High-Level Group on Media Freedom and Pluralism
TERMS OF REFERENCE

September 2011

1. Introduction

The European Union was founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. These values, now enshrined in Article 2 of the Treaty on the European Union, were placed at the heart of the construction of free Europe, implacably opposed to totalitarianism whether behind the Iron Curtain or in the iron grip of dictatorship. Democracies' respect for pluralism and freedom of the media, including the protection of journalists' rights and freedoms, are key elements for the enabling of the exercise of freedom of expression, duly enshrined in Article 11 of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights.

Press and news media constitute one of the most powerful tools for the defence of these values and for reinforcing the related European values of solidarity and inclusion. The recent economic crisis and technological evolution are jointly changing the paradigm for press and news media - i.e. written press, TV news and current affairs both on and offline. Nonetheless, media are needed as much as ever and they need to be able to play their full role in favour of democracy, integration and inclusion.

Media and press freedom can never be taken for granted, and any attempt to erode them has to be firmly resisted. The recent Resolution on media law in Hungary (P7 TA (2011) 0094) adopted by the European Parliament is the latest demonstration of the depth of policy makers', citizens' and civil society concerns, requesting urgent action to protect pluralism and freedom of the media.

The Commission considers therefore that it is necessary to reflect upon pluralism and freedom of the media more broadly and measure whether additional steps need to be taken, and if so, by whom, to ensure the effective protection and promotion of these fundamental rights. To this end, Vice-President Kroes has decided to convene a group of experts with wide experience and reflecting different backgrounds. This group is asked to analyse media and press freedom, including the current legal framework, and, based on an objective and balanced analysis, assess the need for action, proposing concrete ways to address the risks to pluralism and freedom of the media. The group's work will provide the Commission an opportunity to foster a wide debate with Members of Parliament, Member States, representatives from the media and civil society in order to develop a future-oriented vision of pluralism and freedom of the media.

2. The challenges for the EU of reflecting on pluralism and freedom of the media

Member States have primary responsibility for ensuring pluralism and freedom of the media, backed up by their national courts. National authorities, including courts, should ensure the full respect of fundamental rights in general, and freedom of expression in particular.

Legally speaking, the role of the EU, acting within the competences conferred upon it by the EU Treaties, is to ensure compliance with Treaty obligations and secondary legislation. Under the Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU), the Commission has no general power to intervene in cases of violations of fundamental rights. Article 6 of the TEU explicitly states that the Charter of Fundamental Rights of the European Union does not extend the Union's competencies. The European Commission would be able to examine respect for freedom and pluralism of the media only when the Member States are implementing Union law (Article 51 §1 of the Charter of Fundamental Rights of the European Union), for example the implementation of the Audiovisual Media Services Directive (AVMS).

Media pluralism is a complex concept that should not be limited to the issue of media concentration. This is why the starting point should be a broad understanding of media pluralism that includes all measures that ensures citizen's access to a variety of information sources, opinion, voices etc. in order for them to build their opinion without the undue influence of one dominant opinion forming power.

Media freedom implies the free exercise of journalism including protection of sources and independence of newsrooms from political or commercial influence. Media freedom is considered to be part of freedom of expression and originally consisted of the right to publish newspapers, magazines, books, etc. without government interference or prior censorship. Now, it encompasses not only the freedom of print media but also audiovisual, electronic and other public media.

National regulatory models differ vastly within Europe, following significant differences in culture, size and characteristics of media markets, and legal and administrative traditions. Press and news media are very fragmented markets, mainly due to the variety of languages. So far there is insufficient evidence to conclude that a single market-oriented regulatory model applicable to every Member State would be conducive to an improvement in media pluralism or media freedom.

3. Terms of Reference

The Group is asked to provide a set of recommendations for the respect, the protection, the support and the promotion of pluralism and freedom of the media in Europe. These recommendations will need to consider the variety of national situations, the practical consequences of the principle of subsidiarity and ongoing or past policy initiatives at Member States or EU level (as well as relevant or remarkable practices in democracies around the world). The Group is requested to advise as to whether further measures at EU level would be desirable and necessary.

The Group should draw upon work done at EU level, and at national level and identify best practices in Member States in the matter of protection and promotion of media rights and independence in terms of law, self-regulation and tradition.

In this perspective and if appropriate, it might study some examples from certain Member States, applicant countries or democratic third countries in order to identify common issues or concerns and highlight possible solutions for questions of principle as much as for practical problems.

The work of the Group should also build on the works of the Council of Europe, the jurisprudence of the European Court of Human Rights and the OSCE analyses, and take into account ongoing and past discussions at European level such as the debates carried out by European stakeholders.

In order to make the Group's work a success, the issues related to media freedoms have to be addressed in the perspective of meeting three inherent challenges:

- the independence of news media and all its component activities, including publishing and journalism;

- their respective roles in the creation of pluralism and freedom of the media;

- the protection of pluralism and freedom of the media in the digital environment.

As far as the third challenge is concerned, it is common to take pluralism and freedom media for granted in a digital environment because of the switch from an economy of scarcity into the abundance of means. Even though abundance of media distribution channels and lowered entry barriers has transformed the traditional debate, pluralism and freedom of the media may not be self-sustaining. Currently, threats to pluralism and freedom of the media – both offline and online - come *inter alia* from governments reacting to difficult economic and political circumstances. Without detracting from the evident opportunities of digital media, it is appropriate to identify possible risks applicable to both the traditional and the digital sphere.

The Group is asked to cover in priority the following areas, embracing both 'classical' and new media:

- identification of possible limitations to media freedoms, including state interference in law and/or practice, controls upon media independence and the role and independence of regulatory authorities, news media professionals' rights (notably protection of sources), caused by legislation and practices and ways to address these risks;

- impact of media ownership on freedom and pluralism of the media, as well as media accountability, ethics and trust in quality journalism;

The Group may wish to consider other issues which it would find relevant.

Based on this analysis, the group should draw up its report to the Commission, identifying ways to ensure sustainable press and media freedoms in an Internet world, and setting out how risks should best be addressed, including through legislation, better enforcement and or other measures, and at which level (i.e. EU, national, regional) such initiatives should best be implemented.

4. Working Methods

The members of the Group and its chairperson will be appointed by Vice-President Kroes. The Group will consist of one chairperson and five members, selected on the basis of their knowledge, experience and proven track record as in-depth thinkers in the areas of

fundamental rights, pluralism and freedom of the media and their openness to the opportunities of the future.

The chairperson and the members of the Group will conduct their mission under their sole responsibility. The Group will decide its own working methods. It might hold consultations or hearings, as appropriate, with experts, stakeholders, Members of the European Parliament and the competent authorities of Member States or relevant players from democratic third countries.

Co-operation with the EU News Media Futures Forum is encouraged and a joint session at the close of the Group's mandate could be envisaged.

The European Commission's services will ensure the secretariat of the Group. Where necessary, the Group might ask the Commission services to make arrangements to bring in supplementary external technical expertise to support the work of the Group.

The Group will report back in writing to Vice-President Kroes as often as appropriate. The report will be finalised as soon as possible and no later than 12 months [tbc] after the first meeting of the Group.

It is foreseen that the findings of the Group are made publicly available and presented to the European Parliament and the Council of Ministers of the European Union.