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## Issues Paper for the Liverpool Audiovisual Conference

### Media Pluralism - What should be the European Union's role?

#### 1. INTRODUCTION

Maintaining and developing media pluralism is crucial for the democratic process in the Member States as well as in the European Union as a whole. The European Union is committed to protecting media pluralism as well as the right to information and freedom of expression enshrined in Article 11 of the Charter of Fundamental Rights. Similar provisions are included in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The discussion on media pluralism is very broad and includes a variety of different instruments applied at different levels. The objective of this paper is to give a short overview of the discussion so far and the main instruments; and to open the discussion on the possible added value of further European instruments.

#### 2. DISCUSSION AND LEGISLATION ON MEDIA PLURALISM

The Commission published in December 1992 a Green Paper *Pluralism and Media Concentration in the Internal Market: an assessment of the need for Community action*, designed to launch a public debate on the need for Community action in this field. The debate did not show a clear need for Community intervention and no formal initiative was taken by the Commission.

The protection of pluralism has been a recurrent concern of the European Parliament, which was always in favour of European actions in the field of pluralism and media concentration. Several EP-reports have been voted since the 90s<sup>1</sup>: The European Commission has always paid close attention to calls coming from the European Parliament concerning the issue of concentration and pluralism in the EU media sector. Responding to earlier calls from the Parliament for action, the Commission asked whether one should re-examine the need for Community action in this field during the

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<sup>1</sup> Resolution in OJEC C 68 of 19.03.90, Resolution in OJEC C 284 of 2.11.92, B4-0262 in the OJEC C323 of 21.11.94, B4-0884 in OJEC C 166 of 3.07.95; European Parliament resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) P5\_TA(2004)0373; P5\_TA(2003)0381; 'Television without frontiers' European Parliament resolution on Television without Frontiers, on the application of Articles 4 and 5 of Directive 89/552/EEC for the period 2001-2002, Provisional 2004/2236(INI)

course of a much broader consultation on the *Green paper on Services of General Interest*<sup>2</sup> (2003). The results<sup>3</sup> highlighted the differences that exist across the Member States, indicating that the issue should be left to the Member States.

The Council of Europe has been very active in the field of media concentration/media pluralism and diversity through recommendations and reports. Work on this issue started in 1989 and an important number of concrete actions followed, including all-important aspects of this issue (recommendations on media pluralism, on freedom of expression, on the role of public service broadcaster, establishment of code of conduct during election campaigns, cooperation between regulatory authorities etc.). The latest initiatives – a ministerial resolution combined with an action plan - were adopted during the 7th European Ministerial Conference on Mass Media Policy in 2005. Ministers agreed to continue to monitor the development of media concentrations in Europe as a political priority of the organisation, in particular at the transnational level, with a view to suggesting any necessary legal or other initiatives.

Since private broadcasting had been licensed in national markets, Member States have put in place specific measures to ensure media pluralism, in order to protect freedom of expression and to ensure that the media reflect a spectrum of views and opinions that characterise a democratic society. These include a wide set of different instruments that goes from merger control rules to content requirements in the licensing system, the establishment of editorial status and includes also codes of conduct regarding professionalism in journalism and other measures.

### **3. APPLICATION OF MERGER AND/OR SPECIFIC MEDIA OWNERSHIP RULES**

The application of European competition law plays an important role not only in respect of the preventing the creation or the abuse of dominant positions, but also with regard to ensuring market access for new entrants. Application of the Merger Regulation prevents concentrations that significantly impede effective competition in the Common Market, especially through the creation or strengthening of dominant positions. Application of the antitrust rules prevents foreclosure of competitors from those markets and contributes to ensuring access to content and platforms for operators. Thus, in applying antitrust and merger control principles competition policy can make an important contribution to maintaining and to developing media pluralism, both in traditional television markets and in new upcoming markets.

