimensional discussion of connected television and towards a broader consideration of all industries and interlinked sectors along the value chains of converged audiovisual markets. It is exactly these market changes which are providing not only new challenges but also opportunities for media industry stakeholders.

Even if the majority of European users continue to receive most of their audiovisual content through conventional televisions, there is a strong trend towards the use of mobile devices in addition to conventional televisions. Many younger users in particular would like access to audiovisual content and electronic services everywhere, at all times, and with any device.

Converged markets

Convergence therefore also means innovation and this requires new types of cooperation between companies and sectors. Similar content on the same device will in future therefore need a modern, accessible, user-friendly and horizontal regulatory framework. The existing legal framework for audiovisual media and its regulatory objective must be examined and, if necessary, adapted to the current reality of converged markets. The rapporteur believes that it will be necessary to conduct this examination in conjunction with existing legislation in the areas of electronic communication, electronic commerce, the licensing of rights to audiovisual and musical works for online use, copyright, the provisions related to broadcasting and telecommunications devices and competition and anti-trust law. Should a revision of European media law be required, the important social and cultural roles of the media in a converged environment will have to be protected by means of appropriate legal framework conditions.

The Commission's green paper is heavily based on market considerations and, in particular, on targets related to economic growth and technical aspects; it neglects the significance of the media for cultural diversity and identity in Europe. This own-initiative report on the green paper therefore reacts explicitly to the dual nature of audiovisual media as cultural and economic assets as well as the role of dual broadcasting for a culturally diverse range of content and services in the converged media world.

Access and findability

Findability and access to audiovisual goods and services aimed at the general public are becoming key factors in a converged world. Net neutrality guarantees the non-discriminatory transmission of all content and is therefore the 'must-carry' principle of the converged media world in the 21st century. End users should be able to access any content or services they wish, and providers of access should not be allowed to restrict users' freedom to choose. That said, discrimination-free transmission is not enough. For the future of broadcasting in particular, it is essential to ensure that programmes on individual transmission paths are not only given access, but that they can also be found on the content gateways.

The Commission, but also Member States, ought to focus on guaranteeing access to and findability of services and content when drawing up new legislation for the media industry. This means that the diversity of cultural and audiovisual work should be accessible and findable for all Europeans in a converged world. This is particularly relevant when user content is presorted or privileged in any way by device manufacturers, network operators, content providers or other aggregators. Searching for and finding audiovisual content on the various content gateways must not be exclusively determined by economic interests. It is for this reason that this rapporteur believes that the future inclusion of the principle of net neutrality is absolutely essential.

The 'must-be-found' principle, however, is somewhat more difficult to assess. In view of the fact that, in the converged world, we are witnessing a movement away from the principle of open internet content access (via portals and search engines) and towards the 'appization' of content and software on mobile devices, PCs and smart TVs, the rapporteur believes that the

problem is not the content gateways that are reached via open access to the internet, but rather the app services which offer a very non-transparent selection of content.

The rapporteur believes that, in principle, it is correct that Member States be given the opportunity to adopt specific rules to guarantee an appropriate level of visibility for audiovisual content of general interest. The rapporteur is yet to be convinced of the effectiveness and/or enforceability of a 'must-be-found' principle by means of EU legislation providing for a privileged or presorted offer of all (broadcasting) content on all platforms and content gateways. In addition, it is unclear what form such a priority would take in practice and the regulatory objective of the current Audiovisual Media Services Directive could not simply be applied as is to the internet and converged markets. First and foremost, it is important that all content and programmes can be found. The extent to which a statutory privilege in terms of the order could be useful is questionable, in particular when looking at commercial and not state-owned media content.