European competition law cannot replace - nor does it intend to do so - national media concentration controls and measures to ensure media pluralism. Article 21(4) of the Merger Regulation<sup>4</sup> allows Member States to apply additional controls in order to protect of pluralism in the media. The Member States of the European Union operate different systems<sup>5</sup>: In some Member States specific procedures as regards media mergers and

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<sup>2</sup> COM (2003) 270

<sup>3</sup> White paper on Services of General Interest COM (2004)374

<sup>4</sup> Council Regulation No 139/2004 of 20 January 2004 on the control of concentrations between undertakings; JO L 24, 29.01.2004, 1-22

<sup>5</sup> “The information of the citizen in the EU: obligations for the media and the Institutions concerning the citizen’s right to be fully and objectively informed”, the European Institute for the media,

acquisitions are in place; for instance, the minister(s) responsible may request a special intervention on the grounds of pluralism, or the merger/acquisition may require the approval of the minister. In other countries general competition rules and criteria apply. In most of these countries there is co-operation between the Competition Authority and the Broadcasting Regulatory Authority in mergers, acquisitions and other concentration cases concerning media markets. In some Member States competition policy contains a link to media law whereby decisions made by the Competition Authority must be in line with the ownership restrictions laid out in the media law. Such national media ownership regulation covers and combines rules on press ownership, broadcasting ownership, cross media ownership regulation as well regulations on foreign ownership of the media, as in some countries.

#### **4. MEASURES TO PROMOTE PLURALISM ACTIVELY**

The Television without Frontiers Directive lays down minimum standards that all broadcasters have to comply with. This directive allows Member States to put in place stricter rules for television broadcasters under their jurisdiction, including measures concerning “The need to safeguard pluralism in the information society and the media” (Recital 44). In addition, several provision of the directive actively promotes pluralism: the aim of Articles 4, 5 and 6 is to facilitate the circulation of audiovisual works from other countries and to support independent producers. The latest report<sup>6</sup> on the application of these articles shows that this is an important and useful instrument<sup>7</sup>.

Furthermore, the MEDIA Programme<sup>8</sup> is vital in that respect. It aims to strengthen the competitiveness of the European audiovisual industry with a range of support measures dealing with training of professionals, development of production projects, distribution and promotion of cinematographic works and audiovisual programmes.

Public service broadcasting has an important role to play in ensuring media pluralism. The Commission’s policy recognises the importance and special role of PSB as well as the Member States’ freedom to define the public service tasks as stated in the Amsterdam Protocol and spelled out in the Communication from the Commission on the application of State aid rules to public service broadcasting<sup>9</sup>. This leaves the possibilities open for the Member States to support public service broadcasting in order to promote media pluralism actively.

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prepared on behalf of the European Parliament,. This report gives an overview over the different national systems. The Commission gratefully acknowledges access to an advance copy during the preparation of this issues paper.

<sup>6</sup> Sixth Communication from the Commission to the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC "Television without Frontiers", as amended by Directive 97/36/EC, for the period 2001-2002

<sup>7</sup> The average broadcasting time for European works in the EU-15 was 66.10% in 2002. The showing of independent producers’ works broadcast by all European channels in all Member States was and 34.03% in 2002. The share allocated to recent European works by independent producers was 21.10% in 2002.

<sup>8</sup> see: [http://europa.eu.int/comm/avpolicy/mediapro/media\\_en.htm](http://europa.eu.int/comm/avpolicy/mediapro/media_en.htm)

<sup>9</sup> OJ C 320/5 15.11.2001

But the financial aspect of public service broadcaster is only one side of the coin. The status of public service broadcaster, their role within the media landscape as well as their independence needs to be ensured through the legislative framework which underpins their activities. According to the subsidiarity principle, these are tasks for the Member State. One result of the forthcoming EIM study undertaken for the European Parliament *On the Information of the citizen in the EU* is very interesting: “The status and independence of public service broadcasting is in no way secured in many of the countries in the EU”<sup>10</sup>.

Other important issues can only be mentioned briefly: e.g. editorial freedom, working conditions of journalists, the question of the relationship between media and political actors<sup>11</sup>. It is important to admit that even if freedom of expression as well as freedom of information is legally protected in all EU Member States, the actual practice can only be judged by the reality of everyday working experience.

## 5. FRAMEWORK OF ELECTRONIC COMMUNICATIONS

The EU regulatory framework for electronic communications comprises a series of legal texts<sup>12</sup> and associated measures that apply throughout the 25 EU Member States. Promoting competition - in order to achieve economic efficiency in the interests of users and society - is one of the main objectives of the EU regulatory framework. The framework supports media pluralism in two ways. Through access remedies, it limits the market power of those who control access to networks or associated facilities such as conditional access systems. Even if the goal of the new framework is to encourage competition in the electronic communications markets it also recognizes that competition is not the complete answer. Therefore the framework also includes safeguards to guarantee basic user interests that would not be guaranteed by market forces, e.g. with respect to interoperability of consumer digital television, must-carry rules as well as frequencies granted in case of scarcity.

According to the 10<sup>th</sup> report,<sup>13</sup> in a number of Member States several of these possibilities to ensure media pluralism are not implemented in electronic communications law but most often embedded in other pieces of national legislation, such as the audio-visual laws, especially must-carry rules and licensing rules. The general interest objectives invoked by the Member States are quite similar: pluralism, cultural diversity, freedom of expression.

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<sup>10</sup> see: Study footnote 5, page 214.

<sup>11</sup> This is an issue the EP Report Boogerd-Quaak insisted specially on.

<sup>12</sup> Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive); Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive); Directive 2002/20/EC on the authorisation of electronic communications networks and services (Authorisation Directive); Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive); Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

<sup>13</sup> European electronic communications regulation and markets 2004, COM(2004)759

## 6. INTERNATIONAL COOPERATION AT BILATERAL AND MULTILATERAL LEVEL

Media pluralism plays also an important role in the external relations. Different instruments can be employed with respect to different countries. For example within the enlargement strategy, the Commission has placed emphasis on media pluralism questions in its negotiations within candidate countries.<sup>14</sup> Within the neighbourhood policy, bilateral relations between the EU and individual countries are framed by Partnership and Co-operation Agreements that are in force. These also include provisions on media pluralism and freedom of media. In addition since the early 1990s, the EC has included more or less systematically a so-called human rights clause - including freedom of the media and media pluralism- in its bilateral trade and co-operation agreements with third countries.

The Commission is also active in international fora, promoting the inclusion of media pluralism question within the UNESCO instrument on cultural diversity or supporting the European media model. Media pluralism is a feature of the underlying principles of World Summit on the Information Society (WSIS).

## 7. MEDIA OWNERSHIP RULES IN THIRD COUNTRIES AND INTERNATIONAL COMPETITIVENESS OF EUROPE'S MEDIA INDUSTRY

The discussion on media pluralism has to take account of the international dimension and the global competitiveness of Europe's media industry. European Companies are faced to international competition, becoming more intense with the liberalisation of ownership rules in third countries, especially in the US. The US-deregulation of ownership rules in 2003 enabled media giants, such as NBC Universal Inc. or Viacom Inc. to acquire more television and radio stations. This consolidation process made it easier for these companies to expand their activities not only within the US but also towards Europe.

Too restrictive ownership rules in Europe might hinder European companies to compete globally: Carlton/Granada merger produced a company valued at \$7.5 bn, described in the British papers as a "media giant" while for example Google is now worth \$80bn and takes ahead of media leviathan Time Warner, which is valued at \$78bn, or media companies such as Viacom and Walt Disney, which have stock market capitalisations of between \$54bn and \$55bn.

A balance between the safeguard of media pluralism in Europe and the possibilities for European companies to compete globally is crucial if we want a European presence at the global "top table" in the communications and media sector, especially in view of trade deficit of around \$8bn p.a. with the US.