Safeguarding diversity and funding models

The rapporteur believes that regulation may be required if new platforms control access to media and impact directly or indirectly on the shaping of opinion. A comprehensive concept for content gateways and platforms is thus now required and must cover not only technical networks for the transmission of audiovisual content but also content portals, hardware and navigation systems such as EPG. Member States should therefore work together with the Commission to examine developments in converged markets and, if necessary, introduce legal restrictions on media concentration in order to safeguard diversity. The objective must be to balance the interests of all stakeholders throughout the media and the industry and to provide for more flexibility. It is primarily about the development of sustainable funding models which will endure integration in a horizontally (industry convergence) and vertically (value chain convergence) converged world.

In this context a level playing field must also be created. This could be accompanied by deregulation and more flexibility in the area of advertising provisions for broadcasting. At the same time, however, appropriate youth and data protection standards must be drawn up for converged devices and content gateways. The rapporteur therefore refers to instruments of co- and self-regulation.

With these considerations, however, one should not neglect the fact that digitalisation and the internet have changed the framework conditions for media-specific rules. In view of increasing convergence, it is essential to develop a new understanding of the way in which audiovisual media, electronic services and applications interact. This understanding should reflect the connections between the generation, processing, distribution and presentation of content and should take the form of a horizontal legal framework at European level. Convergence should also be viewed as an opportunity to develop new business models. European media players that have long complied with the typical behavioural patterns of traditional industry structures should not be at risk of having to limit their options in their own markets in order to defend their classical market structures.

18.12.2013

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Culture and Education

on preparing for a fully converged audiovisual world
(2013/2180(INI))

Rapporteur for the opinion: Françoise Castex

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Calls on the Commission to conduct an impact assessment so as to look into whether, in the light of developments in all audiovisual media services accessible to European citizens, the scope of the AMS Directive is still relevant;
2. Calls on the Commission to assess whether the lighter-touch regulation applicable to non-linear services in the AMS Directive is still necessary and relevant in the light of the directive's objectives; wonders, in particular, why regulation of commercial communications relating to non-linear services should be weak when those services now have a major impact on European citizens;
3. Calls on the Commission and Member States to step up application of Article 13 of the AMS Directive on promoting production of European works and access to those works through on-demand audiovisual media services;
4. Points out in this context that all linear and non-linear media benefiting from the broadcasting of audiovisual works should contribute towards the financing of European production;
5. Calls on the Commission and Member States to give thought to extending 'must carry' obligations beyond network operators, i.e. to manufacturers of connected devices;
6. Calls on the Commission to harmonise the VAT rates applicable to all cultural products, however they are accessed, in order to prevent market distortions from holding back the expansion of new European on-line services.

7. Calls on the Commission to step up its efforts to enforce youth and consumer protection provisions; calls for the same data protection requirements to apply to all media and communication service providers on the territory of the European Union;
8. Takes the view that any exchange of data taking place in the background must be visible to consumers; urges that consumers must be able to alter their privacy settings easily and at any time.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	17.12.2013
Result of final vote	+: 22 -: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Eva Lichtenberger, József Szájer, Axel Voss
Substitute(s) under Rule 187(2) present for the final vote	Silvia Costa, Jürgen Klute, Kay Swinburne

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	21.1.2014
Result of final vote	+ : 26 - : 0 0 : 3
Members present for the final vote	Zoltán Bagó, Malika Benarab-Attou, Piotr Borys, Jean-Marie Cavada, Silvia Costa, Lorenzo Fontana, Mary Honeyball, Cătălin Sorin Ivan, Petra Kammerevert, Morten Løkkegaard, Emma McClarkin, Emilio Menéndez del Valle, Martina Michels, Marek Henryk Migalski, Katarína Neveďalová, Doris Pack, Chrysoula Paliadeli, Monika Panayotova, Marietje Schaake, Marco Scurria, Hannu Takkula, László Tökés, Helga Trüpel, Gianni Vattimo, Marie-Christine Vergiat, Sabine Verheyen, Milan Zver
Substitute(s) present for the final vote	Ivo Belet, Nadja Hirsch, Seán Kelly, Georgios Papanikolaou, Joanna Katarzyna Skrzydlewska