## 8. CONCLUSIONS

This brief overview already demonstrates that many different measures are in place at different levels in order to safeguard pluralism. Therefore the central question must be **the added value of additional European actions**. The discussion on media pluralism is very often focused on questions related to media ownership. But one should not forget other important aspects such as the status of commercial and public service broadcaster,

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<sup>14</sup> i.e. within the framework of the Stabilisation and Association Process.

editorial freedom, (economic) situation of journalists, training of journalists etc. According to the subsidiarity principle, these are clearly questions for Member States.

With respect to the evolution of the market and new technologies, the European Parliament fears that the absence of a European regulation could create dangerous media concentration and that therefore pluralism could be damaged. The European Parliament invited the Commission to propose concrete measures to safeguard media pluralism.

Member States clearly expressed their views during the different consultation processes and pointed out that they consider this as a task for Member States. The report prepared on behalf of the European Parliament comes to the conclusion that a variety of measures are used to assess a company's influence on the market, and to limit the influence of companies: circulation and audience share, number of licenses, capital shares, voting shares, advertising revenues, or involvement in a certain number of media sectors. Therefore the report concludes that given these differences, **it is difficult to propose any kind of harmonisation of rules between the EU member States**. "The systems have developed alongside and partly in response to the national markets, which in each country have specific characteristics"<sup>15</sup>.

In addition, the Council of Europe is the only organisation at pan-European level dealing with the human and democratic dimension of communication. A series of recommendations, guidance documents and codes of conduct have been developed. The Council of Europe plays a central role in strengthening the common values and principles, in particular by setting common pan-European minimum standards in this area.

The report of the study "*The information of the citizen in the EU: obligations for the media and the Institutions concerning the citizen's right to be fully and objectively informed*" prepared on behalf of the European Parliament gives a very good overview of the situation in the EU-Member States. This report makes several recommendations. Most of these recommendations are addressed to Member States; some of them are addressed to the European Union:

- In preparing this report, the authors noted the difficulty in finding clear and comparable data regarding circulation and audience figures, which in some countries are far more comprehensive than others. To this end the EIM echoes the recommendation of the Council of Europe, namely to encourage the development of 'An up-to date collection and public access' to such information in all Member States, whether they are recent members of the Union or long established.
- A related issue is the transparency of ownership and interests held by companies in media outlets. This varies widely between states and again the EIM repeat the recommendation of the Council of Europe: 'An up-to-date collection and public access to economic information on providers and operators (turnover, audience share, etc.) are absolutely necessary. Only on the basis of appropriate data is it possible to determine if media pluralism is vibrant or endangered.'
- The establishment of an Observatory focusing on media markets and concentration, with the provision of a data-base of information on EU Member States, would go a long way towards providing such transparency and enhancing national systems of regulation. The majority of respondents to the survey on media pluralism were in favour of this idea, which would also be of benefit to the various national authorities dealing with these issues.

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<sup>15</sup> see: Study footnote 5, page 222

- The EU should support and initiate studies to analyse what is actually happening to local media. Is consolidation necessary for small outlets to survive? Does Government support provide an alternative approach? What is the real effect of consolidation upon the range of content, information, voices and opinions at the local level?
- Also the encouragement of research and studies examining levels of internal pluralism and the impact of ownership, or political influence on content, would serve as a useful starting point for assessing the impact of ownership on national media markets.

In the *White Paper on services of General Interest* the Commission committed itself to continuing closely monitoring the situation. Besides this monitoring process, which is very much supported in the EIM report, how could the European Union bring true added-value to the instruments that are already operational at the different levels?

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The Directorate-General for Information Society and Media of the European Commission invites you to make observations to this issues paper by 5 September 2005. Please submit your comment in a generally readable electronic format. All submissions will be published on the Commission's website if not requested otherwise. If you would like your contribution to be treated confidentially, please indicate this at the top of the first page of your submission. Should you want to add a cover letter please do so in a separate document. In case your comments exceeds four pages please start your submission with an **executive summary**. All submissions should be mailed to the functional mailbox of the Audiovisual Policy Unit of the Directorate-General for Information Society and Media: [avpolicy@cec.eu.int](mailto:avpolicy@cec.eu.int).